Havering
LONDON BOROUGH

This Report is part exempt and Appendices A, B, C and D are not available for public inspection as they contain or relate to exempt information within the meaning of Schedule 12A to the Local Government Act 1972. They are exempt because they refer to commercially sensitive information and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

CABINET	**14 June 2023**
Subject Heading:	**Private Property Acquisition Programme (PPAP)**
Cabinet Member:	Cllr Paul McGeary – Lead Member for Housing
SLT Lead:	Patrick Odling-Smee, Director of Housing
Report Author and contact details:	Darren Alexander Assistant Director, Housing Demand
Policy context:	The policy context is associated with the Council's statutory duty to prevent homelessness.
Financial summary:	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 The acquired properties will replace properties withdrawn from the market, mainly by private individuals.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.

Cabinet, 14th June 2023

Is this a Key Decision?	Yes
When should this matter be reviewed?	18 months
Reviewing OSC:	People OSC

Cabinet, 14th June 2023

SUMMARY

1. 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 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 Mercury Land Holdings (MLH) on a back-to-back basis so that they can be let to households in housing need on assured short hold tenancies.

2. This report describes the principles and structure of the proposed contractual arrangement with the REIT and MLH for the acquisition and letting of properties, together with the reasoning for supporting its implementation, and sets out specific Housing Services property requirements associated rental rates.

3. 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.

RECOMMENDATIONS

4. For the reasons set out in this report and its appendices Cabinet is asked to:

    - note the principles and structure of the proposed contractual arrangement for the acquisition and letting of properties, together with the reasoning supporting its implementation, both as described in this report;

    - agree to delegate to the Director of Housing in consultation with the Lead Portfolio Holder for Housing, 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);

    - agree to delegate to Service Director Housing in consultation with the Section 151 officer, the Lead Portfolio Holder for Housing, the authority to negotiate the detailed terms of, and the authority to agree that the Council enters into, an Agreement for underlease (or a broadly equivalent contractual instrument with the same commercial effect) with MLH (and any necessary ancillary agreements).

Cabinet, 14th June 2023

REPORT DETAIL

Background

Impact on families in receipt of housing and universal credit benefits.

5. For residents in receipt of benefits the Local Housing Allowance (LHA) rates have significantly reduced the number of properties within affordable reach.

6. LHA is the level at which Housing Benefit and Universal Credit is paid to private renters. LHA rates are calculated for every local area based on local rents. For Havering, those areas are Outer North East London and South West Essex. The maximum amount of support a household can claim will depend on where they live, the number of bedrooms they need, and their income. Most private renters that need their income topped up by housing benefit will face a monthly shortfall between the actual cost of their rent and the support available. Table 1 sets out this shortfall and indication of the direction of travel.

7. **Table 1:**

Number of Bedrooms	One Bed	Two Bed	Three Bed	Four Bed
2019				
Average monthly rent	£874	£1,111	£1,338	£1,716
Housing Benefit entitlement	£694	£858	£1,082	£1,396
GAP individuals and families need to find each month (average monthly rent – housing benefit entitlement)	**£180**	**£253**	**£256**	**£320**
Percentage gaps	**20%**	**22%**	**19%**	**19%**
2020				
Average monthly rent	£896	£1,189	£1,377	£1,802
Housing Benefit entitlement	£694	£858	£1,082	£1,396
GAP individuals and families need to find each month (average monthly rent – housing benefit entitlement)	**£180**	**£253**	**£256**	**£320**
Percentage gaps	**20%**	**22%**	**19%**	**19%**
2020 POST COVID 16 March 2020/2021				
Average monthly rent	£896	£1,189	£1,377	£1,802
POST COVID Housing Benefit entitlement (LHA uplift new 10th percentile)	£898	£1,147	£1,371	£1,725
GAP individuals and families need to find each month (average monthly rent – housing benefit entitlement)	+2	**-£42**	**-£6**	**-£77**
Percentage gaps	**0**	**1%**	**1%**	**1%**

March 2023				
Average monthly rent	£1,050	£1,100	£1,750	£2,100
Housing Benefit entitlement (LHA uplift new 10th percentile)	£898	£1,147	£1,371	£1,725
GAP individuals and families need to find each month (average monthly rent – housing benefit entitlement)	**£152**	**£153**	**£379**	**£375**
Percentage gaps	**17%**	**13%**	**28%**	**22%**

8. For households accommodated in properties leased directly by the council, or Private Sector Leases, as they are classified as temporary accommodation by the Department for Work and Pensions (DWP), the amount of Housing Benefit subsidy the Council can receive is capped at the January 2011 LHA rate less 10%. Rental charges paid to a landlord for a PSL is related closely to the market rent and therefore a significant gap is created which, on average, will cost in the region of £5k per property to replace it. The government has provided Homeless Prevention Grant (HPG) (Formerly known as Flexible Homelessness Support Grant (FHSG) to meet this shortfall however there is no certainty that this will be provided in the future, and with the rising rent levels the gap is increasing.

Table 2.

Comparison	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	10 Year Total
Cost of equivalent new PSLs (000s)	467	948	979	984	989	1,018	1,024	1,029	1,060	1,066	9,568
Cost of equivalent hotel places (000s)	2,737	5,967	6,266	6,454	6,647	6,847	7,052	7,264	7,482	7,706	64,425

9. Properties let through and assured shorthold tenancy (AST) are classified as private rented accommodation by the DWP and the benefit is paid for through Universal Credit at the 2020 LHA rate.

10. The proposed property acquisition and leasing structure described in this report therefore seeks to minimise the risk of such funding gap and provide alternative accommodation that does not have this funding shortfall.

11. **Impact of the war in Ukraine, cost of living crisis/ high inflation/ interest rates rises/ tax for landlords - Unaffordable rents & increased demand**

12. We have entered an unprecedented period of economic disruption that has impacted the private rented market and our ability to accommodate families considerably. Landlords have faced higher than normal interest rates rises making mortgaging their properties extremely difficult to achieve and variable rate mortgages are unsustainable on the LHA rents. Landlords have subsequently exited the social rented market for benefit dependent households and are either selling their properties or searching for market rents to cover their costs. In previous years we would secure on average 400 properties a year through our rent deposits scheme and now we are occupying hotels for the first time in 6 years with a 170 families and singles in chain hotels at premium rates.

13. For residents in receipt of benefit, rises in local property rental prices have significantly reduced the number of properties within affordable reach. We know that the inability to afford, or sustain, an assured short hold tenancy (AST) in the private rented sector is a key cause of homelessness. This is not just an issue for people receiving benefits, but also for many in low-paid employment.

14. This makes Havering more attractive to other boroughs as an option to house their residents, as it has become a more affordable rental area compared to their own boroughs, and provides an unrealistic view of affordability long-term if the LHA returns to its previous position or is frozen in future years as has been done in the past.

15. Increased unemployment will increase the number of households unable to afford to pay their rents or mortgages and will therefore increase pressure on homelessness. In the last 2 years we started to see a significant increase in applications of homelessness and this rise has remained consistent throughout the remainder of 2022/23.

16. When the Council is unable to prevent homelessness then a full duty is accepted and temporary accommodation has to be provided.

Table 3: Shows number of homeless approaches between 2019 and 2023.

	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	YTD
2019-20	155	186	160	195	177	165	187	174	111	233	160	129	**2032**
2020-21	114	141	165	166	228	269	236	256	175	239	255	292	**2536**
2021-22	235	268	315	246	275	102	262	280	169	258	250	282	**3142**
2022-23	261	294	237	280	319	100	105	100	249	282	325	tbc	**3152**

17. There is demand for settled accommodation and to move households who are currently in hostel and short-life units that need to be decanted for redevelopment – approximately 50 a year. PSL landlords are increasingly ending their leases with the Council as they can get higher rental rates by renting privately (Table 3)

Table 4 – PSL properties handed back -				
Bedroom size	**Total 20/21**	**Total 21/22**	**Total 22/23**	**Total handed back over 3 years**
1 bedrooms	15	8	18	**41**
2 bedrooms	23	43	17	**83**
3 bedrooms	14	29	15	**58**
4 bedrooms	4	6	0	**10**
Total	**56**	**86**	**50**	**192**

18. The Council is currently filling the supply gap by using vacant Council stock as short-life temporary accommodation awaiting demolition as part of its regeneration programmes. However, many of the short-life units will be required for redevelopment over the next 5-6

years and the Council will need a new stable supply to enable it to discharge its homelessness obligations.

19. Under the proposed property acquisition and letting structure, it is envisaged that the REIT will acquire up to 150 units and deliver these to the Council in the first 15-18 months. There is also 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. 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.

20. Replenishing the existing temporary accommodation stock

21. 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 in hostel accommodation

22. Outlined in the table below is the associated costs of replacing existing PSL stock with Chalkhill PRS stock.

Replacing PSL Temporary Accommodation stock with Chalkhill PRS stock	**Ten year cost to Council**
10 year cost of Chalkhill programme delivery	£8,015,079
Final void reinstatement costs	£750,000
Total cost	**£8,765,079**

23. PSL Stock Cost (see Appendix D for PSL cost structure)

Replacing PSL Temporary Accommodation stock with Chalkhill PRS stock	**Ten year cost to Council**
10 year cost of PSL delivery	£15,918,142
Less 10 year cost of Chalkhill programme delivery	£8,765,079
Net total cost avoidance	**£7,153,063**

24. Exit out of Bed and Breakfast Hotels and homeless demand pressures

25. We also acknowledge that the demand for accommodation far outstrips the supply and any shortfall in supply at any juncture will likely lead to further hotel usage. The cost of 150 hotel places is estimated at gross cost of £62,446,000 over a 10 year period and this does not include any housing benefit clawback; while we do not anticipate using hotels for 10 years we will continue to require a supply of accommodation to mitigate against that risk.

26. The total general fund budget cost avoidance over 10 years is £7,153,063.

27. Havering Response to the Accommodation Crisis

28. 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.

29. The Council is developing/negotiating 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 the REIT once it has been formed. Chalkhill's fees will be paid by the REIT.

30. The Council's contractual counterparty in the proposed property acquisition and letting structure will be the REIT, a newly established real estate investment trust. The REIT will be 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. It is not envisaged that the REIT will be a listed corporate entity for the foreseeable future.

31. The REIT is not yet formed. This process will begin once an approval from Cabinet has been obtained in line with the recommendations in this report. Therefore the REIT's name is yet to be determined. The REIT 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 the REIT 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 REIT.

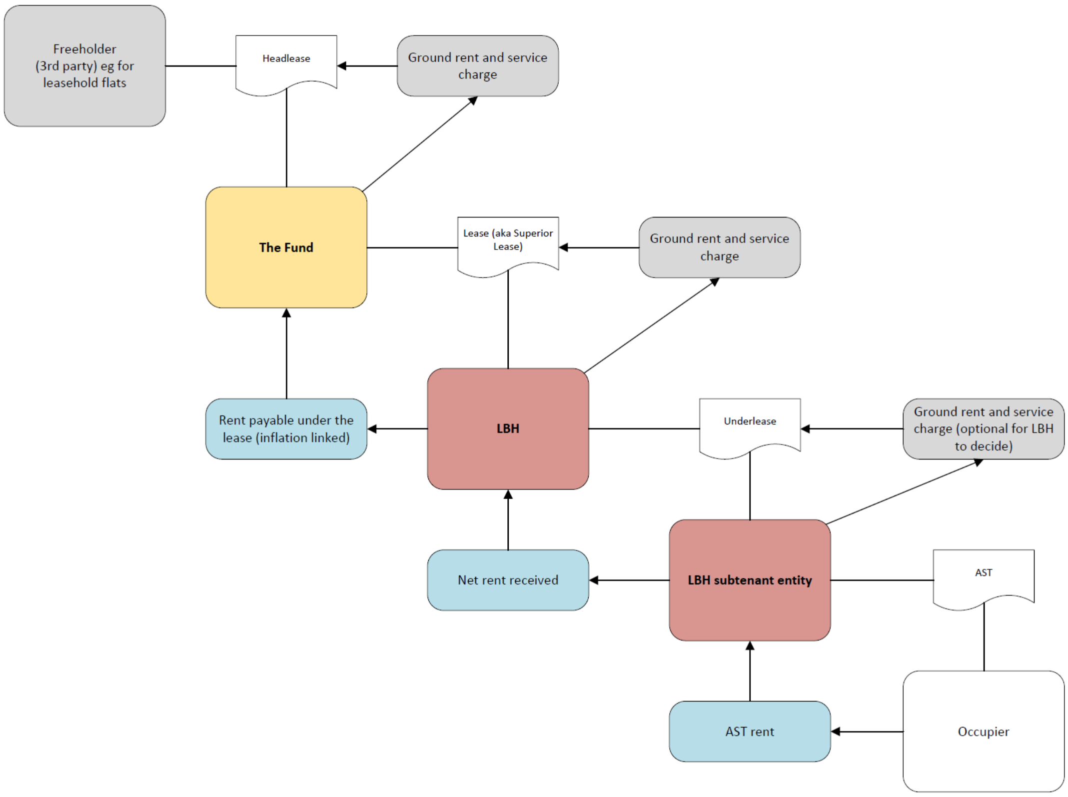
32. The REIT will acquire properties (on a freehold or long leasehold basis) from the open market and lease those individually to the Council (in each case for a term of 10 years) pursuant to an Agreement for Lease (or a broadly equivalent contractual instrument with the same commercial effect). The properties acquired will conform with agreed property selection criteria which pertain to locality and bedroom numbers. The rent payable by the Council to the REIT will be at 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 underlet those properties to MLH on a back-to-back basis. The Council will then manage the properties on behalf of MLH through a management agreement.

33. 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.

34. 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 6 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

Fund 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.

35. The Structure of the arrangement is set out below:



36. This arrangement will enable Havering to gradually reduce its Private Sector Lease (PSL) stock where properties are of poorer quality and value for money is no longer achieved.

37. Changes to the private rented sector has meant that out previously highly successful Find Your Own scheme has not been able to yield the usual 400+ properties for the last 12 months This has led to substantial use of chain hotel accommodation and increasing nightly charged costs. We have worked extensively with private landlords in this period and price and quality has been a difficult negotiation where we are unable to achieve good prices for good quality accommodation. The Council did become a member of Capital Letters a London wide lettings service and this scheme has also failed to yield properties for the same reason.

38. The previous report “Private Housing Investment for Settled Homes Proposal for Mercury Land Holdings PHISH” agreed by Cabinet in 2022 set out a proposal to acquire and supply properties from the private sector housing market and in turn, would offer the properties to the homeless households approaching the Council for a minimum 1 year AST as part of the diversification of current private sector lease provision and to reduce the reliance on supply through the current PSL scheme. The fundamental change to the financial climate meant that this approach was no longer viable. The lease cost for the Private Property Acquisition Programme (PPAP) Chalkhill Scheme for 150 properties £2,301,056 is comparatively cheaper than PHISH MLH scheme for 150 properties is £2,431,560 which did not include today’s inflation and interest rate values. See the exempt appendices for full details of projected costs.

39. Despite failures to deliver on previous proposals heard and approved by Cabinet the principles still provide a sound basis on which to deliver a mixed portfolio of temporary accommodation (PSLs) and private rented properties albeit under this new proposition there is no anticipated capital outlay from the Council.

40. 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.

41. Housing Services' expectations from the scheme are:

- Any grouping of units would be welcomed, as it simplifies management and engagement from a housing management perspective. Any block or site management acquisition, freehold purchase or long lease acquisition, where a number of households could be managed would be beneficial.
- Any M&E, heating, lift services provided on site would need clarity on management company, or block management arrangements so that the Head of Property Services can be assured that there will not be any complication for occupants.
- Any converted stock needs to be of a good standard. All units should pass a HHSRS assessment which procurement team will agree. Portfolio acquisition would be suitable.
- Units should be acquired in locations which have public transport, services, schools and shops within reasonable travel distance.
- These properties will not be subject to Right to Buy.

These expectations have so far as possible been reflected in the Council's approach to the structuring and configuration of the proposals for arrangements with the REIT, recognising that the negotiation of the detailed terms of the contract documents remains ongoing and this Report recommends their ongoing negotiation is delegated as described in paragraph 4 above.

Table 5 Supply and Demand table

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Number of Chalkhill Properties	75	150	150	150	150	150	150	150	150	150
Demand - Cumulative										
Replacement properties for PSL handbacks	60	114	154	190	223	253	281	307	331	353
Loss of shortlife properties - Farnham and Hilldene			150	150						
Move families out of hotels	72	72	72	72	72	72	72	72	72	72
Net property surplus/(shortfall)	**-57**	**-36**	**-226**	**-262**	**-145**	**-175**	**-203**	**-229**	**-253**	**-275**

42. It is envisaged that 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 Council will then be granted a lease (in each case for a term of 10 years) by the REIT (at an index-linked rent) and enter into an underlease with MLH who will provide Assured Shorthold Tenancies (ASTs) for tenants nominated by the Council. Rents will be set at the maximum 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. MLH will have no contractual privity with the REIT and the Council is prepared to bear any shortfall in expected rental income collected by MLH under the ASTs due to arrears / voids. The Council will manage the properties on behalf of MLH through a management agreement. Accordingly MLH will be insulated from both financial and management risk / exposure under the proposed arrangements.

43. These Council fees/costs will be 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.).

44. 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.

45. 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 MLH
   b. Seek to purchase the property through the HRA or MLH.
   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

46. **How will Havering Discharge its Duty**

47. MLH will let each property (subject to nominations rights in favour of the Council) on a Assured Shorthold Tenancy (AST) (or such replacement form of periodic tenancy required by emerging legislation including but not limited to the Renters Reform Bill), subject always to the residual term on the Council's head lease from the REIT. The Council, through a nominated discharge of duty protocol, will discharge its main duty to the household and relinquish responsibility as per the Housing Act 1996 (as subsequently amended by the Localism Act 2011). The Council will manage the properties on behalf of MLH through a management agreement.

48. Officers will send a letter to the applicant when making an offer of private rented accommodation, setting out the following:

   a) the duty under which the offer is being made
   b) possible consequences of refusal or acceptance
   c) the right to request a review of the suitability of accommodation
   d) that the Council is satisfied that the accommodation is suitable
   e) that the Council regards itself as ceasing to be subject to its homeless duty.

49. During the first 2 years of a tenancy, the Council will provide support to the applicant to help sustain the tenancy.

50. **PSL Stock replenishment**

51. Since 2021 we have lost 147 units of accommodation predominantly 2-beds (65) and 3-beds (47). These unit sizes are also the most sought after by homeless households as well as households on the Council's waiting list.

52. For 22-23, the average void-loss cost for a PSL handback was £2,715 and the average projected void repairs cost is £4,000 meaning a total cost per handback is £6,715. For 147 units the total cost of handing those properties back totals £987,105. Replacing these units through the PAPP Scheme will also contribute to significant cost avoidance.

	2021	2023	Stock Loss
Total	**753**	**606**	**147**
1-Bed	178	149	29
2-Bed	308	243	65
3-Bed	222	175	47
4-Bed	45	39	6

REASONS AND OPTIONS

53. **Reasons for the decision:**

54. **Supply and demand**

55. The Council is short of accommodation alternatives and there is an ongoing need for accommodation to continue to meet the housing need of existing homeless households. Delays to the regeneration programme will put further pressure on the supply of affordable housing.

56. Currently, the regeneration short-life properties are being used to fill the gap between supply and demand when PSL landlords cancel their lease arrangements with the Council. However, many of the short-life units will be required for redevelopment over the next 5-6 years. Therefore, the supply sought of PSL properties is needed to continue to meet the housing need of existing households.

57. In order to reduce the reliance on PSL properties with landlords terminating leases at any time, the Council should seek to diversify the sources of supply of both temporary and settled accommodation for homeless households by developing a mixed portfolio of properties at local housing allowance rent levels. Officers are investigating different scheme options and developing costed proposals in order to create sufficient alternative supply.

58. The arrival of mix of portfolio properties will also enable households who are either over-crowded or under-occupying their current PSL accommodation to be moved on in order to

alleviate overcrowding as well as release much needed larger accommodation for other families who need it.

59. Their support needs should be taken into account when decisions are made about the type of alternative accommodation that is suitable for them in order to keep residents near their support network.

60. **Other options considered**

61. **Procure properties through a long term lease agreement with a purchase option.**

62. Discussions are taking place with a provider to purchase properties and lease those to the council on a 40 lease agreement with an income strip so the Council will (pursuant to a purchase option) own the property for £1 at the end of the 40 year lease. The lease rental will rise with inflation over the 40 years, increasing the risk of financial losses over the period. This option remains under consideration.

63. **Private partner to purchase and subsequently lease properties to the Council to be used as temporary accommodation**

64. We considered the use of these properties as temporary accommodation however, the Council have already assessed that the rental value and the housing benefit subsidy deficit would lead to the Council losing out financially. The existing PSL scheme is also being pursued however there is a financial loss to the council due to the subsidy loss as set out elsewhere in this report.

65. **The Council to purchase properties through the HRA**

66. The Council has had a programme for the last 4 years for the purchase of properties though the HRA Acquisitions programme, funded from HRA borrowing and grant. For 2022/22 and 2022/23 the council received GLA grant towards these acquisitions however this has stopped so RTB receipts are being used in 2023/24 to subsidise the purchases. The increasing rise in house prices in the borough has impacted on the financial viability of this programme. Other funding grant opportunities are being explored. There are limitations in that we are only able to acquire units within the Havering borough boundaries as opposed to this proposal which enables us to acquire in other London Boroughs. Although this approach has delivered a positive yield of 35 – 80 per year it will not meet the required demand so other options are going also needed.

67. **The Council to purchase properties through its own wholly owned subsidiary company MLH**

68. The “Private Housing Investment for Settled Homes Proposal for Mercury Land Holdings PHISH” was agreed by Cabinet in 2022 to purchase 125 properties over a 5 year period. The structure of the proposal would mean that there was a capital outlay of circa £60 million from the Council’s general fund and upon acquisition of a property we would offer 12-24 months Assured Shorthold Tenancy (AST) to homeless households and subsequently discharge our housing duty. However, the fundamental change to the financial climate since the Cabinet report i.e. spike in inflation and interest rates means that this approach is no longer financially viable. This does not mean this approach cannot be revisited once the markets have settled down however, it cannot be treated in isolation as a panacea for the current homeless pressures. The 125 units and limited 5 year term will not meet the considerable risk of hotel use in the long-term and will only alleviate it in the short term.

69. **Develop new supply of homes through the Council's regeneration programmes**

70. This is being actively pursued however the viability of future schemes has to be carefully considered. The Council does not receive GLA Grant for the units that are replaced, only the additional units built. There is also the medium term displacement of households during the development stage that creates additional demand for temporary accommodation. The Council is also developing a new hostel in Harold Hill that will provide temporary accommodation for homeless households however this is not due to be completed until 2025.

71. **The Council to work with other investors who provide options to supply accommodation**

72. The Council still consider this as a viable option in order to further increase the mixed portfolio profile it requires to meet the housing need and will carry out its due diligence of these offers as and when they arise.

IMPLICATIONS AND RISKS

73. **Financial implications and risks:**

74. 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).

75. The proposals set out the financial implications relating to the leasing and rental management 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.

76. 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.

77. 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.

78. **Legal implications and risks:**

79. **General**

80. Members established MLH, a company limited by shares and wholly owned by the Council subject to Part V Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995. The company's business is the provision of homes for market rent, sale and if required through compliance with planning obligations the construction of affordable homes.

81. 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. Elsewhere in the same Act the Council is empowered to acquire property for its statutory purposes (including as lessee).

82. 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).

83. 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.

84. By virtue of Section 123 of the Local Government Act 1972, the Council may dispose of land held by it in any manner it wishes subject to obtaining the best consideration reasonably obtainable. Therefore the Council must ensure that the proposed grant of underleases to MLH meets the Council's s.123 obligations.

85. 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 underleases to MLH has not been obtained.

86. **Housing Duty**

87. When a family or individual presents to the Council as homeless, the Council has a statutory duty under Part 7 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 intentionally. If the decision is that these criteria are met, then a duty is owed to that family under section 193 Housing Act 1996 (often referred to as the full housing duty).

88. Once that duty is accepted, the Council must ensure that suitable temporary accommodation is provided pending discharge of the duty. This duty can be discharged in a number of different ways, including via an offer of permanent social housing pursuant to Part 6 Housing Act 1996 or refusals of suitable offers. Section 193(7AA) Housing Act 1996 provides that the acceptance or refusal of a private rented sector offer can discharge the full homelessness

duty. To qualify a private rented sector offer has to be the offer of an Assured Shorthold tenancy, by a private sector landlord, and be for a fixed term of at least 12 months. Under the proposed acquisition and letting structure outlined in this paper the Council will retain 100% nominations to let the acquired properties to homeless households in discharge of the housing duty, in line with the statutory provision and lawful. To those individuals or families who accept the offer of a tenancy from MLH the Council will no longer owe a homelessness duty.

89. However, if within 2 years of a private rented sector offer being accepted, the applicant reapplies to the Council for assistance, they will be automatically owed the full housing duty regardless of whether a priority need is still present.

90. **Regulated activity**

91. Provision of social housing is a regulated activity and requires registration of the organisation as a Registered Provider with the Regulator of Social Housing. MLH is not a Registered Provider of Social Housing. Social Housing is defined in the Housing and Regeneration Act 2008 as either low cost rental accommodation or low cost home ownership accommodation. Section 69 Housing and Regeneration Act 2008 defines low cost rental accommodation as: being made available for rent; the rent is below the market rate; and the accommodation is made available in accordance with rules designed to ensure that it is made available in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market.

92. As set out in Table 2 in the report, LHA rates, which is the level at which rent will be charged by MLH on these properties, is within the lowest 10th percentile of market rent and there is currently minimal difference between LHA and market rents. As such at present it is not considered that the proposal comes within the definition of social housing , and is not a regulated activity. However, it is recommended that close scrutiny is given to the rent levels as the matter progresses to ensure that the risk of the activity becoming one that should be regulated.

93. **Procurement**

Regulation 10(a) of the Public Contracts Regulations 2015 (as amended) (PCR) specifically excludes land transactions from the full application of the PCR.

94. Notwithstanding the fact that the proposed acquisition and letting structure encompasses the procurement of some renovation works as well as some service charge aspects attaching to letting arrangements, legal analysis of the overall structure has concluded that (in line with Regulation 4(2)(b) of the PCR) that the acquisition and letting of properties, not the provision of works and/or services, is the “main subject matter” of this proposed contractual arrangement. In any event it is envisaged that any such renovation works will be procured by the REIT rather than the Council and the value of such works will up to a maximum value of £12k per property.

95. **Finance Arrangements**

96. Section 24 Local Government Act 1988 (LGA 88) provides the Council with the power to provide a wide range of financial assistance to MLH (in respect of privately let housing) including making a grant or loan to it and as MLH is a body corporate the Council may under Section 24 (2)(d) also acquire share or loan capital in it. Privately let housing means any form of rented accommodation provided that is not let by a local authority.

97. If the Council exercise its powers under Section 24 LGA 88 then under Section 25 of the LGA 88 it must obtain the consent of the Secretary of State to do so. The Secretary of State has set out pre-approved consents in the ‘General Consents 2010’ (July 2011 update). If the circumstances of financial assistance meet one of the criteria in the General Consents then the Secretary of State’s consent is given.

98. The current version of the General Consents 2011 contains Consent C. This permits financial assistance to be provided to any person (which includes MLH). The only form of financial assistance which may not be given under Consent C is support through the transfer of land – i.e. at nil or a reduced consideration**.**

99. If the Council intends to borrow to lend to MLH, Reg 25 Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146) treats the giving of a loan by a local authority to a third party (such as MLH) towards expenditure (e.g. works on a new buildings) as capital expenditure providing that if the local authority itself incurred that expenditure (it borrowed to undertake the works itself) it would treat that expenditure (under proper accounting practices) as capital expenditure~~.~~

100. **Fiduciary Duties**

101. 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.

102. **Human Resources implications and risks:**

103. 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.

104. **Equalities implications and risks:**

105. 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[1] and those who do not, and;
iii) Foster good relations between those who have protected characteristics and those who do not.

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

---

[1] ‘Protected characteristics’ are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

107. 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.

108. **Health and Wellbeing implications and Risks**

109. 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.

110. 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.

111. 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.).

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

113. 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

Exempt appendices A, B, C and D