

<b>MAYOR AND CABINET</b>			
<b>Report Title</b>	Lewisham Homes Acquisition Programme and Loan Agreement		
<b>Key Decision</b>	Yes	Item No.	
<b>Ward</b>	All		
<b>Contributors</b>	Executive Director for Customer Services, Executive Director for Resources and Regeneration		
<b>Class</b>	Part 1	Date:	28 September 2016

## **1. Summary**

- 1.1 Mayor and Cabinet has received a number of reports regarding the continuing challenge posed by the increase in homeless households in the borough. At the end of August 2016 there were 1,784 Lewisham households in temporary accommodation, of whom 529 households were in nightly paid accommodation. The remaining 1,255 households are currently placed in a variety of other forms of temporary accommodation, including hostels and properties leased from the private market.
- 1.2 In January 2015 Mayor & Cabinet agreed that in order to increase the supply of quality, in-borough temporary accommodation a commercial loan of £20m should be extended to Lewisham Homes to enable it to purchase properties on the open market for use as temporary accommodation and to prevent homelessness. As of August 2016, Lewisham Homes has acquired 57 properties with this loan, and are continuing negotiations to acquire further properties.
- 1.3 Due to the success of the programme, officers are now recommending that a further loan is extended to Lewisham Homes in order to extend the acquisition programme and continue to provide a better alternative to nightly paid accommodation.
- 1.4 The remainder of this report provides an update on the current situation regarding homelessness and temporary accommodation, an update on further initiatives and more detail on the operation of the acquisition programme and proposed further loan.

## **2. Recommendations**

It is recommended that the Mayor:

- 2.1 Notes the current situation, policy context and pressures concerning the use of temporary accommodation for homeless households.

- 2.2 Notes the progress achieved in meeting the aims of the Lewisham Homes acquisition programme, including the savings from the reduced need to place households into nightly paid accommodation.
- 2.3 Note the rationale for a further £20m to be loaned to Lewisham Homes to acquire additional properties intervention for the purposes of temporary accommodation and homeless prevention, dependent on the demands of the service.
- 2.4 Agree that the Council provides a loan of up to £20m to Lewisham Homes, on the terms set out in this report, to enable Lewisham Homes to continue the acquisition programme as an additional intervention to help manage homelessness demand, and that the authority to finalise the terms of the loan agreement be delegated to the Executive Director for Resources and Regeneration.

### **3. Policy Context**

- 3.1 The contents of this report are consistent with the Council's policy framework. It supports the achievements of the Sustainable Community Strategy policy objectives:

- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
- Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
- Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.

- 3.2 The proposed recommendations are also in line with the Council policy priorities:

- Decent homes for all - Investment in social and affordable housing, improve housing conditions and tackle homelessness

- 3.3 It will also help meet the Council's Housing Strategy 2015-2020 in which the Council commits to the following key objectives:

- Helping residents at times of severe and urgent housing need
- Building the homes our residents need
- Greater security and quality for private renters
- Promoting health and wellbeing by improving our residents' homes

### **4. Homelessness in London and Lewisham**

- 4.1 The affordability pressures in the Private Rented Sector (PRS) in many parts of London have contributed to an increase in homelessness. In London as a whole, there were over 48,000 London households in temporary accommodation at the end of March 2015.
- 4.2 Over 19,000 households were accepted as Homeless in 2015/16 across London, an increase from 17,530 in 2014/15, and as the number of households requiring support is likely to increase in line with government changes these properties become ever more desirable to authorities and the market.
- 4.3 In Lewisham, there has been an 89% increase in the number of homeless households in temporary accommodation over the last five years and there are currently over 1,750 homeless households in temporary accommodation. The interventions outlined elsewhere in this report mean that this number has started to stabilise over the past 12 months, despite the challenges of the reduced supply of accommodation in the PRS and the increasing unaffordability of all tenures, and of increased demand caused by welfare reform.
- 4.4 The shortage of supply of both social housing and affordable private rented accommodation in Lewisham continues to lead to high demand on the Housing Needs Service. There are a number of contributory factors to the level of homelessness in Lewisham and across London. Property price inflation continues to considerably outstrip other measures of inflation, with figures from the Land Registry showing an annual price increase in Lewisham of 18% as at April 2016 compared to an annual price increase of almost 13% across the London area.
- 4.5 Increasing property prices and rents provides incentives for landlords to seek higher rents than can be afforded by residents on lower incomes, or to sell their properties whilst prices are high. This is exacerbated by ongoing shortfalls in the new supply of all forms of housing, particularly affordable housing, and a significant decrease in the movement of tenants within existing stock.
- 4.6 Between 2010/11 and 2015/16 the number of affordable properties to let has decreased by 40%. The Council has over 9,400 individuals and families on the Housing Register and this figure is increasing annually.
- 4.7 In the 2015-16 financial year, the Local Authority spent £14.6m on Bed and Breakfast type accommodation before income; with rental charges to clients, the net spend was £3.9m (an increase from £3.5m in 2014/15 and £1.5m in 2013/14). Additionally, in the 2015-16 financial year, £8.9m was spent on PSL and £2.3m on hostels before income.

## **5. The supply of temporary accommodation**

- 5.1 The Council's in-borough temporary accommodation consists of a combination of hostels, which are owned by the Local Authority, Private

Sector Leased (PSL) properties which are procured on long leases and Privately Managed Accommodation (PMA). As of September 2016, the operational management of the temporary accommodation portfolio was transferred from the Council to Lewisham Homes.

- 5.2 The council seeks to procure properties where the rent is at or below the Local Housing Allowance (LHA), which is the maximum amount of rent which can be covered by housing benefit. However, procuring properties within LHA rates locally has become increasingly difficult.
- 5.3 LHA rates are set based on rental data as set at April 2015 and do not take into account the rapid increase in rental prices in London boroughs. In 2015 it was announced that LHA would be frozen for four years and as rents are forecast to continue to increase, this will lead to an ever reducing level of supply in the private market for those on housing benefit.
- 5.4 There are two LHA rates which apply in Lewisham, and the table below demonstrates that both LHA rates are less than average rents in the borough, even for cheaper properties. As at the end of August 2016, 25 two-bedroom properties were available for renting at the LHA rate in the borough, however in recent months this has dropped to as few as 8 available properties, and as the price of median market rent continues to increase it is expected that these numbers will reduce further.

**LHA & Private Market rates in Lewisham**

	<b>Weekly Cost - 2 Bed</b>
<b>Inner SE London LHA</b>	£265.29
<b>Outer SE London LHA</b>	£198.11
<b>30th Percentile Private Market Rent</b>	£288
<b>Median Private Market Rent</b>	£310

- 5.5 To address the risk to the supply of temporary accommodation outlined above, the Council has taken a number of measures including:
- Expanding the Council’s hostel provision, including:
    - Kelvin House, a former office block converted into temporary accommodation as part of the Empty Homes programme
    - Hamilton Lodge, a former care home which will be let to homeless households in September 2016.
  - PLACE/Ladywell – constructed using modern methods of construction to deliver new temporary accommodation on a vacant site much more quickly.
  - Working with existing PSL landlords to promote the retention of PSL temporary accommodation.
  - Increasing permanent housing supply, including the Council’s own 500 home programme and working with partners to deliver a further 2000 affordable homes by 2018

- The Lewisham Homes acquisition programme, set out in more detail below.

## **6. Lewisham Homes Loan and Acquisition Programme**

6.1 In January 2015 Mayor & Cabinet agreed that as a new strand to the Council's strategy to increase its supply of temporary accommodation, Lewisham Homes should be enabled to acquire properties on the open market. To facilitate this acquisitions programme, Mayor and Cabinet agreed that a commercial loan of £20m should be extended to Lewisham Homes.

6.2 As of September 2016, Lewisham Homes had acquired 57 properties through this scheme, as set out below:

<b>Property size</b>	<b>Number</b>
1 bed	1
2 beds	47
3 beds	9
Total completed	57

6.3 They are also in the process of negotiating the purchase of a further six properties, and will continue to make bids for suitable properties until they have spent the amount available to them under the current loan.

6.4 The properties are let at rents equivalent to the relevant Local Housing Allowance and let either to homeless households, or to prevent a household from becoming homeless. The rental income allows Lewisham Homes to manage and maintain the properties, and also make interest payments on the loan, thus providing an income for the Council in return for the capital committed.

6.5 Letting these properties to homeless households at Local Housing Allowance rates also enables the council to make a saving by reducing the need for expensive bed & breakfast accommodation.

6.6 The financial model for the programme assumes that at the end of ten years Lewisham Homes would dispose of the properties at market value and repay the principle of the loan to the Council.

6.7 The acquisitions programme has therefore been successful at increasing the supply of higher quality temporary accommodation available to the Council. It has also saved money by reducing the amount of nightly paid accommodation the Council would have had to procure, and the scheme also generates an income for the Council.

6.8 Officers are now recommending that a further £20m loan is extended to Lewisham Homes to continue the acquisition programme.

- 6.9 Due to the prevailing conditions of the housing market set out in this report, with house prices continuing to increase in Lewisham, it is anticipated that the new loan would be extended at a lower interest rate and for a longer period, as this would allow Lewisham Homes to pay a higher price for new acquisitions, to reflect this increase in prices.
- 6.10 The expansion and continuation of the acquisition programme would provide a significant benefit to the Council, further reducing the need to use expensive and unsuitable Nightly Paid accommodation for housing homeless households.
- 6.11 As set out above, the Mayor is requested to agree that officers negotiate with Lewisham Homes regarding the detail of this proposal, but based on the terms set out in this report.

## **7. Financial Implications**

- 7.1 The proposal in this report is for the Council to loan Lewisham Homes up to £20m on an interest only basis with the principal to be repaid by Lewisham Homes at the term of the loan. While for the same purpose, this second loan is different to the first granted under the Lewisham Homes loan and acquisition programme.
- 7.2 The possible differences include:
- The loan will not be provided on market terms but at a rate to be negotiated to recover the Council's costs;
  - Properties will only be eligible to rent at Local Housing Allowance rents (and therefore covered by Housing Benefits);
  - The loan will qualify as State Aid exempt because the finance is provided exclusively for Social Housing;
  - The duration of the interest only loan will be longer, thirty to forty years compared to the ten years of the first loan; and
  - The loan will be drawn down and repaid in full at pre-agreed dates, and not on the call-off arrangement in place for the first loan.
- 7.3 These points of difference and the related accounting treatment are the details on which the Council will seek further advice as part of their negotiations with Lewisham Homes. In so far as they impact the terms of any loan, these points will be agreed by the Executive Director for Resources and Regeneration under the authority delegated by this report.
- 7.4 The risks to the Council of making such a loan are that Lewisham Homes is not able to maintain the interest payments or repay the principal on conclusion of the loan agreement. These are mitigated by the fact that, additional to the financing aspects of the loan, the Council should incur lower temporary accommodation costs as a result of being able to access these properties (as compared to other available stock) and its position protected by the security of the properties acquired by

Lewisham Homes with the loan. However, the risks remain higher for this loan, compared to the first one, due to the differences noted above.

- 7.5 As noted in the legal implications below, the proposal is consistent with the revised terms of the management agreement between the Council and Lewisham Homes. The risks to Lewisham Homes in accepting this loan, once the details are confirmed, will be for their Board to consider.

## **8. Legal Implications**

### Duties and powers

- 8.1 The Housing (Homeless Persons) Act 1977 places a duty on local housing authorities to secure permanent accommodation for unintentionally homeless people in priority need. Authorities' duties towards homeless people are now contained in Part 7 of the 1996 Housing Act (as amended) and are briefly summarised in 8.2 below.
- 8.2 When a household makes an application to a local authority for assistance with homelessness the authority is under a duty to carry out inquiries in order to satisfy itself as to what level of duty is owed to a homeless applicant. If an authority has reason to believe that a homeless applicant has nowhere to stay and is in priority need, then there is an immediate duty to make suitable temporary accommodation available pending further inquiries. The 'priority need groups' include households with dependent children or a pregnant woman and people who are vulnerable in some way e.g. because of mental illness or physical disability, having been in care, in the armed forces or subject to domestic violence.
- 8.3 The provision of the loan will enable Lewisham Homes to acquire more properties on the open market to provide temporary accommodation for homeless households. Lewisham Homes is a legal entity separate from the Council and can let tenancies in accordance with the assured tenancy regime set out in the Housing Act 1988 (the 1988 Act), in particular on an assured shorthold tenancy basis. The consequence is that the tenants would be subject to the limited protections afforded by the 1988 Act to assured shorthold tenants, chiefly, a minimum six month term, subject to termination on two months' notice. Rents can be charged at market levels although as indicated in the Report at paragraph 6.5, it is the intention of the Council and Lewisham Homes that the properties will be let at Local Housing Allowance level. Lewisham Homes' tenants would not have the benefit of the right to buy (RTB), notwithstanding the parent/subsidiary relationship between Lewisham Homes and the Council.
- 8.4 The power to permit Lewisham Homes to acquire and let these properties for temporary accommodation can be found in Section 1 of the Local Government Act 2011) which gives power to a local authority to do anything that individuals generally may do. Section 4 of the Localism Act provides that if a local authority is doing anything for a commercial purpose it must do so through a company. As Lewisham Homes is company which is an existing wholly owned subsidiary

of the Council Section 4 can be relied upon if the purpose was deemed to be for a commercial purpose.

- 8.5 The exercise of this discretionary power has to be reasonable. The Council could alternatively acquire these properties under S9 of the Housing Act 1985. However, importantly, this is only one element in a housing strategy to meet the needs of all homeless persons and is strictly for the much needed provision of high quality temporary accommodation for eligible homeless households pending their assessment for secure accommodation. In these circumstances and provided that this purpose is not strayed from it can be justified on the grounds of reasonableness.
- 8.6 Section 1 of the Local Government Act 2003 (the 2003 Act) provides a local authority with power to borrow money for any purpose relevant to its functions (or for the prudent management of its financial affairs). Given the requirements of Part 7 of the Housing Act 1996 the Council can rely upon the first "limb" of this Section 1. The borrowing needs to be within the prudential limits which the Council determines for itself in accordance with its duty under Section 3 of the 2003 Act and the Council is required to have regard to the Prudential Code for Capital Finance in Local Authorities (the Code) when carrying out these duties. This includes a requirement to have regard to its financial commitments and obligations to any companies or similar entities in which it has interests (such as Lewisham Homes).
- 8.7 In providing the proposed "on-lend" finance to Lewisham Homes the Council can rely upon the power in Section 24 of the Local Government Act 1988 which provides that a local housing authority has power to provide any person with financial assistance for the purposes of, or in connection with amongst other things the acquisition of any property which is or is intended to be privately let as housing accommodation. It requires Secretary of State consent to do so under Section 25 of the same Act. There is a general consent available in these circumstances. It covers any financial assistance (other than the disposal of an interest in land or property).

#### State Aid

- 8.8 Issues of State Aid arise under EU law which prevent Member states from granting aid to an organisation which would result in it being anti-competitive in the market. This may arise where a loan is not on market terms. However there is in any event an exemption to the State Aid prohibition for affordable housing. As stated in the body of this report, the precise terms upon which the Council's loan is to be provided are still to be agreed with Lewisham Homes. These matters will be agreed by the Executive Director for Resources and Regeneration under the authority delegated by this report. A final view on the state aid position and, if applicable, the application of the exemption, will be taken at this stage so as to ensure that there is no unlawful state aid.

Lewisham Homes Memorandum and Articles and the Management Agreement



8.9 Lewisham Homes Memorandum and Articles have been extended to enable acquisition of property, ownership of the same and letting such property as landlord for the purpose of temporary accommodation activity. The scheme of delegation in the Management Agreement between the Council and Lewisham Homes has also been amended to reflect this new function.

#### Nomination rights

8.10 The Council would have to be granted nomination rights in respect of the properties acquired by Lewisham Homes as the Council still retains the homeless function.

8.11 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

8.12 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

8.13 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.

8.14 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

8.15 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended

actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

8.16 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

8.17 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

## **9 Equality Implications**

9.1 There are no specific equalities implications to this report.

## **10. Environmental Implications**

10.1 There are no specific environmental implications to this report.

## **11. Background Documents and Report Author**

11.1 There are no background documents to this report.

11.2 If you require further information about this report please contact Jeff Endean on 0208 314 6213