



Policy and Resources Committee

5 September 2017

Title	The Barnet Group – Creation of a new legal entity
Report of	Deputy Chief Executive
Wards	All
Status	Public with an accompanying Exempt Appendix
Urgent	No
Key	No
Enclosures	Exempt Appendix 1– Lettings Agency Model Business Case
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Summary

The Barnet Group (TBG) currently provides a lettings and management service for private landlords through its successful subsidiary let2barnet brand for properties achieving lower quartile market rents.

By utilising this experience TBG aims to gain a foothold in the private rented lettings and management market, TBG proposes to introduce a new private lettings and management service for landlords seeking market rent returns from their properties.

The project involves an anticipated investment of £290k with the maximum possible loss at the end of the first year of c£400k. Forecast to break-even from 2022/23, the entity is part of the medium-term solution to Barnet Homes' budget issues.

To deliver the new service, TBG proposes to create a new legal entity as a trading company. This report sets out the details of the new organisation and seeks council approval for its establishment.

Recommendations

- 1. That the Committee approves the business case for the delivery of a new private lettings agency and approves the creation of a subsidiary of the Barnet Group, a local authority trading company, wholly owned by the Council**
- 2. That the Committee delegates authority to amend the Barnet Group shareholders agreement and the Barnet Group management agreement to the Deputy Chief Executive in consultation with the Committee Chairman**

1. WHY THIS REPORT IS NEEDED

- 1.1 Barnet is already the most populous London Borough, and is set to see more growth, with a projected population increase of 83,000 over the next 30 years. Home ownership has fallen whilst private renting has increased as more people have found it difficult to buy their own home due to higher prices and reduced availability of mortgages.
- 1.2 Private renting is set to continue to increase and means that within 10 years half the properties in the borough are likely to be rented. Therefore, with the numbers of households living in the private rented sector expected to continue to rise, demand for private lettings and management services in Barnet and north London will also continue to grow. Provision of a private rented lettings and management service will help cater for this growing market.
- 1.3 TBG has a wealth of experience of providing a lettings and management service to landlords that can be used to help capitalise on opportunities in the private lettings market TBG aim to combine this experience with targeted marketing and exposure on contemporary lettings search engines to source tenants to meet demand.
- 1.4 The creation of a new legal entity and Trading Company to deliver a private lettings and management service will support TBG's corporate objectives for growth, whilst also supporting the delivery of the management agreement and associated future savings.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The knowledge and experience gained through the delivery of a successful private sector lettings scheme has proven invaluable and has helped establish a framework of landlord contacts from which a private lettings agency service can build upon. Whilst the market in London is fiercely competitive, TBG's experience, status as a respectable provider and existing contacts provides confidence that group can successfully introduce a new private lettings service to the market place while minimising the associated risks.

2.2 Key benefits the new trading company will deliver are:

- Increased long-term revenue for TBG to help support the delivery of the Management Agreement and anticipated associated future savings minimising where possible the impact on service delivery and satisfaction
- An opportunity to cater for all sections of the private market, including key-worker housing. TBG intends to work with the Council to help target key-workers such as teachers and social workers through the new trading company
- There are also potential benefits for the let2barnet brand through an increased landlord contact base, increased market exposure and from the introduction of new IT systems and processes associated with this model
- An opportunity to improve standards in the private sector and the quality of accommodation for private renters
- There is potentially scope in the future for using surpluses for social benefit once the new trading company has established itself

2.3 Independent advice has been sought in respect of the optimum vehicle for delivering the private lettings agency. There are a number of key benefits derived through the creation of a new subsidiary company to deliver the service:

- Barnet Homes benefits from non-trading status with HMRC due to the restricted activities carried out as an Arm's Length Management Organisation on behalf of the local authority. This would not apply to the activities provided to third parties through the private lettings agency so the creation of a new subsidiary company is important to ensure Barnet Homes maintains its non-trading status with HMRC.
- Barnet Homes is exempt from the Public Contracts Regulations 2015, and to maintain this exemption, no more than 20% of the company's turnover can be attributable to income from parties other than the Council. The creation of a new subsidiary company would ensure that the income threshold is not breached and that Barnet Homes would maintain its current exemption
- Establishment of a new subsidiary company will enable the new lettings agency to be marketed as a stand-alone entity from Barnet Homes and the Council
- A separate corporate entity will effectively ring-fence the activity of the new lettings agency, and minimise the potential risks to Barnet Homes and the rest of the Barnet Group

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 To establish a not-for-profit lettings agency

Our learning from the experiences of other local authorities who have sought to develop not-for-profit social lettings agencies has shown that these ventures have failed to make the required impact to ensure sustainable long-term delivery of the services. Delivering a for-profit lettings agency will enable TBG to position itself in the market alongside key competitors in respect of fees charged and afford the opportunity to capitalise on increased revenue for TBG.

4. POST DECISION IMPLEMENTATION

4.1 TBG will be responsible for managing the set-up of the new trading company and for providing the start-up funding. This will include the Articles of Association, Memorandum of Association and Shareholders Agreement setting out the detailed governance arrangements and incorporating the new company with Companies House. There is no liability for the Council in this process.

4.2 TBG will prepare to launch the new trading company in Q4 2017/18 following the successful completion of all necessary preparatory governance, process and operational functions required to deliver the new private lettings agency.

4.3 A new executive board will be established within TBG to ensure effective scrutiny of the new trading company.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The proposal in this report will further strengthen TBG's ability to continue to support the Council's need to deliver efficiencies, value for money, and to achieve savings with a direct link to their £1m budgetary target.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 All costs associated with the delivery of the new private lettings agency will be borne by TBG. TBG's existing infrastructure can be exploited to support the new business at a reduced cost compared to setting up the venture from a zero base.

5.2.2 The establishment of the new legal entity detailed in this report will not result in any additional costs, responsibility or liability to the Council.

5.2.3 If the new trading company is unsuccessful, the Council will not be exposed to any financial liability. It should be noted however that given The Barnet Group is a wholly owned local authority trading company and the parent company to a number of subsidiaries including Barnet Homes and Your Choice Barnet, therefore any venture that increases or decreases the value of the group, ultimately affects the Council's assets or liabilities. In the event of a failure of the venture, the Council will not have any direct liabilities but could see a reduction in the value of its balance sheet.

5.3 Social Value

5.3.1 Having consideration to the Public Services (Social Value) Act 2013, there are no specific social values considerations arising from this proposal.

5.4 Legal and Constitutional References

5.4.1 The Council's Constitution – Appendix A – Responsibilities for Functions, details the responsibilities for the Policy and Resources Committee including to:

- Approve budget and business plan of the Barnet Group Ltd
- Be responsible for those matters not specifically allocated to any other committee affecting the affairs of the Council

5.4.2 The Barnet Group's (TBG) articles of association state that TBG shall not, without the consent of the Council, form any subsidiary, therefore the consent of the Council is required prior to the creation of a further subsidiary.

5.4.3 The proposal to establish a new entity may require changes to be made to the Barnet Groups shareholder agreement and management agreement. Committee are requested to delegate authority to agree any necessary amendments to the Deputy Chief Executive.

5.4.4 The Council has the legal power to create a new legal entity by way of a subsidiary company. The principal statutory powers are contained in:-

- sections 1 and 4, Localism Act 2011 (the general power of competence and the obligation to trade through a company);
- section 95, Local Government Act 2003 (the power to trade through a company);

- section 12, Local Government Act 2003 (the power to invest for any purpose relevant to its functions or for the purposes of the prudent management of its financial affairs: and
- section 111(1), Local Government Act 1972 (the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any functions

5.5 Risk Management

5.5.1 There is a risk that TBG are unsuccessful in the delivery of a new private lettings agency service. In this event, the maximum loss to TBG is estimated at £400k, being the unavoidable costs budgeted for the first year of trading. Successful implementation of the project is part of addressing the risks around the viability of Barnet Homes' budget.

5.5.2 There is a risk that the new trading company will impact on the supply of private rented accommodation available at Local Housing Allowance levels for homeless households. To mitigate against this there are a number of measures in place including:

- The let2barnet service has a key performance indicator to achieve of 575 lettings in 2017/18 and this can be clearly measured by both the Council and TBG and managed appropriately
- Robust performance monitoring by TBG including the Executive board of the new trading company
- A clear distinction between services offered and prioritisation of new supply for the existing let2barnet scheme
- Modernisation of let2barnet systems including shared access of the new trading company software

5.6 Equalities and Diversity

5.6.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies **to have due regard** to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity between people from different groups and foster good relations between people from different groups.

5.6.2 It is not expected that any group will be adversely affected by implementing the policies set out in this report. However the impact will be monitored to ensure that these groups are not adversely affected.

5.7 Consultation and Engagement

5.7.1 Consultation will be undertaken with Unison, GMB and directly with TBG staff.

5.8 Insight

5.8.1 TBG have utilised benchmarking data as well as research conducted by external parties to form the views in proposing the new legal entity and as set out in this report.

6.0 BACKGROUND PAPERS

6.1 Appendix 1 – Lettings Agency Model Outline Business Case (exempt)