

# FUTURE OF HILLINGDON HOMES

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<b>Cabinet Portfolio</b>	Social Services, Health and Housing
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<b>Papers with report</b>	Appendix One – Management Summary from test of opinion report.

## HEADLINE INFORMATION

<b>Purpose of report</b>	To consider a recommendation for the return of Housing Management Services to the Council, having regard to the results of the tenants test of opinion as agreed by Cabinet at its September 2009 meeting and other factors.
<b>Contribution to our plans and strategies</b>	This proposal contributes to the council's principles to ensure the services provided to residents continue to improve. In addition, VFM and efficiency principles will be met.
<b>Financial Cost</b>	As set out in the previous report to Cabinet in September 2009 there are limited costs related to the consultation process and consultancy costs of project management. These are expected to be no more than £75k. In addition, and subject to the final decision by Cabinet to bring services back to the council and TUPE requirements, there are expected to be one off staffing costs (redundancy) from staff realignment. Such changes and other efficiencies will create year on year savings made within the HRA that will exceed the cost of this proposal.
<b>Relevant Policy Overview Committee</b>	Social Services, Health and Housing
<b>Ward(s) affected</b>	All

## RECOMMENDATION

That the Cabinet:

- 1. Notes the outcome of the tenant and leaseholder ' test of opinion '.**
- 2. Resolves that, having taken account of the outcome of the tenant and leaseholder ' test of opinion ' together with those other considerations set out in the earlier Cabinet report dated 24th September 2009, it instructs officers to either:**

- [a] terminate the Management Agreement between the Council and Hillingdon Homes on 30 April 2011 by invoking the break clause within it, or**
- [b] negotiate an earlier return date with Hillingdon Homes subject to the agreement of its Board.**

**So that those functions delegated to Hillingdon Homes, as identified in the said Agreement, are returned back to the Council.**

- 3. Authorises officers to work with Hillingdon Homes board members and staff to wind up or dissolve Hillingdon Homes and to take all other necessary steps to return those functions delegated to it back to the Council.**
- 4. Subject to recommendation 3 above, authorise officers to consult with Hillingdon Homes' staff and to take all other steps to comply with the Transfer of Undertakings [Protection of Employment] Regulations 2006.**

## **INFORMATION**

### **Reasons for recommendation**

1. At its meeting on the 24th September 2009, Cabinet considered a comprehensive report entitled "Future of Hillingdon Homes" setting out the background and rationale for returning Housing Management Services to the Council. The reasons set out in that report for the recommendation are reproduced below for ease of reference:
  2. "The Council's Arms Length Management Company (ALMO), Hillingdon Homes, was set up in April 2003 following a positive outcome to a tenant and leaseholder test of opinion. This enabled the council and residents to receive around £60m towards the cost of achieving the decent homes standard. Hillingdon Homes has been successful in the delivery of that goal, two years ahead of the Government target. In addition services have continuously improved and tenant and leaseholder satisfaction have increased. However, now these targets have been achieved, the future of the ALMO needs to be reviewed along with how best to continue to improve the services provided to tenants and leaseholders. In doing so the following needs to be recognised:-
    - Nationally improving performance of all social housing providers,
    - Changes in flexibilities and freedoms promised by the government for ALMOs have not materialised,
    - At the same time freedoms around borrowing and new build that were given to ALMOs have been extended to local authorities,
    - The scale of the impact of the economic recession on the national public finances and the requirement for reduced future public spending has become apparent in the national Budget published in April 2009. There is an economic recession and the council needs to plan carefully for severely restricted budgets in the foreseeable future.
  3. In the light of the above it is considered to be in the council's and customers' best interests (subject to the consultation process with tenants and leaseholders) to take the service back into the council. This will enable savings to be made by eliminating the cost of governance of the ALMO and further improvements to services by closer alignment to the delivery of services and improvement programmes within the council.

4. To bring the council housing services back in-house there first needs to be a Cabinet decision to carry out a test of tenant and leaseholder opinion. The outcome of that will inform a final decision that then needs to be agreed formally by Cabinet."

5. The recommendations agreed by Cabinet on the 24<sup>th</sup> September 2009 were:

**To instruct officers to carry out a tenant and leaseholder test of opinion on dissolving Hillingdon Homes and bringing the council housing services back in-house.**

**To instruct officers to report back to Cabinet for a final decision on the future of Hillingdon Homes as soon as possible once the test of opinion has been completed.**

6. The test of opinion has now been completed and this report is providing Cabinet with the results obtained and is seeking instruction on the next steps in the future of Hillingdon Homes.

### **Alternative options considered**

7. The alternative option of continuing with the existing contract with Hillingdon Homes were considered as part of the September 2009 report.

### **Comments of Policy Overview Committee(s)**

8. The Social Services, Health and Housing Policy Overview Committee will be considering this report at it's meeting on the 16<sup>th</sup> February 2010 and may provide comments direct to Cabinet.

## **SUPPORTING INFORMATION**

### **Test of Opinion**

9. In accordance with Section 105, of the Housing Act 1985, the Council is required to consult with and have regard to the views of tenants before taking a final decision on a matter of housing management. This proposal falls within that requirement and therefore the Council commissioned a 'test of opinion'. As far as possible, the process replicated that which was undertaken prior to the ALMO being formed and services undertaken by it in 2003. Although it was not under any legal obligation to do so, the Council also decided to consult with its leaseholders as a matter of good practice.

10. The test of opinion was completed during November and December 2009.

Prior to the 'test of opinion' the following process was followed:-

- 1 A letter from the Deputy Director of ASCHH to inform tenants and leaseholders about the Council's intention
2. Two newsletters issued to all tenants and leaseholders giving them further details about the proposal, including questions and answers. The second newsletter included the tear-off ballot for the postal 'test of opinion'.
3. The appointment of an independent tenant advisor who was available throughout the process to answer any question from tenants or leaseholders about the proposal.
4. The establishment of a Council website / email contact for any tenant enquiry about the proposal.
5. There were a series of ten meetings held around the borough with council tenants and leaseholders to inform them of the proposals and give the opportunity for discussions and to ask questions.

11. After the first newsletter, the Council employed agency staff to undertake a random survey after the first newsletter to ascertain tenants views at that time. The results were as follows:-

- 284 completed – 90% aware of proposal – 74% understood details and of those 75% were in favour of returning to the Council.

12. This was carried out so that officers could gauge whether the information being given out was understandable or whether tenants and leaseholders wanted more detail.

13. Prior to the second letter and postal survey the Council again undertook a trial by phoning approximately 30 tenants. This was to be satisfied that the questions in the 'test of opinion' were clear and would not cause difficulties. From the feedback obtained from tenants, the staff reported that there were no difficulties at all.

14. Officers within the council tendered the contract for the test of opinion to an external company in order for an impartial third party control of the process. The independent company that won the tender, Quadrant Consultants finalised the actual test of opinion wording and layout to be satisfied that it was fair and clear.

The results are as follows:-

	<b>Randomly selected telephone survey</b>	<b>Postal survey</b>
Total respondents	1,300	1,249
In favour of returning to the Council	610	942
Did not mind either way	582	251
Opposed to return to the Council	57	44
Not stated	-	12
Unaware of the issues	51	-

15. The management summary taken from the Quadrant report is attached as Appendix One.

*Other Factors to take into account:*

16. The key points and rationale for considering the return of council housing services to the council were considered by Cabinet at its September 2009 meeting in the report entitled Future of Hillingdon Homes and are therefore not repeated here.

17. Officers are able to report that there have been no changes in government policy relating to the future of ALMOs to warrant a change in the advice given to Cabinet previously.

18. It is also pertinent to advise Cabinet that even though there has been an overwhelming result to the test of opinion, Cabinet could decide to continue with the existing arrangements. However, for the reasons previously discussed in the September 2009 Cabinet report, officers are not recommending that course of action.

19. By returning the landlord service to direct control the council will be pursuing its objective of increasing the speed of improvement to the landlord services by pursuing efficiency savings which can then be used to improve services to tenants and leaseholders.

## **Other Local Authorities**

20. Cabinet will be interested to note what is happening nationally to ALMOs operating in other local authority areas. Officers have identified that many other local authorities are currently considering the future of their ALMO, where they have them. There are a range of outcomes expected. Some local authorities are likely to be pursuing the dissolution of their ALMO and bringing the services back in house or outsourcing the services. Other local authorities are intending to allow their ALMOs to become a Register Social Landlord (Housing Associations) and then ballot tenants on a large scale voluntary transfer (LSVT). Other local authorities are expected to continue with their ALMO.

## **The Housing Revenue Account (HRA) Review.**

21. The government has for some time now been carrying out a review of HRA financing and looking at the possibility of local authorities being able to buy out of the subsidy system. Officers are expecting further proposals from government on this during February this year. Whilst the detail of the offer from government are still awaited, from the information officers currently have, it is clear that retaining an ALMO does not provide a better alternative to in-house delivered services to take advantage of the proposal.

## **The way forward – timing of any return.**

22. Should Cabinet decide to progress with bringing back the council housing services back to the council, it will be necessary to embark upon a series of processes:

23. To agree the return date, either in line with the termination clause in the contract i.e. by giving notice to the board of Hillingdon Homes no later than the 31<sup>st</sup> October 2010 that the contract will be terminated on the 30<sup>th</sup> April 2011, or to agree an earlier date with the board of Hillingdon Homes. Under the terms of the contract, any date earlier than the termination clause cannot be imposed and must be by agreement.

24. There must be a legal and financial process completed to properly wind up the affairs of Hillingdon Homes Limited. This must be carried out in compliance with legislation and good practice whilst protecting the company and the council interests.

25. At the point of return of the services, staff will return to the council under the terms of TUPE legislation.

26. Of over-riding concern is that the services to tenants and leaseholders are not impacted negatively by the return process. This means that all efforts must be made to achieve a smooth return of services, providing residents and staff with timely and effective communications throughout the process. This will be a major part of the project.

There are of course, pros and cons to be considered in timing of any return.

## **In Favour of Early Return**

### **Momentum**

27. Having achieved a positive result from consulting tenants, it would be wise to maintain the momentum and proceed with return of the service by continuing this project, thereby keeping a natural progression and avoiding any hiatus. Allowing for all of the practicalities including dissolution of the company, TUPE requirements and other ancillary business would anyway need six months.

## **Staffing**

28. Inevitably, staff will be worried about their future until the council can bring certainty. Even though there will be no significant implication for the vast majority of staff everyone will require confirmation that their employment is secure and that their conditions are protected. The sooner that can be done by returning to the council the better. In the absence of that certainty, staff morale may suffer and good quality staff may leave, thus impacting on the levels of service provided.

## **Service**

29. Whilst the current quality of service is generally very good (subject to detailed audit) it relies upon committed and well managed staff. The risk in terms of staff (see above) could severely impact on service standards. Furthermore, if it is known that the service is returning to the Council, decisions on service progress could be hindered. How would Hillingdon Homes take strategic/medium term decisions knowing that responsibility will cease in 2011?

## **Hillingdon Homes Board**

30. The Board comprises independent members together with councillors and tenants representatives (one third each). For the independent members there will not be the prospect of longer term involvement with the service when it returns. Therefore, it may be difficult to maintain the commitment to serving on this board (especially under the circumstances of the company being dissolved and the service returned to the council). It is perhaps unreasonable to expect a continuing commitment for another fifteen months.

## **Service Review**

31. It has been agreed to undertake a service review in line with an established programme which has been completed for all council services. This is a rigorous examination of both service quality and cost which is challenging for all parties involved. The sooner the service is returned the quicker this exercise can be completed.

## **Council Impact**

32. One of the primary benefits of returning to the council will be greater integration with other council services. This will be mutually advantageous for housing management and other council services in terms of efficiencies. This cannot be completed until return. Furthermore, change is underway within the council structures and it may be advantageous to include the support services within Hillingdon Homes in the council programme.

## **Cost Reductions**

33. It is known that return of the service will assist in reducing costs (primarily support services) The sooner this can be achieved the earlier the financial benefits can be secured and applied for service improvement. Any additional savings/efficiencies within the HRA identified through the service review process can be achieved earlier.

## **Against Early Return**

### **Risks**

34. By trying to expedite the return there is a risk that we may not be sufficiently informed of all the facts in a timely manner. There should be sufficient time for TUPE but clearly there would be less time to fully review the service and financial details prior to return.

## **Staffing**

35. Staff have been advised that the contract return date is April 2011. It is possible that by returning early, staff who would have remained and become more settled would decide to leave now. The primary area for staff reduction will be in support services. It may be possible to secure some integration with council support services in advance of a formal return (Hillingdon Homes buying the services from the Council) and therefore the savings could be secured anyway and the council's reorganisation incorporate the Hillingdon Homes implication.

## **Hillingdon Homes Board**

36. It would be reasonable to assume that there may be some members of the board unhappy with the council decision and under these circumstances it could be more difficult to maintain a constructive relationship during the return period. By trying to bring forward the return date it is possible that the council could aggravate the position and make matters even more difficult.

## **Service Review**

37. It would be possible to undertake a service review whilst the service was managed by Hillingdon Homes so long as we have their full cooperation. The same objectives could be set as usually applies and the completion of the review would act as reassurance for both Hillingdon Homes and the council.

## **Council Change**

38. The Council is in the process of appointing a new Director for ASCH&H and also going through a major change programme through the Business Improvement Delivery project. There will also be elections in May and a new Council. By keeping to the April 2011 date, the Council would be more settled in its other business before having to handle this project.

39. There are pros and cons on this option but overall, for service and staffing reasons, officers believe it would be in the tenants' interest to secure an earlier return if Hillingdon Homes Board supports that option.

On current information, officers believe a reasonable target to achieve an early return could be October 2010.

## **Financial Implications**

40. The financial implications are similar to those stated in the Cabinet report of 24<sup>th</sup> September 2009. In summary, the council will incur one-off costs of disbanding the ALMO including legal and project management costs as well redundancy costs. These are expected to be offset by on-going savings and over a relatively short period of time should result in overall net savings. Immediate savings should arise from governance and obvious duplications in support service functions. Further savings are also expected to arise from a more in depth service review which will aim to take advantage of opportunities that would be available to a single entity, including reduction in duplicated control mechanisms and general economies of scale. Any initial costs will be met from HRA balances.

## **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

### **What will be the effect of the recommendation?**

There will be a number of effects resulting from the recommendations:

41. The governance and management structures and support services within ASCH&H, the council and Hillingdon Homes will be integrated and rationalised where appropriate.

42. There will be opportunities for greater linkages to services provided across the council and other partners. This will include improvements to processes, delivery of shared services and partnering arrangements. These in turn will lead to improved outcomes for service users, improved customer engagement and improved satisfaction levels.

43. There will also be opportunities to pursue efficiency savings within the HRA which can then be used to improve services to tenants and leaseholders.

### **Consultation Carried Out or Required**

Information on this is contained within the body of the report.

## **CORPORATE IMPLICATIONS**

### **Corporate Finance Comments**

44. The proposal to wind-up Hillingdon Homes Ltd as the provider body for housing management services, terminate the management agreement, and bring these services in-house, represents a significant financial decision for the Council. The process of implementing the recommendations to terminate the management agreement will incur costs which will be met from accumulated Housing Revenue Account reserves.

45. The expected financial benefits, costs and risks are summarised in the report and cover a broad range of issues including governance, tenant involvement, access to external finance and issues of operational efficiency and effectiveness, and staff recruitment and retention. The opportunities arising from the return of housing management functions to the Council will be explored and assessed through the project on this topic included in workstream 2 of the Business Improvement Delivery programme.

### **Legal Comments**

#### The decision to return Hillingdon Homes back to the Council.

46. Cabinet Members will be familiar with the common law principles of 'wednesbury reasonableness' which govern all aspects of decision making by the Council. It is therefore important that any decision which Cabinet makes in relation to the return of those housing functions, currently delegated to Hillingdon Homes [HH], back to the Council is legally defensible.

47. Clearly, the 'test of opinion' from the Council's tenants and leaseholders is an important component of any decision but Cabinet is also entitled to have regard to all those other considerations which were set out in the earlier Cabinet report dated 24<sup>th</sup> September 2009.

48. Cabinet can also have full regard to the Council's fiduciary duty towards Council Tax payers in the Borough. If it is satisfied that by returning to the Council those services which HH operates on its behalf will generate efficiencies for the Council, and ultimately reduce costs, this is a very important consideration for Cabinet to take into account.

#### The Management Agreement.

49. The Agreement, which commenced on 1<sup>st</sup> May 2003, was originally due to expire on 30<sup>th</sup> April 2008 but it was extended by the Council for a further period of five years subject to a break

clause. This clause gives the Council the right to give six month's notice to HH, by no later than 31<sup>st</sup> October 2010, that the Agreement will end on 30<sup>th</sup> April 2011.

50. The Agreement is recognised in law as a contract and like any other contract, its terms can be varied with the agreement of both parties to it. The Council cannot unilaterally bring the Agreement to an end earlier than 30<sup>th</sup> April 2011 but there is nothing to prevent it from negotiating an earlier termination date with HH. As HH is set up as a Company Limited by Guarantee, an earlier termination date can only be effective if agreed by its Board.

#### The Transfer of Undertakings [Protection of Employment] Regulations 2006 [TUPE].

51. Cabinet Members may recall that when HH was set up back in 2003, the vast majority of those Council staff who became its employees, were transferred to it under TUPE.

The same considerations will apply when HH staff transfer back to the Council. TUPE applies to and protects all employees who are "wholly or substantially employed" in the undertaking which is transferring and therefore it is anticipated that most HH employees will transfer back to the Council under the protection which these Regulations provide.

52. It is important to note that TUPE imposes obligations on both the Council and HH to provide certain information to and consult with those employees who are likely to be affected by the transfer. A dialogue will also need to be set up with the Trade Unions who have the right to be informed of the following issues under TUPE:

- The fact of the transfer and when it is likely to take place;
- The reason for it;
- The legal, economic and social implications of it for affected employees;
- The measures which both the Council and Hillingdon Homes will be taking in relation to these employees.

#### The liquidation or dissolution of the Company Limited by Guarantee.

53. There will be no benefit to the Council in retaining Hillingdon Homes as a dormant company so steps will have to be taken to dissolve it. There are two main legal mechanisms for achieving this. Firstly, Hillingdon Homes could resolve to go into voluntary liquidation which is a process recognised by the Insolvency Act 1986. A number of statutory steps would need to be followed and it is fair to say that this is a convoluted procedure and it involves the appointment of a liquidator which seems to be pointless given that the Council is the sole member of the Company and it will be the recipient of its assets.

54. Voluntary dissolution of the Company would appear to be a more straightforward process. The Board would once again be required to pass a resolution agreeing to this and the Directors would have to make an application to Companies House to have the Company struck off the register. Companies House will advertise the proposed striking off in the London Gazette so that interested parties will have an opportunity to object. If no objections are received within a period of three months, the Company will be struck off and publication of this fact will appear again in the London Gazette.

#### **BACKGROUND PAPERS**

Quadrant consultants report – 19<sup>th</sup> January 2010 – Housing Management Services Survey Report

## **MANAGEMENT SUMMARY**

### **Introduction**

This consultation exercise on the proposed return to Hillingdon Council of Housing Management Services comprised a postal survey within a newsletter delivered to tenants and leaseholders in early December 2009 and a telephone survey conducted shortly afterwards. 1249 people responded to the postal survey while 1300 people were interviewed by telephone.

### **Key finding**

The great majority of both tenants and leaseholders either support the proposal or do not object. Only a very small proportion expressed any opposition to it.

### **Results**

- ⊕ In both postal and telephone surveys, around nine out of ten of both tenants and leaseholders either supported the proposal or did not mind either way.\*
- ⊕ In the postal survey, around three-quarters of both groups were in favour of the proposal with a further one in five who didn't mind either way.
- ⊕ In the telephone survey around half of both groups were in favour of the proposal while around four in ten did not mind either way. \*\*
- ⊕ The difference between the results of the two surveys may be because some of those who did not mind either way decided not to respond to the postal survey.
- ⊕ The proportions of respondents who said that they understood the proposals was around nine in ten in the postal survey where they had the newsletter in front of them and three in four of those responding to the telephone survey.
- ⊕ The postal survey also asked about consultation with tenants and residents associations about spending the savings and nine in ten were in favour of this.

\*Telephone results with random sample are statistically significant within +/- 3% points

\*\*Telephone results with random sample are statistically significant within +/- 2% points

### **Quality Assurance**

The surveys were carried out in line with market research industry best practice. In particular, they followed the code of conduct of the Market Research Society, the professional body representing market research in the UK. Our Fieldwork and Recruitment Quality Administration Systems are certified and registered under BS EN ISO 9001:2000. Our certificate was issued and registered by CQS (Certified Quality Systems) Limited, certificate number GB2000681. CQS are registered with IAB (International Accreditation Board), registration number 0044/1.