

REPORT TO:	COUNCIL 28th January 2019
SUBJECT:	TRANSFERRING FUTURE BENEFIT OF CROYDON AFFORDABLE HOMES LLP AND CROYDON AFFORDABLE TENURES LLP
LEAD OFFICER:	Richard Simpson, Executive Director of Resources & S151 Officer
CABINET MEMBER:	Councillor Simon Hall, Cabinet Member for Finance and Resources
WARDS:	ALL

1. RECOMMENDATIONS

The Council resolves, at the break in the leases in 40 years, subject to all linked outstanding debt having been cleared, to transfer the 346 homes leased to Croydon Affordable Homes LLP and Croydon Affordable Tenures LLP via an additional lease to the London Borough of Croydon Pension Fund, or any successor body, via a Pension Fund nominee company as part of meeting the Council's liability to the Pension Fund as a scheme employer.

2. EXECUTIVE SUMMARY

- 2.1 The Council, via the limited liability partnerships with Croydon Affordable Housing, is creating approximately 600 new affordable homes in the next three years. Under each programme, the freehold remains with the Council and the homes are leased to the partnership on a long term arrangement.
- 2.2 In each lease, there is a Council only break option which enables the lease to assign the financial benefit to another entity. It is proposed that an additional lease will be inserted in to the existing lease structure to take effect at the break option to pass that benefit to the London Borough of Croydon Pension Fund.
- 2.3 As a result of that future benefit accruing to the Pension Fund, the Fund, after advice from the appointed actuary, has agreed that the Council can reduce its annual employer contributions by 2.5% of pay which equates to £3.5m.

3 BACKGROUND

- 3.1 In June 2017, the Council approved to set up and enter in to limited liability partnerships (LLP) with a local charity, Croydon Affordable Housing to provide

affordable homes for borough residents across three separate schemes. This was extended with a fourth programme in July 2017 bringing the estimated number of additional affordable homes to approximately 600.

- 3.2 For each scheme, the Council agreed to lease the homes or vacant land to one of the LLPs with a Council only break option inserted at forty years, to coincide with the repayment of any debt taken in relation to the homes. At the break point, the Council has the option to either break the lease, reassign the lease to a third party or assign the financial benefit of the lease to another entity.
- 3.3 Under the structure, any surpluses generated by the LLP, after all operating and financing costs have been paid, are passed to the Council as rent payments under the head lease.

4 PROPOSAL

- 4.1 The Council has investigated the potential scope and benefit of assigning, at the point of the break option in each head lease, the financial benefit of some or all of the homes to the London Borough of Croydon Pension Fund (the Fund). By passing the future capital value of the homes as well as the annual net revenue surplus generated after the break point, the Council is providing both future asset value and future ongoing revenue stream to the Fund and in doing so reducing its current liabilities as an employer. From the Fund's perspective, that on-going provision enables it to reduce the current contribution rate of the Council resulting in an immediate revenue saving to the Council.
- 4.2 The Council is seeking in this proposal to transfer the 346 homes in the two most progressed programmes. These are the 96 homes already leased to Croydon Affordable Homes LLP and the 250 homes to be leased to Croydon Affordable Tenures LLP in March 2018.
- 4.3 The Council has sought independent legal and financial advice on the transferring the benefit of the two leases and, based on prudent capital appreciation assumptions, the annual saving to the Council is estimated at £3.5m per year. By pursuing this option, the Council is leveraging the future value of its asset base to enable an immediate financial benefit.
- 4.4 As the Pension Fund is not a separate legal entity but a part of the Council with ring fenced assets, the legal solution, rather than cancelling the head lease, will be for the Council to grant an additional lease to a Fund nominee company with rental provisions that engage at the break option.

- 4.5 Under the additional lease, the Fund will have the benefit of the cumulative capital appreciation of the assets and will receive the annual revenue surplus of the LLP as rent.
- 4.6 The proposal was considered and supported on behalf of the Pension Fund by the Pension Committee on 21 November 2018. As part of its consideration, the Pension Committee received independent specialist legal, actuarial and investment advice in addition to receiving feedback from the Pension Board.
- 4.7 As part of the report to the Committee, certain safeguards to the Fund were provided to mitigate any future risks on the valuation of the assets. In particular, regular valuations of the homes will be built in to future actuarial valuations to ensure that the assumptions on capital appreciation remain reasonable with a commitment from the Council to adjust its employer contribution rate in the event of any shortfall. Similarly, should the Council not resolve the transfer of the benefit of the lease or, in the future, reverse the resolution to transfer the benefit to the Fund, the contribution rate would be adjusted to compensate the Fund.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 The financial implications are incorporated in to the detail of the proposal above, which are, at a summary level:
- By transferring the capital value and the majority of the annual revenue benefit to the Fund, the Council is able to reduce its employer contribution by approximately £3.5m per year from 2019/20;
 - The council will lose income received from the lease in 40 years for this immediate saving;
 - The agreement of the Pension Committee on behalf of the Fund includes risk mitigation in the event of the capital appreciation of the homes being below that assumed for a sustained period;
 - If the Council subsequently reverses the resolution to transfer the benefit of the homes, the employer contribution rate will be amended and/or a capital contribution will be made to return the Fund to the position it would have been in had the transfer not been considered.

6 COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

- 6.1 The structure for the transaction is still being finalised and therefore continuing and ongoing legal input and review is required. However, at the time of the report the Council has taken extensive and detailed advice on the current structure, as detailed above and the legislative framework and powers relevant to this structure. Of particular relevance is:-
- The two principal sources of the Council's power to participate in the transaction as set out above are section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972.
 - The general power of competence under section 1 of the Localism Act 2011 provides the Council with the power to do anything that individuals generally

may do. Section 1(5) of the Localism Act provides that the general power of competence under section 1 is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power. The use of this power in section 1 of the Localism Act 2011 is, like the use of any power, subject to Wednesbury reasonableness constraints and must be used for a proper purpose.

- Whilst the general power of competence in section 1 of the Localism Act 2011 provides sufficient power for the Council to participate in the transaction as per the steps set out above and enter into the relevant project documents, additional power is available under Section 111 of the Local Government Act 1972 which enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any of its functions, whether or not involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.
- Land Disposal Consents - For land held in the General Fund, section 123 of the Local Government Act 1972 (the "1972 Act") provides a local authority may dispose of land held by them in any manner they wish unless the disposal is for a consideration that is less than the best that can be reasonably obtained then the disposal needs to be with the consent of the Secretary of State. Whether the consideration obtained for the disposal is the best that can be reasonably obtained is a valuation question.
- General Disposal Consent (England) 2003 gives consent for a local authority to dispose of land for less than the best consideration that can be reasonably obtained if the local authority considers that the purpose for which the land is to be disposed is likely to contribute towards achieving any one or more of the following objectives in respect of the whole or any part of its area, or of all or any persons resident or present in its area the promotion or improvement of (a) economic wellbeing (b) social wellbeing (c) environmental wellbeing and (d) the difference between the unrestricted value land to be disposed of and a consideration for the disposal does not exceed £2m.
- The Council has power to dispose of the land held in the General Fund to the Pension Fund nominee pursuant to either the 1972 Act or if the valuation obtained indicates the proposed transfer is for less than the best consideration that can be reasonably obtained then there is scope to utilise General Disposal Consent 2003.

- In accordance with Section 8 of the Housing Act 1985, and Part 7 of the Housing Act 1996 (as amended by the Localism Act 2011), the Council is required to consider housing conditions/needs within its area, including the needs of homeless households, to whom local authorities have a statutory duty to provide assistance.
- Local authorities have a duty under section 193 and Part 7 of the Housing Act 1996 to house homeless persons in temporary accommodation who satisfy the qualifying criteria (i.e. eligibility, homeless, priority need, not intentionally homeless and local connection).
- The legislation also provides the Council with powers to meet these requirements via joint working between housing authorities, social services and other statutory, voluntary and private sector partners in tackling homelessness more effectively
- Given that the transaction relates to Council owned affordable housing consideration has and will continue to be given to compliance these duties in considering the structure and above transaction but at the time of writing it is considered these duties can be discharged in line with the proposed transaction.
- For SDLT purposes a lease to a nominee would be granted and consideration would need to be given as to the SDLT consequences. The beneficial owner treats a lease to a nominee for SDLT purposes as an acquisition. As the beneficial owner would be the same before and after the grant there would strictly speaking be no land transaction for SDLT purposes, with no SDLT payable or return due. However, a covering letter to HM Land Registry to clarify why no SDLT 5 certificate has been provided may be required.
- Income or corporation tax should not become payable in relation to the rental income and the grant of the lease should not result in a chargeable disposal for capital gains tax purposes

(Approved by Sean Murphy, Head of Commercial and Property Law and Deputy Monitoring Officer, on behalf of the Director of Law and Governance and Monitoring Officer)

7 HUMAN RESOURCES IMPACT

7.1 No direct implications.

8 EQUALITIES IMPACT

8.1 Provides longer-term certainty about the provision of affordable housing in the borough to those in greatest housing need.

9 ENVIRONMENTAL IMPACT

9.1 No direct implications.

10 CRIME AND DISORDER REDUCTION IMPACT

10.1 No direct implications.

11 REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

11.1 The Council is leveraging the future value of part of its asset base to enable an immediate financial benefit by reducing its employer contribution rate to the London Borough of Croydon Pension Fund.

12 OPTIONS CONSIDERED AND REJECTED

12.1 The Council could not transfer the benefit of the homes and continue to pay the current employer contribution rate to the Fund – this would not enable a £3.5m annual saving and would require additional savings from other Council services to ensure a balanced budget in the future.

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BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972

[For executive decision making it is a requirement that all Part A (open) reports & Part B reports (closed) must list and provide an electronic and a printed copy of all background reference.]