

| <b>Mayor and Cabinet</b> |   |                  |  |
|--------------------------|---|------------------|--|
| <b>Title</b>             | Capital Letters – Collaborative Pan London Accommodation Procurement Initiative |                  |  |
| <b>Key decision</b>      | Yes   | <b>Item no</b>   |  |
| <b>Wards</b>             | All   |                  |  |
| <b>Contributors</b>      | Executive Director for Customer Services<br>Head of Law                         |                  |  |
| <b>Class</b>             | Part 1  | 21 November 2018 |  |

## 1. Purpose of report

1.1 The purpose of this report is :

- to summarise the details of a London Councils led proposal, working with boroughs across the capital to establish a London wide procurement vehicle to deliver new supply of leased and private rented sector (PRS) accommodation for families who are homeless or threatened with homelessness.
- to highlight that the main driver to Lewisham joining Capital Letters is to reduce the use of self-contained nightly paid B&B accommodation by either converting current self-contained nightly paid (SCNP) into leased accommodation for longer term use and also have increased access to new leased accommodation through Capital Letters.
- to set out how accommodation in the private rented sector will be utilised to discharge the Council's statutory housing duty in line with the policy agreed at Mayor & Cabinet on 25 March 2015.

1.2 Mayor & Cabinet are asked to consider this report and agree the recommendations in section 3

## 2 Summary

2.1 The numbers of homeless households in bed and breakfast/nightly paid accommodation continues to rise across London. Housing pressures on low income households in London have never been higher and a more co-ordinated effort is required from Councils across London to source an improved and increasing supply of suitable, more secure accommodation to meet ever rising demand and reduce competition between boroughs.

2.2 London Housing Directors and London Councils have been working on a model which would enable better outcomes for families who are homeless or at risk of homelessness. The model being developed is

Capital Letters. This report outlines the principles behind this model and supports Lewisham's early membership as an *A member*, alongside a number of other London boroughs. Details of those Boroughs will be made available in December 2018 after Councils have completed their reporting cycle. The boroughs who have already obtained this approval as at the date of preparing this report are listed at paragraph 2.13 below.

- 2.3 The establishment of Capital Letters is being supported by £38m grant from the Ministry of Housing, Communities and Local Government (MHCLG), top sliced from the London boroughs Flexible Homelessness Support Grant. Funding for 2019/20 and 2020/21 has been confirmed by MHCLG, with further funding decisions being made later this calendar year. This grant will be available to support increased procurement of leased and PRS lettings and help alleviate the costs to boroughs of providing temporary accommodation. The grant will also support the set up costs of the company including staffing and IT costs. In addition to the grant the financing of this model is supported by access to 100% Local Housing Allowance (LHA) from the Department of Work and Pensions, which on average across London is approximately £35pw higher than the current rate Boroughs can access set at 90% of 2011 LHA levels. Local Authorities cannot access 100% of the LHA for their leased accommodation that is procured and managed in house. Discussions continue on the potential contribution from the grant to the rent and management fee but in all options with access to 100% LHA the costs to the participating London boroughs are expected to be reduced.
- 2.4 Capital Letters is a joint endeavour between London boroughs to support more collaborative working to procure leased accommodation and move away from directly competing with each other which leads to an upward pressure on rents. The main aim and benefit is for boroughs to move away from the use of B&B and Self-Contained Nightly Paid (SCNP) as the most insecure and expensive form of temporary accommodation (TA) for homeless families. Moving customers into a more stable leased home offering longer term tenancies and better and consistent standards of accommodation can only be a benefit to those families and provide improved outcomes for customers. It is also intended to offer a simpler and more straightforward interface for landlords, managing agents and developers operating anywhere in London who are able to provide properties for those families and other vulnerable households most in need of accommodation. The aim is to provide TA accommodation for each borough that is closer to the home borough and avoid customer dissatisfaction and disruption from placements far away in other areas of London.
- 2.5 It is not considered that being involved in this scheme at this stage will put the Council at financial risk. Financial risks are limited as Capital Letters will be a company owned by the London Boroughs and limited by guarantee. The Council would commit to work with Capital Letters to deliver a minimum of 50% of our leased and direct lets procurement requirements based on the 2017/2018 financial year. In the event that this did not happen, Capital Letters would have discretion to terminate the Council's membership of the company as A members.

- 2.6 Capital Letters are also developing a future management service option for any new leased accommodation which can be accessed by paying a fee. Currently TA management is largely provided by Lewisham Homes following the transfer of services in September 2016. There are no plans to transfer management responsibility at this time to Capital Letters but this will be reviewed with Lewisham Homes as more details are made available, as the benefits of having services for customers delivered from one organisation are clear. In Lewisham however there would be an expectation that any provider who leased their accommodation through Capital Letters would provide services directly themselves with the possible exception of the rental collection. Initial discussions have been had with the Chief Executive Officer of Lewisham Homes who has agreed that we take these discussions forward in consultation with the ALMO.
- 2.7 Capital Letters intends to grow in phases. London Councils report that there are around 15 London Boroughs who are aiming to present reports to their Members for consideration before the end of December 2018 for membership in the first phase. The boroughs who have already obtained this approval as at the date of writing this report are listed at para 2.13 below. It is planned that a second phase will follow one year later with the aim of including other boroughs in this second phase. There are also two types of membership - A and B. The distinction is noted in **Appendix A**. The majority of boroughs are reporting that they are looking for A membership because of the advantages of grant access and Board and decision making powers.
- 2.8 Properties are expected to be a mixture of Private Rented Sector properties let by the property owner to households nominated by the boroughs and properties leased directly from landlords or from managing agents. The majority of accommodation will be settled accommodation to prevent homelessness or to end a homelessness duty. The intention is to achieve a significant reduction in the use of short term nightly paid accommodation by the London Boroughs. Boroughs may also transfer properties currently leased as temporary accommodation to Capital Letters to let as settled private rented sector accommodation.
- 2.9 Capital Letters will be established as a Company Limited by Guarantee, wholly owned by the member Boroughs.
- 2.10 The aim of Capital Letters is to deliver all London borough temporary accommodation requirements through this organisation, which will be a very different service delivery model than the current model. By the end of the third year of operation it is envisaged that Capital Letters will have a staff complement of around 270 officers and an annual income of £238m. By this stage it will have secured almost 20,000 additional properties to help prevent and tackle homelessness, and will have an estimated 13,000 properties either fully or partially under its management.
- 2.11 The Council can cease to be a member of Capital Letters at any time by giving six months' notice to Capital Letters and the other members.

2.12 A presentation and full report was presented to Housing Select Committee in September 2018 and the recommendation from Committee was that:

- The Committee noted the report and expressed support for the proposal to join Capital Letters.

Work continues with Members on the Committee to ensure that Capital Letters deliver services in accordance with existing Lewisham policies. Any outstanding items will be reported to the Mayor & Cabinet meeting.

2.13 At the date of preparing this report, five London Boroughs, namely, Brent, Ealing, Haringey, Tower Hamlets and Waltham Forest have already secured committee approvals to join Capital Letters as “A” members.

### **3 Recommendations**

Mayor & Cabinet are asked to:

- 3.1 note the agreed year 1 (2018/19) and 2 (2019/20) funding for Capital Letters from MHCLG and the proposed total funding across 3 years of £38 million from MHCLG the Capital Letters pan-London collaboration on the procurement of accommodation for homeless households
- 3.2 agree that the Council joins Capital Letters Limited as an “A” member.
- 3.3 delegate authority to the Executive Director for Resources & Regeneration, in consultation with the Executive Director for Customer Services and the Head of Law, to agree the final terms of and enter into the Members’ Agreement, Service Level Agreement and all other documentation required for the Council’s membership of Capital Letters Limited.
- 3.4 delegate authority to the Executive Director for Customer Services, in consultation with the Executive Director for Resources & Regeneration, to agree the first Annual Business Plan for Capital Letters Limited and each subsequent Annual Business Plan.
- 3.5 delegate authority to the Executive Director for Customer Services to make all other decisions required in relation to the Council’s participation in Capital Letters Limited from time to time.
- 3.6 agree to appoint the Head of Housing and Refugee Services to act as the Council’s Representative on the Board of Capital Letters Limited and to provide an indemnity for that officer on the terms set out in **Appendix D**;
- 3.7 approve the Officers' Mandate and Governance Guide that is attached as **Appendix E** and note and agree the proposed arrangements for reporting back to Mayor & Cabinet and Housing Select Committee.

## 4 Policy context

4.1 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.

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.

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

4.2 Lewisham's Housing Strategy contains the provision to put in place the framework for the Council to use the private rented sector to house homeless families, so as to increase the supply of properties available to the Council to manage the rising number of homeless households in temporary accommodation.

4.3 On 25th March 2015, Mayor and Cabinet resolved that officers should use the existing power to discharge the Council's homelessness duty into the private rented sector, pending the development of a policy setting out exclusions, and establishing operating protocols to allow staff to successfully implement the policy. Since March 2015, local pressures regarding supply and affordability of accommodation have become more acute. Furthermore, the Council approved the Location Priority Policy, summarised below.

4.4 On 11th November 2015, Mayor and Cabinet approved a Location Priority Policy which sets out how the Council will allocate individual homeless households to the supply of temporary accommodation available to the Council, including temporary accommodation located out of the borough. It also approved a Temporary Accommodation Procurement Strategy which sets out how the Council intends to procure sufficient temporary accommodation to meet demand. The Locational Priority Policy was developed to ensure the Council discharged its duty to ensure that so far as is reasonably practicable it secures that accommodation is available for the occupation of the

relevant homeless applicant in the Borough, and in light of the Supreme Court decision in *Nzolameso v Westminster CC* [2015] UKSC 22.

## 5.0 Background

5.1 The estimated aggregate financial benefits of the proposals to London Boroughs are up to £116m, plus potential savings on changing how placements are made and reduced repeat homelessness through tenancy sustainment. It will also build on the effective work through the Inter Borough Accommodation Agreement (IBAA) which has led to reduced spending through rate sharing and the application of a cap on rates paid for certain accommodation. Capital Letters will work within this system, and provide further opportunities to rationalise and secure efficiencies in the procurement of accommodation for homeless households.

5.2 It is proposed that Capital Letters will be set up according to the timescale set out in the table in **Appendix B** in a number of phases, so that not all Boroughs are required to join at first. It is proposed that Lewisham joins as an *A member*. There are a number of reasons why it would be advantageous for the Council to be part of the first wave of boroughs which are anticipated to start operations in April 2019:

5.2.1 The MHCLG subsidy per borough will be greater in the first year. This is important because it should provide a greater uplift to procurement numbers for the boroughs in the first wave. The MHCLG subsidy per property will also be greater in the first year.

5.2.2 Boroughs joining in the first year will receive an additional year's subsidy from MHCLG.

5.2.3 The boroughs involved in the set-up of the company will have much more control over the way it is organised and shaped than Boroughs who join later after the organisation has been established. Lewisham are currently represented on the steering, working and ICT procurement groups.

5.2.4 Boroughs who do not join Capital Letters will still have properties procured by Capital Letters in their area. Although Capital Letters will abide by the agreed IBAA rates, there is nevertheless a significant risk that landlords and agents will prefer to work with Capital Letters than within individual boroughs because of the profile it will have when launched, and because of the more streamlined ability to let properties across London with one organisation than with a number of different boroughs, all with slightly different terms and conditions and different personnel.

5.2.5 It will be possible for the Council to secure more PRS and leased properties within the borough or close to Lewisham through Capital Letters as the open competition between boroughs will reduce as CL will allocate properties in part by the location of the property, thus reducing the need to place families in B&B and hotel annexes, in areas of London or outside London altogether.

It would be better to secure these benefits sooner rather than later.

5.2.6 By accessing 100% of Local Housing Allowance Rates and a top up contribution from the MHCLG funding pot of £38M, the aim will be to convert all of the self-contained nightly paid accommodation (SCNP) used by the Council to leased accommodation and then transferred over to Capital Letters. This will support the Council's aim to get out of SCNP, will provide longer security of tenure for the customers and will enable the Council to discharge duty where appropriate so customers can get on with their lives and not have to focus on their homelessness. Many of these residents have been living in this SCNP for many months. The grant is also envisaged to be used to support incentives payments for resettling customers directly into the PRS. A possible contribution of 50% is being considered.

## **6. Alternative Options**

6.1 There is the option not to join Capital Letters in the first phase. However, this would result in a lost opportunity to access MHCLG grant funding in the first year that would support the better management of costs of providing TA, increase the procurement of leased TA and move away from expensive nightly paid TA and to enable the placement of households closer to home.

6.2 The Council could alternatively join the company as a *B member*. This would still enable the Council to receive services from Capital Letters but would mean that the Council has less influence over the strategic direction of the company. It also means that the Council would not have access to MHCLG subsidy for newly procured properties. The distinction between A and B membership is noted in the Articles of Association, with the relevant section copied below in Appendix A.

6.3 Should the Council join the scheme as an *A member*, this would mean that at least 50% of the Council's procurement activity for accommodation for homeless households would have to be undertaken by Capital Letters (excluding nightly paid and out of London properties which would remain with the Boroughs). This will be delivered by the secondment of 50% of the current procurement staff to Capital Letters who are working currently in the Council delivering properties to meet this existing need for temporary accommodation. This still allows the Council to retain enough staff to undertake procurement to meet all needs – especially around emergency on the day b&b accommodation – which will still be required to meet the demand from households that present daily to the Housing Needs service. The procurement team has flexibility to move and change resources as need requires. More detail is set out in Section 7 of this report.

## **7. Homelessness update and summary of how Lewisham procurement meets this need:**

- 7.1 There is an increasing burden on boroughs to source accommodation for the growing numbers of homeless families, especially in London. In March 2018 there were over 79,000 households in TA nationally, an increase of 65 per cent since March 2011. Of this number 54,500 were in London (seven out of ten households) and of those 2,000 households are in Lewisham. Shelter research suggests over 300,000 actual individuals are homeless (1 in 200 people in the UK) with a 42% decrease in available social lets since 2010/11.
- 7.2 The cost of providing TA in London in 2015/16 (£845 million) accounted for more than three quarters of the total cost of providing homelessness services nationally (£1.15 billion).
- 7.3 Currently Lewisham Council have circa 2000 households in temporary accommodation housed as below:-
- |  |     |
|--|-----|
| B&B – shared accommodation                               | 137 |
| Self – Contained Nightly Paid Accommodation              | 456 |
| LBL Hostel Accommodation                                 |     |
| 352  |     |
| Leased (PSL) and Managed Accommodation (PMA)             | 724 |
| LBL Stock (Place Ladywell & Lewisham Homes Acquisitions) | 187 |
| RP TA Stock (HALs – Notting Hill, L &Q, Phoenix)         |     |
| 144  |     |
- 7.4 The current procurement team consists of 3 x negotiators within the Property & Business Accounts Service of the Private Sector Housing Agency (PSHA). This team is responsible for procuring emergency, temporary and leased and direct let PRS accommodation for housing and Children’s services, No Recourse to Public Funds (NRTPFs), and Intentionally Homeless clients.
- 7.5 To qualify as an *A Member* a minimum of 50% of leased and direct let accommodation needs be procured through Capital Letters (not B&B or SCNP accommodation). During 2017/18 Lewisham’s procurement team delivered a total of 354 properties, of which 215 were leased and managed and 139 were direct let for prevention and/or discharge of the Council’s homelessness duty into the PRS. The expectation therefore is that around 177 properties (50% of the previous year) for 2018/19 will be procured through Capital Letters, although the exact number will be determined by the type of accommodation required. To deliver this commitment participating boroughs intend to provide staff from their existing procurement teams performing this function for Capital Letters. For Lewisham this would be 1.5 staff or their equivalent staffing budgets. This will allow the existing skills, expertise, local knowledge and client relationships held by those officers to be absorbed into Capital Letters. Even with the transfer of 1.5 staff there is sufficient resource left within Lewisham to ensure continuity of service is maintained and that service delivery is not compromised. The group of Council staff from all the participating Boroughs will be supplemented by approximately 20 additional staff employed directly by Capital Letters.

- 7.6 Council staff will work for Capital Letters under a secondment arrangement. Where secondment of staff could result in them being transferred under TUPE, it is recognised that it could result in difficulties should the Council terminate its membership of Capital Letters . Hence where TUPE applies seconded staff are asked to object to their employment being transferred to Capital Letters.
- 7.7 Boroughs will be allocated at least as many properties over the first year as were procured by the staff it seconds in the previous year. Any additional properties would be allocated to the participant boroughs in proportion to the staff resources they have contributed through secondment or funding of staff recruited directly by Capital Letters. Subject to meeting borough minimum allocations, and fair distribution of additional properties, all properties should be allocated as close to host boroughs as possible, also taking in to account the provisions of the homelessness suitability order as they apply to individual households. This should mean that a much smaller number of households have to move a long distance from their home borough than is currently the case.
- 7.8 Capital Letters will be established as a private company limited by guarantee, owned and managed by the boroughs who constitute limited liability members of the company. The liability of each member is limited to £1. It will also be Teckal compliant, meaning Lewisham or any other Local Authority that is part of Capital Letters will not be required to undertake a separate competitive tendering exercise.
- 7.9 The activity of Capital Letters will be supported by a digital Property Listing Platform (PLP). A specification for this IT system has been developed by London Ventures, in consultation with the Capital Letters working group. Soft market testing has identified a number of providers who would be able to develop a product which meets the specification requirements. Initially the LB of Ealing are leading on the procurement of this PLP on behalf of the company, funded by grant from MHCLG.
- 7.10 The timescale for programme delivery assumes the new company is established early in the 2019/20 financial year. It is envisaged that there will be two phases with the second phase being rolled out in April 2020. It is proposed that the Council works with London Councils and other London Boroughs to join the company as an A member in the first phase so that the Borough may benefit from the services provided by the collaborative enterprise to supply new non-emergency accommodation for homeless households and accesses available grant.

## **8. Financial proposals**

- 8.1 In recognition of the challenges faced by the London boroughs in particular, MHCLG are looking at all available options to directly impact on reducing the numbers of homeless households and so are proposing to allocate £38 million grant over three years, top sliced from the Flexible Homeless Support Grant (FHSG). Funding for this and next financial year are confirmed with decisions on the total fund being finalised over the coming weeks.

- 8.2 Capital Letters will be funded by a combination of MHCLG grant, rents from tenants and top up payments from member local authorities. These are the payments that are already made by local authorities for example through Discretionary Housing Payments (DHP) or other existing budgets when Local Housing Allowance (LHA) rates do not cover full rent. They will be made lower for local authorities as a result of the MHCLG subsidy.
- 8.3 Under current regulations, the Council is limited in the amount of housing benefit that can be claimed for temporary accommodation to a rate of 90% of the January 2011 LHA for the particular bed-size. The Capital Letters scheme proposes that London Boroughs procure their temporary accommodation requirements through an independent but wholly owned company. This company will pay landlords at current LHA rates + £60pw and, as an independent organisation will be able to attract 100% of the current LHA rates as housing benefit.
- 8.4 The £60 element will be funded via a combination of £30 MHCLG grant and a £30 top-up from local authorities once the authority becomes a member of the Capital Lettings Scheme. This applies only to newly leased units procured under the scheme and does not cover nightly paid accommodation and or existing leased units. The financial arrangements remain under discussion
- 8.5 The financial modelling is currently under discussion with Capital Letters and will be agreed and finalised in the near future. In all scenarios it is considered that the Council would be in a better financial position in the short term whilst the grant is available. The main components which contribute to the level of bottom line saving relate to:
- how much of the MHCLG grant could be available to support the actual lease rent;
  - how many providers/properties out of the current 456 SCNP would agree to convert to a leased product. 271 of these properties are In Borough. Conversion of the Out of Borough properties may be more problematic depending on the rent and management fee rate agreed by the individual Boroughs ;
  - what future management arrangements would be in place – either management by Lewisham Homes or by Capital Letters – as the costs vary in the proposals.

Detailed financial costings are being undertaken by officers with the finance team but in all scenarios there is considered to be a saving to the Council. However until the variances above are determined then exact savings figures cannot be confirmed. These are considered in more detail in Section 8 below.

- 8.6 The current proposal in this report is to become an *A member* and move away from the use of B&B and self-contained nightly paid accommodation, converting them into leased accommodation or PRS direct lettings. It is not currently proposed to transfer existing leased accommodation (PSL/PMA) at this stage due to the competitive rates currently negotiated for these schemes.

8.7 Currently the average length of stay of a homeless household in self-contained nightly paid accommodation is 241 days (Approx. 8 months). Evidence suggests that a significant number of households temporarily housed in self-contained nightly paid accommodation are not encouraged or motivated to bid for their permanent housing, simply because they are satisfied with the standard and quality of their accommodation, as they are largely self-contained street properties. The concerns these families do face in SCNP relate to the issue of the longer term security which could be resolved under the Capital Letters model which would change the accommodation from a nightly paid to a leased arrangement. This would then be a positive step for these families in terms of addressing their homelessness and providing settled accommodation. This will however mean that they will not be able to continue to bid for social housing through the housing register as a homeless household, but with an existing queue of 10,000 households currently waiting on the housing register securing a social home, with move rates falling every year to a new low, is a lengthy process for all. Lewisham have long recognised that the link between homelessness and a social housing offer is not sustainable. Utilising the private rented sector through Capital Letters is a real and viable option for our homeless households to take control of their lives and move on from homelessness. This discharge of duty can apply if the property is managed by Capital Letters or remains managed by Lewisham Homes and will be part of the ongoing discussions with both Lewisham Homes and Capital Letters. This approach is in line with the Discharge of Duty policy agreed at Mayor and Cabinet in March 2015 which recognised that to address homelessness a range of housing options need to be used. However Capital Letters is only the framework in which the properties are going to be procured. How they are used by the Boroughs is a decision that will be made locally by individual Boroughs.

8.8 By converting as many of these 456 self-contained units into leased accommodation and transferring them across to Capital Letters, the Council aims to discharge its full housing duty via private rented sector offers (PRSO) to Capital Letters as the landlord. However this will all depend on how successful the Council is in negotiating the conversion from nightly paid into leased. Due to the financial modelling of Capital Letters, initial approaches to providers are positive.

## 9. Risk Management

9.1 The details around the management of risk will form part of the development work over the coming weeks. Risks should be mitigated by the common nature of all members of the Board being London Local Authorities with common aims and objectives.

9.2 Potential identified risks and how these have or will be dealt with include:

1. The Council's financial risks in relation to the liabilities of the company – these will be limited to £1 as the company is limited by guarantee.
2. Risk that the Council decides to leave Capital Letters (by way of 6 months' notice) - there will need to be decisions relating to the

rights over each property and the responsibilities towards the household which would need to be negotiated and would depend on a number of factors, largely if the property is being used for temporary accommodation by the borough or as a PRSO. If it is the latter it is likely the agreement will be that the properties remain with Capital Letters as the borough has no ongoing responsibility to the tenant whilst they are housed in that property. In the former case – as the duty has not been discharged the property would still be available for use by the borough for the remainder of the lease. This detail would need to be confirmed because consideration needs to equally be given to the futureproofing of Capital Letters itself.

3. Risk that Capital Letters cease to operate - again the rights over the properties and responsibilities towards the households would need to be negotiated with Capital Letters and the legal owners of the properties and this would be done in accordance to the framework of the homelessness legislation and the Councils duty to the household.
4. Capital Letters and its operations must be GDPR compliant - all Members are London Boroughs and London Councils and so are experienced at dealing with data sharing protocols and GDPR. All operations will be GDPR compliant and sign off by Lewisham's information governance team. This work is ongoing and will pick up pace as the company is established and staff recruitment. Some of this work will be undertaken by the recently appointed project manager on behalf of Capital Letters.
5. Funding risk of £38m is only for 3 years and there are no indications whether this funding would continue in the future as MHCLG do not wish to prejudge the outcome of the spending review - Capital Letters is a good business model that will save Councils money from the general fund that is currently used to support homelessness services. The grant funding is also only one part of the picture as access to 100% LHA is a positive in Lewisham. This combined with other flexibilities around grant funding for temporary accommodation and the savings and flexibilities delivered through this scheme. This will support the work of the Boroughs becoming self-sufficient in the funding of their homelessness responsibilities going forward. The Housing Needs service is also in the middle of a business transformation programme that up-streams the work of the team and puts real focus on homeless prevention.
6. Conflict of interest risks in the role of the Council member on the Board - this is common and managed in other circumstances in Lewisham and so best practice will be followed including the adoption of the Officers Mandate and Governance Guide. The risk here is also mitigated by the agreed principles of the business and membership being all London Boroughs. If there is a circumstance where the member cannot vote then they can withdraw on the basis of a conflict of interest.
7. The risk of Capital Letters not meeting its procurement target - this could be countered and managed within the Council by recruiting additional staff within the Private Sector Housing Agency (PSHA).

## 10. Financial implications:

- 10.1 The current overall budget for nightly paid accommodation which encompasses both shared and self-contained accommodation is £2.8m.
- 10.2 At the end of May 2018, there were 456 families in self-contained accommodation of which 271 were accommodated in-borough. Accommodation is currently procured by the private sector housing agency procurement team, with on-going day to day tenancy management undertaken by Lewisham Homes via a management fee for that purpose.
- 10.3 The table below provides an analysis of the current full year costs and income for the 456 current self-contained nightly paid units used for homeless families, and provides a comparison with the Capital Letters scheme both internally managed (by Lewisham Homes) and externally managed (by Capital Letters). It also assumes that the rent shortfall is covered by LBL in full whilst the exact detail of the Capital Letters financial model is completed and access to MHCLG funding is confirmed. Of the 456 units, 271 units are in use in-borough.

| <b>Analysis of 456 Units</b>                       | <b>Current Position</b> | <b>CL Scheme (Internal management)</b> | <b>CL Scheme (External Management)</b> |
|--|-------------------------|--|--|
| Payments to Landlords                              | £8.7m                   | £7.4m                                  | £7.4m                                  |
| Rental Income (HB)                                 | -£8.7m*                 | -£6.0m                                 | -£6.0m                                 |
| Rental Shortfall                                   | £0.0m                   | £1.4m                                  | £1.4m                                  |
| Management Costs                                   | £0.3m                   | £0.3m                                  | £0.7m                                  |
| HB Limitation Recharge                             | £2.7m*                  | -                                      | -                                      |
| Rent top-up to CL                                  | -                       | £1.4m                                  | £1.4m                                  |
| Total Cost to LBL                                  | £3.0m                   | £1.7m                                  | £2.1m                                  |
| Budget   | £2.3m                   | £2.3m                                  | £2.3m                                  |
| <b>Net Cost/(Savings)</b>                          | <b>£0.7m</b>            | <b>-£0.6m</b>                          | <b>-£0.2m</b>                          |
| Cost/(Savings) related to the 271 units in-borough | £0.3m                   | -£0.4m                                 | -£0.1m                                 |

\*Currently HB is received in full onto an LBL rent account. However, as this is in excess of the rate claimable @ 90% of the January 2011 LHA rate a recharge is applied to recover the overpaid amount.

- 10.4 The conversion of the accommodation from nightly paid to leased is to be phased over a period of time, which could exceed 12 months.

- 10.5 Analysis shows that a cost reduction of £0.9m (current net cost plus actual savings above), and a minimum full year saving of £0.2m (against budget) could be achieved by negotiating with landlords to turn the current nightly paid agreements into leased accommodation and transferring the units into the Capital Lettings scheme.
- 10.6 The exact cost reduction and savings would be dependent on how many units were transferred and the timescale involved in negotiating and effecting the change. Under current regulations, the Council is limited in the amount of housing benefit that can be claimed for temporary accommodation to a rate of 90% of the January 2011 LHA for the particular bed-size.
- 10.7 The financing arrangements for the Capital Letters Company are outlined in section 8 above. The company is able to access MHCLG grant and 100% LHA rates. This enables it to provide a financial package which is attractive to both London Local Authorities and London private sector landlords. The Council's financial risks in relation to the liabilities of the company will be limited to £1 as the company is limited by guarantee.
- 10.8 Staff who are seconded to Capital Letters from the authority, will remain on the authority's payroll, but will be subject to a secondment agreement to be negotiated between LB Lewisham and Capital Letters. As this will be negotiated on existing terms and conditions, it is not expected to incur any additional financial liability for the authority.
- 10.9 Paragraph 9.2 section 7 highlights the risks of Capital Letters falling short of meeting its procurement target, potentially resulting in the Private Sector Housing Agency (PSHA) needing additional staffing requirements. This is currently not budgeted for and could either reduce the savings achieved in joining this scheme or require additional resources to be invested into the service in these circumstances.

## **11. Legal Implications**

- 11.1 The Council is considering participating in a London Wide procurement vehicle to deliver new supply of leased and private rented sector (PRS) accommodation for families who are homeless or threatened with homelessness. The report sets out the reasons for and implications of the proposal and requests the necessary authority to proceed to join Capital Letters as an "A" member. The report also requests that authority be delegated to the Executive Director for Resources & Regeneration, in consultation with the Executive Director for Customer Services and the Head of Law, to agree the final terms of and enter into the Members' Agreement, Service Level Agreement and all other documentation required for the Council's membership of Capital Letters Limited. The Council has been provided with advanced drafts of the suite of documentation that has been prepared by Trowers & Hamlins Solicitors for use by Capital Letters Limited. The key matters dealt with in the Members Agreement are set out in the body of this report. The final terms will therefore be agreed under the authority delegated by this report.

- 11.2 The Council has a wide general power of competence to do anything that individuals generally may do (Section 1 of the Localism Act 2011). The Council can rely on this power to carry out housing development, to act in an “enabling” manner in relation to the provision of new affordable housing. Further, the Council can undertake activities that are either economically, socially or environmentally beneficial for the authority and residents (Local Government Act 2000). Finally, the Council has a duty to obtain best value in the procurement of works, services and supplies and to secure continuous improvement in the way functions are carried out, having regard to a combination of economy, efficiency and effectiveness (Local Government Act 2003).
- 11.3 The Council has a statutory homelessness duty which this proposal is intended to support. The Council must be satisfied that this proposal will enable it to continue to meet its statutory duty and that the risks and benefits have been properly considered and weighed up.
- 11.4 General decision making principles require consideration of all relevant matters, including financial impacts. Other legal implications are contained in the body of this report.
- 11.5 This report recommends the Head of Housing and Refugee Services be appointed to act as the Council’s Representative on the Board of Capital Letters Limited. The Officers’ Mandate and Governance Guide, which is attached to this report as Appendix D, sets out the Representative’s roles, responsibilities and authority to make decisions.
- 11.6 The Officers’ Mandate and Guidance Note deals with matters of governance generally and sets out the Council’s proposed structure for internal decision-making and authorisations in relation to all aspects of the Council’s role within Capital Letters. The Representative will be fulfilling an operational role as representative of the Council within the Company itself. The Executive Director for Customer Services will have a strategic overview role ensuring that the Representative is acting properly and in accordance with the Council’s interests. The Officers’ Mandate and Guidance Note will act as a guide for the Representative and sets out his/her core duties as provided at common law, under Company legislation and in the Company’s Articles and Memorandum of Association.
- 11.7 Acting as the Council’s Representative on the Board of Capital Letters means that the Council’s Representative can incur personal liability arising out of his/her actions in respect of the Company. As a result of this personal liability, it is common practice for Council employees appointed to become a representative in this manner to request an indemnity from the Council. The Council has the power using article 3 of the Local Authorities (Indemnities for Members and Officers) Order 2004/3082 to indemnify its representative. This will protect the officer from personal liability incurred due to his/her role as representative but will not cover criminal or fraudulent acts of the officer. The appointment of the representative will require the Council to amend its insurance arrangements accordingly to facilitate the giving of the indemnity. The terms of the proposed indemnity are set out in Appendix E.

## **Employment Implications**

11.8 TUPE is unlikely to apply to the Council staff that will work for Capital Letters under a secondment arrangement. Nevertheless to provide clarity on their employment position they should confirm their objection to transferring their employment under TUPE to Capital Letters should TUPE be found to apply.

11.9 The Council must comply with the public sector equality duty (the equality duty or the duty, see Equality Act 2010 - the Act). 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.

11.10 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.

11.11 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 at 7.6 above. 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. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations. 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.

11.12 Guidance from the Equality and Human Rights Commission (to which the Council must have regard) includes information which deals particularly with the equality duty, and 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.

## **12 Best Value (BV) Implications**

12.1 This programme is intended to enable Boroughs to access an improved supply of good quality accommodation to prevent and relieve

homelessness and where necessary for use as temporary accommodation. A cost benefit analysis has been conducted on a London-wide basis and identified four principal areas of savings. These are: more stable tenancies, improved productivity, co-ordination benefits (pricing) and reduced TA spending. If this proposal is agreed, the savings achieved will be monitored and reported to Members as part of the overall Homelessness budget position.

### **13. Equalities Implications**

- 13.1 The proposed Pan-London procurement company will not have any Material impact on the local need for temporary accommodation and prevention or the level of service purchased on behalf of the Council in this market. Apart from the benefits to the Council in terms of price, procurement efficiency and availability of accommodation, the key benefits for service users will be in relation to the quality and location of accommodation, as well as the provision of tenancy sustainment support. Given the well understood negative impact of temporary accommodation and homelessness on a wide range of social and well-being outcomes, and the profile of service users in terms of groups of people with protected characteristics, the services delivered by the proposed procurement company will have a positive impact in promoting the Council's statutory and strategic policy outcomes for equalities

For more information please contact Madeleine Jeffery (Private Sector Housing Agency Manager) at [madeleine.jeffery@lewisham.gov.uk](mailto:madeleine.jeffery@lewisham.gov.uk)

## **Appendices**

### **Appendix A, extract from Articles of Association**

Admission of Members and cessation of Membership:

The Members of the Company shall be divided into "A" Members and "B" Members. "A" Members and "B" Members will have the rights as specified in these Articles.

The subscribers shall be the first Members of the Company and shall be designated as "A" Members.

The Members may admit any other Public Body to Membership on receiving:

- A written application confirming that it agrees to be bound by the provisions of the Articles; and where a Members' Agreement has been entered into, a signed deed of adherence to the Members' Agreement from any such body.

A Member admitted under article 12.3 above shall be designated as an "A" Member or a "B" Member by the "A" Members upon admission.

A Public Body shall only be admitted as an "A" Member if they agree to ensure that at least 50% of the total procurement for that body of dwellings to support the discharge of that body's statutory responsibilities for homeless households or those at risk of homelessness (excluding nightly paid properties or properties outside of the London area) is to be procured by the Company.

A Public Body admitted to Membership who does not agree as per article 12.5 but will receive services from the Company will be admitted as a "B" Member.

The rights powers and obligations of each Member under these Articles shall take effect on the admission of that organisation to Membership.

Each Member shall nominate a person to act as its representative in the manner provided in Section 323 of the Act. Such representative shall have the right on behalf of the Member to attend meetings of the Company and vote thereat and to exercise all rights of Membership on behalf of the Member. The relevant Member may by written notice to the Company revoke the nomination of such representative and may nominate another representative in his place.

The rights of each Member shall be personal and shall not be transferable and shall be exercisable only by the Member or its Voting Representative.

Membership shall not be transferrable.

An "A" Member shall cease to be a Member of the Company if (i) it serves no less than six months' written notice to do so or (ii) is removed or expelled for

any reason by ordinary resolution of the Members passed at a General Meeting or under any agreement entered into between the Members from time to time and (iii) if at any time the Member ceases to be a Public Body or (iv) otherwise in connection with these Articles and the noting of the cessation of Membership in the Company's register of Members shall be conclusive in this regard

A "B" Member shall cease to be a Member of the Company if (i) it serves no less than six months' written notice to do so or (ii) is removed or expelled for any reason by ordinary resolution of the Members passed at a General Meeting or under any agreement entered into between the Members from time to time and (iii) if at any time the Member ceases to be a Public Body or (iv) otherwise in connection with these Articles and the noting of the cessation of Membership in the Company's register of Members shall be conclusive in this regard.

At the end of each financial year, the "A" Members shall each confirm to the Company (in a form that shall be agreed by the "A" Members from time to time) the percentage of its total procurement for that "A" Member of dwellings to support the discharge of its statutory responsibilities for homeless households or those at risk of homelessness (excluding nightly paid properties or properties outside of the London area) that was undertaken via the Company that financial year. In the event that this percentage is less than 50% the "A" Members have, at their discretion, the ability to terminate the "A" Member's Membership in accordance with article 12.14.

The decision to terminate an "A" Member's Membership in accordance with article 12.13 shall be taken at a meeting of the "A" Members (i) called on no less than 7 clear days' notice; (ii) attended in person or by proxy by at least 50% of the "A" Members (excluding the "A" Member whose Membership is being considered for termination); and (iii) made by no less than 50% of the total "A" Members excluding the "A" Member whose membership is being considered for termination.

In the event that an "A" Member's Membership is terminated pursuant to article 12.14 the Membership shall terminate immediately upon the decision having been taken.

In the event that an "A" Member's Membership is terminated in accordance with article 12.12 that Member may be re-admitted to the Membership of the Company as a "B" Member, subject to compliance with article 12.3 and 12.6.

## 11. Appendix B Timetable

| Date           | Milestone  |
|----------------|--|
| June 2018      | <p>Collaborative Procurement Group signs off Capital Letters documentation.</p> <p>Potential first phase (year 1) boroughs identify themselves and begin internal approval processes (8 boroughs minimum required in first year).</p>  |
| July 2018      | Borough Cabinet Papers drafted and submitted   |
| September 2018 | <p>Shadow Capital letters Directors Group meets</p> <p>Business case to be presented to London Councils' Chief Executives London Committee</p> <p>Procurement of IT system begins with OJEU Notice</p>   |
| October 2018   | <p>Capital Letters Incorporated as an organisation</p> <p>Business case to be presented to London Councils Leaders' Committee</p> <p>Cabinet Approval with first phase boroughs received</p> <p>Commence discussions with boroughs re possible resource including secondments</p> <p>Recruitment of CEO and key leadership team begins</p> |
| April 2019     | Formal launch of Capital Letters   |

## **12. Appendix C – Allocations**

### **Allocations**

The method by means of which properties procured by Capital Letters will be allocated to individual boroughs are set out in more detail in the Capital Letters Allocations policy. The main principles are:

#### **Principle 1.**

The number of properties (excluding HMOs and studios) procured for each borough over the previous year using the resources and contracts transferred into Capital Letters would set a minimum limit for allocation of properties to that borough. This should guarantee that (unless market conditions have markedly worsened) each borough will get at least as many properties over the first year as were procured by the staff it seconds in the previous year. Studios and HMOs will not be counted in these minimum allocations, but will be allocated separately according to location and borough need.

#### **Principle 2.**

It is expected that significantly more properties than this will be procured in practice, due to staff working collaboratively and because of the additional procurement resources available to Capital Letters. Properties procured above those numbers would go to the participant boroughs according in proportion to the staff resources they have contributed through secondment or funding of staff recruited directly by Capital Letters.

#### **Principle 3.**

Boroughs will be able to specify the proportion of each type (PRS, PSL etc.) and size of property that they want, as well as making requests to meet urgent needs for specific property types as they arise. These expressed preferences will guide the Capital Letters procurement strategy, and as much as possible they will be met, bearing in mind that some sizes and types of property are harder to obtain than others.

#### **Principle 4.**

Subject to meeting borough minimum allocations, and fair distribution of additional properties, all properties should be allocated as close to host boroughs as possible, also taking in to account the provisions of the homelessness suitability order as they apply to individual households. This should mean that a much smaller number of households have to move a long distance from their home borough than is currently the case.

#### **Principle 5.**

Any additional properties procured beyond the needs of the participating boroughs may be offered to non-participant boroughs.

## Clarity:

- The basis of the arrangement we want with CL - Leased accommodation – discharge and PRSOs – in and OOB SCNP. We need to prove that this is an option that tenants would be happy with as they don't bid and have been there for some time. Also this is not shared – it is actually street properties. Need to include the management arrangement – so CLs will need to manage the income collection for us to discharge. The provider will do the rest of the management. We have had initial discussions with LH and further works will be needed once the details decided. There is also some work to do around the change for CL.
- Board membership – Head of Housing & Refugee services to be the rep in consultation with the cabinet member for Housing? (Check with Paul Bell) ; Delegated Authority??? Where do we need this. SN to check the Besson Street arrangement. We are developing a Mandate and Governance Guide for M&C approval
- Indemnity insurance – SN to write KK to get this insurance in place for GMs post.
- HR – TUPE – Only secondment no TUPE – HR lawyer to give us form of words to use in the report. Ms Patel
- Under risk management – details to be finalised from Alex's mail – how the risks could be managed. Now have appointed a dedicated project manager – Lewisham is on the Steering Group & Working Group. Points 1 & 2 of Alex mail – put risk and possible options and then say working on it;
- Conflict of interest – examples of other type of organisations that have this; All London Borough housing Directors; will get guidance.