



Executive
17 November 2008

**Report from the Director of
Housing and Community Care**

Wards Affected:
Tokyngton

**Disposal and Authority to proceed with development of
housing scheme at Aldbury Avenue**

Appendix 2 to 4 are not for publication as they contain the following categories of exempt information as specified in the Local Government Act 1972, namely:

Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Forward Plan Ref: H&CC-08/09-05

1.0 Summary

1.1 This report seeks to progress the Brent Housing Partnership Limited (BHP) development of new affordable homes under the Housing Corporation's 2008-11 National Affordable Housing Programme. This report specifically requests the Executive agree to dispose of the Aldbury Avenue Garage site to BHP at nil financial consideration and allow BHP to enter into a Grant Agreement with the Housing Corporation with performance guarantee bond arrangements. The Council will receive nomination rights to these homes.

2.0 Recommendations

- 2.1 To note that BHP have received a Housing Corporation funding allocation of £412,500 under the 2008-11 National Affordable Housing Programme to develop the Aldbury Avenue Garages site to provide three affordable social rented three bedroom five person family houses.
- 2.2 To agree to dispose of the Council-owned HRA land at the Aldbury Avenue Garage site to BHP at nil financial consideration.

- 2.3 To agree to enter into a development agreement with BHP under which BHP will agree to procure the construction of the three new homes on terms to be determined by the Director of Housing and Community Care in consultation with the Borough Solicitor.
- 2.4 To give approval to BHP, to enter into a Grant Agreement with the Housing Corporation in respect of the aforesaid BHP funding allocation of £412,500 under the 2008-11 National Affordable Housing Programme provided that the terms of that Grant Agreement are approved by the Director of Finance and Corporate Resources.
- 2.5 To give approval to BHP to finance the development, using its reserves, for the sum of £191,947 to cover the shortfall in funding the scheme.
- 2.6 To agree to enter into a Performance Guarantee Bond with the Housing Corporation in respect of the Grant Agreement entered into by BHP under paragraph 2.4 above on terms to be approved by the Director of Finance and Corporate Resources.
- 2.7 To agree that BHP may, on approval from the Director of Housing and Community Care, submit further bids to the Housing Corporation for schemes to be developed under the NAHP programme without prior Executive approval provided that Executive approval will be required before completing each scheme and/or entering into any Grant Agreement or other agreement for any such schemes.
- 2.8 To agree that BHP may submit a further bid to the Housing Corporation to allow tenants occupying these properties to purchase their home under the Social Homebuy scheme as set out in paragraph 3.2.10 of this report and subject to the approval of the Director and Finance and Corporate Resources as set out in paragraphs 3.2.10 and 4.13.

3.0 Detail

3.1 Background

- 3.1.1 On 6th August 2007 the Executive agreed, in principle, that BHP be permitted to own, manage and grant tenancies of properties to newly developed properties that have been developed under the Housing Corporation's 2008-11 National Affordable Housing Programme (NAHP), and agreed, in principle, to provide a Performance Guarantee Bond in respect of any funding allocation received by BHP under this programme. This approval was given on the basis that specific schemes would require express executive approval as and when they came on stream.
- 3.1.2 BHP achieved Housing Corporation Preferred Partner status on the 19th July 2007. As the Housing Corporation had not finalised the Grant Agreement applicable for ALMOs, BHP were unable to sign an agreement prior to being able to bid for funding. The Housing Corporation invited bids from all preferred partners when they launched the bidding round for the 2008-11 NAHP in September 2007. Given this, BHP submitted their bid for funding, in

consultation with the Council, in order to develop the Aldbury Avenue Garages site on the 2nd November 2007 on the basis that a further detailed report would be presented to Members on the detailed scheme should the funding bid be successful. The Housing Corporation published the initial 2008-11 NAHP Allocation Statement on the 27th February 2008, which showed that the BHP bid was successful, and the approved grant allocation was entered on to the Housing Corporation's Information Management System on 5th April 2008.

- 3.1.3 Given this, BHP will now be required to enter into a Grant Agreement with the Housing Corporation, subject to securing a satisfactory planning permission, such that the initial 50% tranche of the social housing grant allocation will be drawn down on the estimated start on site in April 2009 and the remaining 50% tranche of grant will be drawn down on the estimated practical completion in March 2010. In line with the Executive Report dated 6th August 2007, Executive approval is required for each specific scheme BHP intends to take forward prior to such a Grant Agreement and the approval of the Performance Guarantee Bond against each specific allocation.
- 3.1.4 The Executive is asked to amend arrangements under 3.4.4 of the Executive Report dated 6th August 2007 so that BHP is able to submit bids to the Housing Corporation on approval of the Director of Housing and Community Care. However, once a detailed scheme is worked up and funding secured for a specific scheme, the Executive is asked to note that a further report would be presented to Members to seek approval for each scheme which BHP intends to take forward so that Members can consider the scheme, assess the viability and strategic fit and consider the implications of any proposed Performance Guarantee Bond for each specific allocation that BHP receives.

3.2 Planning & Development

- 3.2.1 The Aldbury Avenue Garages site is Council-owned and on HRA land. The existing site comprises 24 garages of which only 1 remains let. The site is overgrown and is prone to fly tipping. The majority of the garages have been vacant since 1996 and would require a significant investment to return them to a lettable condition. The site itself is a secluded site which is not visible by the general public and does not have any form of overlooking from neighbouring properties. This lends the site to security issues where the usage of garages are concerned. A site map is appended to this report Appendix 1.
- 3.2.2 BHP engaged the Robert Lombardelli Partnership to draw up a housing scheme for the development of the Aldbury Avenue Garage site. Since the bid for funding was submitted BHP has held several pre-application discussions with the planning department and the Council's Affordable Housing Development Unit in preparing and designing the scheme. BHP has also carried out general consultation with the residents whose properties adjoin the site and their concerns about the development were considered as part of BHP's design of the scheme and its discussion with the Council's planning officers. BHP's development function is overseen by its Development Subcommittee which gave approval to the standard house types included in the scheme design at its meeting on 10th June 2008. The full planning application (reference 08/2239) for the demolition of the existing garages and the erection

of three affordable social rented three bedroom five person family houses was submitted in August 2008. Subject to certain revisions and appropriate heads of terms, Planning officers are minded to recommend approval to the application, which is scheduled to go before the Planning Committee on 18th November 2008. An update on the likely planning status will be given at the Executive Meeting on 17th November 2008.

- 3.2.3 The scheme at Aldbury Avenue will be the first affordable housing development by BHP, and represents the beginning of the pipeline of sites that will be required to meet the targets set out in the pre-qualification Housing Corporation bid for 175 units phased over three years from 2008-11 (25/50/100).
- 3.2.4 The total scheme costs are estimated at £604,447 with Social Housing Grant of £412,500 leaving £191,947 to be financed from BHP's reserves, which currently stand at £2.7m. Appendix 2 gives details of the financial appraisal for the scheme. The appraisal methodology is line with approach taken by RSLs to determine the scheme viability and reviews the Net Present Value of the scheme. The scheme achieves an overall net present value of £116,144 over a 40 year period.
- 3.2.5 In the longer term, BHP has discussed the possible use of prudential borrowing to finance their new build development programme. In essence the use of prudential borrowing in certain circumstances can enable the Council to make schemes viable because of lower rates of interest than private loans. It can also be used to provide private support for projects in order to lever in private funds. The expectation is that, as BHP builds up its own asset base it will be able to use its housing stock to secure more favourable terms with lenders. This scheme in itself is not dependant on prudential borrowing. Any future proposal to utilise prudential borrowing or other financing will require Executive approval.
- 3.2.6 BHP is currently exploring longer term options for the delivery of its development programme once a pipeline of schemes is established through:
- Negotiation towards a development partnership with an RSL: BHP is currently in negotiations with an RSL regarding a development partnership.
 - Participation in an established contractor procurement framework.

These options are being considered and negotiations on these options are only at a preliminary stage as BHP is currently seeking advice on the procurement and governance implications as to how to proceed. It is envisaged that BHP and the Council will have meetings in due course once BHP has obtained advice on the procurement and governance implications so that they can discuss how it should proceed with regard to any framework arrangements or development partnership arrangements that would need to be established. A further report will go to the Executive to seek approval regarding the development partnership for subsequent housing development schemes.

- 3.2.7 In the meantime, the delivery route for Aldbury Avenue will be for BHP to commission the tendering of the work as an individual design and build contract by December 2008, in order to be able to meet the Housing Corporation start on site target in April 2009. A single direct tendering exercise would take approximately 12 weeks. The procurement process will be carried out in accordance with BHP's Standing orders and Financial Regulations.
- 3.2.8 In line with the Executive Report dated 6th August 2007 and on completion of the scheme, BHP will arrange and grant assured tenancies. The Housing Corporation has confirmed to the Council that under this scheme, assured tenancies must be granted in respect of the properties and that rents that are charged are subject to the rent regulation regime. The Council will have 100% nomination rights over the properties and a nomination agreement will have to be agreed between the Council and BHP to this effect
- 3.2.9 BHP is keen to offer future tenants of the scheme an opportunity to purchase their property in line with the home ownership initiatives which are currently available to other tenants occupying affordable rented accommodation. Council tenants are currently able to purchase their homes under the Right to Buy Scheme under the Housing Act 1985, as amended. RSL tenants are currently eligible to purchase their home under the Housing Corporation's Right to Acquire which was introduced by the Housing Act 1996 and subsequently amended by the Housing Act 2004. However, BHP is unable to participate in these schemes as it is not an RSL or a local authority.
- 3.2.10 Tenants who do not qualify for assistance under these schemes can purchase their properties through the Housing Corporation's Social Homebuy Programme, which allows social housing tenants to buy their current home either outright or on a shared ownership basis with a benefit of a discount. To do this, their landlord must have decided to participate in the scheme, and therefore the Executive is asked to give its approval for BHP to submit a bid to the Housing Corporation to operate a Social Homebuy scheme should the prospective tenants of this development choose to purchase their property subject to one proviso which is as follows: if the Director of Finance and Corporate Resources considers that there are any unreasonable or adverse risks to the Council involved in BHP participating in the Social HomeBuy scheme, officers will present a further report to the Executive. If the Director of Finance and Corporate Resources is satisfied that there are no adverse or unreasonable risks to the Council involved in BHP in submitting such a bid to the Housing Corporation, BHP's bid can then be assessed under the Housing Corporation's assessment criteria which will require them to provide supporting information, which includes the following:
- i) evidence of demand;
 - ii) a financial viability on their proposal;
 - iii) statement of benefits to be achieved on delivering a Social Homebuy Schemel
 - iv) a projection of estimated level of receipts likely to be generated from sales, and
 - v) confirmation as to how the receipts would be used.

- 3.2.11 If successful, BHP can offer their tenants an opportunity to make an application for assistance. To qualify for assistance under the Social Homebuy scheme, a tenant must hold a secure or an assured tenancy for at least five years. This period is reduced to two years, if the tenant was previously a public sector tenant.
- 3.2.12 Under the Social Homebuy scheme, a tenant can purchase their property on a shared ownership basis with a minimum shared of 25%, and the property can be bought outright. A maximum discount will vary between £9,000 and £16,000 depending on the location of the property. In Brent, the discount is up to £16,000 and amount of discount is payable in proportion to the initial amount purchased. Social Homebuy sales must be based on a full open market valuation of the property carried out by a qualified independent valuer. Further valuations will be carried out for staircasing. A valuation will be valid for 3 months from the date of the offer. BHP will be able to recover the costs of valuations from sales receipts.
- 3.2.13 Under the current guidance, BHP will be able to charge a rent on a property, which is capped at 3% of the capital value of the unsold equity, providing they maintain an average of 2.75% across their Social Homebuy portfolio. These rents can then be increased by up to RPI plus 0.5% in line with the Housing Corporation's rent setting guidelines. Tenants will also be liable to meet the costs of their service charges. BHP will need to ensure that they have undertaken a financial viability to ensure that that the Social Homebuy receipt and rental income can continue to meet their long term operational costs, and that the tenant is able to sustain a mortgage and rent payments.
- 3.2.14 Under the Social Homebuy scheme, if the property is to be sold within 5 years, any discount is repayable and BHP would have the chance to purchase the property back at market value or nominate another purchaser in the first instance. The tenant will need to meet the costs of their own legal fees and stamp duty land tax. Any receipts generated from a disposal will need to be credited to BHP's Disposal Proceeds Fund for the provision of replacement social housing. BHP can use these receipts to repurchase the property at a later date or to fund other developments.

3.3 Aldbury Avenue Garage site disposal

- 3.3.1 The main options available to the Council for the disposal of the land are as follows:
- i) Disposal on the open market
 - ii) Disposal to an RSL or BHP for a receipt
 - iii) Disposal to BHP for nil financial consideration
- 3.3.2 The recommendation in this report is for disposal of the land to BHP at nil consideration. The reasons for this are as follows:
- i) This is HRA land held for housing purposes. Disposal to BHP at nil financial consideration with 100% nomination rights held by the Council

whilst the property is used as social rented accommodation, will ensure that this land continues to meet housing need in the borough.

- ii) The Housing Corporation funding is based on the expectation that the Council would contribute its own land at nil financial consideration.
- iii) The scheme would not be viable if the land was provided at market value.
- iv) The use of BHP for this project will assist BHP build up its development role.
- v) In practice, the current state of the housing market means that it would be difficult for the council to dispose of the site on the private market.
- vi) Disposal to an RSL for nil value is also unlikely to be viable. This is because the Housing Corporation has already allocated the social housing grant funding to BHP and given this, an RSL would not be able to develop this site unless BHP withdraws their grant funding allocation. The Council would need to provide a reasonable explanation as to why an RSL scheme would be favoured over BHP's bid.

3.3.4 BHP, in consultation with the Council's Affordable Housing Development Unit, has commissioned an independent valuation of the site. Details of this valuation are provided in Appendix 3. The valuation was undertaken in August 2008, and given the downturn in the current property market, the valuation of the site is expected to reduce further.

3.3.5 The Executive is therefore asked to give its approval to dispose of the site to BHP for nil financial consideration, and to delegate authority to the Director of Housing and Community Care to enter into a development agreement in relation to the site. .

3.4 Performance Guarantee Bond

3.4.1 This report seeks the Executive's approval to enter into a Performance Bond with the Housing Corporation in respect of BHP's delivery performance on the Aldbury Avenue Garage site. This requirement is necessary for BHP to enter into a Grant Agreement with the Housing Corporation and to receive social housing grant under the Housing Corporation's 2008-11 National Affordable Housing Programme.

3.4.2 On 6th August 2007, the Executive gave in principle agreement to provide a Performance Guarantee Bond to the Housing Corporation in respect of BHP in order for the ALMO to qualify to receive Social Housing Grant under the 2008-11 NAHP and specific approval is now being sought from the Executive. BHP's proposals for the Aldbury Avenue Garages represent the first such development scheme to be presented to the Executive for approval. Any and all subsequent BHP proposals will require a new Council Approval for the Performance Guarantee Bond to come into effect for additional development schemes.

3.4.3 The Performance Guarantee Bond will allow BHP, subject to a satisfactory planning approval, to enter into a Grant Agreement with the Housing Corporation and draw down their social housing grant allocation on the

Aldbury Avenue Garages site, as well as underwrite BHP's liabilities should they default on the Grant Agreement.

- 3.4.4 In the event that BHP default on the Grant Agreement and the Housing Corporation terminate the Agreement, BHP shall be liable on demand from the Housing Corporation to pay all costs and expenses (including all internal costs and expenses) incurred by the Corporation in respect of entry into the Agreement and all actions taken by the Corporation in respect of the Agreement up to the date of termination, and to repay to the Corporation within ten (10) Business Days of the Corporation's demand an amount equivalent to that of any Grant Tranche already paid together with interest at 2% above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the relevant Grant Tranche was paid to the ALMO (or in the case of the Second Tranche to his conveyancer) until the date upon which the Corporation receives the repayment of the relevant Grant Tranche. Under the terms of the Performance Bond, the Council would be required to make this payment if BHP defaults on any repayment of grant.
- 3.4.5 The key risk to the Council if BHP does not deliver this scheme in line with the Housing Corporation Grant conditions, is that BHP and the Council will be liable for the repayment of the social housing grant in line with the details set out in paragraph 3.4.4. The payment of the grant to BHP is made in two tranches, 50% at the start of the development and 50% on the completion of the development. The start on site payment is dependent on BHP obtaining planning approval and entering into a building contract. At this stage BHP's and the Council's liability will be £206,250 in respect to the grant allocated by the Housing Corporation. During this period the Council can grant a licence for BHP to carry out the development works as part of their development agreement in order to mitigate against BHP defaulting on their Grant Agreement. On completion of the units, BHP will be required a completion certificate to discharge it from its planning conditions before the final tranche of the grant can be claimed from the Housing Corporation. At this point, the Council will then dispose the freehold of the site to BHP after confirmation that grant conditions have been met. As the freehold land interest will still be retained by the Council during the construction period, the Council will be able to seek an alternative development partner to develop the site or dispose of the land on the open market to recover any grant payment due back to the Housing Corporation if BHP defaults on the terms of their grant agreement. Alternatively, the Council may wish to retain the option to develop out this scheme itself. Whilst there is a risk during the construction period, the risk is significantly reduced on completion of the units. As part of the tendering of the building contract BHP will need to ensure that the contractors provide adequate warranties for the delivery of the scheme within the timescales required by the Housing Corporation. BHP has carried out a risk assessment of delivering this scheme which is set out in Appendix 4.
- 3.4.6 Under the terms of the guarantee, the Council agrees to guarantee the "due performance" of BHP's performance obligations under the Grant Agreement. As well as being regulated by the Council in respect to council properties being managed by BHP, BHP will be regulated by the Housing Corporation in

respect to properties they will own, in order to ensure that they maintain their performance standards in delivering housing management services to properties they own or manage. In addition, BHP's performance is assessed by the Audit Commission and as development partner of the Housing Corporation, BHP will need to maintain their three star rating and comply with the Housing Corporation's accreditation requirements. Officers consider that there are sufficient safeguards in place to ensure BHP's delivery performance is reviewed and regulated by the Council and through external audit in order to ensure that the Council's liabilities under the performance bond are not called upon due to poor BHP's poor performance.

3.4.7 It should be noted that the Grant Agreement is a standardised agreement which applies to all RSLs and preferred partners that receive Housing Corporation funding. Whilst a bespoke agreement for the ALMO has been consulted upon, the Housing Corporation will not agree terms and conditions which would provide an uncompetitive advantage to its other development partners or which would seek to reduce protection of the investment they are making. The ALMO Grant Agreement is currently being reviewed by the Housing Corporation in light of two schemes being developed by Derby Homes Limited and Stockport Homes Limited, which are two other ALMOs who have been allocated funding under the 2008-11 NAHP. At this stage, the concerns about entering into the Grant Agreement are the same as previously reported to Members in August 2007. However it is unlikely that the Council would be able to renegotiate variations from the standardised ALMO Grant Agreement terms once these have been finalised by the Housing Corporation. Further implications of entering into the grant agreement are discussed in sections 4 and 5 below.

3.4.8 The Executive is asked to give its approval for BHP to enter into the Grant Agreement with the Housing Corporation and for the Council to enter into the Performance Bond Guarantee Bond provided that the Director of Finance and Corporate Resources approves the terms thereof.

3.4.9 The Legal Implications in section 5 below will set out what consents are required from the Secretary of State for Communities and Local Government in order to proceed with this scheme.

4.0 Financial Implications

4.1 The total estimated cost of this development scheme is £604,447. The Housing Corporation has allocated £412,500 under its 2008-11 National Affordable Housing Programme to fund part of this, with the balance of £191,947 to be directly financed from BHP's reserves.

4.2 The value of the site as at August 2008 is given in Appendix 3. The amount of capital receipt being foregone would need to take into account the current valuation of the site and costs the Council would incur to dispose of the site. Current market indications suggest that this value of the site has reduced further over the last 3 months. Officers will seek to ensure that an updated

valuation is commissioned prior to proceeding with the disposal of the site to BHP at nil value.

- 4.3 If the Planning Committee grants the necessary planning permission at its meeting on 18th November 2008 the Council will in addition secure 100% nomination rights for the three properties in perpetuity under the section 106 agreement between BHP and the Council, whilst they remain part of BHP's social rented stock.
- 4.4 The nomination rights will be covered in the section 106 agreement between the Council and BHP, assuming that planning approval is granted by the Planning Committee on 18th November 2008. The nominations rights to these properties may cease where the properties are purchased by a tenant under the Right to Acquire or Social Homebuy schemes, however, BHP will seek to maintain the "right of first refusal" in respect of resales in order to retain the properties within its overall social housing portfolio.
- 4.5 The Development Agreement will include a provision that the development cannot commence before the Section 106 Agreement is completed and planning permission is granted
- 4.6 In respect of SDLT, this scheme will not attract SDLT liability since the transfer is at nil value. As the grant of nomination rights will be a planning obligation in the s.106 agreement, no SDLT will be payable by the Council or BHP on the deemed open market value of the nomination rights.
- 4.7 BHP has undertaken a risk assessment of proceeding with this development which is included in Appendix 4. The key risks identified are a failure to secure a satisfactory planning permission and the subsequent impact on the Housing Corporation milestone start on site (April 2009) and practical completion (March 2010) dates. BHP and the Affordable Housing Development Unit have been in regular contact with Planning to ensure the proposed scheme is acceptable. Subject to certain revisions and appropriate heads of terms, Planning officers are minded to recommend approval to the application. It should be noted that the Grant Agreement with the Housing Corporation would only be signed when a satisfactory planning permission is secured.
- 4.8 Under the Prudential Capital Finance System, which was introduced in 1st April 2004, the value of capital receipts foregone will need to be taken into account for the Capital Receipts Pooling (in which a percentage of capital receipts is paid to the Secretary of State).
 - i) Regulation 22 of the Local Authorities (Capital Finance and Accounting (England) Regulations 2003), sets out that where an authority makes a disposal which would not normally come within the scope of the pooling requirement, but is not paid in cash (in this case it is at nil financial consideration), then the authority must work out what it would have received if the sale has been in cash, and then apply the pooling requirements to that amount.

- ii) Certain types of capital receipts can be treated as reduced before calculating the pooling percentage be reference to the “capital allowance”. The overall effect of the capital allowance is to allow capital receipts to be recycled into the authority’s own affordable housing and regeneration projects. Officers consider there is sufficient resources in the authority’s Capital Allowance that determine that none of this “Notional Capital Receipt” will need to be pooled.

- 4.9 Should BHP default on the Grant Agreement the Council could be liable to repay up to £412,500 in grant to the Housing Corporation plus interest and expenses as set out in paragraph 3.4.4, 3.4.5 and 5.10. In these circumstances, the land ownership would revert back to the Council, and the Council may dispose of the site or transfer the site to another RSL in order for the liability to be minimised.
- 4.10 As part of the s106 agreement required for the planning approval, BHP is required to meet the costs of the Council’s legal and professional costs and is required to make a contribution of £21,600 which will be due to be paid to the Council on material start on site. The payment is a standardised charge which applies to all residential developments.
- 4.11 BHP will be expected to meet the Council’s costs of disposing of the site (which would normally be funded from the receipt). In addition, any costs overruns arising from the construction and delivery of the scheme, will need to be met by BHP.
- 4.12 Whilst BHP is a wholly Council-owned company with separate governance arrangements through its Board, in accounting terms BHP’s accounts are part of Brent’s consolidated group balance sheet for statutory accounting purposes. However, the properties owned BHP under this scheme and any liabilities arising from these would not have any impact on the Council’s overall balance sheet.
- 4.13 BHP will need to undertake a full risk appraisal as part of their bid submission to the Housing Corporation in order to participate in the Social Homebuy scheme. As part of this submission, BHP must demonstrate that their long term operational costs can continue to be supported from participating in this scheme and without any further financial assistance from the Council. If the Director of Finance and Corporate Resources considers that there are any unreasonable or adverse risks to the Council involved in BHP participating in the Social HomeBuy scheme or that the risks will not adequately managed by BHP and will affect the Council’s ability to meet the requirements of the Performance Bond guarantee, then a further report will be presented to the Executive to consider BHP’s submission to participate in the Social Homebuy scheme.
- 4.14 If successfully selected to administer the Homebuy Scheme, BHP will need to ensure that they can assess each application received to be satisfied that the tenant is able to sustain a mortgage and/or rent payments until the property is bought outright. BHP will need to ensure that there are sufficient provisions in their leasing agreement with the tenant to protect them from Mortgage

Defaults, where the tenant is unable to meet their mortgage costs. Under the Social Homebuy Scheme, the Housing Corporation requires all leases to include a Mortgage Protection clause which has been agreed with the Council of Mortgage Lenders for protection required for lending on shared ownership schemes.

- 4.15 BHP will be required to administer a Disposals Proceeds Fund, which will be used to account for receipts from equity sales. This fund will be managed by BHP to ensure that they can either reinvest the receipts into the reprovision of affordable housing or retain the receipts in order to provide a contingency for repurchasing the property from the tenants. BHP will need to manage the risk of ensuring that any receipts held in the Disposals Proceeds Fund are able to keep up with growth in property values in case the properties need to be repurchased at a later date. BHP will need to demonstrate how they will be able to manage this fund as part of their application to participate in the Social Homebuy Programme.

5.0 Legal Implications

- 5.1 As the Council holds the property for housing purposes it cannot dispose of the same other than in accordance with a consent issued by the Secretary of State for Communities and Local Government under Section 32 to 34 of the Housing Act 1985.
- 5.2 Whilst there is a General Consent issued in March 2005 under the Housing Act 1985 which sets out different categories of disposals which are deemed to have consent it will be necessary to obtain a Special Consent from the Secretary of State in this instance given that the disposal is to an ALMO for nil financial consideration. The disposal cannot take place until such consent has been granted.
- 5.3 In respect of the granting of the Performance Guarantee to the Housing Corporation on behalf of BHP, the Council has the power under section 24 of the Local Government Act 1988 ("LGA 1988") to provide any person with financial assistance for privately let housing accommodation. Financial assistance includes the acquisition, construction, maintenance and management of the properties (pursuant to section 24(1) LGA 1988) and includes guaranteeing the performance of any obligation owed to the person to whom the financial assistance is provided (pursuant to section 24(2) LGA 1988). Regarding privately let housing accommodation, under section 24(3) LGA 1988, this means that the properties are occupied as housing accommodation pursuant to any lease or licence of any description or under a statutory tenancy and that the immediate landlord of the occupiers of the properties is not a local authority, which BHP is not.
- 5.4 Under section 25 of the LGA 1988, it states that such a power (under s.24 LGA 1988) cannot be exercised without the consent of the Secretary of State. Therefore, the Council needs to seek the consent of the Secretary of State under section 25 of the LGA 1988 to give the Performance Guarantee to the Housing Corporation on behalf of BHP.

- 5.5 In the decision of the Executive in its meeting dated 6 August 2007, Members agreed for BHP to own property and manage and grant assured tenancies which have been funded by the Housing Corporation using social housing grants allocated under the National Affordable Housing Programme. However, the Executive decided that this would be subject to the Executive's approval for BHP to enter into each scheme under this initiative.
- 5.6 It is proposed that BHP enter into a development agreement with the Council, to build out the scheme. On completion of the scheme the land will be transferred to BHP with appropriate covenants and restrictions being placed on the BHP title
- 5.7 Under paragraph 5(3) of the Articles of Memorandum of Brent Housing Partnership, subject to the written consent of the Council, BHP has the power to borrow money, issue loan stock and raise money in such a manner as BHP sees fit.
- 5.8 In the Report to the Executive meeting of 6th August 2007, the Council agreed in principle to providing a performance guarantee bond in relation to BHP's participation in the 2008-2011 NAHP. The Housing Corporation will give grants on a scheme by scheme basis to RSLs and ALMOs that satisfy the necessary criteria. The approval was given by the Executive in principle and subject to the terms set out by the Housing Corporation.
- 5.9 The terms have now been provided by the Housing Corporation and they are set out in a document known as a base document for the NAHP to be agreed between the Housing Corporation and the ALMO, with the Council as Guarantor. The key obligations of the Council as guarantor to the ALMO NAHP Grant Agreement with the Housing Corporation are set out in Schedule 15, which is the Performance Guarantee and they are summarised in paragraphs 5.9 to 5.18 below.
- 5.10 As part of the guarantee, the Council agrees to guarantee the "due performance" of BHP's performance obligations under the Grant Agreement, and this includes any variation or addition to the Grant Agreement. There are a number of consequences for the Council if the ALMO fails to carry out its obligations as set out in the NAHP Grant Agreement. The consequences are as follows:
- the Council will be liable for and indemnify the Housing Corporation on demand against all losses, damages, costs and expenses which are properly and reasonably incurred by the Housing Corporation and which the Housing Corporation may incur by reason or in consequence of any failure on the ALMO's part to carry out, observe or perform the obligations under the Grant Agreement or in consequence of the Grant Agreement being terminated;
 - upon demand from the Housing Corporation, the Council will carry out, observe, perform and fulfil in place of the ALMO the obligations, duties, undertakings, covenants under the Grant Agreement.

- 5.11 It is envisaged that the ALMO will own the land for which it will obtain a grant from the Housing Corporation. If the Council were to observe the obligations of the Grant Agreement as landlord of the properties being funded under the NAHP, it is likely that the tenancies will change from being assured tenancies to secure tenancies as local authorities cannot grant assured tenancies. This may have an effect on the Housing Revenue Account.
- 5.12 Furthermore, the Housing Corporation is not bound to enforce any rights against the ALMO or any other guarantor or other person before enforcing guarantee. As long as the Housing Corporation has served on the Council and the ALMO written notice requiring the ALMO to comply with the Grant Agreement and the ALMO has not done so within 14 days of such written notice, the Housing Corporation will be able to enforce the Guarantee without further resort to the ALMO. This is a standardised term applied to all of the Housing Corporation's preferred partners and it is unlikely that revised terms would be offered to the Council, as this would result in an uncompetitive advantage in favour of the authority. However it should be noted that the Performance Guarantee specifically states that the Council will have no greater liability as guarantor than if it been named as a party to the Grant Agreement with the ALMO.
- 5.13 The Council will not be discharged from the Guarantee, or released or otherwise exonerated) if any of the following occurs:
- waiver, amendment or variation of the Agreement
 - waiver or release alteration to the nature of the NAHP Project
 - any allowance of time or other concession granted to the ALMO under the Grant Agreement or any other compromise or settlement of any dispute between the Housing Corporation and the ALMO
 - liquidation, bankruptcy, administration, dissolution, incapacity or absence of legal personality of either the ALMO or the Council
 - any provision of the Grant Agreement becoming illegal, invalid, void or voidable
 - suspension of or termination of the Grant Agreement
 - suspension or termination of the employment of the ALMO under the Grant Agreement
 - failure to take or realise, release, discharge or exchange any security guarantee or indemnity in respect of the Grant Agreement
 - any other act which might operate to discharge, release, impair or otherwise exonerate the Council from the Guarantee
- 5.14 The Guarantee is continuing and will continue until all obligations, duties, undertakings, covenants, conditions and warranties carried out or performed by the ALMO under the Grant Agreement will have been observed, satisfied or performed and discharged in full.
- 5.15 The Housing Corporation may make more than one demand under the Guarantee.

- 5.16 The Council has no right to counterclaim or set off against the ALMO for sums payable by the ALMO to the Housing Corporation for payment of monies by the Council to the Housing Corporation.
- 5.17 The Council will not, without prior consent from the Housing Corporation (which will not be unreasonably withheld or delayed), hold any security from the ALMO or any other person in respect of the Council's liability under the Guarantee.
- 5.18 As the Guarantee will be executed as a Deed, the Council's limitation will be 12 years from the date when the cause of action arose.
- 5.19 BHP can offer a prospective tenant an opportunity to own their home by making an application for this scheme to be considered under the Housing Corporation's Social Homebuy programme. This scheme allows tenants to purchase a minimum 25% share of their property, with the option to purchase further shares, and offers an affordable and accessible opportunity for tenants to take their first step on to the property ladder. A tenant will be eligible for a discount, which is based on the location of the property. These discounts are in line with the discounts applied for the Right to Acquire scheme and are set out in the Housing (Rights to Acquire) (Discount) Order 2002 (SI 2002 No 1091).
- 5.20 BHP will not have any liability for Stamp Duty Land Tax arising from the equity sales if a tenant elects to purchase their property under the Social Homebuy scheme.

6.0 Diversity Implications

- 6.1 BHP will be required to deliver new homes to Lifetime Homes standards to maintain the future accessibility of properties
- 6.2 The Council currently has 3,693 households registered on its waiting list that require three bedroom accommodation. Officers are currently forecasting that RSLs will only complete 70 three bedroom properties from the new build programme over the next 12 months
- 6.3 BME households are disproportionately reflected in the Council's Housing Register and amongst homeless households in the borough. This development aims to maintain the relationship respecting diversity and promoting choice for applicants registered on the Council's waiting list for the affordable housing. Given the current financial climate and down turn in the property market, the Council needs its development to partners continue to maximize the delivery of affordable homes.
- 6.4 As part of BHP's selection as a preferred partner, BHP were required to submit a BME Method Statement which sets out their approach to ensure their development activities are in line with the requirements of the Housing Corporation and the Council.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 N/A

8.0 Additional Information

Appendix 1: Site Map

Appendix 2: Aldbury Avenue Financial Appraisal [below the line]

Appendix 3: CBRE Valuation [below the line]

Appendix 4: Risk Assessment [below the line]

Background Papers

- Report to the Executive dated 6th August 2007: Authority for the ALMO to deliver affordable homes under 2008-11 National Affordable Housing Programme
- Aldbury Avenue Scheme Development File
- 2008-11 National Affordable Housing Programme Allocation Statement and Prospectus
- Housing Corporation ALMO Grant Agreement
- Planning Application Ref: 08/2239 for scheme at Aldbury Avenue Garages, Aldbury Avenue, Wembley, HA9


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Appendix 1 Site Plan





**BRENT
COUNCIL**


BRENT HOUSING PARTNERSHIP
NAHP Sites - Aldbury Avenue.

*PREPARED BY PROPERTY
& ASSET MANAGEMENT*
"Unlocking the Potential"

1:500

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 London Borough of Brent, 100025260, 2007

NORTH



Appendix 2 Avenue Financial Appraisal

Appendix 3 CBRE Valuation

Appendix 4 Risk Assessment

NOT FOR PUBLICATION

These appendices are not for publication as it contains the following category(ies) of exempt information as specified in the Local Government Act 1972, namely: (

Information relating to the financial or business affairs of any particular person (including the authority holding that information).