



Cabinet Member Report

Decision Maker:	Cabinet Member for Finance, Property and Regeneration
Date:	9 th April 2019
Classification:	General Release
Title:	Tollgate Gardens: Options on how eight new build intermediate rent homes are held
Wards Affected:	Maida Vale
City For All Summary	The delivery of new intermediate homes contributes to the Building Homes and Celebrating Neighborhoods programme
Key Decision:	No
Financial Summary:	8 intermediate units will be transferred to Westminster Community Homes (WCH) for £800k in line with the Housing Revenue Account (HRA) BP assumptions. All income and expenditure associated with these properties going forward will be met through WCH resources.
Report of:	Barbara Brownlee, Executive Director of Growth, Planning and Housing

1. Executive Summary

1.1. This report asks Cabinet Members to consider the available options on how the 8 new intermediate rented homes being delivered as part of the Tollgate Gardens renewal scheme are held on completion of the renewal programme. The report seeks approval for the recommendation that the units are best held by Westminster Community Homes and asks for consent to proceed with the required next steps to complete the transfer.

2. Recommendations

That the Cabinet Member:

2.1. Notes the options available on how the 8 intermediate units are held after completion

- 2.2. Approves the transfer of the 8 intermediate to Westminster Community Homes
- 2.3. Approves the required necessary arrangements are made to complete the transfer of the units

3. Reasons for Decision

- 3.1. Westminster Community Homes are the tried and tested option for intermediate rented product. They have the immediate capacity to let and manage the 8 intermediate tenancies and offer an attractive product enabling tenants to progress to home ownership.

4. Background, including Policy Context

- 4.1. In 2010, Westminster City Council appointed master planners to create a concept for the redevelopment of Tollgate Gardens Estate. The planners worked with residents using key themes listed in the 2010 Housing Renewal Strategy to develop a series of options which residents then voted on in November 2010.
- 4.2. Residents voted for a maximum demolition option which retained Tollgate House but demolished the remainder of the site which included the community hall and the blocks comprising Wingfield and Godwin House totalling 5 blocks.
- 4.3. Westminster Community Homes acted as agent for the City Council and acquired 29 of the 30 leasehold interests to enable this scheme to proceed. They also acquired 8 units in Tollgate House to offer to secure City Council tenants who wished to remain on the estate. They have retained these units so still have a good presence on this estate.
- 4.4. In November 2013, a decision by the planning committee, granted consent for the scheme to be developed. The planning permission provided for:-
 - Delivery of a high quality housing scheme that increased the number of homes on the estate from 142 to 248, of which 195 were new homes and 53 existing homes in Tollgate House which received internal and external improvements.
 - Provision of 86 new, high quality affordable homes. 78 of these will be council social homes with a further 8 being intermediate units that are identified within the S106 agreement.
 - Creation of new public realm, soft and hard landscaping with dedicated age specific play space, new secure cycle space and undercroft parking.
 - Provision of new community hall fronting on to Kilburn High Road creating an improved aspect and landscaping to Kilburn High road and new pedestrian resident for access to the estate from the High road.
 - Development of a district heating system to reduce energy bills, with the facility to link in to neighbouring properties and specifically the local school.
 - Creation of jobs for local people through the construction that the planning approval would eventually provide.

- 4.5. The project was tendered through the Council's Developer Framework Panel in January 2015 with Affinity Sutton, now Clarion Housing Group, being chosen as the preferred developer.
- 4.6. Clarion appointed Keepmoat, now Engie, as their chosen Design and Build Contractor for the project. Negotiations with Clarion were progressed and completed upon the exchange of an Agreement for Lease in July 2016 with start on site commencing in 2017. Construction is well advanced however Clarion have advised of a delay in the final handover of the new homes beyond the original date of March 2019. The 8 intermediate units are split over two separate blocks containing open market sale units, which will mean that according to the dates provided by Clarion, 3 of the units are now due to complete in May 19, with the remaining 5 units due to be handed over when the wider scheme completes in in late summer 2019.

5. Intermediate Rents Units

- 5.1. Under the terms of the Development Agreement with Clarion, all 86 affordable homes will be acquired by the Council for an agreed value of £190,698 per unit. There is no price variation between the social and intermediate unit types with £16,400,000 being the agreed lump sum for the buy-back of all the affordable units. To support the acquisition, the Affordable Housing Fund is providing £15.2m, including £200k for the acquisition of the new community hall, representing £177k per affordable housing unit. This contribution was increased during the latest HRA Business Plan iteration to enable the Capital Receipts generated to cross subsidise the wider HRA programme.
- 5.2. As it currently stands all 86 units would sit within the Housing Revenue Account. This would be a business as usual arrangement for the 78 social rented homes. However, the position for the 8 intermediate units requires further consideration as typically this type of tenure does not sit within the HRA.

6. Policy Considerations

- 6.1. The question of where these intermediate rented properties should sit raises wider policy related questions about our approach to intermediate rent, such as how much the rents should be and how long the tenancies are for and whether a local lettings policy will apply dependent on different individual schemes.
- 6.2. The Housing Strategy Direction of Travel Statement 2015 sets out that the council will develop its own intermediate housing where it makes sense and sets out an ambition to bring more mobility into the intermediate sector – so one product leads onto another - and so intermediate housing provides a “step up” and is part of a housing journey, but is not always a home for life. Consideration has been given to holding these units in the HRA, although when intermediate rent is offered it is more appropriate to offer it on an assured shorthold tenancy basis and these type of tenancies cannot be held in the HRA. The type of product been proposed via Westminster Community Homes, which has a savings element which can help residents buy a property in the longer term, is aligned with the strategic approach.

- 6.3. As part of any updated Housing Strategy, we could clearly set out our approach to intermediate housing or a stand alone Intermediate Rent Policy could be developed so any future decisions such as this can be assessed against our objectives.

7. Available Options

7.1. Option 1: HRA holds

Benefits

- 7.1.1. The HRA can legally hold intermediate homes and this would enable the Council to retain the units as an asset, thereby generating income. The HRA would benefit from additional revenue generation. However, as a ring-fenced HRA asset the units may qualify as secure council tenancies, noting comments in 7.1.2

Points to Consider

- 7.1.2. Typically intermediate tenancies are issued as an AST (Assured Shorthold Tenancy) so they can be recovered more easily, if the tenant's income exceeds the threshold for intermediate housing (as set out by the Mayor) or if the landlord only wants to offer them for a fixed period, or when the conduct of the tenant in relation to anti-social behaviour or rent arrears is evident. However, the HRA cannot issue ASTs and would have to offer a tenancy equivalent to a one issued to social tenants, in the case of these units would likely be an introductory followed by a fixed term flexible tenancy. Tenants would enjoy all the rights of such tenancies. At the end of the fixed term, a review takes place to decide if the tenancy should be renewed. Possession can only be obtained with a court order and the tenant does have a right to appeal any decision not to renew the tenancy, but only on the basis that the decision not to renew is not in line with the Council's Tenancy Policy. In summary – it is possible to use fixed term/flexible tenancies, normally only issued for social housing, for intermediate rent.

- 7.1.3. Properties sitting within the HRA are eligible to be acquired via the Right To Buy, which could result in the Council losing an affordable home from its stock.

- 7.1.4. Intermediate rents are generally higher than social rented homes and are aimed at households who are in employment and do not require support via housing benefit. In theory the Council could do this though in practice it would be challenging. The Council would be letting most Council homes at social rent levels and a proportion of other homes at intermediate rent. Both types of homes would be "Council housing" and the Council may have difficulty in "ring fencing" intermediate rented homes so that only persons with sufficient income (and not relying on benefit) would be let that accommodation.

Both the Tenancy Policy and the Allocation Policy would need to be amended to offer flexible/fixed term tenancies in the HRA. The Tenancy Policy would need to set out clearly, who these tenancies were for and when they would be renewed. The Allocations Policy would need to state clearly they were not being let as social housing and only working households were eligible for them. There is some risk with this approach as the law assumes all rented housing in the HRA is social

rented and prescribes who should have priority for them (although some local flexibility is possible). This raises a risk of challenge from households on the social housing register, e.g. from households in a reasonable preference group, who the Council owes a duty to house, on the reasonableness of “ring fencing” these units only to households with sufficient income levels and thus breaching its equality duty. The level of risk of this actually occurring needs to be weighed up against the number of units involved here - 8 properties might not be challenged where as a larger scheme might be.

Recommendation – Dismiss

- 7.1.5. Although legally permissible, the HRA does not typically hold intermediate units. Amendments to relevant policy would be required to and some risk of challenge exists on restricting lets to certain groups.

7.2. Option 2: Wholly Owned Company (WOC) holds

Benefits

- 7.2.1. The WOC, incorporated as Westminster Housing Investments Limited (WHIL), can issue ASTs and can hold intermediate housing.
- 7.2.2. The units would not be subject to RTB – although government policy is that some form of home ownership option is offered to these tenants.
- 7.2.3. The properties would be owned and controlled by the Council as the WOC is a wholly owned subsidiary.

Points to Consider

- 7.2.4. The WOC has been created to provide greater flexibility in rent setting, particularly in terms of providing suitable rents for intermediate properties such as this. As the WOC is yet to begin trading, any acquisition would need to be funded through a contribution from the GF or AHF of the Council.

Recommendation – Dismiss

- 7.2.5. The first units as part of this scheme are anticipated to become available in May 2019. The WOC, whilst suitable for these type of properties is not yet in a position to set up and manage the letting of these properties.

7.3. Option 3: Westminster Community Homes (WCH) holds

Benefits

- 7.3.1. WCH are a Registered Provider (RP) and are wholly controlled by the City Council. WCH already hold 90 intermediate rented homes in Westminster. All WCH intermediate homes are subject to 100% nominations agreement with the City Council. Its approach is aimed at assisting households on lower and middle incomes, who typically are unable to purchase on the open market or struggle with market rents, a particular challenge in Westminster.
- 7.3.2. AST are offered on a 12 month basis, with an option to extend providing the tenant successfully maintains the tenancy. It is WCH’s intention to apply the same

scheme as it is providing at its Victoria Wharf (Ladbroke Grove) development which produces a “savings” pot towards home ownership (including shared ownership) for each household of £2k per annum. Tenancies can be renewed up to 4 times (max. 5 years tenancy) so tenants can leave with up to £10k towards their own home.

- 7.3.3. WCH have a solid track record of administrating and managing such tenancies to ensure low levels of rental arrears on their intermediate units. In practice tenancies are tightly managed to ensure sustainable tenancies. This includes full credit checks including confirmation of employment; payslips verification; former landlords contacted for reference checks; interviews with prospective tenants to ensure they are the right match to the property; regular tenancy checks and strict checks on occupancy to ensure no overcrowding.
- 7.3.4. Right to acquire will not apply to these WCH properties as this only applies once the households have been WCH tenants for 10 years. These units would form part of WCH’s new development programme currently being discussed with the City Council which seeks to increase WCH stock by around 250 units over the next 4/5 years while delivering the City Council’s City for All and other housing objectives.

Points to Consider

- 7.3.5. WCH have indicated that it could deliver this scheme including the home ownership savings pot if WCC agreed to simply novate these units at the agreed sum of £190,698.
- 7.3.6. WCH have stated that if the AHF can subsidise the purchase of the units they would be able to make the scheme work from their own resources. A subsidy of £90k per unit of AHF would be sufficient. The balance of funding required to purchase the units, totaling £800,008 would be met through WCH’s own resources.
- 7.3.7. Moving the units to WCH would mean that the HRA has given up the opportunity to acquire an asset and the associated long term rental revenue stream. WCH would own the asset, however, WCC would retain full control of the asset as WCH are wholly controlled. WCC Housing Directorate would provide housing management services for these units producing an income stream.
- 7.3.8. Legal advice has been sought on the options available for WCH to acquire the 8 intermediate units from the HRA. The first option is for WCC to direct Clarion to grant the leases to WCH. This will require Clarion’s consent and an amendment to the Agreement for Lease naming WCH as a party to the contract.
- 7.3.9. A second option is that WCC take the leases as currently structured and then immediately assign/sublet to WCH. WCC will need to consider whether, if it splits the two transactions out (ie take the lease then assign/sublet), this creates an additional SDLT liability, but as WCH are not required to pay SDLT as a registered provider this is unlikely to be an issue.

7.3.10. Note that there is no restriction within the Agreement for Lease on assignment of the lease, but neither is it expressly permitted. As a matter of property law this defaults to “assignable” unless Clarion imply some good reason to the contrary from the terms of the contract.

7.3.11. In both options the parties should be aware of the Housing Act 1985 in light of the disposals. The HA1985 requires Secretary of State consent to any disposals of dwellings by the HRA. Certain disposals are allowed pursuant to “General Housing Consent A of 2013”. This allows the disposal of empty dwellings out of the HRA, without the need to go to the SOS for a specific consent, provided that they take place at “market value” as defined by the RICS (ascertained by a valuer within the preceding three months). The valuer is expected to take into account any specific constraints regarding the tenure of these units which, in the case of affordable housing, would tend to depress the value. If the valuer opines that the value of the units is greater than the agreed sum, in this case £192k including grant, then in order to render the transaction legal WCH would be obliged to pay the difference.

7.3.12. The General Housing Consent A of 2013 is also limited so that where the local authority owns an interest in the buyer, it only applies to the first five disposals in any financial year. There is no guidance or case law to as to whether this means that only five dwellings may be disposed of, or whether five disposals that could be bulk disposals are allowed. However, the general legal view is that the Consent allows five disposals that could be bulk disposals, of which this disposal would count as one.

Recommendation - Preferred Option

7.3.13. WCH are the tried and tested option for intermediate rented product. They have the immediate capacity to let and manage the tenancies and offer an attractive product enabling tenants to progress to home ownership.

7.4. It is recommended that a full valuation to ascertain market value, noting the constraints imposed on the units under the S.106 and lease agreement, be carried out to satisfy the Housing Act 1985 provision on disposal of dwellings by the HRA. Likewise, it is recommended that the bulk **disposal** count toward one of the five disposals by the HRA that is allowed for year-on-year.

7.4.1. For simplicity it is recommended that WCC continue with the buy-back of all the affordable units under the terms of the Agreement for Lease and that the 8 intermediate units are immediately assigned to WCH, who will immediately pay to the HRA the consideration for the 8 units, less grant already paid, of £800,008. The Agreement for Lease is silent on restrictions for assignment

7.5. Option 4 – Registered Provider (RP) Holds

Benefits

- 7.5.1. The 8 units could be sold to an RP other than WCH. The RP would bring external funding resulting in no cost to WCC and money coming into the HRA.
- 7.5.2. Opportunity to achieve an increased valuation above WCC's agreed price, which if achieved would represent a surplus to the HRA, albeit this will unlikely be significant as there are only 8 units involved.
- 7.5.3. WCC would maintain 100% nomination rights for the homes from the intermediate waiting list.

Points to Consider

- 7.5.4. WCC would lose an asset and properties would be outside its scope of control, albeit that rents could be addressed as part of any transfer agreement.
- 7.5.5. Legal advice required on the novation of WCC's contractual agreement with Clarion under the Development Agreement to pass the units to a separate party.

Recommendation – Dismiss

- 7.5.6. As there are only 8 units involved, there is unlikely to be substantial interest from the RP market given the scale of the opportunity.

8. Financial Implications

- 8.1. The expenditure and income incurred to date along with the budgets included within the 2019/20 HRA business for the Tollgate scheme are shown below.

	Costs/income to date	2019/20 HRA	Total
	£'000	BP figures	BP figures
	£'000	£'000	£'000
Expenditure	13,970	308	14,278
Buy-back of affordable units	7,020	9,380	16,400
Affordable Housing Fund (AHF)	(6,199)	(9,000)	(15,199)
Capital Receipts	(1,595)	(23,400)	(24,995)
Capital Receipts (intermediate)	-	(800)	(800)
Capital Grant/Loan	(2,301)	-	(2,301)
Total	10,895	(23,512)	(12,617)

- 8.2. The recommendation to transfer the 8 intermediate units to WCH for £800k is in line with the current HRA business plan assumptions.
- 8.3. WCH will retain the income associated with these units as well as covering the cost of maintenance and administration within their own resources.

9. Legal Implications

- 9.1. Legal advice is set out in the body of the report.

10. **Staffing Implications**

None.

11. **Consultation**

**If you have any queries about this Report or wish to inspect any of the
Background Papers please contact:**

Dermot Moloney, dmoloney@westminster.gov.uk

For completion by the **Cabinet Member for Finance, Property and Regeneration**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: **Councillor Rachael Robathan, Cabinet Member for Finance,
Property and Regeneration**

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendations in the report entitled **Tollgate Gardens: Options on how eight new build intermediate rent homes are held** and reject any alternative options which are referred to but not recommended.

Signed

Councillor Rachael Robathan, Cabinet Member for Finance, Property and Regeneration

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the Executive Director of Finance and Resources, and, if there are human resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy and Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Other Implications

- 1. Resources Implications**
- 2. Business Plan Implications**
- 3. Risk Management Implications** – There is a risk that the savings pot model that is intended to enable resident move into home ownership does not result in all residents being able to take this next step into home ownership. WCH will provide individual advice to residents as part of the their ongoing management of this tenancy.
- 4. Health and Wellbeing Impact Assessment including Health and Safety Implications**
- 5. Crime and Disorder Implications**
- 6. Impact on the Environment**
- 7. Equalities Implications**
- 8. Staffing Implications** – see paragraph 4.8, 4.9 and 4.10 of guide
- 9. Human Rights Implications**
- 10. Energy Measure Implications**
- 11. Communications Implications**

Note to report authors: If there are particularly significant implications in any of the above categories these should be moved to the main body of the report.

