



Cabinet
9 September 2019

**Report from the Strategic Director
of Community Wellbeing**

**Tenant Management Organisations in Brent: Renewal of
Modular Management Agreement**

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| Wards Affected: | Kilburn |
| Key or Non-Key Decision: | Non-Key |
| Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small> | Open |
| No. of Appendices: | Two: <ul style="list-style-type: none"> • Appendix 1 – Map of KSTMO and WGTMO • Appendix 2 – MMA options available |
| Background Papers: | n/a |
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1. Purpose of the Report

- 1.1. In Brent, there are two Tenant Management Organisations (TMO), Kilburn Square TMO (KSTMO) and Watling Gardens TMO (WGTMO). Following the transition from Brent Housing Partnership (BHP) to in-house management, the Council has sought to review the arrangements in place between the Council and each TMO. This to ensure they are reflective of the latest statutory guidance and will be achieved by entering into new Modular Management Agreements (MMA)s.
- 1.2. The purpose of this report is to equip Cabinet with an overview of the proposed agreements, with a view to enter into a new MMA with each TMO. The report sets out which services KSTMO and WGTMO have selected under the Right to Manage (RTM) and how this will be managed by the Council.

- 1.3. The report will include a brief summary of each TMO. Collectively, the TMOs are only responsible for a small amount of stock totalling 410 homes, and they are not responsible for rent setting, allocations or major works. They are, however, a key stakeholder in enabling the Council to achieve corporate priorities such as development of New Council Homes (NCH) of which the two TMO sites offer extensive development opportunities. Both are also significant to the Council fire safety investment for high-rise blocks. It is therefore essential that the improved relationship between the Council and TMO's is underpinned by a new MMA.

2. Recommendation(s)

- 2.1. That Cabinet note the options selected by KSTMO and agree to enter into a new MMA by delegating authority to the Strategic Director of Community Wellbeing, in conjunction with the Chief Finance Officer and the Cabinet Member for Housing and Welfare Reform to enter into a new Modular Management Agreement retrospectively
- 2.2. That Cabinet note the options selected by WGTMO and agree to enter into a new MMA by delegating authority to the Strategic Director of Community Wellbeing, in conjunction with the Chief Finance Officer and the Cabinet Member for Housing and Welfare Reform to enter into a new Modular Management Agreement retrospectively

3. Detail

- 3.1. A TMO is an organisation set up by tenants and/or leaseholders under the "Right to Manage" (RTM). The RTM was introduced in 1994, giving local authority tenants and leaseholders, the statutory right to take over responsibility for managing housing services. To do this, residents had to form a TMO. In short, the RTM allows tenants and leaseholders to takeover certain housing management responsibilities from their landlord. The services a TMO are responsible for are agreed with the Council and set out in a contract known as an MMA. Each TMO is governed by a Board of elected tenants and leaseholders that live on the TMO site and employs an Estate Manager to manage service delivery.
- 3.2. The first TMO to be established in Brent was KSTMO in 1994. As of July 2019, KSTMO is responsible for 246 Council properties which are home to 155 tenants and 91 leaseholders. Located in Kilburn, the boundary of the TMO runs along Brondesbury Park Road and links directly to Kilburn High Road via the market. It includes one high-rise block and the remaining are a mixture of low and medium rise blocks and houses. The Council currently has one active development site within KSTMO's boundary which is part of the NCH programme. This will be detailed further in section 6.1.
- 3.3. The second TMO to be established in Brent was WGTMO in 2002. WGTMO is located at the other end of the Kilburn High Road on Shoot-Up Hill near Kilburn Station. They are responsible for managing 164 homes, for 127 tenants and 37 leaseholders. This TMO includes three high rise blocks, 11 bungalows for older people and two low rise blocks known as Claire Court.

- 3.4. A map of the TMO sites is included in appendix 1. When KSTMO and WGTMO formed, the Council entered into the required MMA's and agreed which services each TMO would be responsible for and which would remain the responsibility of the Council. Delivery and monitoring of these MMA's formed part of BHP's remit up until 2017 until they transferred back in-house along with the Council's housing stock.
- 3.5. During this period, when the TMO's were the responsibility of BHP, the then Department of Communities and Local Government (DCLG) now Ministry for Housing Communities and Local Government (MHCLG) issued new statutory guidance for updating existing MMAs. This was published in 2013. Although this did not make the existing agreements null and void, the new regulations did include clearer guidance on managing the relationships between TMO's and Council's or Arm's Length Management Organisations. Specifically, performance management. The two TMO's approached BHP with a desire to renew the MMA's in line with the regulations. Development of new MMA's was halted due to a reported lack of resource. This furthered a breakdown in relationship between BHP and the Board Members of KSTMO and WGTMO. Monitoring arrangements required from BHP were not completed and as a result, each TMO had significant issues with Governance which went on to directly impact TMO tenants and leaseholder.
- 3.6. Despite this, tenants and leaseholders living within the TMO's wanted to remain a TMO rather than transferring back in-house with wider Council housing stock. This is evidenced by the ballot which is required to take place every five years to establish whether tenants and leaseholders (not just the Board) want to continue as a TMO.
- 3.7. The last ballot for Kilburn Square was held on 25 September 2017. Of the 270 eligible voters 144 voted, 135 in favour of continuing as a TMO and 9 wanting to end the agreement. The last ballot for Watling Gardens was held on 30 November 2017. Of the 145 eligible voters 74 voted, 55 in favour of continuing as a TMO and 19 wanting to end the agreement. The next set of ballots will take place in November 2022.
- 3.8. In 2017, alongside a ballot to assess commitment to continuing as a TMO, the Council commissioned Newman Francis (a Tenant Engagement Consultancy) to undertake a review of both TMOs. The brief was to test viability, identify any governance issues and make recommendations for improvement.
- 3.9. Newman Francis undertook a survey with a sample of tenants and leaseholders living on KSTMO and WGTMO, the findings showed high levels of satisfaction specifically with repairs and maintenance and estate management. Only 8% of residents surveyed stated they thought repairs and maintenance and estate services were below average. This is an area that typically shows lower levels of satisfaction. Further insight shows the satisfaction with repairs and maintenance is directly linked to tenants having direct access to the TMO estate team, meaning they can report issues as they are happening in person. This also means the employed handyperson is more accessible.

- 3.10. The survey did however highlight an area for improvement was engagement and consultation with 22% of residents surveyed reporting this as below average.
- 3.11. Newman Francis found that generally the operational delivery of services being delivered by the TMO's were above average. At a Board level, however, there needed to be significant improvements. These findings were used to create improvement plans for KSTMO and WGTMO. Improvement plans were centred on outcomes for the TMO's to achieve. These outcomes sought to address areas for improvement identified by Newman Francis such as engagement and consultation.
- 3.12. These improvement plans were published in December 2017. In April 2018, management of the TMOs transferred from the Brent Housing Management (BHM) service to Housing Supply and Partnerships (HSP) service. This was in recognition that the TMO's needed to be managed using the MMAs in place rather than part of the Councils housing stock.
- 3.13. The HSP service has worked with KSTMO and WGTMO and all actions listed in the improvement plans have been successfully achieved, except for new MMAs being in place. This is the final step as the new MMAs will be based on now current policies and a better understanding of the Councils and the TMOs strengths in service delivery.
- 3.14. Both KSTMO WGTMO have reviewed their Board membership and the roles within these Boards. Each have appointed a new Chair which has significantly improved the relationship between the Council and the TMO's. This has then enabled new MMA's to be developed and solutions to be found on longstanding historical issues.

4. Modular Management Agreements (MMAs)

- 4.1. When developing a new MMA, the Council must use the guidance set out by the MHCLG. This guidance sets out specific clauses which dictate the services a TMO can choose to become responsible for. The MMA is supported by a series of schedules which detail how the selected option or clause will be implemented. The schedules are predominately a collection of policies Council or TMO policies. The benefit of updating the MMAs has meant that all operational policies have also been reviewed and updated.
- 4.2. Once entered into, these MMA's are indefinite, unless both parties agree to end the agreements or a TMO is no longer able to operate. However, this report has highlighted the need to review MMA's against any new changes in Regulatory Guidance or to ensure any changes to Council or TMO policy can be appropriately recorded. It is recommended that the MMA's between the Council and KSTMO and WGTMO are reviewed every five years once adopted.
- 4.3. This section offers an overview of each chapter and any specific points for Cabinet to note from the new proposed MMA's. A full list of the Chapters and how responsibilities have been split is listed in appendix 2.
- 4.4. *Chapter One – General Provisions*

4.4.1. Chapter one sets out the legal context for evoking the RTM and confirms which properties will be included within the TMO's portfolio. This Chapter is predominately standardised text for the Council and TMO to refer to. In this version of the guidance, chapter one includes clearer guidance on how to manage 'failure to perform' and 'ending this agreement'.

4.5. Chapter Two – Repairs, Maintenance and Service Provision

4.5.1. Repairs and maintenance services can be divided into three options for a TMO in this chapter, these are; responsive repairs, major works and estate services. Both KSTMO and WGTMO have chosen to continue delivering responsive repairs and maintenance services and estate services. Major works remains the Councils responsibility.

4.5.2. KSTMO will be responsible for all repairs up to £3,000 and WGTMO £2,500. Any repairs that are completed by the Council and fall under the responsibility for the TMO will be recharged to the TMO on a quarterly basis. This amount differs as it is based on individual TMO's spend on repairs under their responsibility, their capacity to carry out repairs exceeding this amount and financial delegation agreed by the Board to the Estate Managers. It is not a requirement that these amounts are the same as each MMA will be managed separately. Additionally, WGTMO have opted for the lower amount to ensure any major voids work that exceeds £2,500 is picked up and known to the Council. KSTMO do not do voids.

4.6. Chapter Three – Rent Collection

4.6.1 Chapter three set outs options for collecting rent, managing arrears, setting rents, managing voids including receiving void allowances and managing bad debt. Options selected within this section in the new MMA are a continuation of the existing arrangement between the Council and TMOs. Both TMOs will collect and manage rent arrears for existing tenants. To date this arrangement has worked well. In 2018/19 the performance indicator 'Rent arrears of current tenants as a proportion of the rent roll' was recorded at 1.7% for KSTMO and 1.8% for WGTMO. The target is 2.3%. For comparison, the rent arrears rate for BHM 2.9%.

4.6.2 The Council will continue to be responsible for setting rents and service charges and pursuing former rent arrears. Neither TMO receive an allowance for any extended void periods. The option to write off bad debt also remains in control of the Council.

4.7 Chapter Four – Leasehold and Freehold service charges

4.7.1 The Freehold for all properties included in the TMO boundary remains with the Council. Responsibility for managing the arrangement with Leaseholders has remained with the Council. This chapter specifically focuses on calculating service charges and the consultation procedures which need to be carried out with Leaseholders. This also supports the Council to fulfil the responsibility for managing Major works and ensuring Leaseholders are provided with the correct Notices in line with legislation.

4.8 Chapter 5 – Financial Management

4.8.1 This Chapter provides the Council with clear guidance on how to calculate the allowances for KSTMO and WGTMO. Both TMOs have opted to pass any rent collected back to the Council and receive an allowance rather than being self-financed. The remainder of the Chapter then requires each TMO to set out how they will manage their finances such as banking arrangements. The new MMA includes more detailed guidance on managing surplus and reserves which will be discussed later under section 5.

4.9 Chapter 6 – Housing Management

4.9.1 The Chapter on Housing Management encompasses allocation of properties to tenancy management. It also includes managing the Right to Buy process.

4.9.2 Under this Chapter, the Council Allocations policy took president meaning the TMO was not able to take responsibility for managing allocations and transfers. This is to ensure properties are still going to those with the greatest housing need. It was agreed with both KSTMO and WGTMO however, that any downsizers would be prioritised for properties on the TMO sites to ensure they could remain part of the community. Due to the demand for larger properties this could not be guaranteed for households who are overcrowded. This will be discussed further in section 6 under 'new council homes'.

4.9.3 The remainder of this Chapter then sets out processes for successions, subletting and anti-social behaviour. Options for these clauses require both the Council and TMOs to intervene. The general understanding is that the TMO will manage the day to day operational part of the service and then escalate decisions or legal action to the Council. These processes are fully detailed in the accompanying schedules.

4.10 Chapter 7 – Staffing and Management relationship between the Council and TMO

4.10.1 This Chapter is predominantly standard text which the Council and TMO's have to adhere to in order to manage the MMA's effectively.

4.10.2 TUPE does not apply in this Chapter as they are established organisations. Additionally, the Council is responsible for deciding whether job opportunities at the TMO will be offered as a secondment to existing Council staff. At present this is not offered.

4.10.3 The core information in this Chapter sets out the type of relationship the Council and the TMOs expect to have and specifies who the Councils nominated person is to act as the 'Liaison Officer'. This sits within the HSP service. It then goes on to list the types of Notice which can be served by either party should there be an extended failure to provide a service and how disputes between the Council and TMO should be managed.

4.10.4 Under this Chapter the TMO's have selected that the Council remains responsible for undertaking statutory consultation and that they will work with the Council to appoint any contractors.

4.11 Chapter 8 – Performance standards

4.11.1 In the Guidance, this is standard text, again setting out the process for performance monitoring but at an operational level. The most significant change introduced by the HSP service is the Performance Indicators being reported on by the TMO's. Both TMO's will be reporting on the same suite of performance indicators ensuring performance is now directly comparable. The service will also continue to monitor rent collection rates against BHM's performance.

4.11.2 The Councils Policy Co-ordination Group has agreed that an annual update on each TMO's performance will be presented alongside the Councils own housing service performance on an annual basis.

5 Allowances

5.1 To deliver the services agreed under an MMA, the Council grants an allowance to KSTMO and WGTMO. This allowance is calculated using the Councils own spend using the process outlined in Chapter 5. This means where efficiencies are made by the Council to achieve its Medium Term Financial Savings (MTFS), this should also be reflected by the TMOs.

5.2 Under BHP, the allowances were not regularly reviewed in line with the required process. The following two sections will detail the implications of this and what is being implemented to rectify this.

5.3 Kilburn Square TMO

5.3.1 KSTMO's allowance in 2017/18 was £390,824. Following the transfer back to the Council, it was identified that a 9% reduction needed to be introduced. This reduction was initially rejected by the TMO and a change in allowance was not introduced for 2018/2019. Since, the HSP service has worked with the TMO to successfully introduce the reduced allowance by the maximum 5% for 2019/2020 with a further reduction planned. This has saved the Housing Revenue Account (HRA) £19,000.

5.3.2 Kilburn Square had projected an accumulated surplus of £728,000 by the end of the financial year. This now stands as £750,000. The Council cannot recoup this money. Whilst performance of service delivery is good, the ability to accrue such large surplus under BHP demonstrates a need for the Council to strengthen its financial management of the TMO's. The new MMA's include clear joint processes for allocating surplus spend to large estate improvement projects, this is further underpinned by the Newman Francis report setting out expectations on delivering against KSTMO's Business Plan.

5.4 Watling Gardens TMO

5.4.1 In 2018, it was reported to the Council by the WGTMO Board that their allowance was incorrectly calculated. An investigation into this shows that the

allowance which was set at £198,965 needed to be increased to £216,471. The TMO had received an underpayment of £17,506 per year since the previous allowance review in 2012. This was not backdated by the Council but the higher allowance introduced.

5.4.2 WGTMO reported a projected deficit of £76,000 at their 2018 Annual General Meeting. This deficit was reported as planned and invested in a new CCTV system for the site. This deficit was addressed at the start of the new financial year using reserves. Going forward finances will be closely monitored with the Liaison Officer ensuring monthly financial updates are provided by the Board.

5.5 Next steps

5.5.1 Working with Finance, the new MMAs offer an opportunity to conduct a full review of budgets associated with TMO responsibilities against Council spend. It is proposed that a zero based budgeting exercise is completed and an allowance is committed to for a period of 3-years minimum to ensure any reductions can be appropriately introduced and the TMOs can effectively plan spend against their business plans.

5.5.2 The HSP service has established a partnership with the KSTMO Board and will work with them to plan investment using the acquired surplus for the estate. The renewed MMA's and clearer guidance will support this. The HSP service will monitor WGTMO to ensure they remain financially viable and reduce their deficit.

6 **Financial Implications**

6.1 The cost of TMO management allowances is funded from the HRA. Any adjustments to the proposed MMA will result in an increase or decrease to the management allowance at an amount comparable to existing similar costs in the HRA to undertake the particular function.

6.2 Revenue pressures in the HRA has meant that savings had to be achieved as part of the transformation programme. Cost reductions and future efficiency savings set in the HRA will also be reflected in the management allowances to TMOs.

6.3 All major works including fire safety are funded within the HRA and does not impact TMO allowance calculations.

7 **Legal Implications**

7.1 The current RTM arrangements are governed by the Housing (Right to Manage) (England) Regulations 2012 ("the 2012 regulations"). Local authorities and TMOs must have regard to the statutory guidance that is issued by the Secretary of State under the 2012 regulations and that guidance was issued by DCLG, as it then was, in December 2013. The Council as landlord must accept a Right to Manage application provided that the tenant organisation has complied with the relevant regulations for setting up a TMO and continued to fulfil its ongoing obligations as set out in the MMA.

7.2 A proforma MMA with mandatory clauses and optional clauses and schedules is set out in the non-statutory guidance (which accompanies the December 2013 statutory guidance) and it covers a number of arrangements between the Councils and TMOs which are summarised above in section 5.

7.3 As set out above, the KSTMO was established in 1994 and the WGTMO was established in 2002 after complying with the necessary legal requirements to set up a TMO. The proposed updated MMAs are in the form of the Modular Management Agreement and are consistent with the requirements of the 2012 Regulations and the 2013 statutory guidance and non-statutory guidance.

8 **Equality Implications**

8.1 Schedule 2 of the Guidance published by MHCLG requires each TMO to set out how they will meet the requirement as an employer and service provider and fulfil the equality and diversity agenda. Aims suggested by the Guidance include; deliver a service to all residents which takes into account any special needs they may have; fair treatment of employees; a management board which reflects the composition of the estates population; the encouragement of active participation from all individuals and sections of the community.

8.2 As part of the on-going monitoring arrangement, the Councils Liaison Officer will review each TMO's approach to equality and diversity on an annual basis. This will include reviewing procedures to ensure they enable the Council to fulfil its statutory duties under the Equality Act 2010.

9 **Consultation with Ward Members and Stakeholders**

9.1 New agreements have been developed in consultation with the following:

9.1.1 KSTMO Estate Manager, Board Members and Residents

9.1.2 National TMO Federation Advisor

9.1.3 WGTMO Estate Manager and Board Members

9.1.4 Cabinet Member for Housing and Welfare Reform

10 **Human Resources/Property Implications (if appropriate)**

N/A

Report sign off:

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Strategic Director of Community Wellbeing