

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>CABINET</b>	
<b>DATE OF DECISION</b>	<b>27<sup>th</sup> September 2023</b>	
<b>REPORT TITLE:</b>	<b>Future of Croydon Affordable Homes</b>	
<b>CORPORATE DIRECTOR and LEAD OFFICER</b>	<b>Jane West – Corporate Director of Resources and S151 Officer</b>	
<b>LEAD MEMBER:</b>	<b>Mayor Jason Perry – Executive Mayor Cllr Jason Cummings – Lead Member for Finance</b>	
<b>DECISION TAKER:</b>	<b>Executive Mayor in Cabinet</b>	
<b>KEY DECISION?</b>	<b>Yes</b>	Key Decision <b>6223EM</b> – Decision incurs expenditure, or makes savings, of more than £1,000,000 or such smaller sum which the decision-taker considers is significant having regard to the Council’s budget for the service or function to which the decision relates
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>No</b>	<b>N/A</b>
<b>WARDS AFFECTED:</b>	<b>All</b>	

## 1 Summary of Report

- 1.1** This report updates Cabinet on operations and performance of both active Limited Liability Partnership Companies (LLP Companies), Croydon Affordable Homes LLP and Croydon Affordable Tenures LLP.
- 1.2** This report also provides updates to changes being made to operational arrangements including the Council’s relationship with the Limited Liability Partnership (LLP) Board. The update to the arrangements reflects an approach that was envisaged during the setup of the LLP Companies but was not fully implemented. With necessary adjustments now being made to the Council’s draft 2019/20 Financial Accounts the Council can proceed with formalising engagement between the Council and the LLP Companies.

## 2 Recommendations

For the reasons set out in the report the Executive Mayor in Cabinet is recommended:

- 2.1** to note the update on operations and performance of Croydon Affordable Homes LLP and Croydon Affordable Tenures LLP

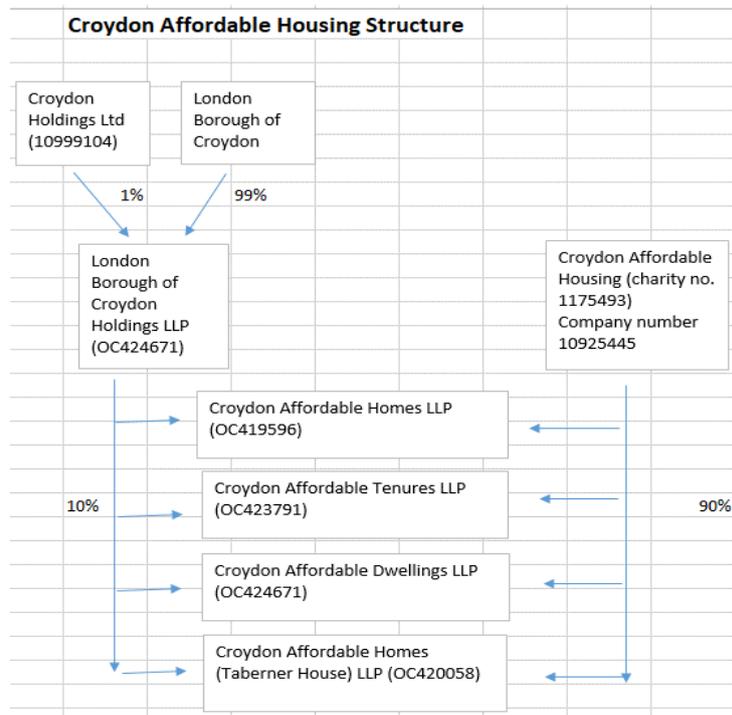
- 2.2 to note the changes to working arrangements between the Council and the LLP companies.
- 2.3 to delegate to Corporate Director of Resources and S151 Officer, in consultation with Cabinet Member of Finance and Croydon Companies Supervision and Monitoring Panel (CCSMP) to vary agreements between the Council and the LLP Companies.

### **3 Reasons for Recommendations**

- 3.1 Formalising of arrangements between the Council and LLP Companies will result in changes to the agreements between the two entities and no previous delegation has been made to make variations.
- 3.2 The recommendations requesting Cabinet to note matters reflects the latest update to arrangements to legacy accounting issues and implications of the performance of the LLP companies to the Council.

### **4 Background and Details**

- 4.1 Cabinet received an update in May 2023 on the LLP Companies as part of the Croydon Council Companies (excluding Brick by Brick Croydon Ltd) Update Report. This report advised Cabinet of performance issues particularly in relation to arrears.
- 4.2 In addition, the report in May 2023 also advised Cabinet on work being done between the Council and its external Auditors (Grant Thornton) to correct the accounting treatment of CAH/CAT in the Council's financial accounts. Further detail was also provided within the last two Budget Setting reports presented to Cabinet and Full Council during March 2022 and March 2023. This report provides an update to the work done and latest position in relation to the status of the audit.
- 4.3 Significant administrative time by Council Officers' have been allocated to resolving matters related to the LLP Companies. Further changes identified in this report will ensure that less Council Staff time is needed and that the LLP Board have the necessary autonomy to focus on managing for the LLP Companies.
- 4.4 The Council approved the setting up of the LLP structure in 2017 via the Delivery of Affordable Housing report presented to the June 2017 Cabinet. The LLP companies were subsequently set up and became operational over financial years 2017/18 to 2019/20. The only active LLPs are Croydon Affordable Homes LLP and Croydon Affordable Tenures LLP, with other LLPs remaining dormant. The Council, via London Borough of Croydon LLP holds a 10% equity stake in the LLP Companies and the Charity, Croydon Affordable Housing, holds the remaining 90% equity stake. The ownership structure is presented below.



- 4.5** The LLPs support the Council through provision of 344 residential units for the Homelessness service, where the Council holds 100% nomination rights to the units for a period of 40 years from inception of the arrangement. It is therefore important that the LLPs remain successful in their operations whilst ensuring the Council achieves the best value from being a key stakeholder.
- 4.6** The Council has invested significant resources to support the LLPs and that investment is now establishing a sustainable structure with minimal Council input. The Council and the LLPs have five property agreements between them and these will need to be varied as explained in Section 6 below to ensure that the operations within the LLP companies and the Council are in line with best practice with clear separation of duties.

### **Accounting corrections for transactions with LLP Companies**

- 4.7** The Council has now made all necessary updates to its 2019/20 Year End Accounts to reflect accounting entries that reflect accounting substance over legal form in relation to the initial transactions with the LLP Companies. An updated set of 2019/20 accounts were posted on the Council's website in July 2023 and these are now with the Council's external auditors. The updates include showing the assets (properties) and liabilities (loans from Canada Life and Legal & General) on the Council's balance sheet.
- 4.8** The accounting update has resulted in a net charge of £73.078m to the Council's Income and Expenditure account, as the removal of the capital receipt to the Council from the LLP structures prevented revenue transformation expenditure being funded from capital by the Council. This cost pressure was resolved by the application of a capitalisation direction into the 2019/20 accounts, which increased the Council's Capital Financing Requirement (CFR) by the same amount. This capitalisation direction does however incur additional Minimum Revenue Provision (MRP) charges

for its repayment over the subsequent 20 years. At the point the 2019/20 accounts were re-presented, this MRP charge totalled £3.544m, which was also funded by Capitalisation Direction. The repayment of this Capitalisation Direction via MRP was included within the 2023/24 Budget Setting report and therefore will not result in any new additional costs to the Council.

- 4.9** At the time of writing this report the Council's external auditors have not concluded their audit of the 2019-20 accounts which will include the changes explained in paragraph 5.2 above.

### **Operational Updates between the Council and LLP Companies**

- 4.10** The accounting implications have revealed a few operational improvements that can be made and ones which will ensure clear roles and responsibilities for both entities. Currently, the Council provides financial and property services which includes cash management, property management and bookkeeping services. The LLP Companies procure external accounting services from Azets Accountants but largely have been relying on the Council to provide other services.
- 4.11** This has caused a number of operational inefficiencies due to the differing rules and regulations impacting both the Council and LLP Companies. The Council is obliged to ensure all procurement and payment matters adhere to its constitutional position and also correctly follows finance and procurement regulations. However, the LLP Companies require to operate in a similar manner to private entities where the requirements to appoint and work with third party suppliers is a lot more flexible.
- 4.12** As various matters proceed via the Council this creates delay in completing matters and results in financial costs to the LLP. For example, resolution of disrepair claims requires efficient and timely legal action as the longer a claim is held the greater the risk of non-payment of rent.
- 4.13** In order to ensure the LLP Companies, operate in a commercially viable manner, the Board of the Companies agreed to transfer the cash management and bookkeeping services back into the LLP Companies. A new Finance Officer will be recruited by the LLP Companies who will provide focused support and will work closely with the Council on property management matters.
- 4.14** In addition, at the time of writing this report the LLP Companies are now in the process of opening their own bank accounts, which will help with procuring new suppliers directly and having the mechanism to pay under their own bank accounts.
- 4.15** The Property Management agreement will remain with the Council as the LLP Companies do not have the full infrastructure at present, which would include IT systems and staffing resource to manage the tenancies and the assets. The Council's NEC system is an established software, which currently has a repairs and tenancy

management function, and the Council can leverage its scale to continue to provide property and tenancy services.

- 4.16** Having an improved financial management arrangement will ensure the LLPs are able to build a direct and efficient relationship with the suppliers and the Council. The aim is that the Council's Property management lead will work closely with the finance lead and ensure a more formal arrangement can be implemented.
- 4.17** Through these changes the LLP Companies will take on more responsibilities in managing their own day to day arrangements and retain the necessary control as required for independent companies. This approach will require the LLPs to have sufficient cash to cover costs of the finance lead and to ensure it can pay suppliers in a timely manner. Currently, a recharge is made by the Council to the LLP Companies for provision of financial support. As part of the change in arrangements the LLPs will simply divert the recharge payment from the Council to paying for staff within the LLP.
- 4.18** As the processes and relationships are formalised with clearer roles and responsibilities identified, the Headlease agreement, Cash Management agreement and the Property Management agreement may need to be varied to reflect the revised relationship between the Council and LLP Companies.
- 4.19** The Headlease Agreement will need to be varied to reflect the need for the LLP Companies to deduct from the rent calculation charges related to lifecycle and other general business provisions. The Council currently holds provision for lifecycle costs and other provisions within its own balance sheet, however this is not in line with proper accounting practices as the provisions should remain on the LLPs balance sheet.
- 4.20** The Council is currently holding £1.50m in lifecycle and other provisions money that belongs to the LLP Companies. A full property condition survey is being proposed by the LLP Companies, which will be used to assess the net requirement to carry out necessary refurbishment to bring the residential units to a decent standard.

## **5 Alternative Options Considered**

- 5.1** There are no alternative options as this paper updates the Cabinet on current arrangements with Croydon Affordable Homes structure and requests that further improvements be made to ensure clear roles and responsibilities are identified for the Council.
- 5.2** Not proceeding with these updates would simply cause further operational inefficiencies and impact on the financial position of the LLP Companies. This risks both the Council and the LLP Companies failing on their compliance and accounting responsibilities.

## **6 Consultation**

- 6.1** The proposal presented in this report has been discussed and agreed with the Board of both LLP Companies. Approval was sought from the LLP Boards during the June and July 2023 Board meetings.
- 6.2** The Council has also engaged with the LLP's accountants Azets, to ensure corrections to the LLP accounts are made in line with that explained under Section 5 of this report. Azets have now completed the adjustments and the changes to the accounts will be presented to the September LLP Board meetings.
- 6.3** The Croydon Companies' Supervision and Monitoring Panel (CCSMP) has also been a key driver in considering improvements relevant to these proposals as a result of its role in monitoring the performance of the LLPs.

## **7 Implications**

### **7.1 FINANCIAL IMPLICATIONS**

- 7.1.1** This report requests delegation to vary agreements between the Council and the LLP Companies to reduce operational process inefficiencies and clarify roles and responsibilities of the parties.
- 7.1.2** These arrangements will not materially impact the Council's financial position, however as the accounting services will be transferred into the LLP Companies the Council will not receive any income for the financial management services previously provided. In return, the Council's finance staff previously supporting the LLP Companies will focus on Council requirements.

Comments approved by Allister Bannin, Director of Finance (Deputy S151). 11/08/23

### **7.2 LEGAL IMPLICATIONS**

- 7.2.1** The Council has a 10% interest in Croydon Affordable Homes LLP and Croydon Affordable Tenures LLP (the 'LLPs') via the London Borough of Croydon Holdings LLP (the 'Holding LLP') alongside Croydon Holdings Ltd, a company solely owned by the Council (the 'Holding Company'). These arrangements are detailed within paragraph 4.3 of this report, and the Council has a direct relationship with the LLPs under various agreements, as detailed in this report.

- 7.2.2** In respect of the delegation recommendation 3 set out in this report, the Executive Mayor has the power to exercise executive functions pursuant to s9E of the Local Government Act 2000 and has the power to delegate those functions.
- 7.2.3** When making delegated decisions to vary agreements between the Council and the LLPs, the Council will need to consider its responsibilities as a party to those agreements and its interest as Shareholder/ Member of the LLPs, Holding LLP and Holding Company. It is important to separate what is in the interests of the LLPs, Holding LLP and Holding Company from what is in the interests of the Council. Fundamentally, decisions need to be made solely having regard to what is in the interests of the Council (allowing for the fact that the interests of the LLPs, Holding LLP and Holding Company are intertwined with each other and with the Council).
- 7.2.4** The proposed variations to agreements will also require independent decisions of the LLPs, which may require Director and/or Shareholder/ Member decisions. The LLPs will follow their own decision-making processes in that regard and, if required, the Council's power to make decisions as a Shareholder/Member of the LLPs via the Holding Company/ Holding LLP may be exercised pursuant to the general power under Section 1 of the Localism Act 2011.
- 7.2.5** Legal implications will also need to be considered as part of any delegated decision on variations to agreements.
- 7.2.6** The recommendations in this report updating Cabinet on the position of, are to note only.

Comments approved by the Head of Legal – Kiri Bailey on behalf of the Director of Legal Services and Monitoring Officer 17.08.23

### **7.3 EQUALITIES IMPLICATIONS**

- 7.3.1** The Council has a statutory duty, when exercising its functions, to comply with the provisions set out in the Sec 149 of the Equality Act 2010. The Council must, in the performance of its functions, therefore, have due regard to:
- a. eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
  - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**7.3.2** When a service is contracted out both the contractor and the public authority that commissioned the service must give due regard to the three principles of the General Duty as set out above. Any supplier that is exercising public functions also has an obligation to fulfil the general duty.

**7.3.3** The Contract Management Framework is required to work within the framework of the Equality Strategy 2020- 2024. The deliverables in the Equalities Strategy should be incorporated into the Contract Management Framework and policy documents as detailed below:

“Outline how the proposed contract(s) will comply with the Public Sector Equality Duty outlined in Section 4 of the EQIA; and meet the outcomes of the Council’s equality strategy, particularly:

- i. All Council contracts contribute towards delivering our equality objectives.
- ii. Council contractors are inclusive and supportive of vulnerable groups.
- iii. Ensure that every strategy, delivery plan, council contract and staff appraisal have an equality objective linked to it.
- iv. That contractors be requested to adopt Croydon’s Equality and George Floyd Race Matters Pledges”.

**7.3.4** The Equalities Strategy including the Pledges named above, are provided to all bidders during the tendering stage of the procurement process. Social Value objectives also mirror the Council’s commitments to equalities and diversity.

**7.3.5** At the delivery stage of this service, the provider is required to collect diversity of service user and update the EQIA.

Comments approved by Denise McCausland - Equalities Manager (Date 07/08/2023)

## **8 APPENDICES**

N/A

## **9 BACKGROUND DOCUMENTS**

Croydon Council Companies (excluding Brick by Brick Croydon Ltd) Update Report – **May Cabinet 2023**

Revenue Budget and Council Tax Levels 2023/24 – **February 2023**

General Fund & Housing Revenue Account Budget 2022/23 to 2024/25 – **February 2022**