

AGENDA ITEM:8 Page nos. 31 – 37

Meeting	Pensions Fund Committee
Date	1 September 2011
Subject	Establishment of a Local Authority Trading Company for the Provision of Adult Social Care services incorporating Barnet Homes
Report of	Director of Adult Social Care and Health
Summary	This report informs the Committee of the 24 May 2011 Cabinet Resources Committee approval of the Business Case for the creation of a Local Authority Trading Company (LATC) incorporating Barnet Homes and seeks approval for the LATC to become a member of the Local Government Pension Scheme through Designated Body status. The committee is also asked to note the retention of Scheduled Body status for the Arms Length Management Organisation (ALMO), Barnet Homes within the proposed structure.

Officer Contributors	Richard Harrison, Project Manager
Status (public or exempt)	Public
Wards affected	All
Enclosures	None
For decision by	Pensions Fund Committee
Function of	Executive
Reason for urgency / exemption from call-in	Not applicable

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1. RECOMMENDATIONS

- 1.1 That the Committee note 24 May Cabinet Resources Committee approval to establish a Local Authority Trading Company (LATC) incorporating Barnet Homes for the transfer of Adult Social Services in house provision;**
- 1.2 That the Committee note that the LATC will be 100 per cent owned by the Council;**
- 1.3 That the Committee rescind the previous decision from 21 March 2011 Committee;**
- 1.4 That the Committee approve admission to the Local Government Pension Scheme under Designated Body Status for the LATC Holding Company and Adult Social Care subsidiary; and**
- 1.5 That the Committee note the proposal for Barnet Homes to retain Scheduled Body Status subject to confirmation from the Department for Communities and Local Government (CLG) and the criteria under the LGPS for Scheduled Body is still met.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 The Council views Barnet Homes as a potential vehicle for providing additional services on its' behalf, as well as extending its role as a provider of housing related services. The Housing Strategy was agreed by Cabinet on 12 April 2010 (decision item 8), and we will explore options for progressing this.
- 2.2 The One Barnet Scrutiny Panel considered a presentation outlining the key points of the options appraisal on 11 August 2010 (decision item 10). The Panel supported the option for Adult Social Services to be transferred to a Local Authority Trading Company however they wanted the long-term future of Barnet Homes be carefully assessed when exploring options for establishing a Local Authority Trading Company which incorporated Barnet Homes.
- 2.3 On 29 November 2010, Cabinet approved the initiation of the development of a full business case (decision item 6), to support the findings of the high level options appraisal, which recommended the transfer of Adult Social Services in house provision and staff to a newly established Local Authority Trading Company (LATC) and, subject to legal constraint, incorporating Barnet Homes. Cabinet requested that the report be brought to Cabinet on the viability of the recommendation upon completion of the full business case.
- 2.4 At 21 March 2011 Pension Fund Committee (decision item 6), the following was resolved:
 1. That the Pensions Fund Committee note the proposal to establish a Local Authority Trading Company (LATC) incorporating Barnet Homes for the transfer of Adult Social Services in house provision and staff.
 2. That the Pensions Fund Committee note that it is proposed the LATC is 100% owned by the Council and further agreement will be sought from the Cabinet Resources Committee (CRC) that should the LATC enter financial difficulty, staff will transfer back to the Council.
 3. That the Pension Fund Committee note the Designated Body Status proposed for the LATC.

4. That the Pension Fund Committee approve in principle Admission Body Status in the event the LATC does not meet the Designated Body Status criteria.

2.5 At 24 May 2011 Cabinet Resources Committee approved the business case for the Adults In-House Service Review (decision item 12). This has enabled the Council, to begin contract negotiations with the LATC Shadow Board as part of the due diligence process. The Committee requested that Council officers continue to take specialist taxation advice to safeguard the Council. The Cabinet Resource Committee approval confirms the proposed LATC structure as presented at 21 March 2011 Pensions Fund Committee.

2.6 It is noted that Department for Communities and Local Government advice may impact the Arms Length Management Organisation (ALMO), Barnet Homes current Scheduled Body Status.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 The proposals to establish a Local Authority Trading Company ('LATC') supports the achievement of the Corporate Plan objective of 'Better Services with Less Money' through establishing alternative service delivery bodies who are better placed to respond to changing market conditions. As the workforce of the Council changes it is necessary to ensure that the integrity of the Pension Fund is maintained and that that staff transferring out of the Council are offered the opportunity to remain within the Local Government Pension Scheme (LGPS) or join a pension scheme that provides benefits certified by the Government Actuary's Department (GAD) as being broadly comparable to those benefits provided by the public sector scheme in which the transferring employees formerly participated.

3.2 The proposal to establish a LATC to manage in-house adult social care services supports the objective of "a new relationship with citizens" and the corporate plan priority of 'Sharing Opportunities and Sharing Responsibilities.' This change will promote choice and independence for residents as service users will be able to purchase services currently managed by the Council with a Direct Payment.

3.3 In turn this will leave the Council free to focus on becoming a commissioner of Adult Social Services as the core business of the authority in order to ensure a relentless drive for efficiency with the services through commissioning arrangements.

4. RISK MANAGEMENT ISSUES

LATC Holding Company and Adult Social Care Subsidiary

The ongoing viability of the Pension Fund is dependent on maximising pension fund membership. The employees of the LATC who become members of the Local Government Pension Scheme (LGPS) will pay pension contributions as specified under the Regulations.

4.2 All scheduled/designated or admission bodies are subject to reviews and actuarial assessments to ensure compliance with regulations and the maintenance of appropriate employer contribution levels in order to mitigate against any risk to the financial viability of the Pension Fund. The actuarial assessment is carried at the commencement of the contract and at each triennial valuation.

- 4.3 Trowers & Hamblins LLP has confirmed that the LATC will meet the criteria for Designated Body as stated in section 7.2. Therefore the LATC will not be required to secure a pension bond and should the LATC cease trading, any pension fund deficit that may be incurred will remain with this Authority.
- 4.4 The LGPS provides for early payment of pension benefits on compulsory early retirement or redundancy. As an employer in the pension fund, the LATC will take responsibility for any potential strain on the fund resulting from any such early retirements. Payments will be made to the Pension Fund by the LATC as and when required, should there be any pension strain or contribution issues as a consequence of any decisions made by the LATC.
- 4.5 Barnet Homes
It is proposed that Barnet Homes will retain its status as a schedule body. However, having regard to the need for approval/determination from CLG in light of Barnet Homes ceasing to be a direct party to the housing management agreement (see section 7.4.3 below), in the event that the criteria for schedule body status are not met, it will be necessary for Barnet Homes to seek approval as an admitted body into the scheme.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 An Employee Equalities Impact Assessment has been conducted for the proposal which is set for the full in-scope workforce to transfer to the LATC. It is not envisaged that there should be any adverse equalities impact on any protected characteristic grouping. This will continue to be monitored and reviewed at future milestones.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 As set out in 4.3 above, risks associated with any pension fund deficit in the event that the LATC ceases trading will remain with the Council. However, the LATC will be responsible for paying the employers contribution rate, costs associated with redundancy and early retirement, and any pension strain costs.
- 6.2 The Pension Fund will be in receipt of additional appropriate employer and employee contributions to cover the liability associated with the LATC staff membership of LGPS.
- 6.3 As the LATC will be a designated body, staff pension rights are unaffected by the transfer from the Council to the LATC.

7. LEGAL ISSUES

- 7.1 There have been reports to the Cabinet Resources Committee which have addressed the Council's powers to set up a Local Authority Trading Company under section 95 of the Local Government Act 2003. A comprehensive report was produced by the Council's external legal advisers, Trowers & Hamblins LLP, which was incorporated to the Business Case and cover report presented to the Cabinet Resources Committee on 24 May 2011.
- 7.2 Trowers & Hamblins LLP have advised that the necessary controls will be met to enable the LATC holding company and Adult Social Care subsidiary. These controls will be

reflected in the articles of the two companies, but should there be any change a report will be presented to the Committee detailing those changes.

7.3 The Admission Regulations govern whether the LATC entities set out in the structure at paragraph 9.4 can satisfy schedule body, designated body or admission body status.

7.4 The Admission Regulations govern the relevant status of Barnet Social Care and Housing (the LATC Holding Co), Barnet Cares Ltd (LATC subsidiary) and Barnet Homes for LGPS purposes. They specify the particular statutory tests to be met in order to qualify for the relevant status.

7.4.1 It is proposed that the LATC Holding Co will be established with a view to becoming a scheme employer with designated body status.

7.4.2 It is proposed that the LATC subsidiary will be established with a view to becoming a scheme employer with designated body status.

7.4.3 It is proposed, subject to ongoing legal consideration and consultation with HMRC and CLG, that Barnet Homes will remain a scheme employer with schedule body status.

7.4.4 The requirements in respect of the Holding Company and Adult Social Care subsidiary are set out in 7.5 below.

7.5 Barnet Social Care and Housing (LATC Holding Co)

In order for the LATC Holding Co to be a Scheme Employer with designated body status, it will need to be a body falling within Part 2 of Schedule 2 to the Administration Regulations. A company under the control of a local authority is listed in Part 2 of Schedule 2 to the Administration Regulations as a body capable of being a Scheme Employer with designated body status.

7.5.1 LATC Holding Co to obtain designated body status

The test is whether the LATC Holding Co is a company under the control of the Council. "Control" is defined by legislation and includes amongst other matters whether the company is a subsidiary of the Council and/or the Council's power to control votes or remove/appoint LATC Holding Co directors. The intention is that the LATC Holding Co will be a wholly owned subsidiary of the Council and, as such, will satisfy the control test and qualify as a Scheme Employer with designated body status.

7.5.2 LATC Subsidiary to obtain designated body status

The test is whether the LATC Subsidiary is a company under the control of the Council. The same requirements for "control" apply as for the LATC Holding Co. The intention is that the LATC Subsidiary will be wholly owned by the LATC Holding Co, itself a wholly owned subsidiary of the Council, and therefore qualify as a Scheme Employer with designated body status.

7.5.3 Barnet Homes to retain scheduled body status

The test under the relevant legislation (including the Housing Act 1985 and the Local Government Act 2000) is whether Barnet Homes is a body that exercises housing management functions of the Council. It is intended that this will be established by

reference to the management agreement between the Council and, as presently envisaged, the LATC Holding Co. That agreement, however, will be subject to approval by CLG. Aspects of the status of Barnet Homes, as a subsidiary of the LATC Holding Co, for the purposes of tax legislation are also subject to a determination by HMRC. As indicated in section 4.5 above, this approval/determination may mean that Barnet Homes precise status under the Administration Regulations will have to be reviewed in due course.

8. CONSTITUTIONAL POWERS

- 8.1 Constitution – Part 3 Responsibility for Functions – Section 2 – Responsibility for Council Functions delegated to the Pension Fund Committee, as set out in the Pension Fund Governance Compliance Statement.

9. BACKGROUND INFORMATION

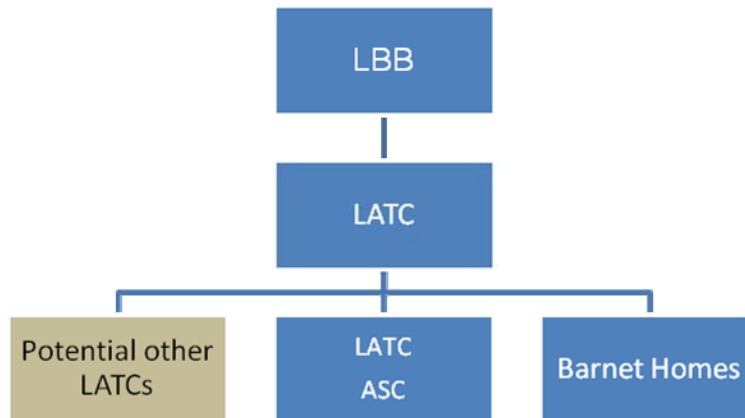
- 9.1 Since 2007 work has been undertaken to prepare the Adult Social Care in house provider services for transfer to an arms length organisation. To build on the work conducted, a High Level Options Appraisal was commissioned by the council in April 2010 to consider the future options for the Adults In-House Service provision. Care and Health Solutions were appointed to undertake the options appraisal because of their track record and experience of transferring social care provider services into new delivery vehicles in response to the personalisation agenda, most notably in Essex with the creation of Essex Cares. The options identified were:

- Closure and the non provision or reprovision of service
- Remain In-House
- Tender (or trade sale)
- Social Enterprise
- Local Authority Trading Company (LATC)
- Local Authority Trading Company incorporating the LBB Arms Length Management Organisation (Barnet Homes)
- Joint venture Company (with other independent organisations or other partners)

- 9.2 The recommended option was a Local Authority Trading Company incorporating the LBB Arms Length Management Organisation (Barnet Homes). The proposed entity will be 100% council owned to ensure the council remained in control of the service. This option also creates an opportunity to generate savings in line with the MTFs relating to reduced back office costs building on the existing Barnet Homes infrastructure. Cabinet agreed to the initiation of a full business case on 29 November 2011 to further build the case for change.

- 9.3 The aim of the proposal to implement a Local Authority Trading Company (LATC) is a strategic fit with the personalisation agenda to roll out personal budgets and direct payments as identified as an objective in the Corporate Plan.

- 9.4 The company structure as approved at 24 May Cabinet Resources Committee is illustrated below:



- 9.5 The structure illustrated places a new company at the head of a wider corporate structure. This company will be the holding trading company. This changes Barnet Homes from a wholly owned company to an operating subsidiary.
- 9.6 A new Board of Directors for the LATC holding company will be formed, comprising membership of both Barnet Homes and the Adults Social Care. This is to ensure both Housing Management and Adult Social Care representation at parent company level. This Board will focus on the commercial aspects of the LATC and will hold the subsidiary companies account for delivery of their respective business plans.
- 9.7 The Council, being the sole 100 per cent shareholder of the LATC, will appoint (and remove) directors to run the company. There will be no private interests in the LATC. The directors will be appointed with the relevant skills and experience to deliver both Housing Management and Adult Social Care services.
- 9.8 The proposal is for the LATC Holding Company and LATC ASC to both have Designated Body status and for Barnet Homes to retain their Scheduled Body Status.

10. LIST OF BACKGROUND PAPERS

- 10.1 Adults In-House Service Review: Initiation of Full Business Plan, Agenda item 12 presented to Cabinet Resource Committee on 24 May 2011.

Legal:SS
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