



Cabinet
20 April 2020

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

**Transfer of Network Homes Temporary Accommodation
Portfolio**

Wards Affected:	All
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>	Part Exempt – Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”
Background Papers	None
No. of Appendices	Two Appendix 1: (exempt) Financial & Legal Implications Appendix 2: Equality Impact Assessment
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1.0 Purpose of the Report

- 1.1 This report requests approval for the Council to take over the management of the Network Homes Housing Association Temporary Accommodation (TA) portfolio in Brent.
- 1.2 This transfer would allow the Council to retain, and eventually increase, the stock of more settled, leased temporary accommodation, to help meet demand from homeless households. This would prevent the Council having to use poorer quality, more expensive, nightly paid temporary accommodation in response to Network Homes leaving the TA market and enable households to continue to live in Brent.

2.0 Recommendations

Cabinet is asked to:

- 2.1 Confirm the decision not to approve the implementation of the Reasonable Rent Scheme, as set out in paragraphs 3.10 to 3.13.
- 2.2 Agree that the Council enters into a Transfer Agreement with Network Homes Limited for the transfer of the temporary accommodation portfolio to the Council and authorises the Strategic Director of Community Wellbeing to finalise the terms of the Transfer Agreement.
- 2.3 Approve the assignment of the leases currently held by Network Homes for the Temporary Accommodation portfolio in Brent to the Council.

3.0 Detail

Demand for affordable housing

- 3.1 The Council's aim is to reduce the use of Temporary Accommodation, and ultimately eradicate its use all together. However, until there is sufficient supply of settled accommodation, which matches the demand, it is important that the accommodation used is of the highest quality and cost effective, that allow people to stay in Brent. The opportunity to secure the Network Homes portfolio is therefore important to maintain a large number of good quality homes in Brent.

The demand for affordable housing in Brent continues to be one of the major challenges that the Council faces, with high demand on the housing needs service being primarily driven by households being evicted from the Private Rented Sector due to affordability. Additionally, as illustrated in Table 1, the implementation of the Homelessness Reduction Act (HRA) 2017, has led to an increase in the number of households seeking the Council's assistance for housing. There has also been a surge in demand from single homeless people, since the inception of the Coronavirus and the associated lockdown. The Winter Shelters in Brent have all been decanted, along with shelter at Ashford Place, to move Rough Sleepers out of accommodation with shared facilities.

Table 1: Number of households seeking the Council's assistance for housing

	HNS Approaches	% increase compared to 2017 figures
April - Dec 17 (prior to HRA 2017 implementation)	2447	
April - Dec 18 (following HRA 2017 implementation in April 2018)	4020	64%
April - Dec 19	4494	83%

- 3.2 The HRA came into effect in April 2018. The first year post implementation saw a 64% increase in the number of homelessness presentations; there were 4020

cases during April to December 2018 compared to 2447 cases in the same period in 2017. The second year (2019) saw an 83% increase in cases in the April - December period compared to the same period in 2017, prior to the implementation of the HRA 2017.

- 3.3 Due to the historic lack of supply of social housing available in Brent, accepted homeless households have to wait for many years in TA before an offer of social housing is available. For example, the average waiting time for a 3-bedroom property is 16 years. The Council has been using its power to meet new demand from homeless households with accommodation in the Private Rented Sector since 2012. However, there is an insufficient supply of affordable Private Rented Sector accommodation in Brent and, as a result; some accepted homeless households are still placed in temporary accommodation.

Temporary Accommodation

- 3.4 The Council has a statutory duty to provide suitable temporary accommodation to homeless persons who are eligible, unintentionally homeless and have a priority need for accommodation under Part VII of the Housing Act 1996 (as amended). The duty to provide temporary accommodation usually comes to an end by arranging a settled housing solution with an offer of accommodation either in the public or private housing sector.
- 3.5 With demand from homeless households increasing since the implementation of the Homelessness Reduction Act 2017, and the recent influx of single homelessness driven by the Coronavirus, the pressure to retain and acquire good quality and affordable TA has also increased. The Housing Needs service, working with Housing Supply and Partnerships, are reducing the need for temporary accommodation by delivering 1000 new affordable housing per year over the next 5 years, including 1000 new Council homes. That said, there will likely always be a need for some good quality Temporary Accommodation. This will, in the medium term, be delivered through Council-owned provision. However, the transfer proposed in this report will help to retain existing stock and meet this demand in the short-term, and stop the families currently living in these properties from having to go into more expensive and lesser quality annexes.
- 3.6 Currently, there are three types of Temporary Accommodation: Bed and Breakfast, Annexes, and more settled leased accommodation, the majority of which is delivered through the Housing Association Leasing Scheme (HALS). The overall number of households residing in Temporary Accommodation has reduced in recent years, and so has the number in Bed and Breakfast. However, there has also been a reduction in the number of better quality units available through HALS, so there is still a significant reliance on the use of poor quality and expensive, nightly paid annexe accommodation.
- 3.7 Annexe accommodation is self-contained, which means the family have exclusive use of a bathroom, toilet and kitchen facilities. However, the majority of Brent's annexe accommodation is en-suite rooms, with a kitchenette in the corner of the room. There are still 207 households living in this type of temporary accommodation. A key objective of the procurement outlined in this

report is to maintain the current levels, and possibly increase, HALS provision of TA so that there is a reduction in the use of nightly paid annexe accommodation.

Current HALS provision

- 3.8 There are approximately 2000 homeless households currently living in TA in Brent. Approximately 854 of these households are in a Temporary Accommodation property sourced under HALS. The current contract has been awarded to Notting Hill Genesis Housing Association, Network Homes Housing Association and Shepherd's Bush Housing Association.
- 3.9 Out of the 854 HALS units, Network Homes manages 217 HALS properties. Network Homes has advised the Council that they are exiting the Temporary Accommodation market and has asked if the Council would be willing to take over the management of their entire TA portfolio.

Reasonable Rents

- 3.10 The recent review of the Council's Allocation Scheme included a proposal to implement the Reasonable Rent Scheme, as a way of mitigating against the loss of HALS units. Members decided not to implement the Reasonable Rent proposal as part of the review of the Allocation Scheme, and asked to review this proposal by January 2020.
- 3.11 The Reasonable Rents Scheme allows the status of leased properties under the current HALS scheme to be changed so that they no longer classify as TA, and therefore are not subject to the limits on Housing Benefit payable in TA. It would therefore be possible to pay owners a more attractive lease rent, which would facilitate better retention of HALS properties.
- 3.12 Network Homes exiting the Temporary Accommodation market presents an opportunity for the Council to take over the management of their entire TA portfolio, significantly increasing the in-house leasing scheme – Brent Direct Leasing (BDL), described further below in 3.19. This will give the Council more control of the portfolio, especially in negotiating lease renewals, providing an alternative way of offering more attractive lease rents to the Reasonable Rents scheme, without changing the status of the properties.
- 3.13 Officers have already successfully converted 33 properties for which the lease with Network Homes has expired (These are not included in the 217 figure above, which corresponds to the HALS units Network Homes continue to manage) The owners have (in principle, subject to further enquiries surrounding the BDL lease) agreed to lease their properties directly to the Council. Given that this opportunity offers an alternative way to achieve a similar retention of HALS properties to the Reasonable Rent scheme, it is recommended that Cabinet decide not to implement the Reasonable Rent Scheme.

Proposed Transfer of the Network Homes Portfolio

- 3.14 Network formally contacted the Council in November 2019 to advise that their Board had determined to exit the TA market, and invited the Council to take over their TA portfolio.
- 3.15 If the Council decide not to take over the management of these properties, Network Homes may start to give 1 months' notice to the owners of the properties, to bring the lease to an end and hand the property back, as is their right according to the HALS contract and the property leases.
- 3.16 As well as the 217 HALS units, Network have 117 properties in other Private Sector Leasing Schemes with the Council, broken down by scheme in the table below:

Table 2: breakdown of Network Homes PSL portfolio.

Name of Scheme	Number of properties	Description
HALS	217	Privately owned properties, leased and managed by Housing Associations, who are responsible for the rent collection
DPS	63	Privately owned properties, leased and managed by Housing Associations. The council is responsible for the rent collection
PMA	57	Privately owned properties, leased and managed by Housing Associations. The council is responsible for the rent collection
HALD	2	These are privately rented properties where the landlord issues the client with an Assured Shorthold Tenancy (AST) directly.
Total	339	

- 3.17 The Council still owes the main rehousing duty to all households living in these properties, with the exception of the 2 HALD properties. If the properties are handed back to the owners, the Council will have a statutory duty to find alternative accommodation for them. Due to the difficulties in securing alternative accommodation, this will most likely result in a move to emergency B&B or hotel annex accommodation which may not be in Brent.
- 3.18 The loss of this portfolio of TA would therefore has a significant negative impact on the Council and on the homeless households currently residing in these homes. The opportunity for Brent to take over the portfolio will guarantee that the Council retains this supply of TA in Brent, which will minimise the need for annexes.
- 3.19 As mentioned above, the Council has its own in-house Temporary Accommodation leasing scheme, called Brent Direct Leasing (BDL). This service currently manages 82 properties and households. If the Network Homes portfolio transfers into the Council, it would be managed alongside the BDL portfolio, increasing the in-house leasing scheme to approximately 450 homes.

3.20 Officers have visited Kingston Council, who manage a similar size TA portfolio through their own in-house leasing scheme. The visit confirmed that having a larger in house scheme presents opportunities to develop relationships with owners of local properties. It also enables more control over the service provided to owners, which helps to build a positive reputation, which in turn leads to a higher percentage of leases being renewed. This, coupled with the avoidance of negative impacts described above, leads this report to recommend that the Council take over the management of the Network portfolio.

4.0 Proposed Transfer

4.1 If the Network portfolio does transfer to Brent, the Council will be bound by the current terms and conditions of the existing leases with the owners of the properties. These leases are staggered, with end dates ranging from the present day to 2026. The Council will therefore be responsible for the rent collection, as well as minor repairs.

4.2 It is expected that the staff TUPE'd from Network, as well as an additional income collection post, will fulfil these requirements in a manner in line with Brent's current processes.

4.3 Under the Council's current leasing scheme (BDL), the landlords are responsible for managing repairs. Where this is not fulfilled, then the Council carries out the necessary repairs and recharges the landlord. The rent is collected by the Council for these properties.

4.4 As the leases end on the Network portfolio, the Council will contact the owners of the properties to negotiate a new arrangement from one of two options.

4.5 One option is to convert the property to a Private Rented Sector Offer (PRSO). This would end the main housing duty to the client, (and would only be possible if the household living in the property were accepted as homeless post November 2012). In this arrangement, the landlord would issue our client with an Assured Shorthold Tenancy (AST). Additionally, this approach will require the landlord's agreement to convert. Landlords are often reluctant to convert to a PRSO as this arrangement does not guarantee their rent.

4.6 If the landlord is not willing to convert to a PRSO, because they want to continue with a leasing scheme which guarantees the rental income, then officers will attempt to negotiate to enter into a new BDL lease with the Council.

4.7 In the last month, Council officers have been liaising with landlords where property leases have expired or are due to expire between January 2020 and May 2020. So far, 36 properties have been assessed for conversion to the Council's in house BDL scheme, and 33 landlords have agreed in principle. It should be noted that all of the properties inspected so far have been found to be in a good condition with only minor works required.

4.8 Through the current Network Homes lease, the Council will inherit some repairs obligations.

- 4.9 In the lease between Network Homes and Landlords, the tenant (Network Homes), is responsible for keeping the property in a habitable state of repair. This arrangement means that the majority of repairs in the property is the tenant's responsibility, with the exception of "fair wear and tear" repairs and some voids repairs, depending on the lease in place for each property.
- 4.10 Analysis of data received from Network Homes has shown that their average repairs spend in 2018/19 was £577 per property, and in 2019/20 (up to 26 February 2020 when the information was sent), the average repairs spend was £430 per property.
- 4.11 A stock condition survey has been undertaken to determine the condition of the portfolio, and help to inform any potential financial risks further. A sample of 23 properties (c.7%) have been inspected, with estimated repairs costs averaging £737.60 per property. At least a small portion of these repairs and associated costs would be the responsibility of the landlord.
- 4.12 The indicative timetable for the proposed transfer is as follows:

20 April	Cabinet meeting
27 April	Call in period expires
28 April	TUPE process starts (consultation for 28 days)
26 May	Transfer of stock go live

- 4.13 Legal Officers have advised that, in theory, landlords do not need to agree / provide written agreement for the leases to be assigned to Brent prior to the transfer taking place, as the local authority is named as a "permitted assignee" on the lease. However, due diligence needs to be carried out to ensure there aren't any breaches of covenant by Network Homes that Brent could become liable for.
- 4.14 As part of our due diligence, all cases of landlord and repair disputes., as well as cases of environmental protection / EPA notices, have been requested from Network Homes.
- 4.15 Network Homes have responded confirming that there are no current legal, financial or service delivery disputes with any Brent landlords, nor have any legal proceedings ever been issued against Network by a landlord. They have said there is currently one ongoing disrepair case that their legal team is dealing with, and that all historical disrepair claims have been dealt with. They have also said that there are currently no environmental health / EPA notices and no notices have been issued over the last two years.
- 4.16 For further due diligence, the Housing Needs Service are in the process of writing to all the landlords whose leases may be assigned to Brent Council to request feedback on the transfer and leasing scheme as a whole.
- 4.17 Network Homes have proposed a transfer agreement, which will be entered into by Network Homes and the Council. The transfer agreement will set out the respective party's rights and responsibilities in respect of the transfer of the

temporary accommodation portfolio including the dowry payment (see paragraph 5.3) and TUPE indemnities.

- 4.18 Cabinet is asked to agree that the Council enters into a Transfer Agreement with Network Homes Limited for the transfer of the temporary accommodation portfolio to the Council and authorises the Strategic Director of Community Wellbeing to finalise the terms of the Transfer Agreement

5.0 Financial Implications

- 5.1 Bringing the staff and management of the Network Homes portfolio in-house to manage as BDL properties is expected to lead to net additional costs.
- 5.2 Repairs & maintenance costs will be incurred on the 339 properties in scope at the time of the transfer. The Council's repairs contractor, Wates, have selected 23 properties across the portfolio to help inform any potential financial risks to the Council, in taking on the repairs and lease end costs, under the Network Homes lease. From the completed survey reports that the Council has received to date, the estimated repairs costs average £737 per property.
- 5.3 Other costs, such as bad debts on rents, may be incurred. £50k has been included to cover these expenses.
- 5.4 Most of the properties being brought in-house are managed under the Housing Association Leasing Scheme. The management and nomination fees for these properties currently total £70/week. However, £40/week is covered through the Housing Benefit payments to tenants. As such, the net cost to Brent will be £30/week per property. Applying this rate to the entire portfolio of properties being managed will lead to annual savings of £585k per annum.
- 5.5 In summary, the net financial impact is estimated to be £41k per year.

	£'000
Staff Costs	293
Repairs & maintenance	227
Other Costs	50
(less) Savings on management fees	(529)
Net Annual Costs	41

- 5.6 Further additional costs may be incurred if BDL increases the rent paid from the current levels and this cannot be covered by Housing Benefit. If an additional

£20/week was paid this could cost an additional £390k per annum. However, it is likely that rents will be reviewed on a case by case basis, reducing this cost. In addition, paying a higher rent may still be cheaper than the property returning to the landlord and the Council needing to use alternate forms of TA such as Annexes and B&B's which would come with higher costs.

- 5.7 The Financial Implications above look at the annual cost increases and ignore one-off payments such as any potential 'dowry' which may be paid by Network Homes in order to take over the management of these properties.

6.0 Legal Implications

- 6.1 The Council can only discharge its duty to those qualifying homeless persons in temporary accommodation under the circumstances set out in section 193 of the Housing Act 1996. The circumstances in which this duty can be discharged include the following: (i) if the homeless person accepts an offer of permanent accommodation from the Council or registered provider of social housing in the form of a secure tenancy or assured tenancy under Part 6 of the Housing Act 1996; (ii) if the homeless person accepts an offer of an assured tenancy (other than an assured shorthold tenancy) from a private landlord; or (iii) for homeless applications accepted after 9 November 2012, if the homeless person accepts an offer of private rented accommodation where there is a fixed term of at least 12 months – this is also known as a private rented sector offer (PRSO) of accommodation. There are other defined circumstances where the rehousing duty can be discharged if a suitable offer of temporary or permanent accommodation is refused by the applicant.
- 6.2 If Network Homes terminate their leases with private landlords which have been providing temporary accommodation to those homeless households to whom the Council has accepted a duty to secure suitable temporary accommodation, the Council will remain under a duty under section 193 of the Housing Act 1996 to continue to secure the provision of suitable temporary accommodation to such homeless households until such circumstances arise in which the duty can be discharged.
- 6.3 The Council will need to be careful to ensure that if the leases are assigned from Network Homes to the Council, that the tenancies are not secure tenancies and come within one of the exception as set out in Schedule 1 to the Housing Act 1985. The most frequently used exception is paragraph 4 to Schedule 1 to the Housing Act 1985 which states that a tenancy granted in pursuance of any function under Part VII of the Housing Act 1996 (homelessness) is not a secure tenancy unless the local housing authority concerned has notified the tenant that the tenancy is to be regarded as a secure tenancy.
- 6.4 Officers within legal services are currently reviewing the Transfer Agreement put forward by Network Homes and will enter into negotiations with Network Homes' solicitor regarding the rights and responsibilities therein.
- 6.5 The Council's HALS contract with Network Homes is split into two phases. The first phase was for acquisition and management of HALS properties. This

phase expired on 31st of January 2020. The second phase is for ongoing management of HALS properties until their leases expire with a final contract expiry date of 31st January 2023. The parties will need to agree to terminate the HALS contract as part of the transfer process. This can be addressed in the Transfer Agreement.

- 6.6 The PMA scheme refers to a Framework Agreement for temporary accommodation for the council's private managed accommodation scheme. The Framework expired on the 3rd of July 2015. The DPS scheme refers to a Dynamic Purchasing System for temporary accommodation for private sector managed accommodation. The DPS expired on the 14th of July 2019. Notwithstanding the fact that both the framework agreement and the DPS have expired, call-off contracts which were issued under those contracts may continue to be valid. Any such call-off contracts will need to be terminated as part of the transfer process. This can be addressed in the Transfer Agreement.
- 6.7 Careful consideration should be given to the terms of the lease to be assigned to the Council, Officers should review the yield up provisions in the lease. This provision sets out the obligations of Network Homes in relation its liability owed to the Landlord in respect of its duty to place the property in a good standard of repair once the lease expires. Particular attention should also be given to the provisions of the lease that set out the Networks Homes duty to repair the property. Once the lease is assigned the repairing obligation both in relation to ongoing repairs during the lease term and at the end of the term will become the responsibility of the Council.
- 6.8 In relation to the new leases to be entered into between the Landlord and the Council. The Council should inspect the property thoroughly and agree a schedule of condition with the Landlord that can be appended to the lease as a supplemental document.

Employment/staffing issues

- 6.9 Based on the information gleaned to date, it is reasonable to believe that TUPE is likely to apply to this situation. Any transfer of staff is governed by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE 2006). TUPE applies where there is a 'relevant transfer' this can be; 1) a business transfer or, 2) service provision change (a change in the provider of a service). This is service provision change and is governed by TUPE 2006 Regs 3(1)(b)(iii) TUPE 2006. To satisfy the conditions of TUPE 2006 there must be immediately before the service provision change—an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client; the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration; and the activities concerned do not consist wholly or mainly of the supply of goods for the client's use. Further details relating to TUPE and staffing are contained in Appendix 1.
- 6.10 Under TUPE 2006 there is a requirement for the transferor to inform and consult with affected staff. Brent Council and Network Homes will be jointly and

severally liable if Network Homes fails to do so. An award of up to 13 weeks' pay, for each member of staff could be made, It is essential to include adequate indemnity in the transfer agreement.

- 6.11 Under TUPE 2006 any dismissals made prior to the transfer that are connected to the transfer, will be automatically unfair. On transfer, Bent Council will become jointly and severally liable therefore it is essential to include adequate indemnities in the transfer agreement.
- 6.12 The transferred employees will be part of a pension scheme, the details of which are yet to be known. There will be associated costs in either maintaining the employees' membership in their current pension scheme or, offering membership into the Local Government Pension Scheme.
- 6.13 Further legal implications relating to Employment and Staffing Issues are contained in Appendix 1

7.0 Equality Implications

- 7.1 The Households living in the Network Temporary Accommodation are all households to whom the Council has accepted the main rehousing duty to under homelessness legislation. The provision of this accommodation has a positive impact on service users, by providing good quality, well managed, self-contained accommodation, which is affordable for households on low income.
- 7.2 A full equalities impact assessment is available in Appendix 2.

Report sign off:

Phil Porter
Strategic Director of Community Wellbeing