



Cabinet
11th October 2021

Report from the Chief Executive

Proposal for ownership and refurbishment of Granville New Homes blocks

Wards Affected:	Kilburn
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Appendix A – Cashflow implications of options Appendix B –Exempt – Additional Legal Implications; Exempt pursuant to paragraph 5 of Schedule 12A of the Local Government Act 1972: Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
No. of Appendices:	N/A
Background Papers:	N/A
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1.0 Purpose of the Report

- 1.1 First Wave Housing (FWH) has commissioned a report from Ridge Consultants to investigate water penetration, cladding, fire safety and window issues at FWH's Granville Road, Princess Road, and Canterbury Road blocks (otherwise known as Granville New Homes). Ridge have recommended that works be carried out at the blocks to remediate these issues. It is estimated that the cost of works will be £18.5m. This makes the FWH business plan unviable.
- 1.2 Within these constraints, a report was presented at FWH's biannual Guarantor meeting, detailing the possible options for funding and carrying out these remedial works. The report recommended disposing of the blocks to the Council's Housing Revenue Account (HRA).
- 1.3 Following the Guarantor meeting, the Guarantor asked FWH to investigate options around how FWH could structure its debt, primarily whether it retains the debt for the blocks at a new interest rate of 2%. The Guarantor also requested that FWH explore options for protecting the revenue flows of FWH's intermediate rented properties. Further information on this is in section six of this report.

- 1.4 The report also presents options for transferring FWH’s properties to the HRA including how FWH structures its future debt, and whether the intermediate rented properties at the blocks are transferred to the HRA or i4B, for Cabinet to review. It is recommended that subject to consultation with residents at Granville New Homes, the 84 social rent properties are transferred to the HRA, and the leasehold interest of the 25 intermediate rent properties is transferred to i4B, with the freehold interest of the entire blocks being transferred to the HRA. This is recommended as the best option to balance costs between the Council’s General Fund, HRA and housing companies and ensure the works are carried out as rapidly as possible.
- 1.5 Audit and Standards Advisory Committee (ASAC) considered a regular update on FWH at its meeting on 22nd September 2021, and ASAC recommended that the Community and Wellbeing Scrutiny Committee consider and comment on the implications for BHM and the HRA of the recommended disposal option. The Committee will meet on 7 October, and any comments and recommendations will be circulated in advance of the 11 October Cabinet meeting.
- 1.6 Finally, as per guidance from the Regulator of Social Housing, First Wave Housing will be expected to consult with residents prior to disposing of its ownership of the properties to another landlord. Therefore, this report seeks Cabinet’s approval to begin a consultation with residents on the potential disposal of the block to the HRA. Subject to the outcomes of this consultation, this report asks Cabinet to delegate authority to the Strategic Director of Community Wellbeing for a final decision regarding the disposal of the properties.

2.0 Recommendation(s)

- 2.1 Cabinet note the options analysis and agree that disposing of the blocks at Granville New Homes to the HRA is the best option, subject to a consultation with residents being carried out.
- 2.2 Cabinet give approval to commence a consultation with residents on the proposed option 1C as set out in sections 5 and 6 of this report.
- 2.3 Cabinet delegate authority to the Strategic Director of Community Wellbeing in consultation with the Director of Finance and the Lead Member (the Deputy Leader) for a final decision regarding the disposal of the properties, subject to the outcomes of the consultation with residents.
- 2.4 Cabinet delegate authority to the Director of Finance to renegotiate the terms and payment of the loan between Brent Council and FWH.

3.0 Background

- 3.1 FWH is one of the Council’s wholly owned housing companies. It is a registered provider with 326 properties. A breakdown of these properties is below:

Table 1 – Breakdown of FWH portfolio

Rent Type	Number	Annual rent	Comment
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Intermediate	25	£379,684	All intermediate units are at Granville New Homes. Let on assured short hold tenancies (ASTs). Rents are let via external estate agent with intention that reduced rents allow families to save for a deposit.
Market	45	£709,147	Let at market rates on ASTs. Located across the borough.
Settled Homes	167	£2,612,876	Purchased through grant funding, let as a form of TA. Let on ASTs. Rents reduce to affordable rates over time.
Social	89	£603,879	Let at social rent levels. 84 units are at Granville New Homes. Large amount of tenants were ex-Council tenants, with secure tenancy rights.
Total	326	£4,305,585	

3.2 Of FWH's 326 properties, 110 are located at Granville New Homes. These 110 properties comprise of 84 social rented properties, 25 intermediate rented properties, and one leaseholder.

3.3 Granville New Homes is a residential development that completed in 2009. It was developed by the Council and Higgins. In 2007, the Council selected Hyde Housing as their preferred partner to purchase the properties. However, due to economic downturn in 2008, Hyde reduced their initial offer for the blocks. This was not acceptable to the Council as the revised offer did not cover the Council's development costs.

3.4 The Council, therefore, looked at alternative options. Retaining Granville New Homes within Council ownership was not deemed viable. As a result, the Council's arm's length management organisation (ALMO), Brent Housing Partnership (BHP), purchased the properties at a cost of £17.1m. This figure met the Council's development costs and was funded via a loan from the Council. BHP also received 45 one bedroom market rented properties in order to cross subsidise the acquisition, as on its own, the purchase of Granville New Homes would not have been viable for BHP. Since 2009, the properties have been managed as part of BHP, now FWH's portfolio.

3.5 At the December 2020 Guarantor meeting, the Guarantor was made aware of potential defects at Granville New Homes relating to fire safety and water ingress. Currently, a waking watch service has been put in place at the blocks and a communal fire alarm is being installed.

3.6 Since December 2020, investigations have taken place into these issues. At the June 2021 FWH Board meeting, the Housing Property Services team presented the results of fire risk assessments and intrusive investigations into fire safety concerns. Ridge Consultants also presented the results of intrusive investigation into the water penetration, cladding and window issues at the blocks.

3.7 In summary, the investigations determined that the blocks suffer from poor quality design, construction and workmanship going back to the original construction. Water ingress is an issue at various locations in the blocks and the blocks do not comply with current fire safety building regulations. The report found the concrete core of the building was structurally sound and that the most effective solution would be to refurbish the blocks.

3.8 The Ridge report stated that the issues identified are not easily repairable in a way which will offer a guaranteed and satisfactory solution. On this basis, the

only available option is to replace the facades, roof coverings and balcony waterproofing systems. These works include:

- Removing and replacing all cladding (both cementitious and brick effect panel) with non-combustible A1 or A2 fire rated materials;
- Stripping external façades and removing all external doors and windows;
- Providing new external doors and windows within a new panelised cladding system;
- Replacing insulation; and
- Stripping roofs and providing new roof coverings.

3.9 Including consultancy services, the waking-watch, the fire alarm system and contingency allowances, the estimated total cost of remediation works is circa £18.5m (including VAT). This figure includes £2m of contingency costs. If the remediation is carried out as outlined, the estimated completion date is September 2023. At present these costs are not affordable for FWH. It should be noted that the £18.5m is an estimated value from Ridge; until works are tendered and completed the actual cost will not be known.

3.10 The Guarantor and FWH Board requested that officers explore options for funding the works. An options analysis was presented to the Guarantor on 23 August 2021 and it was agreed that the recommended approach is for FWH to transfer the units at Granville New Homes to the Council's Housing Revenue Account, subject to further work being undertaken on the details of the transfer.

4.0 Summary of Discounted Options

4.1 The following section presents a list of the discounted options. In summary, there are no cost free options available to the Council. Therefore, options were reviewed against the following criteria:

- Putting the properties back into a good state of repair as quickly as possible;
- Causing the least disruption to residents;
- Allocating the risks of a major refurbishment programme to where they can best be managed; and
- Utilising the structures of the Housing Revenue Account (HRA), General Fund, FWH and i4B in a way that is most financially beneficial to Brent Council overall.

4.2 A summary of the discounted options is below.

Option	Comment	Reason for exclusion
Rebuild at higher density	The blocks would be demolished and rebuilt at a higher density to offset demolition and rebuilt costs.	Not possible at sufficient scale to be affordable due to planning constraints, and would require temporary decanting of residents.
Market sale	The blocks would be sold on the open market. This would require vacant possession and therefore require residents to be permanently re-housed.	Would require permanent decanting of residents and would not be an option that could be implemented rapidly due to the decant process.
Transfer to the General Fund	Under this option, the blocks would be disposed of to the General Fund.	The General Fund cannot operate permanent tenanted accommodation (at least not without the consent of the Secretary of State); therefore a full permanent decant would be required.

Disposal to i4B	The blocks would be disposed of to i4B. i4B would carry out remediation works to the block.	i4B cannot afford remediation works. Therefore, this option would require £18.5m equity funding from the General Fund.
Disposal of all FWH stock to the HRA and wind up of FWH	Under this option, all of FWH's 326 properties would be transferred to the Housing Revenue Account (HRA).	This option has not been excluded but is not recommended at this stage as it would delay rectifying the issues in the blocks. The transaction would be highly complex and would require specialist advice and a full audit on a final set of company accounts. This option could still be pursued at a later date.

5.0 Recommended Option – Disposal of the blocks to the HRA

5.1 The recommended option is for FWH to dispose of the blocks to the HRA and for the HRA to carry out remediation works as recommended in the Ridge report. There are nuances to this option in regards to how the transaction would be structured. These are detailed in section 6. However, broadly, under this option:

- The transfer occurs at zero value as the blocks' asset valuation of £12.5m is offset by the £15.4m of works required to the asset (the figure excludes VAT as this is reclaimable by the Council). The HRA as part of the Council will come within the scope of public law principles. Therefore, it cannot act unlawfully or irrationally. Therefore, the HRA cannot pay a sum for the blocks.
- The HRA carries out the remediation works.
- The 84 social rented tenants would become secure Council tenants.
- The 25 intermediate rented tenants would be transferred to i4B under the recommended option; the HRA will recharge i4B for its proportion of the works.
- FWH's loan for the blocks would be refinanced to a more affordable rate.
- As the transfer will formally be valued at zero value by the valuer no capital gains or SDLT costs are anticipated. As the transaction is a commercial transaction to support the ability of FWH to trade as a going concern, any tax implications to the transfer are incidental and would be in accordance with General Anti avoidance Rules operated by HMRC. Tax advice from the Council's tax advisors have confirmed this position.

5.2 The following assumptions have also been made:

- It is assumed the housing management function will be managed within existing staffing resources. There will be a reallocation of resource time and cost from FWH to the HRA to reflect the work associated with the transferred units.
- Rent inflation at 1.5% in line with CPI+1 and cost inflation at 2% per annum in line with Bank of England target rates.
- The cost assumptions in this report do not include estimates for decarbonisation works, as this is a known budget limitation across the sector.
- Further major works at £2,000 per property assumed from year 8 of the HRA Business Plan.

5.3 This option balances the cost between FWH, i4B, the Council's General Fund and the HRA. It also offers the minimum disruption to residents in the blocks by offering the most rapid solution to addressing the remediation works required. Furthermore, it is acknowledged that this is a reasonable way to achieve appropriate levels of different types of housing tenure in the borough.

6.0 Summary of HRA Disposal Options

6.1 Within the disposal of the blocks to the HRA option, there are different ways the transaction could be structured.

Option	Description
1A	Transfer 84 social housing units and write off associated debt of £9.1m
1B	Transfer 84 social housing units and refinance the debt
1C	Transfer 84 social housing units to the HRA and 25 intermediate units to i4B and refinance the debt
2A	Transfer all 110 units and write off associated debt of £11.6m
2B	Transfer all 110 units and refinance the debt

6.2 There are two primary issues for consideration:

- What happens to FWH's intermediate rented properties and whether they are retained by FWH (Options 1A and 1B), transferred to i4B (Option 1C) or transferred to the HRA (Options 2A and 2B); and
- What happens to FWH's loan i.e. whether it is written off (Options 1A and 2A) or refinanced at a reduced financing rate (Options 1B, 1C and 2B).

6.3 The recommended option is Option 1C: for FWH to dispose of its freehold interest in the 84 social housing units (and the one leasehold property) to the Council's HRA and to transfer its leasehold interest in the 25 intermediate units to i4B. Once the leasehold transfer of the intermediate rented properties to i4B has taken place, the freehold interest of the intermediate rented properties will be disposed to the Council's HRA. Under this option the FWH business plan is still viable. It improves the financial position of the HRA by reducing the capital investment requirement by £3.5m and strengthens the i4B business plan by retaining units at a higher rental level. i4B in addition benefits from the capital works being carried out by the Council and recharged as a leasehold charge excluding VAT.

6.4 This option also allows the rents for the 25 intermediate units to be kept at current levels, protecting this revenue stream and reducing the capital refurbishment and debt burden in the HRA. If transferred to the HRA, rents for these units would have to be reduced to social levels which reduces the financial capacity to fund the refurbishment works. The average weekly rent level for an intermediate rent property is £322.97; for a social rent property, this is £118.97. This is a difference of £10,608 per annum. Furthermore, as set out above, this option is a reasonable way to achieve appropriate levels of different types of housing tenure in the borough.

6.5 Tenants of intermediate rented properties are market tenants sourced via external agents, rather than traditional social housing clients. Intermediate tenants have no specific housing need. Therefore, they are able to afford rents within the private rented sector and are free to move. Transfer to the HRA would entitle these tenants to reduced rents, secure tenancies and RTB that, as intermediate or private tenants, they would not usually be entitled to.

6.6 External legal and tax advice has confirmed that Option 1C is technically viable. In addition, FWH and i4B have obtained their own legal advice regarding the preferred option as proposed in this report.

7.0 Option 1A – FWH retain intermediate rented properties

7.1 Under this option, the 84 social rented properties and one leaseholder would be disposed of to the HRA. FWH would retain the 25 intermediate rented properties.

7.2 The following assumptions have been made:

- The Council would write off £9.1m of debt. The remaining loan would be paid over 50 years at 3%. New borrowing for capital investment would be at 2% subject to future movements in PWLB rates.
- The HRA incurs £11.2m of the estimated £14.6m refurbishment cost and FWH is recharged £3.4m.
- This option would require the Secretary of State's approval to grant a lease of the 25 intermediate rental units back to FWH.

7.3 Implications for tenants

7.3.1 The 84 social rented tenants at Granville New Homes would become secure council tenants. The leaseholder would become a Council leaseholder. Social rents remain the same.

7.3.2 The 25 intermediate tenants would remain FWH tenants. Their rents would remain at current levels.

7.4 Implications for FWH

7.4.1 FWH benefits from increased rents on the intermediate rental units as well as a reduction in financing costs. There are no years where negative cashflows are incurred with this option (see Appendix A).

7.4.2 FWH benefits from there being no VAT on its share of the works as they are charged as a service charge without VAT by the Council.

7.4.3 The cashflow surplus over the 30 year life of the FWH business plan is £22.8m.

7.5 Implications for the General Fund

7.5.1 Under this option £9.1m of the loan to FWH will be written off against the general fund. This one off cost would need to be managed within the overall revenue budget for 2022/23. There will be additional financial implications for loss of interest, however it is anticipated that this can be managed within the overall capital financing budget.

7.6 Implications for the HRA

7.6.1 The HRA operates with a break-even budget, with limited financial capacity to absorb cost pressures without identifying offsetting budget mitigations. The HRA currently faces competing pressures from investment requirements in its existing stock.

- 7.6.2 Transfer of 84 social rent properties to HRA is estimated at nil value, on the basis that the capital investment required of £11.2m (HRA share of remediation cost) is greater in comparison to the net book value of the properties. The remediation cost can be part funded through useable capital receipts of £4m, with the remaining balance of £7.2m funded through borrowing. Annual interest cost is estimated to be £0.2m at 2.1% PWLB rates in July 2021.
- 7.6.3 The 84 social rent properties are estimated to generate income of £0.5m per annum for the HRA. Based on the average cost in the HRA for stock maintenance, there is a projected break-even position. It is assumed housing management function will be managed within existing staffing resources.
- 7.6.4 The HRA affordable rent policy for Brent is set at 65% of market rates. This means that intermediate rented properties would require rent reductions if they were to transfer to the HRA. The total estimated rental income to the HRA from the 25 intermediate properties after rent reductions would be £0.2m, which is £0.2m less when compared to FWH intermediate rent levels currently.
- 7.6.5 Transferring to the HRA would allow Right to Buy (RTB) rights for secured tenants. Stock reductions from RTB sale receipts will need to be replaced with affordable homes within five years, or paid over to central government.

8.0 Option 1B – FWH retain intermediate rented properties

8.1 Under this option, the 84 social rented properties and one leaseholder would be disposed of to the HRA. FWH would retain the 25 intermediate rented properties. FWH would refinance its debt for the blocks to 2% over 50 years. The following assumptions have been made:

- Debt for the blocks is retained by FWH but refinanced, with interest rate reduced from 3% to 2% over 50 years.

8.2 Implications for tenants

8.2.1 The 84 social rented tenants at Granville New Homes would become secure council tenants. The leaseholder have the Council as the freehold owner. Social rents remain the same.

8.2.2 The 25 intermediate tenants would remain FWH tenants. Their rents would remain at current levels.

8.3 Implications for FWH

8.3.1 FWH benefits from increased rents on the intermediate rental units as well as a reduction in financing costs. There are no years where negative cashflows are incurred with this option (see Appendix A).

8.3.2 FWH benefits from there being no VAT on its share of the works as they are charged as a service charge without VAT by the Council.

8.3.3 The cashflow surplus over the 30 year life of the FWH business plan is £19.3m, indicating that refinancing is less beneficial than debt write off to FWH. Either way, the FWH business plan is still viable under both options.

8.4 Implications for the HRA

8.4.1 Implications to the HRA are the same as for Option 1A.

9.0 **Option 2A - All 110 units are transferred to the HRA**

9.1 Under this option, the 110 units (including one leaseholder) would be disposed of to the HRA. The following assumptions are made for this option:

- Debt of £11.6m would be written off. The residual existing loan would be refinanced over 50 years at 3%. New borrowing would be at 2% subject to fluctuations in PWLB rates.
- The 84 social rented properties at Granville New Homes would continue to be let at existing rent levels.
- Rents for the 25 intermediate rented properties would be reduced to HRA rents. This is in line with Brent affordable rent policy of 65% market rate.
- FWH debt is retained by FWH, with interest rate reduced from 3% to 2% over 50 years.

9.2 Implications for tenants

9.2.1 The 109 tenants at Granville New Homes would become secure council tenants, with one leaseholder having the Council as the freehold owner. Tenants would have the right to buy, and rents would be set in line with HRA rent setting policy of charging 65% of market rate.

9.2.2 Rents for the 25 intermediate properties would need to reduce to be compliant with HRA rent setting policy. This would result in lower rental charges to tenants.

9.3 Implications for FWH

9.3.1 FWH benefits from a reduction in financing costs. There are no years where negative cashflows are incurred with this option (see Appendix A).

9.3.2 There are no refurbishment costs to be incurred by FWH.

9.3.3 FWH incurs greater loss of efficiency from economies of scale through the loss of the higher rent intermediate rental units.

9.3.4 The cashflow surplus over the 30 year life of the FWH business plan is £20.7m indicating that refinancing is less beneficial than debt write off to FWH.

9.4 Implications for the General Fund

9.4.1 Under this option £11.6m of the loan to FWH will be written off against the general fund. This one off cost would need to be managed within the overall revenue budget for 2022/23. There will be additional financial implications for loss of interest, however it is anticipated that this can be managed within the overall capital financing budget.

9.5 Implications for the HRA

- 9.5.1 The HRA operates with a break-even budget, with limited financial capacity to absorb cost pressures without identifying offsetting budget mitigations. The HRA currently faces competing pressures from investment requirements in its existing stock.
- 9.5.2 Transfer of all 110 properties to HRA is estimated at nil value, on the basis that the capital investment required of £14.6m (excluding VAT) is greater in comparison to the net book value of the properties. The remediation cost can be part funded through useable capital receipts of £4m, with the remaining balance of £10.6m funded through borrowing. Annual interest cost is estimated to be £0.2m at 2.1% PWLB rates in July 2021.
- 9.5.3 Transfer of rented properties is estimated to generate income of £0.8m per annum for the HRA, after adjusting for affordable rent at 65% of market. Based on average cost in the HRA for stock maintenance, there is a projected break-even position. It is assumed housing management function will be managed within existing staffing resources.
- 9.5.4 Transferring to HRA would allow Right to Buy (RTB) rights for secured tenants. Stock reductions from RTB sale receipts will need to be replaced with affordable homes within five years, or paid over to central government.

10.0 Option 2B – All 110 units are transferred to the HRA

- 10.1 Under this option, the 110 units (including one leaseholder) would be disposed of to the HRA. The following assumptions are made for this option:
- Debt would be refinanced from 3% to 2%. New borrowing would be at 2% subject to fluctuations in PWLB rates.
 - The 84 social rented properties at Granville New Homes would continue to be let at existing rent levels.
 - Rents for the 25 intermediate rented properties would be reduced to HRA rents. This is in line with Brent affordable rent policy of 65% market rate.
 - FWH debt is retained by FWH, with interest rate reduced from 3% to 2% over 50 years.

10.2 Implications for tenants

- 10.2.1 The 109 tenants at Granville New Homes would become secure council tenants, with one leaseholder. Tenants would have the right to buy and rents would be set in line with HRA rent setting policy of charging 65% of market rate.
- 10.2.2 Rents for the 25 intermediate properties would need to reduce, resulting in lower rental charges to tenants.

10.3 Implications for FWH

- 10.3.1 FWH benefits from a reduction in financing costs.
- 10.3.2 There are no refurbishment costs to be incurred by FWH.
- 10.3.3 FWH incurs greater loss of efficiency from economies of scale through the loss of the higher rent intermediate rental units.

10.3.4 The cashflow surplus over the 30 year life of the FWH business plan is £15.7m indicating that refinancing is less beneficial than debt write off to FWH. This is the least beneficial option for FWH.

10.4 Implications for the HRA

10.4.1 Implications to the HRA are the same as for Option 2A.

11.0 Option 1C – Intermediate units are transferred to i4B

11.1 Under this option, the freehold interest of 84 social rented properties and one leasehold property would be disposed of to the HRA. The leasehold interest of the 25 intermediate rented properties would be transferred to i4B. FWH would refinance its debt for the blocks to 2% over 50 years. The following assumptions have been made:

- Debt would be refinanced from 3% to 2%. New borrowing would be at 2% subject to fluctuations in PWLB rates.
- The 84 social rented properties at Granville New Homes would continue to be let at existing rent levels.
- The 25 intermediate units would be transferred to i4B at nil value. Rents for these properties would be kept at the same level.
- The freehold for the blocks would be transferred to the HRA after the leasehold interest of the intermediate rented properties is disposed of to i4B, and the HRA would recharge i4B for its share of the remedial works, estimated at £3.6m.
- FWH debt is retained by FWH, with interest rate reduced from 3% to 2% over 50 years.

11.2 Implications for tenants

11.2.1 The 84 social rented tenants at Granville New Homes would become secure council tenants. The leaseholder would become a Council leaseholder. Tenants would have the right to buy, and rents would be set in line with HRA rent setting policy of charging 65% of market rate.

11.2.2 The 25 intermediate tenants would become i4B tenants, with their ASTs transferring over. Under this option there would not be a need to reduce rents for these properties, which would be necessary with a transfer to the HRA. In addition, tenants would not receive the benefits of being a secure Council tenant such as secure tenancy rights and Right to Buy.

11.3 Implications for FWH

11.3.1 The implications for FWH are the same as for option 2B with a positive cashflow of £15.7m over the 30 year life of the business plan. This is the least beneficial outcome for FWH, however the overall business plan is still viable.

11.4 Implications for i4B

11.4.1 Detailed modelling of the i4B business plan has been undertaken. i4B would be acquiring units for £3.5m with an average rental of £324 per week. The average purchase price per unit is £140,000. This is within the affordability parameters

of the i4B purchase model and would allow i4B to benefit from economies of scale due to an increase in units under management.

11.5 Implications for the HRA

11.5.1 Implications to the HRA are the same as for Option 1A.

12.0 **Next Steps**

12.1 Following Cabinet approval, FWH will begin the consultation process with residents on the potential disposal of the Granville New Homes properties.

12.2 Subject to the outcomes of the consultation with residents, a final decision on the disposal of Granville New Homes will be agreed by the Strategic Director of Community Wellbeing.

13.0 **Legal Implications**

13.1 First Wave Housing Limited is a company that is limited by guarantee and the company's sole guarantor is Brent Council. First Wave Housing Limited owns a number of residential properties as a landlord in its own right and this remains the case after the Council's housing management functions in relation to the Council's housing stock were removed from Brent Housing Partnership and brought back in house.

13.2 Local authorities can either grant secure tenancies or non-secure tenancies under one of the exceptions set out in Schedule 1 of the Housing Act 1985. Local authorities cannot be landlords of assured tenancies / tenants as local authorities are excluded from granting assured tenancies as set out in paragraph 12 of Schedule 1 of the Housing Act 1988).

13.3 Properties in which there are secure tenancies in which the council is the landlord involves housing provided or acquired under Part II of the Housing Act 1985 and such properties have to be held within the HRA pursuant to section 74(1) of the Local Government and Housing Act 1989 unless the Secretary of State gives specific consent to hold such properties outside the HRA pursuant to section 74(3)(d) of the Local Government and Housing Act 1989.

13.4 Under section 76 of the Local Government and Housing Act 1989, the Council has a duty to prevent a debit balance on its Housing Revenue Account. The Council currently has a self-financing settlement agreement with MHCLG regarding paying off its HRA debt as the Government no longer provides an annual subsidy towards the HRA. One would need to consider whether any proposals to transfer FWH's properties to the Council's HRA will have a significant effect on the self-financing agreement reached between the Council and MHCLG regarding payment of the Council's HRA debt and how it would affect the current HRA Business Plan. The government removed the HRA borrowing cap on local authorities in October 2018 and borrowing in the HRA is now subject to the similar prudential guidelines as the General Fund. As set out in Part II of Schedule 4 of the Local Government and Housing Act 1989, capital expenditure in respect of houses or other properties within the HRA which involves capital expenditure for the year and which the local authority decide should be charged to a revenue account for the year, must be debited to the HRA.

- 13.5 All of FWH's tenants are either assured tenants or assured shorthold tenants. However, none of FWH's tenants are secure tenants. If the FWH properties disposed to another non local authority landlord like i4B, the FWH tenants would remain as assured tenants. If the FWH properties were disposed to the Council, the FWH tenants would become secure tenants. After such a transfer, the Council would be in a position to have the ability to consult on varying the tenancy terms and conditions under the procedure set out in section 103 of the Housing Act 1985.
- 13.6 There is no statutory duty to consult assured tenants under the Housing Act 1988 regarding disposing of properties to another landlord or transferring the ownership to a different landlord. However, the guidance from the Social Housing Regulator states that it expects RP landlords to consult with its tenants before disposing of its ownership of properties to another landlord and the actual wording in the guidance states that the Regulator expects "*accountability to tenants and proper consultation with tenants when considering a disposal that would mean a change in the tenant's landlord or changes that affect tenant's statutory or contractual rights*". This quote is taken from one of the bullet points in paragraph 2.1 of the guidance of the Social Housing Regulator dated March 2017 and entitled: "*Guidance for private registered providers on how to notify the regulator about the disposal of social housing dwellings*". The new landlord would be under a duty to inform its new tenant(s) of the address of the new landlord pursuant to section 3 of the Landlord and Tenant Act 1985.
- 13.7 There is a requirement for a Registered Provider of Social Housing to notify the Regulator of Social Housing of the relevant disposal(s) of its residential properties within three months of the disposal(s) as set out in the direction entitled "Regulator of Social Housing – Direction about notifications of disposal of social housing dwellings and of land other than a dwelling 2017". There is no requirement on a Registered Provider (including FWH) to obtain the consent of the Regulator of Social Housing when disposing of properties, including tenanted properties.
- 13.8 As a landlord, FWH is under a statutory obligation to carry out repair works in respect of properties it lets out to its assured tenants. Section 11(1) of the Landlord and Tenant Act 1985 states the following must be kept in repair by the landlord of a residential property involving a tenancy and this includes the structure and exterior of the properties:
- "(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),*
(b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and
(c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water."
- Furthermore, failure to comply with fire safety regulations can lead to enforcement action against FWH by the London Fire Brigade, in particular breach of the Regulatory Reform (Fire Safety) Order 2005.
- 13.9 The Council, as the guarantor of FWH, must be mindful of its fiduciary duties towards its tax payers. The Council's fiduciary duties can be briefly summarised

as acting as a trustee of Council tax and public sector income on behalf of its rate and tax payers.

- 13.10 Under the general power of competence pursuant to section 1 of the Localism Act 2011, a local authority has power to do anything that individuals may generally do, though there are some restrictions. The power does not permit local authorities to do anything that is specifically prohibited in legislation or to raise taxes. Section 3 of the Localism Act 2011 sets out further clarification and restrictions regarding commercial activities.
- 13.11 The Council has the power under section 24(1) of the Local Government Act 1988 to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation, subject to consent being provided by the Secretary of State under section 25 of the said Act. As for the scope of such financial assistance, this includes (pursuant to section 24(2) of the Local Government Act 1988) as follows:
- “(a) make a grant or loan to that person;*
 - (b) guarantee or join in guaranteeing the performance of any obligation owed to or by that person;*
 - (c) indemnify or join in indemnifying that person in respect of any liabilities, loss or damage; or*
 - (d) if that person is a body corporate, acquire share or loan capital in that person.”*
- 13.12 As for consent under section 25 of the Local Government Act 1988, the Secretary of State gave a general consent in 2010 entitled:
- “The general consents under section 25 of the Local Government Act 1988 (Local Authority assistance for privately let housing) 2010” and this includes the following:
- “C - A local authority may provide any person with any financial assistance (other than the disposal of an interest in land or property):*
- (a) for the purposes of or in connection with the matters mentioned in section 24(1) of the 1988 Act...”*
- 13.13 Any proposed option must be consistent with the subsidy control regime under the EU-UK Trade & Cooperation Agreement and the proposed replacement Subsidy Control Bill. Option 1C involves the Council agreeing to refinance the debt at a lower interest rate to that currently charged. This would however be at a rate in excess of the Council’s own borrowing rate and be against a background of extending the duration of the loan and the transfer of assets to the HRA and i4B to ensure that FWH remains a viable entity. Whilst the arrangement would have to be appropriately structured, Option 1C is considered to be in compliance with the subsidy control regime.
- 13.14 Section .17 Housing Act 1985 (HA 1985) provides power to acquire land for housing purposes, and s.9 HA 1985 sets out the Council’s power to provide housing accommodation. Section 9(2) of the Housing Act 1985 also provides the Council with power to *“alter, enlarge, repair or improve a house so ...acquired”*. Therefore, the Council has power to acquire the land and do the repair works, but in exercising that power, the Council must act for proper purposes, in good faith, and must exercise the power properly, following proper

procedures in a "*Wednesbury reasonable*" manner. The Council must act for proper motives, taking into account all relevant considerations, ignoring irrelevant matters. The Council must not act irrationally, must balance risks against potential rewards, and when making decisions, must consider the usual fiduciary, best value, crime and disorder reduction, equalities, health and wellbeing and other relevant overarching duties, and any explicit requirements placed on a power.

13.15 FWH and i4B have obtained their own legal advice regarding the preferred option as proposed in this report.

13.16 Members are referred to the content of the exempt appendix 1 to this report.

14.0 Financial Implications

14.1 Financial Implications of each of the options under consideration are set out throughout the report. Overall, the recommended option is the best option to balance costs between the Council's General Fund, HRA and housing companies and ensure the works are carried out as rapidly as possible, while providing minimum disruption to residents.

15.0 Equality Implications

15.1 An equalities impact assessment will be undertaken during the consultation and will be considered along the outcomes of the consultation.

16.0 Consultation with Ward Members and Stakeholders

16.1 Ward members are being consulted.

Report sign off:

Carolyn Downs
Chief Executive