



## Cabinet

<b>Title</b>	<b>Touchpoint Housing LBB Portfolio Purchase</b>
<b>Date of meeting</b>	6 February 2024
<b>Report of</b>	Councillor Ross Houston, Deputy Leader and Cabinet Member for Homes and Regeneration
<b>Wards</b>	All
<b>Status</b>	Public with accompanying exempt appendix - Exempt from publication in accordance with paragraph 3 of Schedule 12A of the Local Government Act 1972 on account that it contains information relating to the financial or business affairs of any particular person including the authority holding the information.
<b>Key</b>	Key
<b>Urgent</b>	No
<b>Appendices</b>	Appendix A – Full Business Case (FBC) (Exempt)
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<b>Summary</b>	
In November 2017, the Council approved a deal with a Fund Manager, Cheyne Capital Management, for the delivery of approximately 150 homes in the Greater London area. The homes were to be leased by Cheyne Capital, through an SPV (Touchpoint Housing	

(LBB) Ltd), to the Council for a CPI indexed 40-year term and an option for the Council to acquire Touchpoint Housing LBB's interest for a small nominal payment at the end of the lease. To make the scheme tax efficient, a head lease and under lease structure was put in place enabling the properties to be leased back to Touchpoint Housing (LBB) Ltd. This meant that Touchpoint Housing (LBB) Ltd acted as landlord and tenants were offered properties as a private sector placement, achieving full LHA.

Changing economic conditions meant that mid-way through the programme in 2019/20, Cheyne were unable to continue supporting the programme on the agreed terms and interest rate. After pausing the programme, Cheyne attempted to sell the portfolio to investors. These attempts ultimately proved unsuccessful.

Late in 2022, Cheyne approached Barnet Homes seeking amendments to lease terms to render the portfolio sellable. After seeking legal advice, this request was declined on the basis that the proposed changes were of no commercial benefit to the council.

Cheyne then approached Barnet Homes with an offer to either acquire the portfolio or agree to the lease amends with a financial incentive of £0.25m plus £0.125m towards legal costs. The situation has further evolved, with an agreed offer for purchase of £20m.

The paper summarises issues relating to the Touchpoint Housing (LBB) Ltd portfolio and recommends that a loan facility of £20.6m be established between the Council and TBG Open Door Ltd, and for TBG Open Door Ltd to acquire the portfolio and assume the role of head lessor in the existing leasing structure.

## Recommendations

- 1. That Cabinet approves the purchase of the Touchpoint Housing LBB portfolio by TBG Open Door Limited.**
- 2. That Cabinet approves the transfer of leases held by Touchpoint Housing LBB to TBG Open Door Limited, varying lease rent inflation as outlined at 1.13.**
- 3. Subject to full council agreeing to increase the borrowing limit and approve the Capital Programme that Cabinet approves the establishment of a £20.6m loan facility with TBG Open Door Limited to facilitate the purchase.**
- 4. Delegates authority for the Deputy Chief Executive, in consultation with the Director of Finance, to agree the Facility Loan Agreement any additional security documents and any other related documents required, including any consent required from the Council pursuant to its agreements with The Barnet Group and from the Council as landlord of the underleases affected.**

### 1. Reasons for the Recommendations

#### 1.1 Introduction

In March 2018, the Council approved a deal with Cheyne Capital Management for the delivery of approximately 150 homes in the Greater London area. The homes were to be leased by Cheyne Capital, through an SPV (Touchpoint Housing (LBB) Ltd) (Touchpoint), to the Council for a CPI indexed 40-year term with an option to acquire the portfolio for £1 (plus Stamp Duty Land Tax) at the end of the lease term. To make the scheme tax efficient, a head lease and under lease structure was put in place enabling the properties to be leased by Touchpoint to the Council, and then leased back to Touchpoint. This

meant that Touchpoint acted as landlord and tenants were offered properties as a private sector placement, achieving full Local Housing Allowance rents (LHA).

- 1.2 Unfortunately, changing economic conditions meant that mid-way through the programme in 2019/20, Cheyne were unable to continue supporting the programme on the agreed terms and interest rate. The portfolio now holds 73 units in total after two properties were sold through CPO.
- 1.3 After pausing the programme, Cheyne attempted to sell the portfolio to investors through a variety of methods. These attempts ultimately proved unsuccessful as potential buyers were unable to agree to acquire due to there being 73 individual leases with differing lease end dates. Late in 2022, Cheyne approached Barnet Homes seeking amendments to lease terms to render the portfolio sellable.
- 1.4 Following further dialogue with Cheyne and rejection of an offer to waive 3 months' rent in order for the council to agree to the amendments, Cheyne approached Barnet Homes with an initial offer to either acquire the portfolio for £24.27m (the total cost incurred by Cheyne in developing the portfolio) or agree to the lease amends with a financial incentive of £0.25m plus £0.125m towards legal costs.
- 1.5 Negotiations have now concluded with an agreed offer for purchase of £20m and for agreeing to the lease amends (£0.5m incentive plus £0.125m towards legal costs), and we are now in a position where we believe further negotiation will yield no additional results.
- 1.6 The 73 Touchpoint properties are currently occupied by Barnet housing applicants who hold ASTs with the landlord Touchpoint. Properties were let as private sector placements and do not currently contribute to the number of households in temporary accommodation.
- 1.7 Touchpoint may require their landlord's consent to the transfer of their headleases, or some of them, to TBG Open Door Ltd and will need to request any such consent as part of the due diligence process. Touchpoint will require the Council's consent to the transfer of the underleases made between the Council and Touchpoint.

#### 1.8 **Options for resolving matters with Cheyne Capital**

We have now arrived at two final options for resolving the lease issues with the portfolio:

1. Agree to the lease amendments in exchange for an incentive of £0.5m and £0.125m as payment towards legal costs.
2. Agree to acquire the portfolio from Touchpoint at a discounted rate of approximately 18% on the cost paid to initially acquire it (a discounted cost of £20m for the 73 units)
3. Do nothing.

- 1.9 A 'do nothing' option, whilst possible, will likely expose the Council to longer-term risks such as the portfolio being sold to an investor the Council does not approve of who is prepared to acquire the portfolio at a discounted price without the lease amendments. It would also increase the risk of Touchpoint not engaging with freeholders in respect of superior lease extensions thus presenting a long-term financial risk in relation to the value of assets in the portfolio.

#### 1.10 **Proposal**

- 1.11 TBG Open Door Ltd (ODH) is a subsidiary company of Barnet Homes, who in turn are a subsidiary of The Barnet Group, of which the Council is the sole shareholder. TBG Open

Door Limited is a community benefit company and holds Registered Provider and, for tax purposes, has charitable status.

- 1.12 The acquisition of the portfolio from Touchpoint by TBG Open Door Limited would involve the Council borrowing funds from the Public Works Loans Board and lending to TBG Open Door Limited at cost, with no on-lending charge (advice from Savills has confirmed that no margin is required if the borrowing is to be used for Social Housing), through a loan facility. TBG Open Door Limited would then acquire the portfolio, retaining the existing head lease and under lease structure.
- 1.13 Headlease rents from Council to TBG Open Door Limited would be reduced for the first four years to offset MRP costs incurred by the Council, followed by annual lease rent inflation of 1.25% to facilitate repayment of the loan.
- 1.14 Lease terms would be extended from 36 to 45 years to allow additional capacity for the loan to be repaid. Funds already paid by Touchpoint and held by Barnet Homes for freeholder lease extension costs (in the region of £0.44m) would be retained by TBG Open Door Limited for exercising lease extensions as per the original intention. Freeholder lease extensions will commence post purchase.
- 1.15 A loan facility of £20.6m would be in place with the Council to cover a cost of purchase of up to £20.3m, to include legal and valuation costs, and £0.3m working capital to offset short-term revenue deficits for TBG Open Door Limited. For the purchase to proceed, funds would be required to be drawn down at a maximum rate of 5.40%. If borrowing costs exceed this, TBG Open Door Limited will not be able to proceed with the purchase.

#### **1.16 Benefits**

- The Council benefits from removal of lease rent CPI indexation risk.
- Certainty of expenditure with lease rent inflation fixed for the duration of the term.
- Removes the risk that the portfolio will be sold to an investor the Council does not approve of.
- Generates significant savings over the duration of the lease term when compared to the existing leasing arrangements.

#### **1.17 Disbenefits**

- The Council retains long-term lease liability.
- Increases debt exposure with TBG Open Door Limited.

#### **1.18 Recommendation**

It is recommended that an option for TBG Open Door Limited to pursue the purchase of the portfolio is agreed. Whilst the offer to agree to the lease amends does include a financial incentive, it does not consider TBG officer time that would be required to facilitate it. This, coupled with the fact that the proposed amends largely serve Touchpoint's purposes and appear to increase liability on the part of the council, means that the preferred option would be for TBG Open Door Limited to acquire the portfolio. The fact that properties are already tenanted with Barnet housing applicants and have been managed by TBG for several years now also helps to alleviate some of the risk when compared to the acquisition of a new portfolio. Of the proposed options, TBG Open Door Limited acquiring the portfolio does appear to represent the most viable long-term option for all parties.

## **2. Alternative Options Considered and Not Recommended**

### **2.1 Option 1: Do nothing**

The Council is not obliged to agree to the lease amends, nor are they required to purchase the portfolio. A 'do nothing' option in this instance would mean that neither resolution is agreed.

#### **Benefits**

- Would mean that the Council is not exposed to additional debt.

#### **Disbenefits**

- Would likely expose the Council to a risk of the portfolio being sold to an investor that the Council does not approve of.
- Potentially increases the risk of the head lessor not engaging.

### **2.2 Option 2: Agree to the lease amendments**

This option would see the Council agree to the proposed lease amendments by Cheyne Capital in exchange for an incentive of £0.5m and £0.125m towards legal costs.

#### **Benefits**

- Would mean that the Council is not exposed to additional debt.
- The Council benefits from a £0.5m incentive

#### **Disbenefits**

- Exposes the Council to more risk in respect of lease liability.
- Does not capitalise on the opportunity to remove CPI indexation liability.
- Would likely expose the Council to a risk of the portfolio being sold to an investor that the Council does not approve of.
- Facilitating the lease amendments will cost officer time to deliver, potentially reducing the benefit of the financial incentive.

### **2.3 Option 3: Council acquires the portfolio in the General Fund**

This option would involve the acquisition the portfolio funded by GF borrowing via the Public Works Loans Board and held in the Council's General Fund.

#### **Benefits**

- The Council benefits from removal of lease rent CPI indexation risk
- Lease liability removed on consolidation from 2025 when the lease would have to be accounted for on the Council's Statement of Financial Position (balance sheet)
- Portfolio secured at a discounted rate.
- Removes the risk of the portfolio being sold to an investor the Council does not approve of.

#### **Disbenefits**

- Stamp Duty Land Tax (SDLT) costs to be incurred in addition to the proposed portfolio cost.

- Potential increase in temporary accommodation (TA) numbers as properties would no longer be considered private rented sector (PRS) placements to a third-party landlord and subsequent contribution loss associated.

## **2.4 Option 4: Council acquires the portfolio in the Housing Revenue Account (HRA)**

This option would involve the acquisition of the portfolio to be held in the Housing Revenue Account funded by HRA borrowing via the Public Works Loans Board.

### **Benefits**

- The Council benefits from removal of lease rent CPI indexation risk
- Lease liability removed on consolidation from 2025 when the lease would have to be accounted for on the Council's Statement of Financial Position (balance sheet)
- Portfolio secured at a discounted rate.
- Removes the risk of the portfolio being sold to an investor the Council does not approve of.
- Benefits through an additional 40-point reduction on PWLB borrowing rates through the delivery of social housing.

### **Disbenefits**

- Affordability question for the HRA and leaves little headroom for future investment opportunities.
- Potential policy challenge concerning rent levels, with the portfolio rents achieving LHA to support viability which may in future exceed 80% of market rent.

## **3. Post Decision Implementation**

- 3.1 Once the recommendations are approved and authority is provided to proceed with the purchase, due diligence work will commence on the portfolio. This will include a formal valuation and novation of leases, with variations to lease rent inflation. Alongside this, work will also commence on the arrangement of a loan facility between the Council and TBG Open Door Limited to facilitate the purchase.

## **4. Corporate Priorities, Performance and Other Considerations**

### **4.1 Corporate Plan**

The acquisition of the portfolio from Touchpoint is broadly aligned with LB Barnet's Corporate Plan 2023 – 2026 priorities as follows:

- Caring for people – The delivery of acquired homes, let at sub-market rents will provide opportunities for Barnet's housing applicants to be provided with quality homes at affordable rent levels.
- Caring for our places – The programme will continue to provide affordable, good quality homes for housing applicants, located within easy reach of essential services and managed by a responsible social landlord.
- Caring for our planet – Homes will be delivered with the required investment to enhance energy efficiency ratings, with all properties achieving a minimum C rating.

- An engaged and effective council – The purchase of the Touchpoint portfolio aligns the corporate plan objective of being financially responsible through delivering long-term financial savings for the borough when compared to the existing leasing programme.

### **Corporate Performance / Outcome Measures**

- 4.1 Performance of the portfolio will be monitored through the council's contract monitoring processes in place with Barnet Homes.

### **Sustainability**

- 4.2 The council has set ambitious targets to become net zero as an organisation by 2030 and net zero as a borough by 2042. To achieve this, the council recognises the importance, and necessity, to embed sustainability considerations into all decision making and council activity. By accepting this report, the properties in the portfolio will have the required long-term investment to enhance their energy efficiency ratings and achieve a minimum C rating.

### **Corporate Parenting**

- 4.3 Properties will continue to be managed by Barnet Homes, as they are currently and therefore will have no direct impact on looked after children or care leavers.

### **Risk Management**

- 4.4 The portfolio is already held on a long-term leasing structure, and therefore the Council is already exposed to the risks associated with that programme. A decision to acquire the portfolio contributes to reducing exposure to some of these risks, however there are two key risks specifically associated with this proposal:

- A risk that the portfolio is valued less than the agreed purchase price – whilst we expect this to be unlikely, given the value of the assets (without professional costs and refurbishment) when initially acquired in 2018/19 was £20.5m and that house prices have inflated in that time, a valuation of the portfolio under the agreed £20m purchase price would mean that the purchase would not proceed.
- A risk that long-term tenant rental inflation falls below the new lease rent inflation of 1.25% per annum – Lease rents in the portfolio are currently indexed to CPI. The new lease rent inflation post purchase of 1.25% is proposed largely to enable repayment of the loan by TBG Open Door Limited, whilst also expected to be consistently lower than CPI and tenant rental inflation. This indicator will be monitored closely, and stress testing has been provided as part of the analysis of the proposal.

### **Insight**

- 4.5 The proposed lease amendments have been reviewed by lawyers on behalf of the Council and discussed with Cheyne Capital's representatives. Lawyers have advised that there is no commercial benefit to the Council agreeing to the proposed lease amendments and that they expose the Council to greater risk.
- 4.6 In light of the legal advice received, Barnet Homes has analysed the performance of the portfolio and its projected costs over the remaining lease term. This has provided a basis against which proposed options to acquire the portfolio have been assessed.

4.7 The performance of the portfolio will be monitored through the Council's contract monitoring processes with Barnet Homes to ensure the benefits of acquiring the portfolio are realised.

**Social Value**

4.8 There are no additional social value elements derived through the acquisition of the portfolio.

**5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)**

**5.1 Benefits to the Council**

The impacts of TBG Open Door Limited acquiring the portfolio compared to agreeing to the lease amends are outlined in the table below.

	<b>Acquiring</b>	<b>Existing</b>
NPV	£Nil	(£5m)
Capital receipts	£20.6m	Nil
Total revenue surplus @36 years	(£7m)	(£13.9m)
Total revenue surplus @45 years	(£8.1m)	N/A
Total lease rent	£61.4m	£62.3m
Incentive from Cheyne (excl. staffing costs)		£0.5m

5.2 Whilst agreeing to the lease amends will provide an incentive in the short-term, TBG Open Door Limited acquiring the portfolio does deliver significant long-term benefits to both TBG Open Door Limited and the Council. For the Council, this option significantly outperforms the current leasing arrangement, saving £6.9m on potential revenue costs over the remainder of the lease term. For TBG Open Door Limited, acquiring the portfolio results in an income generating portfolio that generates sufficient surpluses to repay the loan by year 43.

**5.3 MTFS benefit**

Acquiring the portfolio delivers long-term revenue benefits. Short-term benefits are minimal as lease rents proposed are designed to ensure the Council is exposed to no additional pressure.

MTFS 5-year benefit

<b>£'000s</b>	<b>2024/25</b>	<b>2025/26</b>	<b>2026/27</b>	<b>2027/28</b>	<b>2028/29</b>
<b>Current revenue cost</b>	<b>150</b>	<b>210</b>	<b>257</b>	<b>263</b>	<b>270</b>
Cost post purchase	59	114	156	157	148
MRP	91	96	101	106	111
<b>Net</b>	<b>150</b>	<b>210</b>	<b>257</b>	<b>263</b>	<b>259</b>
<b>Benefit</b>	-	-	-	-	<b>11</b>
Budget +/-	-	-	-	-	11

5.4 Over the subsequent 5 years the option to acquire the portfolio would deliver further revenue savings of £228k.

**5.5 Capital budget required**



A loan facility of £20.6m is required to facilitate the purchase, broken down as follows:

- £20m to acquire the portfolio from Touchpoint
- £0.35m to fund legal and due diligence costs of acquiring the portfolio
- £0.25m working capital to fund short-term revenue deficits incurred by TBG Open Door Limited

## 5.6 Stress testing

Modelling has assumed borrowing at current PWLB rates. Should rates fluctuate, this will have no impact on the Council as lease rents are adjusted to ensure the scheme does not present any revenue pressure for the Council for the first four years. This means there is no short to medium term impact for the Council. As such, the borrowing rate largely impacts TBG Open Door Limited. A summary of outcomes for TBG Open Door Limited is provided below.

### *Impact of varying borrowing rates*

	Total surplus	Repayment year
5.45%	(£0.5m)	47
5.40%	£0.3m	45
5.35%	£1.2m	45
5.25% base	£3.6m	43
5.20%	£4m	43
5.15%	£4.7m	43

5.7 With borrowing costs exceeding 5.40% meaning that the loan will not be fully repaid within the 45-year term, it is proposed to only proceed where funds can be drawn-down by TBG Open Door Limited where they do not exceed 5.40%.

## 6. Legal Implications and Constitution References

### Recommendation 3:

6.1 The Council has the power to borrow and invest for any purpose relevant to its statutory functions in accordance with Sections 1 and 12 of the Local Government Act 2003 (as amended) in order to meet its statutory functions in the Housing Act 1996 (as amended).

6.2 The Council has the power to make the proposed loan by using the general power of competence under Section 1 of the Localism Act 2011 (as amended). This gives the Council the power to do anything that an individual may do (unless specifically prohibited).

6.3 The Council must take cognisance of the Subsidy Control Act 2022 (as amended) and more particularly the subsidy control rules outlined in said act. The Council has to ensure that the proposed loan does not contravene the subsidy control rules.

6.4 Furthermore,, in order to address commercial risk and protect the Council's interest the proposed loan and Funding Loan Agreement should be subject to: (a) satisfactory legal and financial due diligence; (b) satisfactory loan to property value assessments; (c) agreeing a commercial rate of interest for the loan facility, commensurate with the degree of risk involved; (d) the Council securing the loan, for example, by way of a first charge on the properties being purchased.

6.5 It is important that a proper audit trail is maintained in respect of the following: the Council's compliance with the Constitution specifically increasing the Council's borrowing

limit and impact this may have on the Council's budget; and the Council's compliance with the Subsidy Control Act 2022 (as amended) in respect of the proposed loan.

6.6 The proposed loan must be subject to the Council entering into an appropriate Facility Loan Agreement which protects the Council's interests and also ensuring there are appropriate governance mechanisms in place for the Council to monitor TBG Opendoor Limited adherence to the Facility Loan Agreement.

6.7 The Council has previously sought advice on the previous subsidy regime, State Aid, from Savills. The subsidy control regime has changed and therefore it would be prudent to seek updated legal advice on the new subsidy regime, as introduced by Subsidy Control Act 2022 (as amended).

#### **Recommendation 4:**

6.8 In relation to Recommendation 4, relating to the delegation of final terms of the Facility Loan Agreement facility and the completion of the necessary funding and security documents to the Deputy Chief Executive, this is permissible under section 9E of the Local Government Act 2000.

6.9 The 73 Touchpoint Housing LBB properties are currently occupied by Barnet housing applicants who hold ASTs with the landlord Touchpoint Housing. Properties were let as private sector placements and do not currently contribute to the number of households in temporary accommodation.

6.10 Council Constitution, Part 2B (Terms of Reference and Delegation of Duties to Cabinet) – the Cabinet is responsible for

- Management of the Council's Capital Programme
- All key decisions, which include namely:

4.1 an executive decision which is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or function to which the decision relates; .

4.3 a decision is significant for the purposes of above if it involves expenditure or the making of savings of an amount in excess of £1m for capital expenditure or £500,000 for revenue expenditure or, where expenditure or savings are less than the amounts specified above, they constitute more than 50% of the budget attributable to the service in question.

6.11 TBG Open Door Limited is subject to the requirements of a shareholder agreement dated 2 February 2016 made between the Council, The Barnet Group and other via a deed of adherence. Under the shareholder agreement the Council's approval is required to the acquisition of material assets with a value exceeding £170,000 per year.

6.12 Touchpoint will require the Council's consent to the transfer of the underleases made between the Council and Touchpoint under the terms of the underleases. If the Council will approve the recommendations in this report such consent is given in principle.

## **7. Consultation**

7.1 Tenants will receive a statutory notification of a change of landlord as part of the purchase process.

## **8. Equalities and Diversity**

8.1 Under the Equality Act 2010, the Council must 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.

8.2 The 'protected characteristics' referred to are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. It also covers marriage and civil partnership with regards to eliminating discrimination

8.3 The Council is committed to improving the quality of life for all, and wider participation in the economic, educational, cultural, social, and community life in the Borough.

8.4 It is not envisaged that there will not be any disproportionate impact on any individuals or groups as a result of the implementation of the approvals recommended within this paper.

## **9. Background Papers**

9.1 Assets, Regeneration & Growth Committee, 27 November 2017, Item 13 (open Market Purchases of Affordable Housing): [Agenda for Housing and Growth Committee on Monday 27th November, 2017, 7.00 pm \(modern.gov.co.uk\)Open Market Purchases of Affordable Housing.pdf \(modern.gov.co.uk\)](#)