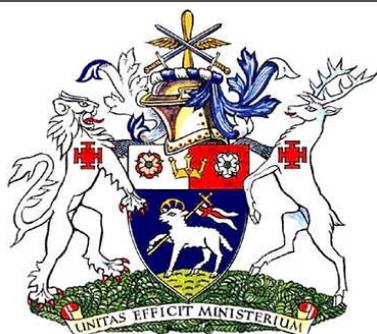


## Policy and Resources

20 February 2019



<b>Title</b>	<b>Transfer properties acquired by the Council to TBG Open Door Homes Limited</b>
<b>Report of</b>	Chairman of the Policy and Resources Committee
<b>Wards</b>	All
<b>Status</b>	Public with exempt report under para 3, Part I and para 10, Part II of schedule 12 A to the Local Government Act 1972)
<b>Urgent</b>	No
<b>Key</b>	Yes
<b>Enclosures</b>	Appendices 1 and 2 - list of properties to be transferred (contains exempt information)
<b>Officer Contact Details</b>	Paul Shipway, Strategic Lead Housing paul.shipway@barnet.gov.uk

### Summary

The Housing Committee on 27 November 2018 supported proposals for transferring properties acquired by council for use as affordable temporary accommodation to TBG Open Door Homes Limited, which will deliver additional income of £822,000 to the council's General Fund. This report sets out the financial arrangements for implementation of this proposal and seeks authorisation of the transfer of the properties from the council to TBG Open Door Homes Limited as listed in appendix 1 and appendix 2 (in the accompanying exempt report) and the other related proposals as follows.

## **Officers Recommendations**

- 1. That the Committee approves the financial arrangements relating to the transfer of the ownership of 174 properties, listed in in appendix 1 and appendix 2 (as detailed in the accompanying exempt report) from the council to TBG Open Door Homes Limited or the completion of acquisition of the properties by TBG Open Door Homes Ltd, in each case subject to obtaining any consents required from third parties. The properties may be transferred at different times. Authority is delegated to the Deputy Chief Executive, in consultation with the Section 151 Officer, to negotiate, settle and complete the documents to deal with the transfer (or sub-sale) of the properties and the financial arrangements, which will include land transfers, charges to secure the payments due to the council, a nomination agreement and a facility agreement governing the loan to TBG Open Door Limited, and such documentation as appropriate to cover the loan at recommendation 3.**
- 2. That the Committee approves the transfer of the ownership of the properties listed in appendix 1 and appendix 2 (in the accompanying exempt report) from the council to TBG Open Door Homes Limited**
- 3. That the Committee agrees that the unspent balance of the council's current £40 million investment programme for acquiring properties for use as affordable temporary accommodation, should be made available to Open Door Homes in the form of a loan to complete the programme. This includes properties listed in appendix 2 (in the accompanying exempt report) which are currently in the process of being acquired by the council.**
- 4. That the Committee notes the risk in relation to the value of Minimum Revenue Provision required to be set aside by the council as set out in paragraph 4.5.3**

### **1. WHY THIS REPORT IS NEEDED**

- 1.1 The council faces significant financial pressures with an anticipated budget gap of £69.9m to 2023/24.
- 1.2 As part of the work to address this budget gap, it has been identified that the transfer of 174 properties that the council has acquired for use as temporary accommodation to TBG Open Door Homes Limited will deliver additional income of £882,000 over the period 2019/20 to 2022/23.
- 1.3 TBG Open Door Homes Limited (ODH) is a Registered Provider, or Housing Association within The Barnet Group. The Barnet Group is wholly owned by the Council. ODH, which is a subsidiary of Barnet Homes, is registered with and regulated by the Social Housing Regulator. As part of its regulatory requirements ODH operates as an independent company with a board of directors responsible for the running of the organisation, governance and regulatory compliance. ODH is currently delivering a new build programme of circa 350 homes across the borough supported by a PWLB loan, Right to Buy receipts and infill land across the Council's housing estates

1.4 The ODH board reviewed the proposal for the transfer of assets in to the company at its meeting of the 14 January 2019. The board considered the impact of the transfer on the ODH business plan and any related risks to the organisation arising. Overall, the board were supportive of the proposal which would:

- Generate earlier revenue into the organisation than the current new build programme therefore improving the flexibility and resilience of the current business plan
- Reduce payback time on the main new build programme loan by 6 years
- Deliver assets into ODH that in time will enable further borrowing to deliver more new homes
- Enhances its position as the Council's future development partner

The ODH board supported the proposal subject to further stress testing of ODH business plan being undertaken and the terms of the loan agreement being acceptable.

1.5 The additional income for the council referred to in paragraph 1.2 above will be achieved by transfer of debt management costs and a premium of 1.24% interest on loans made by the council to Open Door Homes.

## **2. REASONS FOR RECOMMENDATIONS**

2.1 The proposal to transfer the properties has already been considered and supported by the Housing Committee at its' meeting on 27 November 2018.

2.2 The additional income has been budgeted from April 2019, and it is important that the transfer of the properties or as many as possible, at such times as they can be transferred, is completed prior to this to realise the full year benefit.

### 2.3 **ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

2.4 The council could retain the portfolio, and benefit from future income streams and appreciation in the value of the assets. However, this would not enable the council to realise the improvement in its budget position in the medium term.

### 3. **POST DECISION IMPLEMENTATION**

3.1 Arrangements will be made to formally transfer the ownership of the properties listed in appendix 1, or as many as possible, from the council to TBG Open Door Homes Limited. The council has exchanged contracts to buy the properties in appendix 2 (exempt) but has not yet completed. It is proposed that ODH should be given the ability to acquire these instead of the council (sub-sale), using the funds mentioned at recommendation 3, but if the council completes the acquisition of any they will be transferred to ODH by the council on the same basis as the properties in the appendix 1 (exempt). The sale price will not be paid by ODH to the council on completion of the property transfer, but will be repaid in accordance with the proposed facility agreement.

3.2 The council and TBG Open Door Homes Ltd will enter into a facility agreement dealing with a loan to TBG Open Door Homes Ltd in respect of the sums which TBG Open Door Homes Ltd must pay to the Council, and grant first charges on the properties to secure the payments due to the council from TBG Open Door Homes Ltd. A nomination agreement will be concluded between the council and TBG Open Door Homes to enable the Council to use the properties to accommodate homeless persons (as they do at present).

3.3 TBG Open Door Homes Ltd board will be meeting on the 18 March 2019 to formally approve the facility and nominations agreements. Officers from The Barnet Group will be engaging with board members in advance of that meeting to ensure that the specific terms of the agreement are acceptable and broadly in line with previous approved agreements.

### 4. **IMPLICATIONS OF DECISION**

#### 4.1 **Corporate Priorities and Performance**

4.1.1 The council's Corporate Plan, which sets out the outcomes, priorities and strategic approach, has been refreshed for 2019 to 2024. The proposal to transfer properties acquired by the council for use as temporary accommodation will support the delivery of the Corporate Plan.

#### 4.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

4.2.1 The key impact to the Council's revenue account of the proposal to transfer 174 properties to TBG Open Door Homes Limited is an estimated budget saving of £822K over the next five years and will be achieved as follows:

- TBG Open Door Homes Limited will pay the Council an interest margin of in the region of 1.24% above the rate at which the Council can borrow from the Public Works Loans Board (PWLB) on the outstanding loan and
- A net cost saving to the temporary accommodation

- A transfer of debt management arrangements from the council to TBG Open Door Homes Limited, removing the need for the council to set aside Minimum Revenue Provision.
- 4.2.2. There will be costs of approximately £14,000 associated with obtaining up to date valuations for each property to be transferred. Legal costs will be payable to external solicitors, the cost estimate is £55,750. These professional fees will be met from the existing acquisitions programme budget.
- 4.2.3 The value of the assets to be transferred by the Council to TBG Opendoor Limited is approximately £50 million. A loan to this value plus costs of approximately £3m incurred in acquiring and refurbishing the properties will be created in the accounts of the Council to enable the purchase of the assets plus an amount of working capital to support Opendoor's initial funding needs. The main terms of this loan are:
- Instalment repayments over a period of 40 years
  - An interest rate of 1.24% above the Council's borrowing rate from the PWLB for the above duration.
  - Security of the loan over the assets of Open Door, namely the properties transferred or sub-sold to them as proposed in this report and properties acquired with the funds proposed in this report. Security can only be released if a margin of value of securitised properties to loans is at least 120%
- 4.2.4 The proposal is one of three relating to the transfer, purchase or build of residential properties that will be owned by Open Door and initially financed by the Council. The maximum debt exposure by Open Door to the Council is £303 million, including an existing loan for 320 homes, and a proposed programme of 500 property purchases to be used as affordable accommodation. Residential property values have risen strongly in recent years. The last significant correction was over 30 years ago. The Council needs to be mindful of its overall exposure to residential property via its loans to Open Doors and consider whether it has the reserves to sustain any loan provisions should residential property prices fall significantly.
- 4.2.5 The properties to be transferred or sub-sold are detailed in the schedule in appendix 1 (exempt) and appendix 2 (exempt), and are a mix of 1, 2 and 3 bed units in various locations in and outside London. The schedule includes the acquisition cost and cost of improvements carried out or required to be carried out to the properties to bring them up to standard and the total spend will be paid to the council through repayment of the loan.
- 4.2.6 Independent valuations have been commissioned for 68 of the properties which completed prior to July 2018, which are expected to indicate that the market value is less than the sum being paid by ODH for the council's interest and a best value transaction under section 123 of the Local Government Act 1972 can be confirmed.
- 4.2.7 The absence of minimum revenue provision is based on previous treasury advice. Given the scale of investment, the long-term nature of the loans and changes in the prudential code, further treasury advice is being sought and there is a risk that this could affect the value of provision the council needs to set aside in order to repay the debt. Should the business case be materially affected by updated treasury advice then the Committee will receive a revised plan for consideration.

### **4.3 Social Value**

The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. Before commencing a procurement process, commissioners should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders. No service is being commissioned in this case.

### **4.4 Legal and Constitutional References**

4.4.1 Under article 7 of the council's constitution, the council's Assets, Regeneration & Growth Committee is responsible for asset management and other matters, and the council's Policy & Resources Committee is responsible for Strategic policy, finance and corporate risk management including recommending: Capital and Revenue Budget; Medium Term Financial Strategy; and Corporate Plan to Full Council. Article 7.5 of the council's constitution provides that If any report appears to come within the remit of more than one committee, to avoid the report being discussed at several committees, the report will be presented and determined at the most appropriate committee. If this is not clear, then the report will be discussed and determined by the Policy and Resources Committee.

4.4.2 As the properties in question acquired to date are held in the council's general fund and are not occupied by secure tenants, the council may sell them for not less than the best consideration reasonably obtainable, under section 123 of the Local Government Act 1972. The properties in relation to which the council has exchanged contracts were also to be held in the general fund so the same comments apply. It is proposed that TBG Open Door Homes Limited will pay no less than the best consideration reasonably obtainable. If the terms of the Council's loan to TBG Open Door Homes Limited are more favourable than could be obtained on the open market, consent is needed from the Secretary of State for Housing, Communities and Local Government, but a general consent granted in 2010 applies.

4.4.3 Legal advice is being sought as to whether the proposed transaction is state aid (which would not be lawful) and upon whether there are any implications for the transfer, as to the use by the Council of RTB receipts when purchasing some of the properties.

### **4.5 Risk Management**

4.5.1 There is a risk that TBG Open Door Homes Limited may become insolvent or fail to pay sums due to the council in respect of the properties transferred to them by the authority. This will be mitigated the loan agreement between TBG Open Door Homes Limited and the council, through which the council will have a charge on each property transferred. In addition, a robust business plan has been developed by OpenDoor Homes illustrating that the loan is repayable.

4.5.2 The risk of interest rate increase prior to drawdown will be mitigated by a review of an updated business plan by the Section 151 Officer prior to the loan being advanced.

4.5.3 Further treasury advice is being sought with regards to the value of minimum revenue provision required to be set aside which could affect the business case. If this risk materialises, an updated business case will be presented to the Committee for

consideration.

## 4.6 Equalities and Diversity

4.6.1 Equality and diversity issues are a mandatory consideration in the decision-making of the council.

4.6.2 Decision makers should have due regard to the public-sector equality duty in making their decisions. The equalities duties are continuing duties, they are not duties to secure a particular outcome. The statutory grounds of the public-sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

*A public authority must, in the exercise of its functions, have due regard to the need to:*

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

*Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:*

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*

*The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.*

*Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:*

- (a) Tackle prejudice, and*
- (b) Promote understanding.*

*Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act. The relevant protected characteristics are:*

- Age*
- Disability*
- Gender reassignment*
- Pregnancy and maternity*
- Race,*
- Religion or belief*
- Sex*
- Sexual orientation*

- *Marriage and Civil partnership*

4.6.3 Management of the properties will continue to be provided by Barnet Homes as at present, and the proposal is not expected to have any adverse impact on tenants.

#### 4.7 **Corporate Parenting**

5.7.1 In line with Children and Social Work Act 2017, the council has a duty to consider Corporate Parenting Principles in decision-making across the council. It is not anticipated that this report has any implications for the council's corporate parenting duties.

#### 4.8 **Consultation and Engagement**

4.8.1 There is no requirement to consult with tenants currently living in the properties, however, they will be formally notified of any transfer before it takes place, and arrangements will be made to transfer their tenancy to TBG Open Door Homes Limited.

#### 5.8 **Insight**

5.8.1 A reduction in the supply of affordable housing, coupled with sustained levels of increased demand provides the rationale for the key element of the proposals which is to increase the supply of affordable housing options.

5.8.2 There has been a 42% increase in new homelessness applications between 2011/12 and 2016/17.

5.8.3 There has been a significant increase in the number of households in temporary accommodation; numbers have increased from 2,172 in April 2012 to their current level of 2,519 at the end of September 2018.

## 5 **BACKGROUND PAPERS**

Housing Committee 27 November 2018 - Item 7 Business Planning 2019-2024  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=699&MId=9741&Ver=4>

Assets, Regeneration and Growth Committee – 27 November 2017 – Item 13 – Open Market Purchases of Affordable Housing  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9435&Ver=4>

Assets, Regeneration and Growth Committee – 12 December 2016 – Item 12 – In London and Out of London Acquisitions  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8640&Ver=4>

Assets, Regeneration and Growth Committee – 11 July 2016 – Item 9 – Out of Borough Acquisitions  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8881&Ver=4>