

	Officer Key Decision
	Report to 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 – Appendices 1 and 2 are exempt as they contain 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	Four Appendix 1: Exempt Information Appendix 2: Copy of the transfer agreement (Exempt) Appendix 3: Copy of the Equalities Impact Assessment Appendix 4: Summaries of the obligations under the four types of leases
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1. Purpose of the Report

- 1.1. This report requests approval to agree the terms of the transfer agreement associated with the Private Sector Leasing (PSL) scheme transfer as negotiated by Network Homes and Brent’s operational and legal teams.

2. Recommendations

- 2.1. To approve the terms of the Transfer Agreement with Network Homes Limited as set out in the detail of this report and agree that the Council may proceed to enter into the Transfer Agreement

3. Background

The PSL schemes

- 3.1. Network Homes have managed 3 PSL schemes on behalf of the Council for a number of years. The schemes offer temporary accommodation that is more settled, of higher quality and more affordable for the Council than the alternative B&B and annexe form of temporary accommodation. By taking over this portfolio, Brent will retain a valued supply of privately-leased temporary accommodation for homeless families. The transfer also offers the Council more control of the portfolio, for example in negotiating lease renewals and thereby retention of stock, as well as monitoring the quality of the portfolio and the performance of the service surrounding it.
- 3.2. The Council has 3 separate contract arrangements with Network Homes in respect of temporary accommodation. They are as follows:
 - (a) Framework Agreement for the Procurement and Management of Temporary Accommodation for the Council's Private Managed Accommodation Scheme ("PMA"). There are 60 properties managed under the PMA scheme.
 - (b) Contract for the Provision of Procurement and Management of Temporary Accommodation Services for Brent Council's Housing Associations Leasing Scheme ("HALS"). There are 234 properties managed under the HALS scheme.
 - (c) Dynamic Purchasing Agreement – Temporary Accommodation for Private Sector Managed Accommodation Scheme ("DPS"). There are 65 properties managed under the DPS scheme.
- 3.3. The PMA and the DPS contracts have both expired but arrangements which were entered into under those contracts continue. The HALS contract is not due to expire until 31st of January 2022.
- 3.4. Under the PMA and the DPS, Network Homes entered into leases with landlords and then entered into a head licence with the Council in respect of those properties. Those head licences continue notwithstanding the fact that the overarching PMA and DPS contracts have expired. The Council enters into sub-licences with tenants. The Council pays rent to Network Homes under the head licences. The amount of rent payable includes a management fee for Network Homes. The Council collects and retains the rent from the tenants.
- 3.5. Under the HALS contract Network Homes enters into leases with landlords and then enters into tenancy agreements direct with the tenants. Network Homes collects and retains the rent from the tenants and the Council pays Network Homes a weekly nomination fee in respect of the properties.
- 3.6. The portfolio, consisting of the three PSL schemes, will be integrated with the current in-house leasing scheme; Brent Direct Lease, which currently manages 107 properties. The in-house leasing scheme will thereby effectively grow by around 350 properties.

- 3.7. Where there are leases that are expiring before this portfolio is transferred by NH to the Council and the landlord is prepared to grant a new lease then a new lease is being put in place directly between the landlord and the Council.

Process of finalising this decision

- 3.8. In November 2019 Network Homes formally approached the Council to advise that their board had determined to exit the Temporary Accommodation (TA) market, and invited the Council to take over their PSL TA portfolio.
- 3.9. A paper went to Cabinet on 20 April 2020, which included the following recommendations: "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.
 - Approve the assignment of the leases currently held by Network Homes for the Temporary Accommodation portfolio in Brent to the Council."
- 3.10. These recommendations were approved, but as the first recommendation states, at the time the Cabinet paper was written, a number of details regarding the transfer had yet to be negotiated and decided. These matters represent significant financial and organisational implications for the Council. It was thereby determined that the decision to agree the terms of the transfer agreement constituted an officer key decision. This paper seeks approval for that decision.

4. Details

- 4.1. The main terms of the Transfer Agreement as negotiated between the parties are set out below and in Appendix 1. A copy of the draft Transfer Agreement is attached as Appendix 2. The Transfer Agreement may be subject to some final minor drafting amendments however, the substance of the agreement is agreed and will not change.

Dowry Payment

- 4.2. A survey was carried out by Wates, on behalf of Brent, on 23 properties (6.85 %) of PSL portfolio to transfer. A further 36 inspections were carried out of the lease end properties of the PSL portfolio to transfer. From the inspection reports provided, an average cost of carrying out the repairs needed in these properties was established.
- 4.3. This figure was used to negotiate a dowry from Network Homes. Details of the average cost of carrying out repairs and the Dowry figure are set out in Appendix 1. The dowry payment will be paid by Network Homes in full to the Council on the completion date.
- 4.4. The agreed purchase price for this portfolio is £1.00

Rent Arrears

- 4.5. Details of the arrangements in respect of rent arrears are set out in Appendix 1.

Property / deed of assignment

- 4.6. There are 333 properties where the leases will be transferred to the Council under the Transfer Agreement. There may be some final movement in these numbers if properties are moved across to the excluded property list or to the council's BDL scheme before the transfer date.
- 4.7. Under the terms of the leases held between Network Homes and landlords, the leases can be assigned to an "approved assignee", which includes the local authority. There is therefore no requirement to obtain licences to assign from landlords before the leases are assigned.
- 4.8. On the completion date (proposed date of 29th June 2020 or shortly thereafter) the sale and purchase of the leases of the properties (including the licenses and tenancies), the business of providing temporary accommodation and the services to residents, the records and any other assets that Network Homes used in connection with their business (subject to certain exceptions) will transfer to the Council.. In respect of the HALS scheme, the leases will be transferred subject to and with the benefit of subleases between Network Homes and the tenants.
- 4.9. Details of the arrangements regarding rent apportionment are included in the legal implications section of this report:
- There are 26 properties where the leases in favour of Network Homes are not being assigned to the Council but where residents continue to occupy these properties. These are known as Excluded Properties. The main reason for these leases not transferring to the Council is that the landlords do not wish to enter into a lease renewal. There are a few exceptions where there are ongoing discussions between the landlord and the Council for a new lease to be granted to the Council. Where the landlords do not wish to renew the lease the residents will have to be rehoused so that vacant possession can be achieved and Network Homes can hand the property back to the landlords. Where some of the landlords of the Excluded Properties are willing to grant a new lease to the Council, the residents will not need to vacate the property.
 - Summaries of the obligations under the four types of leases being assigned to the Council are set out in Appendix 4

Termination of Contract

- 4.10. The Transfer Agreement will terminate the HALS contract and will also terminate any contracts, including head licences, entered into between the Council and Network Homes under the PMA and DPS arrangements. In the main the contracts will terminate on the completion date (proposed date of 29th June 2020 or shortly thereafter) however, in respect of the excluded properties noted in 4.5 above the contracts will continue in so far as they

relate to the excluded properties until such time as the residents vacate the properties or the Council enters into a lease direct with the Landlord. ,

5. 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 additional costs. However, these will be offset by savings on management fees.
- 5.2. A dowry payment from Network Homes has been agreed. The amount of the dowry payment is set out in Appendix 1. This is in recognition of the additional costs expected to be incurred by the council after taking over the portfolio.
- 5.3. 4 existing employees from Network Homes are expected to be TUPE'd into the council. In addition, an Income Collection Officer is expected to be hired to oversee the rental income from the additional properties.
- 5.4. Repairs & maintenance costs will be incurred on the properties transferred. 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, an average cost of repairs per property has been estimated. The estimated repairs cost is set out in Appendix 1.
- 5.5. Other costs, such as bad debts on rents, may be incurred. £50k has been included to cover these expenses.
- 5.6. 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 was covered through the Housing Benefit payments to tenants. As such, the existing net cost to Brent was £30/week per property. Applying this rate to the entire portfolio of properties being managed will lead to annual savings of £585k per annum.
- 5.7. In summary, the ongoing costs are expected to be covered by the savings on management fees. This ignores the one-off payment from Network Homes.

	£'000
Staff Costs	282
Repairs & maintenance	251
Other Costs	50

(less) Savings on management fees	(585)
Net Annual Saving	(2)

- 5.8. 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.
- 5.9. We have taken specialist TAX advice from Ernst & Young. Ernst & Young have advised that from a value added tax perspective this transaction is a Transfer of Going Concern (TOGC) and therefore there should be no VAT liability on the part of the council. Ernst & Young have advised that Dowry payment is seen as an inducement payment by Network Homes to the council. As such, it falls under VAT legislation that requires that VAT is payable on such a payment. It has been agreed that the council and Network Homes will share the VAT costs of the Dowry payment.
- 5.10. Having taken specialist Stamp Duty Land Tax (SDLT) advice from Ernst & Young, their advice is that SDLT should not be payable in this transaction.

6. Legal Implications

- 6.1. As a result of the transfer of the portfolio of Network Homes' leases to the Council, the Council will have the obligation to make rent payments to landlords and the Council will also receive rent from the tenants under the terms of the subleases.
- 6.2. There will need to be an apportionment exercise of the rent paid or to be paid by Network Homes to their landlords. In most instances, Network Homes pay rent to their landlords in advance and therefore the Council will have to reimburse Network Homes where they have paid rent that covers a period after completion. Similarly, where Network Homes pay rent in arrears to their landlords then Network Homes will have to reimburse the Council where the Council has paid rent which also covers a period before completion. The Transfer Agreement provides that the rent apportionment will happen within 4 weeks of the completion however this timescale can be extended by mutual agreement.
- 6.3. At completion, any Local Authority Contracts between Network Homes and the Council (except in so far as they related to the Excluded Properties noted in 4.5 above) will be terminated. Any payment of rent and any other payments due under the terms of these contracts will be dealt with in

accordance with the provisions of those contracts. In respect of the excluded properties the contracts will continue in so far as they relate to the excluded properties until such time as the residents vacate the properties or the Council enters into a lease direct with the Landlord. They will then be terminated in accordance with the provisions of the transfer agreement

- 6.4. There are a number of properties (26) where the landlord does not wish to grant a new lease. The current leases of these properties has been extended by six months and these leases will not be assigned to the Council. The current arrangements for these properties, known as Excluded Properties, will therefore continue and when the lease expires the Council will have to rehouse the tenants as the landlord will expect vacant possession of these properties.
- 6.5. The Transfer Agreement provides that where Network Homes receives a rent payment from or on behalf of a tenant which relates to the period after the transfer and which should have been paid to the Council, Network Homes will pay such sums to the Council within 10 business days of completion of the transfer agreement or receipt of the payment. There is a similar provision requiring the Council to pay to Network Homes any sums it receives relating to housing benefit or rent which relate to the period prior to completion of the Transfer Agreement.
- 6.6. TUPE will apply to the proposed service provision change of bringing the PSL service back in house. Subject to the right to object, there are four employees who are wholly assigned to the PSL scheme. These employees will transfer to Brent on their current terms and conditions. Further details regarding the employees are set out in Appendix 1 Under TUPE, any change to employees' terms and conditions is void if the sole or principal reason for the change is the transfer (even if the employees agree to the change) unless it is an economic, technical or organisational reason (ETO reason) entailing changes in the workforce. As such, Brent cannot make any changes to the contract.

7. Equality Implications

- 7.1. The Operational Director of Community Wellbeing is referred to the Equalities Impact Assessment at Appendix 3. The proposals in this report have been subject to screening and Officers believe that there are no adverse equality implications.

8. Consultation with Ward Members and Stakeholders

- 8.1. TUPE consultation will be undertaken in an effective manner. Please see point 9.1 for further information regarding consultation.

9. Human Resource/Property Implications

- 9.1. TUPE applies to the proposals within this report. This process continues to be managed in partnership with Human Resources and in line with current

HR Policies and Procedures. Throughout these processes, consultation will be required with relevant individuals, partners, stakeholders and Trade Unions as appropriate.

- 9.2. As part of the transfer, the Council will inherit some repairs obligations that are written into the leases with Network Homes. The Council has accepted the risk that there may be some properties which are in disrepair and the NH obligation regarding these disrepairs will be assumed by the Council after completion. In the lease between Network Homes and the Landlords, the tenant is responsible for keeping the property in a habitable state of repair. The Council will inherit this responsibility, which is more than our current BDL leases are responsible for. As the leases expire with the Landlords, they will then be signed onto the BDL leases should they choose to renew their lease, where the Landlord is responsible for keeping the property in a habitable state of repair.

Related papers:

Cabinet paper 20 April 2020; Transfer of Network Homes Temporary Accommodation Portfolio

Report sign off:
Strategic Director Community Wellbeing
Phil Porter