


<p style="text-align: center;"><b>Cabinet</b></p> <p style="text-align: center;">20 March 2018</p>	
<p><b>Report of:</b> Ann Sutcliffe, Acting Corporate Director, Place</p>	<p><b>Classification:</b> Part Exempt (Appendix 2)</p>
<p><b>Pan-London Modular Temporary Accommodation</b></p>	

<b>Lead Member</b>	Cabinet Member for Strategic Development and Waste, Deputy Mayor and Cabinet Member for Housing
<b>Originating Officer(s)</b>	Mark Baigent, Nicole Layton
<b>Wards affected</b>	All Wards
<b>Key Decision?</b>	Y
<b>Community Plan Theme</b>	A Great Place To Live

### Executive Summary

A working group of boroughs from across London, chaired by Tower Hamlets, is proposing a collaborative approach to acquiring modular temporary accommodation, manufactured in a factory, installed on “meanwhile” sites and moved to other sites as they become available, with the homes let by boroughs to homeless families as a cheaper and better quality alternative to Bed & Breakfast or other nightly paid temporary accommodation. The GLA are proposing to grant fund this scheme from their Innovation Fund. London Councils are supporting the programme from the Capital Ambition programme.

This report asks the Mayor to approve the establishment of a not-for-profit Company Limited by Guarantee which will act as the procurement and ownership vehicle for the scheme. Boroughs will become members of the company in order to participate in and benefit from the programme. Legal advice confirms that this approach will comply with public procurement regulations and financial modelling demonstrates commercial viability, based on current assumptions and the availability of grant.

### Recommendations:

The Mayor in Cabinet is recommended to:

1. Note the award of £11 million from the GLA Innovation Fund to deliver modular temporary accommodation through a pan-London collaboration between London boroughs.
2. Note the award of £20,000 from the Capital Ambition programme (hosted by London Councils) as “seed-funding” for the further development of the pan-London temporary accommodation proposals.

3. Approve the establishment of a Company Limited by Guarantee to procure and own modular temporary accommodation for the benefit of London boroughs who become members of the company, with LB Tower Hamlets as a founding member.
4. Appoint Mark Baigent, Interim Divisional Director of Housing & Regeneration as the Council's initial Company Director.
5. Delegate to the Corporate Director (Place) in consultation with the Corporate Director (Governance) and the Corporate Director (Resources) to approve the specific legal documentation for establishing the company.
6. Note that further decisions will be required at a later date to pass on GLA grant funding from the Council to the new Company and, if relevant, for the Council to provide debt finance to the Company.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The decisions recommended are required to establish the company that boroughs will then become members of as they decide individually to participate in the collaborative procurement and ownership approach.

## **2. ALTERNATIVE OPTIONS**

- 2.1 There is the option not to establish the company and withdraw from the Innovation Fund grant agreement with the GLA. This would result in a lost opportunity to lead and deliver better quality temporary accommodation both locally and across London as well as achieve General Fund budget savings by providing a cheaper alternative to B&B and nightly paid accommodation.
- 2.2 There is also the option of stepping back from a leadership role and inviting another borough to take on the role of establishing the company on behalf of the collaborative group. At present, London Councils and the collaborative group are encouraging Tower Hamlets to take on this leadership role.

## **3. DETAILS OF REPORT**

- 3.1 The Interim Divisional Director of Housing & Regeneration is chair of the London Councils Temporary Accommodation Supply group. During 2017 the group began investigating the possibility of setting up a collaborative approach to procuring and owning demountable modular temporary accommodation to be used by boroughs across London on "meanwhile" sites (such as future estate regeneration sites, transport sites, etc.). Currently around sixteen boroughs are attending the group, with potential sites identified in several boroughs, including Tower Hamlets.

- 3.2 In Spring 2017 the group collectively submitted a bid for £11 million to the GLA's Innovation Fund which was welcomed and taken through to the next stage. Heads of Terms and a Grant Contract are currently being drawn up. Detailed delivery arrangements now need to be established, including one borough acting as grant recipient. The group have asked LB Tower Hamlets to consider receiving the grant for this programme.
- 3.3 The group also bid for and secured £20,000 from the Capital Ambition programme (hosted by London Councils) as "seed-funding" for the further development of the pan-London temporary accommodation proposals. These funds will also be received by LB Tower Hamlets as lead borough.
- 3.4 The group explored a range of options for funding, owning and providing a centralised supply of modular homes to be used by London Boroughs. London Councils procured legal advice, attached as Appendix A. This advice recommends setting up a not-for-profit Company Limited by Guarantee to procure and own the modular homes, with boroughs making use of the homes being members of the company. Any surpluses would be reinvested in scaling up the programme. The group have asked LB Tower Hamlets to consider leading the establishment of the new collaborative company.
- 3.5 The company would be funded by a combination of GLA grant (made available to the company via a member borough) and debt finance (either made available to the company by member boroughs or by securing debt from the private finance market).
- 3.6 London Councils procured financial consultancy support to model the viability of providing modular temporary accommodation via the proposed special purpose vehicle. This analysis is attached as exempt Appendix B. This is exempt due to commercial confidentiality.
- 3.7 The financial modelling was based on soft market testing in relation to production, installation and relocation costs. As well as assuming general costs of management and maintenance, the modelling also took into account the income variations between locations across London, assuming rents are fixed at Local Housing Allowance levels (which vary between Broad Rental Market Areas). Thus smaller sites are more viable in Inner London, whilst larger sites are needed to ensure viability in Outer London, given scaling of costs by site size.
- 3.8 The analysis clearly demonstrates that the proposed approach can be made viable on a pan-London basis, based on the assumptions made and assuming sound decision-making by the company in relation to the size and location of meanwhile sites to be used.
- 3.9 The timescale for programme delivery assumes the new company is established in April 2018, with additional borough members formally joining the company during the early Summer 2018.
- 3.10 Therefore, the Mayor is asked to approve that Tower Hamlets establishes the company, appointing Mark Baigent, Interim Divisional Director of Housing & Regeneration, as the initial Company Director. The Mayor is also asked to delegate to the Corporate Director (Place) in consultation with the Corporate Director (Governance) and the Corporate Director (Resources) to approve the specific legal documentation for establishing the company.

- 3.11 If the Mayor approves these recommendations, then further decisions will be required at a later date to pass on GLA grant funding from the Council to the new company and, if relevant, for the Council to provide debt finance to the company.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 This report seeks the approval of the Mayor in Cabinet to the Council becoming a founding member of a company limited by guarantee that will procure and own modular temporary accommodation. It also seeks approval for the Council to act as the accountable body in relation to grant funding and for the Interim Divisional Director of Housing and Regeneration to be appointed as the company director
- 4.2 Local authorities across London are experiencing an acute housing crisis and currently Tower Hamlets has over 2,000 families in temporary accommodation. The net cost of these units of temporary accommodation to this authority varies depending on the type of accommodation, with bed and breakfast accommodation costing £9,000 per annum, nightly lets costing £6,500 and private licensed accommodation costing £3,500 per annum. It is intended that modular housing will provide better quality, less costly temporary accommodation than the existing options.
- 4.3 A financial viability overview of providing modular temporary accommodation via a special purpose vehicle has been undertaken (see the exempt Appendix B) however detailed borough specific appraisals will be undertaken before specific schemes progress. Any surpluses generated by the company will be reinvested in the programme.
- 4.4 The working group of councils has secured capital financing of £11 million from the GLA's Innovation Fund and a revenue allocation of £20,000 from London Council's Capital Ambition programme to deliver modular temporary accommodation. The GLA and London Councils require one authority to receive the grants and it is proposed that the Council acts as the accountable body, receiving the funding and passing it to the company. If this is approved, formal decisions will be required in future to authorise the allocation of grant funding from the Council to the new company.
- 4.5 Although the Council will be the accountable body for the grants, it is essential that the legal agreements protect the Council's assets and minimise its exposure to risk.

#### **5. LEGAL COMMENTS**

- 5.1 The acquisition of modular accommodation is a public supply contract for the purposes of the Public Contracts Regulations 2015 (PCR) and would ordinarily be subject to a competitive tendering exercise. In order for the scheme to be successful the Council must be able to purchase the accommodation as and when required from the specially set up company

without subjecting the purchase to competition. Otherwise, this substantially would reduce the utility and financial viability of the whole scheme.

- 5.2 Regulation 12 of the PCR exempts competition where the Council makes a purchase from a separate company over which the Council exerts a level of control similar to that of one of its own departments. Regulation 12 also allows a group of local authorities to purchase from that separate company where together they exert the level of control over that company that each one would do over one of their own departments.
- 5.3 This means that each local authority will be able to purchase modular accommodation from the specially set up company if:
  - 5.3.1 each local authority is represented on the board of directors and has the ability to have significant input on the overall strategic direction of the specially set up company
  - 5.3.2 at least 80% of the specially set up company is for the benefit of the controlling local authorities and
  - 5.3.3 there is no significant private investment in the company
- 5.4 The requirements stated in paragraph 5.3 should be stated in the new company's articles of association.
- 5.5 It therefore follows that in the event a new local authority wishes to utilise the new company as a provider provision needs to be made within the articles allowing a new local authority to gain a controlling interest along with the existing local authorities to ensure that the Company continues to satisfy the requirements of Regulation 12.
- 5.6 Initially agreement should be reached between the participant local authorities as to their combined approach to the setting up of the new company and this form part of a written agreement.
- 5.7 The new company will itself be a contracting authority for the purposes of the PCR and therefore, it will have to perform a competitive tender before engaging with suppliers who will ultimately provide supplies and services to the participant local authorities.
- 5.8 Notwithstanding the fact that the new company is compliant with Regulation 12, for the purposes of procurement it should be made clear in all adverts relating to the new company's tenders that the new company is purchasing on behalf of other local authorities. This should include a list of prospective users of the company's supplies as well as existing ones.
- 5.9 The Council still has an obligation to ensure that it complies with its Best Value duty under section 3 of the Local Government Act 1999. However, this will be simply demonstrated provided that the new company's tenders are evaluated on a "most economically advantageous" basis using a final score which represents a blend of quality and price.

- 5.10 Whilst the new company will be controlled by the participant authorities it is still a separate trading legal entity for the purposes of UK law. Therefore, all supplies should be governed by a proper supply contract and all other constitutional processes of the Council followed prior to committing to a supply
- 5.11 It is unlikely that the setting up of the company will have any significant equalities impact (either for the purposes of the Equality Act 2010 or in any wider context) although it is good practice to ensure that an Equalities Assessment has been completed. However, there is likely to be a significant equalities impact in respect of the actual provision of the accommodation in individual circumstances and the Council should ensure that it takes all appropriate measures (including where necessary consultation) to properly understand the impact the provision of an individual item of accommodation would have on persons who have a protected characteristic at the appropriate time.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 The proposed collaborative procurement and ownership company will provide cheaper and better quality temporary accommodation for homeless families, thus promoting improve life chances and outcomes for a group of people over-represented in terms of protected equality categories compared with the general population. Modular homes would be specifically designed to comply with Planning requirements in relation to accessibility for people with physical disabilities.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 This programme is intended to deliver cheaper and better quality temporary accommodation both locally and across London, achieving General Fund budget savings by providing a cheaper alternative to B&B and nightly paid accommodation. The savings achieved will be monitored and reported to Members as part of the overall Homelessness budget position.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 Making use of meanwhile sites pending regeneration or permanent redevelopment demonstrates an enhancement of the local environment in terms of amenity and place-making. Landscaping and external space treatment will be integral to the Planning process for these sites. Relocation and reuse of modular homes demonstrates more efficient use of scarce resources. Factory production can reduce and eliminate construction waste.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 The Council will take on a liability to repay GLA Innovation Fund grant if grant conditions are not met and outputs are not achieved. The Council will need to ensure a robust agreement with the proposed company when grant is passed

on. The risks in relation to procurement, construction and ownership of the modular homes will be held by the company, not falling to the Council itself.

**10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 There are no specific implications.

**11. SAFEGUARDING IMPLICATIONS**

11.1 There are no specific implications.

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**Appendices**

A: Legal advice – Anthony Collins Solicitors LLP

B: Financial modelling – 31Ten [NB: Exempt due to commercial confidentiality]