

## BARNESLEY METROPOLITAN BOROUGH COUNCIL

This matter is a Key Decision within the Council's definition and has been included in the relevant Forward Plan

Report of the Executive Director  
for PLACE

### **BERNESLAI HOMES: SERVICES AGREEMENT & MEMORANDUM OF ASSOCIATIONS RENEWAL 2018**

#### **1. Purpose of Report**

- 1.1 To inform Cabinet of the review of the Services Agreement and Memorandum of Associations undertaken as part of the Housing Services Review and to seek approval to make the necessary amendments to these documents to align with agreed recommendations, delegations and changes to service delivery functions.

#### **2. Recommendation**

- 2.1 **That Cabinet approve the revisions to the Services Agreement and Memorandum of Associations with any further minor amendments being delegated to the Service Director for Culture and Housing in consultation with the Executive Director of Core Services, the Service Director of Finance and the Cabinet Member for Place.**

#### **3 Introduction**

- 3.1 In 2002, the Council formally established its Arms Length Management Organisation (ALMO) Berneslai Homes. At that time the Council entered into a five year agreement for Berneslai Homes to act as their agent to manage the Council's housing stock. The contract between the Council and Berneslai Homes which sets out the rights and responsibilities of both parties is known as the Services Agreement.
- 3.2 The original agreement was extended for a further period of five years in 2007 (Cab ref 14.11.2007/6.4), was revised in 2012 (Cab.18.1.2012/9.4) to take account of significant changes required as a result of a move to self-financing and updated in 2016 following approval for the extension of the existing contractual arrangements with Berneslai Homes up to 31st March 2021 (Cab.4.11.2015/8).
- 3.3 Although the automatic renewal of the contract with Berneslai Homes was approved for a further five years in November 2015 (to commence 1<sup>st</sup> April 2016), the Council had already taken the decision to commission a Social Housing Options appraisal to determine whether options were available to further protect and invest in the social housing stock in Barnsley, and facilitate the accelerated delivery of the Council's housing priorities, going forward.

- 3.4 As the Services Agreement included a termination clause (upon the provision of a 6 months' notice period) should the review identify a more beneficial stock management option, there was no conflict between the contract extension and the Social Housing Options work, at that time.
- 3.5 The Social Housing Options appraisal, independently undertaken by the Northern Housing Consortium and Campbell Tickell, resulted in the Council taking the decision to retain the ALMO management function but to undertake a series of Housing Service Reviews focussed upon ensuring best value and enhanced strategic alignment between the Council and Berneslai Homes.
- 3.6 The recommendations arising from the reviews were agreed in April 2018. This report seeks approval to amend the Services Agreement and Memorandum of Associations in line with key recommendations which impact on service delivery and/or delegated functions.

#### **4. Key Revisions to the Services Agreement**

- 4.1 The areas of the Services Agreement that have required any significant updating are outlined in detail below:

##### **4.2 Section 1: Strategic Plans**

The wording in this section has been slightly amended to better reflect that the Strategic Plan is set within the context of the Council's Corporate Plan and relevant strategies.

##### **4.3 Section 6: Future Strategic Plans**

This section has been updated to remove the requirement for Berneslai Homes to produce a 30 year HRA financial business plan and HRA Budget Report alongside an updated Strategic Plan. These functions were previously carried out by Berneslai Homes on behalf of the section 151 officer but are now being carried out directly by BMBC Finance.

##### **4.4 Section 23: Assignment and Sub-Contracting**

Clause 23.5 has been added to this section to provide an option for Berneslai Homes ("the company") to deliver market rent/sale products as a commercial venture in their own right, subject to an agreed business case.

##### **4.5 Section 28: Data Protection**

This section has been amended to reflect the General Data Protection Regulations (GDPR) May 2018.

##### **4.6 Section 32: Insurances**

This section makes it clear that the amount of indemnity cover is £30M and that BMBC Finance procure and manage insurances on Berneslai Homes behalf.

##### **4.7 Section 52: Right to Use Surpluses**

This section has been updated to provide greater clarity with regard to the use of company surpluses. The section makes it clear that the Council has ultimate discretion to use of company surpluses to support its strategic objectives whilst recognising, in the exercise of that discretion, the need for a proportion of surpluses to be retained by BH to enable it to sustain its ongoing operations

and meet its Director's fiduciary obligations to the Council. The section also clearly states the delegations that apply with respect to the use of such retained surpluses:-

- Approval for expenditure up to £250K in any one year is delegated to the Organisation's Board, in agreement with the Service Director responsible for Housing.
  - Approval for expenditure above £250K shall be given by the Council in line with its financial delegations and limits set out in the Council's Constitution.
- 4.8 Decisions in respect of surpluses to be used in support of the Council's strategic objectives will be made by Cabinet as part of the Council's normal decision making processes; following initial consideration by officers through the Capital Oversight Board.
- 4.9 Appropriate consequential amendments have been made to the Memorandum of Association to achieve consistency between the two documents. These are referred to in section 5 below.
- 4.10 Other minor amendments include tweaks to Section 37 in relation to the Ombudsman, minor amendments to the core services functions (to reflect the service/structure) and changes to the Delegations and Constitutions document in relation to approvals routes (all in line with the Council's approvals processes and financial thresholds).

### **Schedules**

- 4.11 **Fourth Schedule: Financial Arrangements**  
PAYMENT OF THE MANAGEMENT FEE  
This section has been amended to remove the management of the Housing Revenue Account (HRA) from the delegations on which the Management Fee is paid.

### **Annexes**

- 4.12 **Annex 1 Strategic Plan Format:** The Strategic Plan format has been updated to reflect the revised headings as used in the Strategic Plan 2016-21.
- 4.13 **Annex 2 Housing Management Responsibilities Delegated to the Organisation:** The list of delegations has been amended to reflect:
- **Tenancy Management & ASB:** This section has been amended to reflect that the Council retains responsibility for higher level ASB enforcement. The Council also retains responsibility for the development of the ASB Strategy, with BH a member of the SNS Strategic Leadership Team.
  - **Resource/Budget Management:** This section reflects that the financial management arrangements relating to the HRA/Housing Capital Programme currently carried out by BH have been transferred back to the Council under the direct control of the Section 151 Officer.

- **Capital Programme Approvals:** The Council's Governance and Decision making arrangements will apply for the approval of all Capital Schemes (including Decency Programmes).
- **Capital Programme 5 Year Housing Investment Programme:** The Council is responsible for setting the five year Housing investment programme and the ALMO is responsible for delivery.
- **New Build Delivery Programme (across tenure):** This function will now be undertaken by the Council.
- **Conversions (across tenure):** The ALMO retains this function, subject to approvals in line with agreed delegated limits.
- **Housing Revenue Account Pooling Returns:** This function will now be undertaken by the Council.
- As referenced at point 4.4 and Section 23 within the Services Agreement, Annexe 2 also includes a delegation for Berneslai Homes to deliver market rent/sale products as a commercial venture by the organisation in their own right, subject to approval by the Council via an agreed business case.

## 5. **Key Revisions to the Memorandum of Associations (MofA)**

- 5.1 The Memorandum of Association sets out the key powers of the company. It is a basic principle of company law that a company cannot act outside the scope of its powers as set out in the MofA. It is proposed to amend the wording of Clause 6 of the document which deals with the application of income and property. This is to make it clear that surpluses may be applied in support of the Council's strategic objectives as provided for in section 52 of the Services Agreement. As referred to in section 4 above, it is ultimately in the discretion of the Council how surpluses are to be used in support of its strategic objectives.

## 6. **Consideration of Alternative Approach**

- 6.1 No alternative approach has been considered given that this report is the culmination of a series of reports on the future delivery of the housing services in Barnsley following the Housing Services Review which was approved in April 2018. This report sets out the required amendments to Services Agreement and Memorandum of Associations, as required.

## 7. **Proposal and Justification**

- 7.1 It is proposed that the revision to the Services Agreement (Delegations and Constitutions document) and Memorandum of Associations, as detailed in this report be approved and implemented with immediate effect.

## 8. **Implications for Local People/Service Users**

- 8.1 The revisions to the Services Agreement and MofA have been made in response to the Housing Services Review recommendations approved in April 2018. The reviews were undertaken by officers across all three directorates of the Council, staff at Berneslai Homes and representatives of the Tenant's Federation to ensure that best value and full strategic alignment is achieved between the council and BH to the benefit of both Tenants and Residents of Barnsley.

## **9. Financial Implications**

- 9.1 Consultations on the financial implications have taken place with the Service Director, Finance.

## **10. Employee Implications**

- 10.1 There are no direct employee implications arising from this report. The transfer of the finance and housing growth functions from Berneslai Homes to the Council resulted in the TUPE transfer of a small number of posts. These transfers were managed in the normal way, including full consultation with the staff concerned and with their Trade Union representatives.

## **11. Communications Implications**

- 11.1 Changes flowing from the Housing Service Review work have been communicated to all affected, staff, tenants and the wider Barnsley community, as appropriate.

## **12. Consultations**

- 12.1 Extensive consultations have been undertaken with the Portfolio Holder for Place, with Berneslai Homes Senior Management Team and Board, with the Tenants and Residents Federation, and with colleagues across the Council as part of the HSO study process and the subsequent reviews.

## **13. The Corporate Plan and the Council's performance management framework**

- 13.1 The amendments to the Services Agreement will strengthen the strategic alignment between the Council's corporate priorities and the BH Strategic Plan.

## **14. Promoting Equality, Diversity and Social Inclusion**

- 14.1 The requirement to promote Equality, Diversity and Social Inclusion has been central to the Housing Service Review and Service Agreement revision process.
- 14.2 Tenants Federation representatives have been fully engaged in the Housing Service Review process and resulting recommendations/changes.

## **15. Tackling Health Inequalities**

- 15.1 The housing management and maintenance model delivered between the Council and Berneslai Homes contributes to the wider wellbeing of Barnsley people by helping customers to meet their housing need requirements, deal with poverty, health and unemployment issues and supports communities to have healthier and fulfilling lives

**16. BACKGROUND PAPERS**


Housing Services Review Report (internal report presented to Purple Cabinet. April 2018.

Cabinet approval for the extension of the existing contractual arrangements with Berneslai Homes up to 31st March 2021 (Cab.4.11.2015/8)

DRAFT updated Services Agreement, MofA, and Delegations paper are available upon request.

If you would like to inspect background papers for this report, please email [governance@barnsley.gov.uk](mailto:governance@barnsley.gov.uk) so that appropriate arrangements can be made

Financial Implications/Consultation



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*(To be signed by senior Financial Services officer where no financial implications)*