

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Cabinet

Date: 04 November 2024

Subject: Creating a Housing Company

Report of: Cllr Rowan Ree, Cabinet Member for Finance and Reform

Report author: Labab Lubab – Head of Partnerships, Investment and Assurance

Responsible Director: Sukvinder Kalsi – Executive Director of Finance and Corporate Services

SUMMARY

The challenges facing councils across the country in providing an adequate supply of affordable housing are well-documented. Equally well-recognised are the pressures that currently confront councils in respect of unprecedented demand for temporary accommodation (TA) and the difficulties of providing sufficient TA within broader local government financial constraints.

This report seeks cabinet approval to establish wholly owned council housing company that will aim to provide a wider choice of housing options for people in the borough. Through a diversified property portfolio, the council will seek to broaden the housing options available for people underserved by the current housing provision in the marketplace.

The objectives the company delivers will range from enhancing the provision of temporary housing for homeless households to increasing the provision of intermediate rent and low-cost homeownership housing for key workers. The company will also be structured to enable provision of market rent homes to help raise the housing standards in the private rented sector.

The report establishes the strategic and operational context underpinning the proposal and describes the multiple benefits that the council could expect to realise through the creation of a housing company.

The paper also sets out – using the Treasury’s five case model – the outline business case that serves to justify the proposals to Cabinet and requests approval of a series of recommendations that will both authorise the creation of the housing company and delegate authority to individual Cabinet Members to take operational decisions on the ongoing functions of the company.

This report is not seeking – at this stage - to commit any council resources to the company other than those limited to its incorporation and the establishment of its board and governance mechanism.

Following detailed feasibility studies, future decisions will be required to enable the company to undertake a range of real estate related activities such as acquisitions, lettings, developments, investment and other related trading activities. These future decisions will also consider any funding source and arrangements required to enable the company to undertake each activity.

RECOMMENDATIONS

Cabinet is recommended to:

1. Approve in principle the establishment of a wholly owned housing company limited by shares.
2. Delegate to the Executive Director for Finance and Corporate Services in consultation with the Cabinet Member for Finance and Reform and the Director of Legal Services:
 - a. to incorporate the company, establish its article of association and such other documents that are necessary to enable the establishment of the company, its board and governance structure.
 - b. to take any necessary steps including procuring and appointing any consultants or suppliers to support the governance of the company, and support feasibility studies on any trading activity that company may undertake subject to future decisions
 - c. Appointment of company directors.
3. Note that the company business case/s prior to incorporation of the company will be brought back to Cabinet for approval

Wards Affected: All

Our Values	Summary of how this report aligns to the H&F Corporate Plan and the H&F Values
Building shared prosperity	The report proposes the establishment of a council-owned housing company that will enable the council to be more flexible in offering a broad range of affordable housing products to meet the varied needs of residents and to promote inclusive economic growth.
Creating a compassionate and inclusive council	The proposal is focused on improving the supply of affordable housing across the borough to provide access to safe and affordable homes for some of the borough's most vulnerable residents. It also focuses on the generation of significant savings in

	temporary accommodation expenditure which safeguards council finances and the protection of a range of council services aimed at supporting the borough's at risk residents.
Doing things with local residents, not to them	As part of the council's co-produced corporate plan, the organisation has committed to exploring the feasibility of establishing a wholly owned housing company. The council will carry out further co-production as the proposal develops to ensure that the purpose of the company reflects the priorities and needs of residents.
Being ruthlessly financially efficient	The proposal offers the council opportunities to make significant savings on current TA costs, which are described within this report.
Taking pride in H&F	Alleviating general fund temporary accommodation cost pressures will serve to safeguard a range of services aimed at keeping the borough safe, clean and prosperous. The proposal will also provide a route for the council to bring long-term complex void properties back into use, contributing to better placemaking across the borough's neighbourhoods.
Rising to the challenge of the climate and ecological emergency	The council is committed to improving the environmental performance of properties that it may either acquire or bring back into use in line with the council's commitment to addressing the climate and ecological emergency.

Financial Impact

This report proposes the establishing of a wholly owned housing company to progress three pre-determined and separate functions, as outlined in paragraph 10, namely:

1. Pursue property acquisitions on the open market properties and intermediate homes to increase provision of affordable homes
2. Bring complex and expensive HRA voids back into use
3. Address the increased demand for Temporary Accommodation

Function 1 would be a primarily revenue driven activity, with the other 2 functions requiring capital funding for the acquisition of properties, which the company would borrow from the General Fund.

As is made clear in the report, the progressing of each strand will only be taken forward once a clear business case (based on the Treasury's five business case model as referred to above) has been established for each line, with this report asking that Cabinet delegate the ability to progress any or all of the aforementioned strands to officers, on completion of a satisfactory discreet business case.

Acknowledging failures of subsidiaries within the sector, there is considerable detail required to build a satisfactory business case within this context, that takes into account the appropriate management of associated risks. In addition to the company's own viability, it is imperative that the General Fund is kept whole, in terms of any financing it provides and minimal exposure to potential company deficits.

The ability to operate a successful subsidiary will be reliant on assembling the appropriate mix of skills and expertise across a number of different facets, including private sector accounting and tax knowledge (which will also form part of the business case). Officers will also need to ensure the company's activities are compliant with the UK's Subsidy Control regulations (State Aid as was).

Prepared by James Newman, AD Finance, 30 September 2024

Verified by officer name, role title, date verified (send to Sukvinder Kalsi, Andre Mark, or James Newman for verification)

Legal Implications

The Council has the power to set up a company to carry out the functions referred to in this report. If it undertakes activities for a commercial purpose then, under s4(2) of the Localism Act 2011, it must do so through a company. The types of company which can be used for this purpose are set out in s4 of the Localism Act and include a company limited by shares under the Companies Act 2006.

In this context a commercial purpose includes the company generating a profit on its activities and paying dividends or surpluses to the Council's general fund.

This report sets out an outline business case. A detailed business case will be required in relation to each of the proposed strands of activity the company is proposing to undertake. This is essential to ensure that the company is subject to effective management and governance and meets all legal and regulatory requirements relating to companies.

Any directors appointed will need to have training on the requirements for company directors. The company will need to have clear practices in relation to conflicts of interest including guidance for directors.

Under the Local Government and Housing Act 1989 the housing revenue account is required to be "ring-fenced" i.e. expenditure in relation to the housing stock within the account must be accounted for within the HRA. The way in which the proposal to grant leases of HRA voids with a view to recouping the costs of these through rental income will need to ensure that these requirements are observed.

John Sharland, Assistant Director of Legal Services 23/9/2024

Background Papers Used in Preparing This Report

None.

DETAILED ANALYSIS

BACKGROUND AND CONTEXT

1. The council's Corporate Plan 2023-26 reinforces the importance of housing as a key corporate priority to address the borough's shortage of affordable homes. This plan makes a new commitment to *"Explore the feasibility of creating a council-owned housing company to support an increase in affordable homes for residents who do not qualify for social housing and cannot afford the open market."*
2. In addition, the current Housing Strategy (2021-2026) recommends that new housing provision should diversify means to meet housing need without additional burden on the council's General Fund (GF) and Housing Revenue Account (HRA).
3. The housing shortage continues to be acute within the borough. The council's housing waiting list is circa 3,000 residents and the organisation is subject to the same pressures as other London boroughs in regard to TA budget pressures; boroughs are collectively forecast to exceed homelessness budgets by £250m in the 2024-25 financial year.
4. In addition, more there are more than 6,000 applicant households who live and/or work in the borough registered on the council's Home Buy database. These households are actively seeking access to intermediate affordable housing properties through schemes such as Intermediate Rent, London Living Rent, Shared Ownership and Council Shared Equity (formerly Discount Market Sale).
5. This report proposes to establish a wholly owned housing company limited by shares to help the council in achieving some of its key housing objectives. It describes a range of potential functions that the company could exercise in order to respond to these pressures.
6. If approved, the company will seek to carry out a wide range of functions, each of which will be appraised in their own right and operate according to a detailed business plan. The report sets out these functions and then – using the Treasury's five case model – details an Outline Business Case for the establishment of the company.
7. Cabinet should note at this stage, however, that the recommendations focus on the establishment of the company rather than the individual functions that the company may exercise. These functions will be subject to further appraisal, evaluation, and governance prior to implementation.

PURPOSE OF HOUSING COMPANY

8. The housing company will not only aim to reduce the immediate housing pressures facing the council, but also the shortage of affordable housing options available to people who do not qualify for social housing and are unable to access safe and secure housing on the open market.

9. To achieve this, the council's intention is that the housing company will have a broad remit so that it can respond dynamically to evolving business needs. Detailed business plans for individual company functions will govern the objectives, outputs, and exit strategy for the company.
10. Generally, the principal functions of the housing company are expected to be:
 - **Function One:** Property acquisitions
 - **Function Two:** Bring complex HRA void properties back into use
 - **Function Three:** Address the increased demand for temporary accommodation
11. The next section of the report will describe the benefits associated with executing each of these three functions through a housing company, as well as other advantages that the creation of a housing company offers to the council.

Function One: Property acquisitions

12. The housing company will be able to acquire intermediate homes from the council's development programme, making these homes available for intermediate rent, low cost home ownership, at the same time reducing the financial risk to the HRA by securing sale receipts to help service debt. The company could also purchase S106 affordable homes from developers.
13. The housing company would be structured to acquire homes on the open market, meaning the council could act as private landlord or use market homes for use as Temporary Accommodation.
14. This approach not only diversifies the stock holding and enable the council to operate more commercially, it significantly mitigates sales risk in the development programme, while also being opportunistic in the section 106 market - as recently demonstrated with the Quayside Lodge affordable homes acquisition.

Function Two: Bring complex HRA void properties back into use

15. Currently there are a high number of complex void properties in the HRA that require significant investment, which will not be covered by social rent the council charges in the HRA.
16. The housing company can acquire these long term voids from the HRA on a lease (25 to 35 years depending on viability), refurbish and let them as intermediate rent – potentially to key workers. At the end of the lease period, the homes can be returned to the HRA in a lettable condition for allocation to social housing applicants.
17. This approach would mean that the investment requirement is alleviated from the HRA and borne by the housing company and let at rent level that would be covered overtime by the higher rent levels that company can charge that the HRA cannot.

18. The homes could then be returned to the council at the end of the lease period to let to the social housing register. Alternatively, it would also be possible to lease back some of the homes to the council to use to use as temporary accommodation which will contribute to cost savings on temporary accommodation budgets.

Function Three: Address the increased demand for temporary accommodation

19. The parlous state of the economy has led to a significant increase in homelessness across London, and the country as a whole. Local authorities have a duty to house those who present as homeless and this has created a surge in demand for TA.
20. The cost of provision of TA for homeless households continues to rise as rent and demand increase. To discharge this duty, the council leases properties from private landlords at high rates which exacerbates pressure on existing homelessness budgets.
21. Increasing the council's stock of properties through acquisitions, and through bringing complex voids back into service, will create a larger overall housing portfolio. This will provide greater flexibility to meet the needs of those seeking TA from the council.
22. Similarly, through the housing company, the council can enter the private rented sector and let properties at, or near, market-rate levels, while issuing assured shorthold tenancies, which is currently not possible in the HRA.
23. These freedoms will significantly help the council diversify its property portfolio and reinvest the revenue generated to reduce the reliance on council General Fund subsidy, generating a saving for the council, while also providing further investment opportunities for the provision of more affordable homes.

OTHER ADVANTAGES OF CREATING A HOUSING COMPANY

Revenue generation and long-term financial sustainability

24. The council can generate revenue that would otherwise not be available under traditional social housing models. For example, by acquiring and managing properties through the housing company, the council will have the flexibility to charge a range of rent levels. From social rent up to market rents.
25. The rents that the housing company collects from both market-rate lets and affordable housing tenants provides a sustainable revenue stream. Any profits generated by the housing company can be reinvested into the council's budgets, which can help reduce reliance on grants or direct funding from central government. Over time, this income can be used to service debt, support other council services and fund new housing developments.

Access to more flexible finance options

26. The housing company will enable the council to access funding through more flexible financial mechanisms than those available through traditional HRA borrowing. There are several options for funding the Company, and each scheme business plan will provide an optimum recommendation.
27. The council has primarily borrowed funding to date via the Public Works Loan Board and it is likely this will be the route for funding the Housing Company. However, there are other potential options such as using investment by pension funds, or bank finance, and leaseback schemes from other institutional lenders with pension liabilities who require guaranteed long-term returns.

Faster decision making and development

28. Subject to council approval, the housing company will be equipped to operate with a commercial mindset, allowing for quicker decision-making and implementation, which can accelerate the pace of housing delivery and income generation.

Greater control over tenancy management

29. The council can ensure the housing company provides exemplar tenant management and services that align with its values and objectives, ensuring better tenant support and property maintenance.

Improved housing standards

30. As the council will oversee the housing company's operation, it can ensure that high standards of quality and sustainability are met in its housing provision. This can lead to general improvement in the private rented sector in the borough. While also positively impacting design, energy efficiency, refurbishment and development standards.

Job creation and economic benefits

31. The operations of the housing company can stimulate the local economy by creating jobs, apprenticeships, and benefit local supply chains.

ESTABLISHING THE HOUSING COMPANY

Company structure

32. Solicitors from Trowers & Hamlin are commissioned to advise on company structure using their experience of advising numerous local authorities, on the establishment of wholly owned housing companies.
33. Their advice is to set up a company limited by shares (CLS), which has been adopted by the majority of local authority housing companies. The council would be the sole shareholder in the Company. Should the Housing Company generate a surplus, it can be repatriated to the Council by a dividend payment.

34. This proposed structure provides tax advantages. For example, the council as the sole shareholder would be able to claim group relief for stamp duty land tax (SDLT), if property is transferred from the council to the Company.
35. The CLS structure in terms of control, financial and tax planning, provides considerable flexibility through the creation of different classes of share and the ability to apply varieties of loan capital.

Articles of Association

36. The articles of Association are the documents that define the purpose of the council's housing company and state the regulations that will govern it.
37. The articles will:
 - Provide the council with control, delegated to the Shareholder Representative [to be appointed by the Council].
 - Provide the broad scope to enable the housing company to address key challenges, and also allow flexibility to respond dynamically to changing needs.
 - Provide the framework for the council's appointment and removal of directors and definition of directors' powers.
38. The company's articles of association can only be changed by the council, and the council will also approve the company's business plans, and any amendments to them.

OUTLINE BUSINESS CASE

39. Having considered the broad range of benefits that the council expects to arise from the establishment of a housing company, this report now summarises the Outline Business Case (OBC) for the development of the housing company. It follows the structure of the Treasury's Five Case Model for good business case development.
40. The OBC supports early-stage decision making using the best available present information and provides a structure for the ongoing development of the business case for each function of the housing company.
41. The model is structured into five separate cases as follows:
 - **The Strategic Case:** This case provides the strategic rationale for the establishment of the housing company and demonstrates how the proposal supports the implementation of the council's corporate plan.
 - **The Economic Case:** This case outlines the economic and social benefits of the development of the housing company.

- **The Commercial Case:** This case addresses the fundamental considerations and feasibility of any procurement and commercial implications arising from the proposal.
- **The Financial Case:** This case discusses the ongoing financial implications of the proposal and assesses its affordability to the organisation.
- **The Management Case:** This case sets out the practicalities of the proposal from a governance perspective, describing the roles and management structure required to deliver the benefits outlined and the feasibility of implementation.

The Strategic Case

Identifying the Need

42. Like many councils across the country, this council is managing growing housing demand, homelessness, and a shortage of affordable homes. In addition, the high land values and property prices, coupled with a booming rental market made home ownership and private renting unaffordable for many households. Meanwhile, the council's ability to increase the overall provision of affordable housing has been constrained by limited funding and restrictions on borrowing against housing revenue accounts.
43. Establishing a council wholly owned housing company presents an opportunity for the council to address housing need. The housing company will enable the council to acquire, manage or even build housing, and generate enhanced revenue streams. This is an essential response to the need for increased housing supply, particularly in this borough where market conditions and affordability pressures are most acute.

Alignment with National and Local Policy

44. The creation of the housing company also aligns with national policy objectives. The National Planning Policy Framework (NPPF) encourages local authorities to significantly boost housing supply, particularly affordable housing, and meet the needs of different groups in the community. Moreover, there is increased expectation that local authorities take a leading role in the provision of new housing.
45. At the local level, many councils have already established housing companies to support their housing supply ambitions, and meaningfully contribute to the achievement of local housing strategy objectives.

The Economic Case

Agility and Flexibility

46. There are several options available to the council to address housing needs. These include continuing with current housing delivery models, reliance on

section 106 provision in private developments, increasing direct council housebuilding activity, and/or establishing a housing company.

47. Focusing on the housing company, this option offers several economic advantages. For example, the housing company offers commercial agility, allowing the council to respond quickly to market conditions and leverage opportunities for acquisition and development. The council will retain control over housing assets, ensuring that homes remain within the council ownership and affordable in the long term.
48. Moreover, the housing company structure enables access to different funding streams, including commercial borrowing. The council has primarily borrowed funding to date via the Public Works Loan Board and it is likely this will be the route for funding the Housing Company as well.
49. However, there are other potential options such as using investment by pension funds, or bank finance. These freedoms can give the council greater financial flexibility and capacity to invest in housing.

Benefits and Value for Money

50. The economic case for the housing company is underpinned by the potential to deliver significant benefits to the community and local authority. These include:
 - **Revenue generation:** the higher rental income from homes managed by the housing company can provide a sustainable revenue stream for the council, helping to offset budget pressure.
 - **Increased affordable housing supply:** the housing company can deliver new homes quickly and efficiently.
 - **Long-term asset retention:** The housing company allows the council to retain ownership of housing stock, which can appreciate in value over time, providing further financial benefits.

The Commercial Case

Deliverability and Market Conditions

51. The commercial case focuses on how the housing company will be delivered and whether it is commercially viable. The housing market in the borough is a determining factor in the success of the housing company. In areas where there is high demand for housing, particularly affordable housing, the commercial case for setting up the company is stronger.
52. As regards delivery, the housing company will operate as a wholly council-owned entity. This approach gives the council greater control over housing provision and management operations.

Risk Management

53. Setting up a housing company involves several commercial risks, including market fluctuations, and increase in costs. However, implementation of a robust

risk management strategy, including clear and realistic exit strategies is essential and will be developed as part of the business case for each of the functions to be undertaken by the company.

54. Each function's business case will also include a clear commercial strategy, including detailed market analysis and financial projections. This is essential for its long-term viability.
55. Moreover, the housing company will have clear governance structures and reporting lines to the council to monitor performance and address issues as they arise.

The Financial Case

Funding and Financing

56. The financial case assesses how the housing company will be funded and whether it is financially sustainable. Creating and establishing a housing company requires very little upfront investment.
57. Where investment is needed, each proposed function will be supported with a detailed business case setting out the level of investment, viability and exit strategy as outlined in the commercial case.
58. The council can finance the investment through a range of mechanisms, including prudential borrowing, loans from PWLB, and investment from council reserves, if applicable.
59. Revenue generation from rents will be the crucial element of the company's financial model. The housing company has the flexibility to set rents at levels that are both affordable for tenants and commercially viable for the business.
60. The balance between affordable and market-rate housing would need to be carefully managed to ensure that the company remains financially sustainable while delivering on its social objectives.

Financial Sustainability

61. For the housing company to succeed, it must generate a surplus after covering operating costs, loan repayments, and maintenance of the housing stock.
62. The Financial modelling should consider different market scenarios, including variations in rent levels, and borrowing costs. Sensitivity analysis will be undertaken to identify the conditions under which the company might face financial difficulties and plan the risk mitigation accordingly.

The Management Case

Governance and Delivery

63. Effective governance is critical to the success of the housing company. The company will have a clear governance structure, with a board consisting of officer representatives from the council. The board will be responsible for setting the company's strategic direction, overseeing operations, and ensuring that the company meets its objectives.
64. Three directors will be appointed by the council as shareholder, with company secretary duties to be commissioned to an agency that has provided these services to other council-owned companies.
65. Establishing strong project management protocols and processes is also essential for delivering housing projects on time and within budget. This would involve setting clear timelines, defining roles and responsibilities, and implementing robust performance management systems to monitor progress.

Monitoring and Evaluation

66. Once the housing company is operational, a framework for ongoing monitoring and evaluation will be implemented. This would involve regular financial reporting, performance monitoring against key metrics (e.g., the number of homes delivered, rent collection rates), and stakeholder engagement to ensure that the company is meeting the needs of the community.
67. Scrutiny of the company's activities will be undertaken on a monthly basis by Commercial Board with regular reporting to SLT Assurance. The company will provide reports with commentary, on a quarterly basis, with an annual update and progress report to Cabinet.
68. The relationship between the council and housing company will be governed by the Company's Articles of Association, setting out in broad terms its objectives and activities, and the matters reserved to the shareholder and those delegated to the company via a shareholder/governance agreement.

OPTIONS ANALYSIS

69. The main options available to Cabinet are outlined below.

Option A: Do nothing (not recommended)

70. This option constitutes a decision to reject the recommendations within the report and proceed with current operational arrangements in regard to TA management, void management, and the council's broader investment strategy.
71. Option A is not recommended on the basis that it fails to yield the benefits outlined in this report. It should be noted that there is a substantial expected overspend on TA this financial year. A failure to put in place alternative strategies for TA expenditure reduction is not viable in view of the council's current financial constraints.

Option B: Explore different company structure options (not recommended)

72. This option constitutes a decision to reject the recommendations within this report and to instruct officers to further explore different options and proposals in regard to the structure of the company.
73. Option B is not recommended owing to the fact that officers have already carried out substantial due diligence in regard to the most appropriate company structure and taken specialist legal advice on this matter. Other options, including a Limited Liability Partnership (LLP) and a Community Benefit Society (CBS) have been examined though have been deemed inappropriate owing to the fact that they do not provide the council with the same flexibility as a Company Limited by Shares (CLS).

Option C: Establish a Company Limited by Shares (recommended)

74. This option constitutes a decision to approve the recommendations within this report and to authorise the establishment of a housing company to operate within the strategic framework set out within this paper.
75. Option C is the recommended option owing to the fact that it will enable the council to take a flexible, dynamic approach to exploring further the company functions outlined within this report and to work towards a reduction in TA demand and expenditure, providing a framework to deliver a broader and greater range of affordable housing options for residents.

Reasons for Decision

76. This decision is required in order to establish the strategic framework for an operational housing company that can, through the various functions outlined within the report, yield significant reductions in TA demand and expenditure and help to address the borough's affordable housing shortage.
77. Cabinet is the appropriate decision maker in view of the fact that the decision seeks to establish a new policy framework for the delivery of certain housing services.

Equality Implications

There are no direct equality implications arising from this decision, as it seeks only to request authorisation to establish the housing company. This decision does not disproportionately affect protected characteristic groups.

Where the company may in future decide to adopt a business case and plan for the proposed function(s), these decisions will be informed by Equality Impact Assessments which will take into account the most recent and available data in terms of both the proposals and the borough demography.

Risk Management Implications

The report recommends the establishment of a wholly owned housing company with a view to providing appropriate flexibility to manage a number of key risks

faced by the council in respect of rising demand and cost of temporary accommodation, lack of supply of affordable rental accommodation in the borough and the investment required complex void properties in the HRA.

The housing company will only undertake any of the potential functions identified in this report once a detailed business case has been developed and agreed, in line with the Treasury Five Case model, taking account of the costs, benefits and risks associated with the proposed function.

In appointing directors to the housing company, officers will have due consideration for ensuring that the directors receive appropriate training and guidance on their responsibilities as company directors and that in making the appointments there are no conflicts of interests with the officers' substantive roles.

The report also sets out the oversight arrangements for discharging the Council's shareholder responsibilities, to ensure the housing company delivers on the objectives and requirements set out by the Council.

David Hughes, Director of Audit, Fraud, Risk and Insurance, 21 September 2024

Climate and Ecological Emergency Implications

There are no direct climate and ecological emergency implications arising from the report. It should be noted, however, that the council is proposing to explore opportunities to invest in the acquisition and refurbishment of properties through the housing company. The council is committed – through its climate and ecological emergency strategy – to the ambition of achieving net-zero by 2030.

The council will accordingly seek to prioritise investment that ensures homes will be compatible with a net zero goal, through the most appropriate combination of embodied carbon reduction, energy efficiency, and low carbon heating. Moreover, and more broadly, as the company is a subsidiary of the council, its future business plan will reflect the council's own commitments to net-zero and will shape the ongoing approach to investment and governance.

Verified by Jim Cunningham, Strategic Lead for Net Zero Housing, 26 September 2024

LIST OF APPENDICES

None