

## Notice of KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendix A is not available for public inspection as it contains or relates to exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. It is exempt because it refers to confidential commercial information and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

<b>Subject Heading:</b>	<b>Private Property Acquisition Programme (PPAP)</b>
<b>Decision Maker:</b>	Patrick Odling-Smee - Director of Housing
<b>Cabinet Member:</b>	Councillor Keith Darvill – Lead Portfolio Holder for Housing Services
<b>SLT Lead:</b>	Barbara Nicholls, Strategic Director, People
<b>Report Author and contact details:</b>	Darren Alexander, Assistant Director Housing Demand <a href="mailto:darren.alexander@havering.gov.uk">darren.alexander@havering.gov.uk</a> 01708 43 3751
<b>Policy context:</b>	The policy context is associated with the Council's statutory duty to prevent homelessness.
<b>Financial summary:</b>	Over a period of 2 years the Council will replace its supply of 150 private rented properties through third party acquisition by an institution. The acquired properties will replace properties withdrawn from the

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	<p>market, mainly by private individuals. Annual rents will increase by inflation that are likely to outstrip increases in supported rents representing a risk to general fund that needs to be quantified and reflects spending pressures within the Medium Term Financial Strategy (MTFS). As current leases expire these costs also represent spending pressure through contracted dilapidation costs. Going forward the department should seek to minimise these costs through contractual terms.</p>
<b>Reason decision is Key</b>	<b><i>(a) Expenditure or saving (including anticipated income) of £500,000 or more</i></b>
<b>Date notice given of intended decision:</b>	25 <sup>th</sup> March 2024
<b>Relevant Overview &amp; Scrutiny Sub Committee:</b>	People
<b>Is this decision exempt from being called-in?</b>	No

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**The subject matter of this report deals with the following Council Objectives**

People - Things that matter for residents X

Place - A great place to live, work and enjoy

Resources - A well run Council that delivers for People and Place.

## **Part A – Report seeking decision**

### **DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

1. Cabinet on the 14<sup>th</sup> June 2023 agreed the recommendation to:
  - agree to delegate to the Director of Housing (Living Well) in consultation with the Lead Portfolio Holder for Housing (Climate Change & Housing Needs), the authority to negotiate the detailed terms of, and the authority to agree that the Council enters into, an Agreement for Lease (or a broadly equivalent contractual instrument with the same commercial effect) with the REIT (and any necessary ancillary agreements)
2. The Council intends to manage its mixed portfolio of accommodation options in the borough in order to prevent homelessness through replacing existing Private Sector Leases (PSLs). The Council will enter into a contractual arrangement with a Urban Impact Plumpton Ltd Plumpton Ltd, a real estate investment trust (REIT) which will acquire and procure the renovation of properties to a lettable standard (at no upfront cost from the Council) before leasing them to the Council for a term of 10 years. The Council will underlet those properties to a new commercial entity on a back-to-back basis so that they can be let to households in housing need on assured short hold tenancies (AST). The establishment of the new commercial entity will be subject to a separate Cabinet report.
3. This report describes the principles and structure of the proposed contractual arrangement with Urban Impact Plumpton Ltd Plumpton Ltd, (REIT) for the acquisition of properties, together with the reasoning for supporting its implementation, and sets out specific Housing Services property requirements associated rental rates.
4. The proposed course of action is part of wider strategic response to ensure sufficient accommodation for the residents of the borough. The current proposal is to seek to acquire up to 150 properties, any increase in the number of properties should be considered as part of a wider strategic approach.
5. In accordance with the Cabinet decision of the 14<sup>th</sup> June 2023, this key decision approves the final documentation for between the Council and Urban Impact Plumpton Ltd.
6. Note that the Council will look to secure a third party relationship with a commercial entity to undertake the underlease arrangements prescribed in the final documentation

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### **AUTHORITY UNDER WHICH DECISION IS MADE**

7. Cabinet on the 14<sup>th</sup> June 2023 agreed the recommendation to:
8. agree to delegate to the Director of Housing (Living Well) in consultation with the Lead Portfolio Holder for Housing (Climate Change & Housing Needs), the authority to negotiate the detailed terms of, and the authority to agree that the Council enters into, an Agreement for Lease (or a broadly equivalent contractual instrument with the same commercial effect) with the REIT (and any necessary ancillary agreements);
9. The Director of Housing (Living Well) having negotiated the terms of the Agreement for Lease and any other necessary ancillary agreements is therefore requested to authorise (having consulted the Lead Portfolio Holder for Housing Climate Change & Housing Needs) the completion of the following documents to give effect to the transaction detailed within this report:
  - a. Head Lease Appendix 1
  - b. Portfolio agreement Appendix 1
  - c. Minimum property standards Appendix 1
  - d. Certificate of title Appendix 1

### Background

10. In June 2023 Cabinet approved the Chalkhill Private Property Acquisition Programme (PAPP).
11. The Cabinet report recommended that a Real Estate Investment Trust (REIT) will acquire up to 150 units and deliver these to the Council in the first 15-18 months from mobilisation. Cabinet was also advised that there was potential for further units up to an overall total of 400 to be acquired thereafter if the Council and the REIT agree to extend the arrangement. Such extension would be the subject of a future Cabinet decision. The REIT will not be subject to a contractual obligation to acquire properties, rather it will be commercially incentivised to do so. Accordingly, an element of delivery risk (i.e. to the extent that the REIT is unable to identify and acquire suitable properties) is part and parcel of the proposals.
12. Subject to the current homeless demand management model continuing to be effective, there is demand for Havering Council to deliver 400 units a year and will have to diversify its supply options to alleviate the pressures and over-reliance on current PSL Accommodation Scheme and Hotels.
13. Properties will be acquired on the open market and brought up to an agreed and specified lettable standard required by the Council at no extra cost. The required standard is set out in the "Minimum Property Standard" to the portfolio agreement. The Council will then be granted a lease (in each case for a term of 10 years) by the REIT (at an index-linked lease rent) and, once established, enter into an underlease with a commercial entity who will provide Assured Shorthold Tenancies (ASTs) for tenants nominated by the Council. The lease rent will be based on the 2020 LHA rates relevant to the size and location of the

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property less a management fee. These are set out in Appendix 1 of the portfolio agreement.

14. Tenant rents will be set at the maximum (2024) LHA level for the area. Rental income under the ASTs will go to the Council who will take a fee for the management and maintenance of the property as well as remunerate associated staffing costs. The commercial entity may not have contractual privity with the REIT and the Council is prepared to bear any shortfall in expected rental income collected by the commercial entity under the ASTs due to arrears / voids. The Council will manage the properties on behalf of a commercial entity through a management agreement. Accordingly the commercial entity will look to be insulated from both financial and management risk / exposure under the proposed arrangements.
15. Estimates of the Council fees/costs are based on average costs per property typically incurred by the Council on existing PSL stock (including tenant damage), together with an allowance to cover landlord repairs and maintenance costs such as gas servicing, day to day repairs etc. Any costs incurred above the allowance are the responsibility of the Council. The Council will cover rent arrears and void rent loss in excess of the allowance amount (including any Council tax, utility costs etc.).
16. Save for circumstances where pre-existing leasehold arrangements supersede this (e.g. where the REIT has acquired a property on a long leasehold basis) the REIT will provide buildings and public liability insurance. In all circumstances an insurance rent will be payable by the Council under its own leasehold interest.
17. The options for the end of the 10 year lease are:
  - a. Renew the lease for a further 10 years subject to terms being agreed with the REIT and the commercial entity
  - b. Seek to purchase the property through the HRA
  - c. Hand back the property at the end of the lease term.
  - d. Seek to secure another provider to renew the lease with the REIT with 100% nominations to Havering
18. The REIT is now identified as Urban Impact Plumpton Ltd. Urban Impact Plumpton Ltd will form the holding entity for other, similar, affordable housing transactions albeit each transaction will be ring-fenced. It is envisaged that the shares in Urban Impact Plumpton Ltd will be sold to a broad base of investors. Chalkhill have obtained underwriting commitments to fund the entirety of the commercial proposal under discussion with the Council. The Council will not be involved in the formation or configuration of the Urban Impact Plumpton Ltd however it may be involved in the formation and configuration of a company to take the underleases for the stock, once established.
19. Therefore the Council has developed this proposal with Chalkhill Partners Limited (Chalkhill), a financial adviser regulated by the FCA. Chalkhill is promoting the transaction and will provide structuring services to Urban Impact

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Plumpton Ltd, the Real Estate Investment Trust (REIT), having now been formed. Chalkhill's fees will be paid by the Urban Impact Plumpton Ltd, (REIT).

20. The Council's contractual counterparty in the proposed property acquisition and letting structure is Urban Impact Plumpton Ltd. Urban Impact Plumpton Ltd is a UK domiciled entity. Corporate entities of this kind are typical holding vehicles for real estate in general, reflecting their tax benefits which, in turn, lower the cost of capital.
21. Urban Impact Plumpton Ltd will acquire properties (on a freehold or long leasehold basis) from the open market and lease those individually to the Council (in each case for a term of 10 years) pursuant to an Agreement for Lease (or a broadly equivalent contractual instrument with the same commercial effect). The properties acquired will conform with agreed property selection criteria which pertain to locality and bedroom numbers. The rent payable by the Council to the Urban Impact Plumpton Ltd will be based on the April 2020 LHA rate less a fixed sum for the management and maintenance of the properties (subject to subsequent annual increases in lease rental charges which will be based on the Consumer Price Index (CPI)). There is no cap and collar. The Council will look to underlet those properties to a commercial entity on a back-to-back basis and then manage the properties on behalf of the commercial entity through a management agreement.
22. The REIT will also enter into a contractual arrangement with Core Residential Ltd (Core Residential). Core Residential was specifically set up in 2018 by Chalkhill to manage the process of acquiring and refurbishing properties to be leased to local authorities. Core Residential Ltd has been dormant in the interim, awaiting its first transaction. It has an established panel of approved employer's agents, conveyancing solicitors and refurbishment contractors.
23. Core Residential will be a counterparty to the REIT as part of the process to acquire and refurbish the properties (to an agreed lettable standard specified in the contract documents) before they are leased to the Council as described above. Core Residential's contract will be with the REIT and its fees paid by the REIT. While the Council will not be able to 'reject' a property which accords with the specified property selection criteria and lettable standard, it is proposed that the Council will have a 3 month period from the date on which an acquired and refurbished property is handed over by the fund during which the Council can notify the REIT of defects. Such notified defects will either be remedied or ultimately result in a termination of the relevant lease. The Council is comfortable with this level / means of protection regarding the suitability of acquired properties.
24. Purpose of REIT to the Council
25. The Council's Prevention of Homelessness and Rough Sleeping Strategy, adopted by Cabinet in September 2020 set out the objective of reducing the number of households and the overall cost of temporary accommodation (TA). This proposal intends to meet both objectives through the proposed property acquisition and leasing structure.

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26. The 150 units acquired by the REIT will be used to address the following:

- Replenish old and tired Private Sector Lease (PSL) stock including those being handed back
- To exit families and children out of chain bed and breakfast hotels
- To move on families from hostel accommodation

27. We have reached the final documentation stages and have produced the following:

- a. Head Lease Appendix 1
- b. Portfolio agreement Appendix 1
- c. Minimum property standards Appendix 1
- d. Certificate of title Appendix 1

### 28. Headlease

29. The Landlord will be granted a head lease of each of the Premises pursuant to a put option under the Headlease Portfolio Agreement.

### **30. Refurbishment and repair**

- a. Pursuant to the Portfolio Agreement the REIT are responsible for the undertaking of refurbishment and redecoration ("the Works") to the Properties prior to the grant of a Superior Lease.
- b. LBH shall procure that the Fund complies with its obligations in clauses of the Portfolio Agreement and will not accept a Superior Lease of any of the Properties unless and until the Fund has complied with such clauses.
- c. Following the grant of each Underlease the ongoing maintenance and repair of the Properties shall be in accordance with the terms of the Superior Lease and Underlease.
- d. In the event that either the REIT or LBH do not comply with their obligations the commercial entity shall be entitled to serve written notice on LBH and if LBH fails to remedy or procure the remedy of the breach the commercial shall be entitled to carry out the required works itself and LBH shall reimburse the commercial entity for any costs it incurs in this regard within 10 days of receipt of an invoice from the commercial entity or allow deduction from the rent.

### 31. Minimum property standards

One of the pre-conditions to the grant of each Headlease to the Council is that the Landlord will be required to carry out works to each set of Premises to bring them into compliance with a set of 'Minimum Property Standards', which will be annexed to the Headlease Portfolio Agreement.

### 32. Headlease Portfolio Agreement

The Headlease Portfolio Agreement contains the put option mechanism for the grant of the Head leases to the Council, as well as the conditions precedent to lease grant - the key conditions being: (1) Acquisition of premises (2) LTA 54 contracting out procedure completed (3) Conveyancer's Certificate issued (3) Works completed and Handover Compliance Certificate, report and collateral



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warranty issued (4) Vacant Possession and (5) Property Selection Criteria Compliance Certificate issued.

### 33. Certificate of title

The Council will not be carrying out property/title due diligence on any of the Premises. It will instead (as a pre-condition to lease grant) be issued with a Certificate of Title (the "Conveyancer's Certificate") by the Landlord's solicitor, containing statements and verifications of the title to each Premises. This will be in an agreed form annexed to the Headlease Portfolio Agreement. It is intended that any under tenant will be able to rely on this Certificate too.

## **OTHER OPTIONS CONSIDERED AND REJECTED**

34. Enter into agreement and this will enable to Council to mitigate the existing overspend on high cost hotel accommodation within the next 18 months  
or

35. Do nothing and we are likely to continue to experience housing supply issues that will impact our ability to exit families from hotels.

## **PRE-DECISION CONSULTATION**

N/A

## **NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Darren Alexander

Designation: Assistant Director, Housing Demand

Signature:



Date: 25.03.24

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

#### 36. General

37. The Council has power under section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. Pursuant to section 120 in the same Act the Council is empowered to acquire property for its statutory purposes (including as lessee).
38. The Council may further rely upon the General Power of Competence provided for in Section 1 of the Localism Act 2011 to pursue the proposed acquisition and letting structure described in this report. The general power is a wide power which allows the Council to do anything that an individual may do (subject to public law principles), but it is subject to certain statutory limitations (of which there are none which apply in this context). For completeness, the purpose of the transaction is not for the leased properties to be held by the Council as an investment (thereby engaging other relevant statutory provisions).
39. The Council has a statutory duty under Sections 8 and 9 of the Housing Act 1985 to consider housing conditions in its district and the needs of the district with respect to the provision of further housing accommodation, and provides the Council with related powers to provide housing accommodation by building and acquiring houses or by converting other buildings into houses. These powers can include provision via third parties.
40. The Council also needs to have regard to its obligations under the Subsidy Control Act 2022 in relation to the entire proposed transaction, including without limitation where it considers the best consideration reasonably obtainable in relation to the proposed grant of under leases to MLH has not been obtained.

#### 41. Housing Duty

42. When a family or individual presents to the Council as homeless, the Council has a statutory duty under Part VII of the Housing Act 1996 to consider this application and make a decision as to whether the family/ individual is homeless, eligible, in priority need, and not homeless.

#### 43. Fiduciary Duties

44. The Council's fiduciary duties could be briefly summarised as it acting as a trustee of tax and public sector income on behalf of its rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its business rate and Council-tax payers.

**FINANCIAL IMPLICATIONS AND RISKS**

**45. Financial implications and risks:**

46. In summary, the PPAP envisages that up to 150 units be acquired and delivered in the first 15-18 months, with the potential for further units up to an overall total of 400 to be acquired thereafter if the Council and the REIT agree to extend the arrangement, as part of a wider strategic assessment. Any increase would be subject to a new cabinet decision. The properties will become part of a Private Rented Supply for 10 years and then be returned to the REIT (subject to a dilapidations arrangement).
47. The proposals set out the financial implications relating to the leasing of the properties. Consideration must also be given to the accounting treatment of the lease, specifically International Financial Reporting Standard 16 (IFRS 16) to ensure that hidden costs are not being incurred that would offset any benefit. The way in which the council chooses to administer the properties, the length of the lease and other factors may all have a bearing on how the properties financed. It is also important that this is kept under review throughout the lifetime of the lease as accounting standards change and are often subject to clarification.
48. Although the Council will receive revenue in the form of an allowance for the provision of a chargeable management and maintenance service which it intends to deliver; with the volatility of the current financial climate it is anticipated that there will be some shortfall in the repairs and maintenance costs which will have to be met by the general fund. This is unquantified.
49. Other costs likely to be at risk is rent collection with families who are unable to afford the rent or who have significant rent arrears. Properties in voids that have been returned to landlords to carry out repairs but works have gone undone will also contribute to rent loss. We intend to mitigate these challenges by meeting some of the shortfall using the homeless prevention grant and managing contracts with landlords respectively.
50. Inflation risk. There is a risk that if the rate of inflation (CPI) increases more than the local housing allowance this is likely to impact the Council's revenue budget.
51. Service Charge Risk - Under the lease the council will take on the full repairing obligation for the properties. This will include payment of the service charges for the properties. An assessment will be made before entering into a lease on the level of services charges however there is a risk that the service charges may increase above inflation during the course of the lease. Legislation is in place to protect leaseholders from excessive increase in charges and the council will use the legal challenges through the First Tier Tribunal to protect its interests.
52. Property Standard risk - The standard of the properties is defined in the "Minimum Property Standard" and this includes the requirement for the property to meet the EPC C standard. The council is required to maintain the property during the term of the lease and there is a risk that maintenance issues are

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identified that could require significant expenditure to rectify. This risk will be mitigated through:

- a. A maintenance budget being put in place for each property for planned maintenance to prevent building defects arising.
- b. Insurances being taken out for damage to the property either by the tenant or force major.
- c. Routine surveys of the property to provide early identification of issues.

53. Risk that there is not a demand for the properties. Some of the properties may prove to be hard to let, either through location or some other reason. If this is the case then the property will be let on a market rent to a household in the vicinity.

54. Delivery Risk. It is possible that Urban Impact Plumpton Ltd will not be able to purchase the required 150 properties within the 18 month timeframe. This may be due to market conditions, or not being able to source properties of the required value in the required locations. The Council's liability in this case is limited, as we will only enter into a lease if the property is purchased. There will however be a financial impact as the council will have to source more expensive temporary accommodation for the homeless households for whom it has a housing duty.

### **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

55. The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce. And it is anticipated that the extra revenue generated from this proposal will ease some of the financial burden within the existing budgets.

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

56. The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- ii) The need to advance equality of opportunity between persons who share protected characteristics<sup>1</sup> and those who do not, and;

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<sup>1</sup> 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

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iii) Foster good relations between those who have protected characteristics and those who do not.

57. The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce.

58. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants. The scheme will benefit households at risk of homelessness by providing good quality, affordable housing. Households with protected characteristics are over-represented as homeless and therefore this scheme will have a positive impact on those groups.

## **HEALTH AND WELLBEING IMPLICATIONS AND RISKS**

59. It is anticipated that the implementation of this proposal and its subsequent delivery of better quality properties will generate positive health and wellbeing benefits directly to households who have a need to be accommodated by the Council.

60. Havering council is committed to improving the health and wellbeing of its residents. The provision of good quality and affordable housing is an important determinant of health and wellbeing as housing impacts both our physical and mental health and wellbeing. Inadequate housing and poorly designed housing is associated with increased risk of ill health including cardiovascular and respiratory diseases, depression and anxiety as well as risk of physical injury from accidents.

61. Housing conditions, quality, affordability and tenure (particularly for women due to safety issues) plays an important part in pathways long term sustainability as well as well as means through which people living in Havering can build a new life (e.g. access to employment, identity, living practices, creation of social networks etc.).

62. There is an impact for families placed outside of the borough but the risks of remaining in insecure accommodation particularly for children weigh higher.

63. A full Equalities Impact Assessment will be prepared where appropriate as part of the delegated decision process to enter into the arrangements contemplated by this report.

## **BACKGROUND PAPERS**

## **APPENDICES**

**EXEMPT- Appendix A Portfolio Agreement**

**Key Executive Decision**

**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

**Details of decision maker**

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

**Lodging this notice**

The signed decision notice must be delivered to Committee Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_