



Executive
14 January 2013

**Report from the Director of
Legal and Procurement**

Wards Affected:
ALL

**London Housing Consortium – Establishment and Membership of Joint
Committee**

1.0 Summary

1.1 This report seeks the Executive's approval that the London Housing Consortium, of which Brent Council is a member, is formalised as a Joint Committee for the purposes of section 101(5) of the Local Government Act 1972, and that Brent Council continues its membership of the London Housing Consortium ("LHC") as a Joint Committee member. The London Boroughs of Ealing, Hackney, Haringey, Hillingdon, Islington, Tower Hamlets and Buckinghamshire County Council have agreed to establish the London Housing Consortium Joint Committee with effect from 7 December 2012 pursuant to Section 101(5) of the Local Government Act 1972. The LHC had previously been an unincorporated association. Brent Council will be admitted to the Joint Committee of the LHC once this Executive agrees to participate and become a member of the same and to discharge its functions through the LHC Joint Committee. This matter has been presented to the Full Council of May 2012 and the necessary amendments have been made to the Council's Constitution to incorporate the London Housing Corporation as a joint committee of the Council. However, the approval of the Executive is required to authorise the Joint Committee of the LHC to discharge its Executive functions in the running of the LHC. One benefit of approving these changes is that once admitted to the Joint Committee of the LHC, Brent Council will continue to receive a share of the surpluses generated by the LHC.

2.0 Recommendations

- 2.1 That the Executive agree that Brent Council should continue to be a member of the London Housing Consortium
- 2.2 That the Executive note that the London Housing Consortium has been formally established as a Joint Committee by seven other local authorities pursuant to section 101(5) of the Local Government Act 1972;

- 2.3 That the Executive authorise the Executive's functions in relation to the running of the London Housing Consortium to be discharged to the Joint Committee of the London Housing Consortium and agree to Brent Council's membership and participation in that Joint Committee.
- 2.4 That the Executive appoint the Lead Member for Housing, as Brent Council's Executive representative, and a Brent Council non-Executive representative (to be confirmed), to the Joint Committee of the London Housing Consortium.
- 2.5 That the Executive authorise and delegate to the Director of Regeneration and Major Projects, in consultation with the Lead Member for Housing and the Director of Legal and Procurement, to agree a Constitution for the Joint Committee based on the draft Constitution as set out in Appendix 1.
- 2.6 That the Executive agree for other options for the legal framework and governance structure of the London Housing Consortium to be fully explored and that a further report, detailing the options, is presented to a future meeting of the Executive for consideration.

3.0 Detail

3.1 Historical Context

- 3.1.1 The London Housing Consortium ("LHC") was established in 1966 by a group of London Boroughs, known as the LHC Founder Members. These London boroughs are Barnet, Brent, Camden, Ealing, Hillingdon, Islington and Tower Hamlets.
- 3.1.2 Members and officers from the above-mentioned London boroughs agreed to create what they described as 'a voluntary association' concerned primarily with an architectural focus and 'industrialised forms of building'. Over the years, three other London boroughs, namely Hackney, Haringey and Lambeth, have joined the Consortium as LHC Full Members. Additionally, Buckinghamshire County Council and a Registered Social Landlord, the Anchor Trust, are also LHC Full Members. There are therefore 12 current Members of the LHC.
- 3.1.3 The objectives have evolved and changed over time so that the LHC now very successfully supports large numbers of local authorities, arm's length management organisations and registered housing providers and has the following aims:
- To provide specialist technical and procurement services related to building programmes undertaken by LHC constituent authorities and other public sector bodies.
 - To establish, develop and manage framework agreements for the procurement of building components and services for the use and benefit of all constituent authorities and other public sector bodies.

3.2 Current Operations of the London Housing Consortium

- 3.2.1 The LHC was governed by a Board of Elected Members which comprises one voting Councillor representative from the eleven local authority members. The current Chairman is the Cabinet Member for Housing from the London Borough of Haringey and the Vice Chairman is the Cabinet Member for Social Services, Health and Housing from the London Borough of Hillingdon. An officer from the London Borough of Hillingdon Democratic Services Team undertakes the Honorary Clerk duties.
- 3.2.2 The day to day activities of the LHC have been carried out by the LHC Operations Group, a dedicated team of 17 professional staff who have, from the inception of the LHC, been employed by the London Borough of Hillingdon. Taking direction from the LHC Board, the Senior Management Team of the LHC Operations Group prepares an annual Business Plan which aims to generate a surplus of income over operating costs. In this way, the work of the LHC is self-financing and it has not required any financial support from any of the LHC members. In fact, the surplus is redistributed to all the LHC members who realise a financial gain. Over the past five years, a total sum of £5m has been redistributed.
- 3.2.3 Income is generated in two ways:
- a) The creation of framework agreements for building products and services which allow the LHC members and other public sector bodies to contract directly with approved suppliers and contractors. The LHC earns a levy [typically 5%] on all business transactions.
 - b) The provision of specialist technical and procurement advice to the LHC members and other public sector bodies which is paid for on a fee basis.
- 3.2.4 The LHC Operations Group occupies premises in Uxbridge, leased by the London Borough of Hillingdon and financed out of LHC income.
- 3.2.5 In addition to the Full LHC Members, the LHC also currently accepts Associate Members. They have no voting rights but are entitled to a share of the LHC surplus in accordance with a committed level of business procured by them. There are currently 51 LHC Associate Members. The LHC also offers its services to the wider public sector community. There are currently approximately 100 public sector authorities using the LHC as non-members.
- 3.2.6 Over the last 45 years, the LHC has built a strong position as a highly respected procurement consortium for housing and, more recently, schools and corporate buildings. The key benefit to local authorities and other public sector bodies of using the LHC is that they can obtain expert support in four critical areas of building procurement:
- Quality - The LHC employs technical experts to research, specify and monitor the quality of building products and services to help maintain the maximum long term value of assets.
 - Efficiency - As a collaborative purchasing organisation, the LHC can gain benefits from bulk buying leading to greater efficiency savings.

- Sustainability - The LHC develops an intimate knowledge with the supply chain and engages with it, on behalf of users, to drive up the green credentials of all supply companies.
- Compliance - As public procurement legislation has grown increasingly complex and local authorities and other registered social landlords have found themselves at greater risk of challenge and litigation in relation to their procurement activities, the LHC has been able to provide valuable assistance through the provision of its regulatory compliant framework arrangements.

3.2.7 On 7 December 2012, after obtaining the necessary authorisation from their respective Executive committees, the following local authorities resolved to establish the Joint Committee of the London Housing Consortium pursuant to Section 101(5) of the Local Government Act 1972 as applied by Section 9EB of the Local Government Act 2000 and Part 4 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 with effect from 7 December 2012: the London Boroughs of Ealing, Hackney, Haringey, Hillingdon, Islington, Tower Hamlets and Buckinghamshire County Council. Brent Council will be admitted as a member of the Joint Committee at its next meeting once the necessary authorisation as set out in the recommendations in section 2 of this report are obtained from this Executive. It is understood that Lambeth Council is also seeking authorisation from its Executive to join and participate in the Joint Committee of the LHC.

3.3 Governance Arrangements

3.3.1 In paragraph 3.1.3 above, reference is made to the fact that the LHC has been governed by a Board of Elected Members. It has always been the belief of the Full LHC Members that the LHC has operated as a Joint Committee set up under section 101(5) of the Local Government Act 1972 as amended. This provides that, 'Two or more local authorities may discharge any of their functions jointly and, where arrangements are in force for them to do so, they may also arrange for the discharge of those functions by a joint committee of theirs'.

3.3.2 External legal advice was commissioned by the LHC Board from a firm of solicitors, Bevan Brittan, in relation to the legal status of the LHC and this advice has confirmed that there is no evidence to suggest that the LHC was ever established as a Joint Committee under the 1972 Act.

3.3.3 Bevan Brittan have concluded that LHC's most likely status is that of an unincorporated association which it has had since it was first established in 1966. An unincorporated association is simply an association of persons bound together by rules for a common purpose but with no independent legal existence apart from the members. The consequences of this are that:

- a) Members are exposed to claims and liabilities incurred by them directly and without limit;
- b) The association cannot hold property or contract in its own name.

- 3.3.4 As the LHC appeared to have been an unincorporated association, it had no legal powers or existence of its own. As stated above, it could not employ staff, hold property or contract in its own right. Given that the LHC is responsible for letting high value contracts on a regular basis, this called into question the legality of the contracts which it has entered into and the LHC has left itself open to a finding in the courts that these contracts are simply null and void. This difficulty has now been resolved as seven Councils have obtained approval to formalise the LHC as a joint committee under section 101(5) of the Local Government Act 1972.
- 3.3.5 However, the overriding concern was that the Members who were appointed to the LHC were left exposed to personal liability arising from the LHC's activities. This exposure arose through no fault of their own and given that the LHC lets a number of high value contracts, this in itself heightened the risk for Members of the LHC. As set out in the previous paragraph, this problem has been resolved as seven Councils have formalised and established the LHC as a joint committee under section 101(5) of the Local Government Act 1972.
- 3.3.6 The immediate solution to remedying this situation was for the respective committees of the local authority Full LHC members to agree that the LHC is to be formally established as a Joint Committee pursuant to section 101(5) of the Local Government Act 1972, and that they would be members of the Joint Committee of the LHC. As stated in paragraph 3.2.7 above, the London Boroughs of Ealing, Hackney, Haringey, Hillingdon, Islington, Tower Hamlets and Buckinghamshire County Council resolved to establish the Joint Committee of the London Housing Consortium pursuant to Section 101(5) of the Local Government Act 1972. This will overcome any difficulties in relation to the legality of the LHC's future operations and it will also afford the necessary protection to Hillingdon Members. The London Borough of Hillingdon will continue to employ the LHC Operations Group.
- 3.3.7 Appointment to a Joint Committee is treated in exactly the same way as an appointment to any other local authority committee. The Members will be collectively responsible, with the other members of the Joint Committee, for decision making and in this way they will avoid any personal liability arising.
- 3.3.8 If Members agree to Brent Council joining and participating in the Joint Committee of the LHC, it is important that it has a well-defined Constitution in place which will cover matters such as:
- Making appropriate delegations to the Committee;
 - Setting membership and constitution requirements;
 - Specifying the vires of the Committee and what it can provide and to whom;
 - Dealing with finance and accounting issues;
 - Dealing with all other governance arrangements as appropriate.
- 3.3.9 Bevan Brittan have drawn up a draft Model Constitution for each authority which wishes to continue to participate in the LHC and a recently revised copy of it can be

found at Appendix 1 to this report. At its first meeting of 7 December 2012, the Joint Committee of the LHC considered the draft constitution which had been developed by Hillingdon and Haringey and the Joint Committee noted that all the constituent authorities have delegated authority to an officer (generally the Chief Executive or the relevant Director) to settle it. This is an advanced draft as a basis for agreeing a final Constitution. Members are therefore being asked to give delegated authority to the Director of Regeneration and Major Projects to finalise it in consultation with the Lead Member for Housing and the Director of Legal and Procurement.

3.3 Other options for the legal framework and governance arrangements of the LHC

- 3.4.1 The LHC in the past has commissioned external legal advice in relation to the possible alternative legal structures which it may wish to adopt. The Joint Committee structure can be perceived as old fashioned and is one which has its roots in legislation which is now forty years old. The Joint Committee structure is also rigid and restrictive. For example, a Joint Committee is not recognised as a legal entity in its own right and it cannot be an employer. This is the reason why Hillingdon Council has assumed responsibility for employing the LHC Operations Group.
- 3.4.2 On the basis that the LHC will continue to exist in the future, it would be beneficial for it to further examine the various legal structures which it could consider adopting in the future.
- 3.4.3 Although each of the potential structures have their own advantages and disadvantages, nevertheless they do offer a less rigid model than the Joint Committee Model and they would give the LHC greater freedom to trade by offering a wider range of services. Therefore, each of the options should be fully explored by those authorities who wish to continue to participate in the LHC. As part of this process, the taxation and financial implications of each model would also be considered.
- 3.4.4 Examples of alternative structures are:
- Company Limited by Guarantee
 - Community Interest Company
 - Industrial and Provident Society
 - Partnership
- 3.4.5 The final recommendation in paragraph 2.6 of this report asks Members to agree that these options be fully explored and that a further report, detailing the options, is submitted to a future meeting of the Executive for its consideration. The intention is that each of the authorities who are full LHC Members will be taking an identical report to their respective Executive committees and the reason for including this recommendation is so that the examination of the options is not forgotten as it has been in the past and that there is a proper focus for this piece of work to be undertaken. If a further report is presented to Members, detailed legal and financial

implications of the proposals will be provided which Members will be asked to consider.

4.0 Financial Implications

- 4.1 The Council currently receives a share of the annual surplus generated by the LHC. If Members decide that Brent Council should no longer participate in the LHC, it would no longer be in receipt of the surplus.
- 4.2 The key benefit of formalising these changes to the LHC is that Brent Council will continue to receive a share of the surpluses generated by the LHC.
- 4.3 Rebates to full members of the LHC are distributed proportionately to the value of the works procured by each member in the financial year, so the likely returns will be directly related to the likely purchases. The value of the rebate is agreed annually by the elected members of the LHC but it is typically between 2% to 4% of the value of the works procured through the LHC.
- 4.4 Over the last five years, Brent Council has procured very little through the LHC so the rebates from the LHC have been almost zero. Details of the rebates are set out in Appendix 2 to this report. It is understood that this is mainly due to Brent Council, like many social landlords in London, implementing a specific procurement strategy that was designed to deliver the Decent Homes Programme. However, the LHC may be more relevant in future in providing specialist packages for housing and school refurbishment.
- 4.5 There are currently no financial costs to Brent Council in being a member of the LHC. Income is generated through a levy applied to the value of each project undertaken through the LHC. However, full members of the LHC are liable for any losses made by the LHC. This risk of making losses is very small. The LHC has been self-financed for at least 25 years and the risk of making losses is mitigated through the holding of sufficient reserves, which are agreed by elected members of the LHC (and will be agreed in future by the Joint Committee of the LHC) grand taken into account when making the annual decision about rebate payments to members.

5.0 Legal Implications

- 5.1 Under regulation 4 of the Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2012, which were effective from 4 May 2012, the decision to discharge the Council's Executive functions in relation to the running of the LHC by its newly established Joint Committee has to be made by the Executive. This is why this report is presented to this Executive Committee. Although a report was presented to Full Council which made the necessary amendments to the Council's Constitution so that the Council could participate in the Joint Committee of the LHC, the decision to discharge the Council's Executive functions to the Joint Committee of the LHC can only be made by the Executive and not Full Council.

- 5.2 Section 101(5) of the Local Government Act 1972 allows two or more local authorities to discharge their functions jointly and they may also arrange for the discharge of those functions by way of a joint committee.
- 5.3 In relation to the governance arrangements of the LHC, Members are referred to paragraph 3.2.7 and section 3.3 of this report.
- 5.4 In order to recognise the Council's planned discharge of its Executive functions in relation to the running of the LHC to its Joint Committee for the purposes of section 105(1) of the Local Government Act 1972, a number of amendments had to be made to Brent Council's Constitution and those changes were approved at the Full Council meeting on 14 May 2012.

6.0 Diversity Implications

- 6.1 There are no specific diversity implications arising from this report.

7.0 Staffing/Accommodation Implications (if appropriate)

None specific.

Background Papers

Report to the Full Council of 16 May 2012

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Appendix 1 – Draft Constitution of the Joint Committee of the London Housing Committee

Appendix 2 – Details of Rebates to LHC Members