

<b>Cabinet</b>  31 July 2019	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director Place	<b>Classification:</b> Partially exempt (appendix one)
<b>Angela Court, 315 Burdett Road; Lease to Mulberry Housing Society</b>	

<b>Lead Member</b>	<b>Cllr Islam, Cabinet Member for Housing</b>
<b>Originating Officer(s)</b>	Ralph Million, Senior Strategic Asset Manager Paul Butler, Head of Strategic Finance, Place
<b>Wards affected</b>	Mile End
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	TBA
<b>Reason for Key Decision</b>	Financial Threshold; “to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority’s budget for the service or function to which the decision relates.”
<b>Strategic Plan Priority / Outcome</b>	1. People are aspirational, independent and have equal access to opportunities;  2. A borough that our residents are proud of and love to live in;  3. A dynamic outcomes-based Council using digital innovation and partnership working to respond to the changing needs of our borough.

### **Executive Summary**

The report proposes that the Council grants a lease of Angela Court, Burdett Road to Mulberry Housing Society (MHS) on the terms set out, under which MHS will operate the building as affordable housing.

## **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Agree to grant a lease of Angela Court, Burdett Road to Mulberry Housing Society on the main terms set out in paragraph 3.11 of the report.
2. Delegate to the Corporate Director of Place, in consultation with the Corporate Director of Resources, authority to negotiate a lease with Mulberry Housing Society that substantially reflects the main terms.
3. Note the specific equalities considerations as set out in paragraph 4.1.

## **1 REASONS FOR THE DECISIONS**

- 1.1 The grant of a lease to MHS is a necessary part of the overall arrangements between the Council and MHS, to allow it to take on and operate the property as affordable housing. The Council has secured these 42 social rented homes through a s106 agreement and the proposed arrangement will entrust MHS to provide this affordable housing for the next 40 years, with grant provided to compensate MHS for the reasonable costs of providing these homes.

## **2 ALTERNATIVE OPTIONS**

- 2.1 The Council has various options for the future use of the units in the building. The main options are;
  - Transfer the units to MHS at or soon after completion. The mechanism for such a transfer is proposed as on a leasehold basis. This is the preferred option.
  - Hold the units in the General Fund as temporary accommodation (TA). The Council is constrained by the s106 agreement provisions that the level of rent that it can charge to occupiers must be at social rent levels, and those are typically lower than that generally charged for TA.
  - Hold the units in the HRA as TA or general needs housing. In the TA option the same rent considerations apply as for the General Fund option. For general needs housing let under secure or flexible tenancies, the right to buy will arise in the future.
  - In any of the above scenarios the management of the units could be undertaken by THH or some other body, as the Council or MHS may choose.
  - The units will be freehold assets of the Council which could be sold or let in the future, subject to any restrictions imposed by the s106 agreement.

### **3 DETAILS OF THE REPORT**

3.1 On 10 November 2017, the Mayor agreed a budget of £60m to fund the purchase of new affordable housing in the borough, to be built by developers as part of planning obligations. On 19 June 2018, as part of the programme and in line with the delegated authority given by the Mayor, the Acting Corporate Director of Place agreed to acquire the freehold interest in Angela Court.

3.2 Angela Court is a development of 42 affordable housing units, constructed by Canary Wharf Group, in line with its obligations under a s106 agreement relating to a separate site. The property contains the following accommodation;

<b>Unit size</b>	<b>Number of Units</b>	<b>Tenure</b>
1 Bed	5	Social Rented Housing
2 bed	5	Social Rented Housing
3 Bed	30	Social Rented Housing
4 Bed	2	Social Rented Housing

3.3 On 22 March 2019, the Council exchanged contracts to purchase the property, with completion of the sale to take place following practical completion of the construction. This has now been achieved and the Council and MHS Board need to agree on arrangements for the future management and occupation of the building.

3.4 MHS is an independent charitable community benefit society that was established in 2017, as approved by the Mayor in Cabinet in February 2017. The organisation is established to provide affordable homes for the benefit of the residents of Tower Hamlets. The Mayor agreed to set up MHS as a Council-sponsored housing delivery vehicle that could receive grant in the form of Right To Buy receipts and draw on loan finance from the Council. The Society was envisaged to develop new homes on Council-owned land as well as to acquire homes for use as affordable housing, including through s106 Planning agreements. MHS is run by a Board comprising three independent members and two Council nominees.

3.5 The proposal in this case is for MHS to enter into a lease with the Council for Angela Court, whereby the Society will pay for the lease using Right To Buy receipts and loan funding and will cover its management and maintenance costs, as well as the cost of repaying the loan funding and interest, from the rent income from letting the 42 social rented flats to families rehoused via the Common Housing Register. .

3.6 The Board of MHS have been advised of the proposed terms of the lease and will be seeking independent legal advice before reaching a decision to acquire the leasehold interest. MHS will also need to approve formally to accept the terms of the grant agreement, the loan facility and finally to enter into a management agreement for the management and maintenance of the block.

- 3.7 MHS may decide to contract with Tower Hamlets Homes to carry out this managing agent role. This is a decision for the MHS Board and not a matter for approval as part of this report. The principle of lending funds to MHS was approved by the Mayor in February 2017 and the terms of the loan delegated to the Corporate Director of Resources. The granting of RTB receipts to MHS has already been approved by the Grants Determination Sub-Committee.
- 3.8 The Council will acquire the freehold of the 42 units using its own capital resources at a cost set out in the exempt appendix and lease the properties to MHS at market value (the same value as the acquisition cost). MHS will obtain a loan from the Council for 70% of this value, receiving a grant from the Council for the remaining 30%, using 1-4-1 right to buy receipts. The grant in effect compensates MHS for the costs of providing these affordable homes for the next 40 years. The valuation advice obtained by the Council demonstrates that this is reasonable compensation and does not amount to over-compensating MHS, which otherwise would fall foul of State Aid regulations.
- 3.9 The Council will recover its capital outlay through the lease charge levied to MHS.
- 3.10 The main terms of the proposed lease are set out below. A draft lease has been produced by the Council in line with these terms. The Board of MHS will need to review and approve the draft lease, which process may result in some revisions. Recommendation 2 of the report is intended to allow for any such future changes to be considered and agreed at officer level, provided that they are within the scope of delegation.
- Length; 40 years
  - Premium; The sum set out in the exempt appendix one, being the same amount as paid by the Council to acquire the freehold interest in the property.
  - Rent/rent cap; Social Target Rents
  - Use; Affordable housing. MHS to carry out housing management functions in accordance with a specification to be annexed to the lease.
  - Repairs/maintenance; MHS to be responsible for all repairs and maintenance.
  - Insurance; Council to insure, MHS to repay the premium.
  - Assignment/sub-letting; No assignment or sub-letting of the whole or part of the property, except for occupational tenancies of individual units in a form agreed with the Council.
  - Alterations; No new building or changes affecting the exterior without the Council's consent.
  - Landlord and Tenant Act 1954; the security of tenure provisions in ss24-28 will be excluded.

- 3.11 The proposal is that the property is acquired into the General Fund. As such the disposal, by way of the grant of the proposed lease, is covered by s123 of the Local Government Act 1972. This requires that, except with the consent of the Secretary of State, a disposal by the Council must be at not less than the best consideration reasonably obtainable. The proposed lease terms, which involve the payment of a premium equivalent to the freehold purchase price along with on-going rent payments by MHS, represent an arrangement above best consideration.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 The 42 units in the building are to be used as affordable housing, which will contribute to meeting the housing needs of people in the borough with identified priority.

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 The statutory implications arising from the grant of the lease are covered in paragraphs 3.7 and 3.8.

- 5.2 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

- 5.3 [Report authors should identify any other specific issues relevant to consideration of this report. Including, but not limited to, the issues noted above. This section of the report can also be used to re-emphasise particular issues that Members must have considered before taking the decision (for example issues that may come up if an objection was taken to court). Note – Paragraph 5.1 MUST NOT be deleted.]

#### **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 On 10<sup>th</sup> November 2017 the Mayor approved the adoption of a capital estimate of £60m to fund the purchase of new housing in the Borough, built by developers as part of their planning obligations.
- 6.2 The Mayor in Cabinet on 7<sup>th</sup> February 2017 approved the establishment of Mulberry Housing Society, a charitable Community Benefit Society (CBS), to provide homes for sub-market rent. It was agreed that £30 million of

resources would be made available to the CBS, including an allocation of retained Right to Buy receipts of up to £9 million, representing 30% of the total financing available. This funding has been incorporated within the Council's capital programme and as a grant is given to a third party any allocations are also approved by the Grants Determination Sub-Committee.

- 6.3 Burdett Road represents the first of these schemes where 42 units will be purchased from Canary Wharf Group and let at social rent levels. The Council will acquire the freehold to these properties which will be let through Mulberry Housing Society.
- 6.4 These acquisitions provide new properties at good value as they are purchased for less than the open market value of similar properties due to the restrictions on their use as affordable homes. Rental levels are set in accordance with the terms of the appropriate s106 agreement and usually include units to be let at social rents.
- 6.5 The freehold will be acquired using Council capital resources at a cost set out in the exempt appendix. To date a 10% deposit has been paid and the remaining amount will be paid on legal completion.
- 6.6 The Council will lease the properties to Mulberry Housing Society, who will obtain a loan from the Council for 70% of this value. The lease will be of the same value as the acquisition cost incurred by LBTH. Mulberry Housing Society will repay the loan plus an amount for interest over the life of the freehold, enabling LBTH to recover its costs plus a contribution towards the opportunity cost of investing in this scheme. The Council contribution is limited to the remaining 30% which will be met through a grant using 1-4-1 RTB receipts.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 The Council's power to dispose of land is set out in s123 of the Local Government Act 1972. It is subject to the requirements set out in that Act, most notably the s123 requirement to obtain best consideration for any disposal.
- 7.2 The Council has the legal entitlement to use Right to Buy receipts for the purposes described in this report. This is because the Council entered into a Retention Agreement with the Secretary of State in November 2012
- 7.3 Under s.24 of the Local Government Act 1988, the council has power to provide a range financial assistance to any person in connection with the acquisition of property to that is intended to be privately let as housing accommodation' i.e. housing where the immediate landlord is not a local authority, Financial assistance includes loans, grants and guarantees. The council can rely on this power to advance loans/grants to MHS. The use of this power is subject to Secretary of state consent. The Secretary of state has

issued pre-approved consents in the “General Consents 2010” (updated 2011) This includes General Consent C upon which the council can rely.

7.4 The Council is lending to the CBS at a rate comparable with that available on the market generally. Therefore, the CBS does not gain a financial advantage over other providers in the same market place by borrowing the money from the Council. Also, the levy by the Council of a commercial rate of interest means that the Council has the legal power enter into the arrangement

7.5 Public bodies are allowed to provide grant support to private bodies where the purpose is to cause the provision of services which would not otherwise be available in the market place or available but not on favourable conditions, provided such services are in the General Economic Interest. Also, the level of support should be only that which it is reasonable to give in order to compensate the provider for the costs of providing the relevant service.

7.6 The making by the Council of the grant is designed to create the availability of accommodation at a social level of rent. This purpose is recognised under state aid law as being a service of general Economic Interest. Also, an assessment has been undertaken to demonstrate that the level of compensation provided is not greater than the costs that are reasonably likely to be incurred by the CBS and therefore the making of the grant does not constitute state aid.

The use of the funds will be subject to a grant agreement which details the level of compensation and that the compensation is only available on demonstration of the appropriate use of the funds. This also guards against over compensation as well as demonstrating that the Council is receiving Best Value as regards the use of the funds.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None.

### **Appendices**

- Exempt Appendix 1

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- None.

### **Officer contact details for documents:**

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