

BARNSLEY 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 Contract Renewal & Strategic Plan 2021

1. Purpose of Report

This report is split into two sections. Section A of the report:

- 1.1 Seeks approval to renew the Services Agreement (Contract) (and associated lease) between the Council and Berneslai Homes in line with the automatic renewal mechanism as set out in Clause 61 and the Second Schedule of the Services Agreement and to vary the terms of the Services Agreement (and ancillary documents) as set out in this report.
- 1.2 Seeks approval of the DRAFT Berneslai Homes Strategic Plan 2021-2031 (Appendix B).

Section B of the report.

- 1.3 Seeks Cabinet endorsement of the independent Governance Review undertaken by DTP in June/July 2020 and approval of the recommendations within the report. This includes the proposal for a revised Governance Structure for the Berneslai Homes Board and will require amendment to the Memorandum and Articles of Association for Berneslai Homes Ltd.
- 1.4 Seeks approval to appoint a new independent Chair to the Berneslai Homes Board following a recent recruitment process.

2. Recommendations

It is recommended that:

SECTION A - CONTRACT RENEWAL & STRATEGIC PLAN:

- 2.1 Cabinet acknowledge the evidence base provided by Berneslai Homes; satisfying the pre-agreed conditions for automatic contract renewal.
- 2.2 Cabinet approve the renewal of the Services Agreement (and associated lease) between the Council and Berneslai Homes for a period of up to 10 years (5+5 years - 1st April 2021- 31st March 2031). The renewal at year 5 to be subject to Berneslai Homes satisfying the pre-agreed conditions for automatic renewal set out in Schedule 2 of the Services Agreement.
- 2.3 Cabinet approve the revisions to the Services Agreement (and ancillary documents) as set out in paragraph 6 of this report with the approval of all

necessary contract amendments and related changes being delegated to the Service Director for Regeneration & Culture in consultation with the Portfolio Holder for Place, the Legal Services Director and the Service Director for Finance.

- 2.4 Cabinet authorise the Legal Services Director to enter into all necessary legal documentation in connection with the extension of the Services Agreement and lease renewal.
- 2.5 Cabinet approve the DRAFT 2021-31 Strategic Plan.
- 2.6 The Head of Housing & Energy, in consultation with the Cabinet Spokesperson for PLACE, be authorised to approve any minor final amendments or additions to the Strategic Plan and associated appendices as may be identified.

SECTION B: GOVERNANCE:

- 2.7 Cabinet support the findings and recommendations of the Governance Review of the Berneslai Homes Board and endorses the proposed new Board Structure and associated actions as summarised in Appendix C and at section 8 within the report.
- 2.8 Cabinet authorise the Legal Services Director to enter into all necessary legal documentation in connection with the amendments to the Memorandum and Articles of Association for Berneslai Homes Ltd.
- 2.9 Cabinet approves the appointment of Sinead Butters MBE as the new Chair of the Berneslai Homes Board.

3. Introduction

- 3.1 On 18th January 2012, Cabinet approved the content of a Services Agreement between the Council and Berneslai Homes for a period of 4 years; expiring on 31st March 2016. The 2012 Services Agreement (and subsequent updated iterations) include a clause allowing the Council to extend the terms of the contract for further periods in blocks of up to 5 years (Automatic Contract Renewal), subject to Berneslai Homes meeting a number of pre-agreed conditions as set out in the Second Schedule of the Services Agreement. These conditions are linked to Berneslai Homes demonstrating value for money, sound governance, and achieving high levels of performance on service delivery.
- 3.2 In 2016, the contract was renewed for a further 5 years up to 31st March 2021. The Council revised the Services Agreement in 2018 following the completion of the Housing Services Review; retaining the right to extend the term of the Services Agreement for further periods of up to five years or to terminate the agreement, upon the provision of a 6 months' notice period.
- 3.3 The current contractual term expires on 31st March 2021 with the Council being required to give Berneslai Homes 6 months notice of its intentions relating to contract renewal.

4. SECTION A: Automatic Contract Renewal & Strategic Plan

- 4.1 The conditions set down in the pre-agreed automatic renewal mechanism, cover four key aspects of Berneslai Homes' performance that must be maintained for the contract to be extended. These criteria cover the areas of:
- 1) Service Delivery**
 - 2) Governance Arrangements**
 - 3) Management; and**
 - 4) Organisational Efficiencies**
- 4.2 The monitoring of performance against the criteria as set out above has been undertaken against an evidence portfolio. A summary of the evidence is included within this report at section 5, with the evidence portfolio available to members on request.
- 4.3 There are also a number of red line issues that would result in the automatic renewal mechanism not being implemented, these are:
- Health and Safety - This would relate to a serious systemic breach of duty of care which has the potential to, or does, lead to a charge of Corporate Manslaughter;
 - Governance arrangements - This would be identified where the arrangements are found to be inadequate or fail against the planned review;
 - Customer Satisfaction - This would be identified following any adverse regulatory finding for which Berneslai Homes is substantially and directly responsible.
- 4.4 **In terms of the red line issues as highlighted above, it is not considered that any of these triggers have been breached, as this report goes to publication.**

5. Automatic Contract Renewal

- 5.1 **Service Delivery** – The evidence reviewed as part of this performance area included a review of quarterly performance over the last contract period and the annual Housemark benchmarking data for Berneslai Homes over 2017-2019 (2019/20 data will be available in December 2020). A summary of this evidence (with attachments) is available on request as part of the background papers to this report.

Since April 2016, Berneslai Homes have produced a quarterly performance report for review and sign off by BMBC. The report includes agreed KPI's (updated annually within the Strategic Plan Refresh) covering: Customer Satisfaction, Rent Collection, Void Management and Repairs and the percentage of stock meeting decency standards (the Barnsley Homes Standard). The key KPI's are also included within the Council's Corporate Quarterly Performance reports.

Berneslai Homes has consistently delivered on key KPI targets over the 2016/17-2019/20. This is evidenced in the Quarterly Performance reports for years 2016/17, 2017/18, 2018/19, 2019/20 and Q1 2020/21 (to date). Performance targets are reviewed and endorsed by both BMBC and the Tenant's Panel at the Strategic ALMO Liaison Meetings held on a quarterly basis during this period.

COVID 19:

Naturally, performance during quarter 4, 2019/20 & quarter 1, 2020/21 has been impacted by the Covid 19 situation. Berneslai Homes have responded positively to the challenges of the pandemic, retaining essential services including gas servicing and responsive repairs for tenants. Health and safety for tenants and staff remained the first priority resulting in the suspension of the choice based lettings service and other non essential services. The changes in service delivery have had an impact on performance affecting 2020/21 quarter 1.

Relet days and the number of empty homes has increased but work has now recommenced; resuming normal service delivery which will result in improvements in performance in future months.

Rent collection services have been retained throughout the pandemic but with an emphasis on support and contact with those whose income has been affected by the pandemic. Rent collection rates have reduced slightly, but the overall impact has been mitigated by the proactive actions of the rents team.

Repairs have also been affected by the pandemic and a catch up programme has commenced and will be completed during quarter 2 2020/21. The investment works resumed in July 2020 but will result in delays to the overall programme for 2020/21.

5.2 Governance Arrangements – The evidence reviewed as part of this performance area includes the annual self-assessment against NHF governance standard last completed in 2019/20 and reviewed by Berneslai Homes Audit Committee and the Council's internal Audit Team. The Council's Audit Team concluded that Berneslai Homes' governance arrangements complied with the prescribed standards.

During 2020, Berneslai Homes instigated a review of governance relating specifically to compliance issues and also a more general review of the current arrangements and options for improvement. These reviews were initiated by the Berneslai Homes Board themselves in acknowledgement of the need for improvement and sought an external evaluation of the current governance arrangements.

Reports produced by independent consultants DTP in March and July 2020 have resulted in a number of changes to increase the skills on the Board. Measures have included training on compliance, risk, development of a new

strategic plan and the adoption of a governance improvement plan which includes changes in the Board composition. During the process the current Chair of the Board resigned and the recruitment of the new Chair will complete in August 2020.

The proactive approach by the Board to improve governance will ensure that the new arrangements from November 2020 will strengthen the Board and ensure that diversity within the Board is retained with representatives from the local community as well as independent members.

- 5.3 **Management** - In line with the Second Schedule of the Services Agreement, this area has been measured against the organisations achievements as reported against externally assessed quality standards for both staff and customer satisfaction. The required assessments have been reviewed over the last 12 months, with Berneslai Homes successfully gaining re-accreditation to Investors in People (IIP) Gold and receiving the Wellbeing Good Practice Award. The organisation has also been recognised as a Disability Confident Employer and a Mindful Employer.

From a customer services perspective, the STAR survey results for 2019 again place Berneslai Homes in the upper quartile for overall customer satisfaction, with the level consistently staying at 89% over the last 3 years. Other results remain consistently high and above the benchmark on 8 out of the 10 key indicators.

- 5.4 **Organisational Efficiencies** - This evidence base takes into consideration:
- The annual review of the HRA Budget
 - The levels of assurance given in the Internal Audit reports; and
 - The value for money outcomes as identified in the Organisations efficiencies register

The evidence provided for this performance includes the efficiency savings generated over the last financial year (£516k for 2019/20) and the forecast for 2020/21, the Value for Money Strategy for 2020-23 and the outcomes of the Housemark Performance Improvement Club benchmarking report from December 2019, which showed that (compared to the Local Authorities and ALMOs in the Peer Group) Berneslai Homes was upper quartile in 11 of the 13 efficiency PI's and fifth overall in terms of low cost core housing management services. A copy of the Value for Money annual report has been provided as part of the evidence base and can be provided within the background papers, as requested.

6. Key Revisions to the Services Agreement 2021

- 6.1 Subject to approval, the Automatic Contract Renewal will trigger a requirement to revise the contents of the Services Agreement. In short, the main amendments are noted in the table below.

Section		Amendment
1	Strategic Plan	This section will need updating to reflect the duration of a new Strategic Plan;

Section		Amendment
		covering the 2021-31 period.
5	Best Value	Replaced with Value for Money
15	Functions delegated	Annex 2 amended to represent the recent changes in acquisitions (now undertaken by the Council). It is proposed that further revisions to annexe 2 are delegated to the Service Director of Regeneration and Culture in consultation with the 151 officer, monitoring officer, the Director of Core Services and the Portfolio Holder for Place.
27	Data Protection	Section updated including role as Data Controller. A summary table of the roles/responsibilities of the Data Controller/Data Processor is located at Appendix E.
61	Duration	This section will need updating to reflect the expiry date of the updated contract duration, initially for 5 years, but extendable for up to 10 years subject to Berneslai Homes satisfying the pre-agreed conditions for automatic renewal at end of year 5.
Fourth Schedule	Part B	Reference to NPS has been removed and replaced with provider of professional services
	Social Value	The agreement will be updated to align with the Council's corporate social value policy framework and strategic priorities when contracting.
Any other ancillary, legislative, administrative and consequential changes to the legal documentation as recommended by the Legal Services Director.		

7. Strategic Plan 2021-2031

- 7.1 Subject to cabinet approval to renew this contract beyond March 2021, Berneslai Homes are required to produce a new Strategic Plan to cover the extended contract period (2021-31). The Strategic Plan covers a ten year delivery strategy, with associated appendices updated on an annual basis. A DRAFT plan has been developed, but with an emphasis on the period to April 2022. The vision of the organisation, and its objectives in the longer term, need to be developed further with key stakeholders including the Council, tenants and the Berneslai Homes Board.
- 7.2 The new plan focuses on the initial period to April 2022, aligning its objectives to the **Barnsley Priorities**.

- Health and Wellbeing – active travel, development of coaching culture, investment in aids and adaptations
 - Business & Economy – active asset management strategy maintaining council homes, enhanced cyber security , local economic investment
 - Community Resilience – providing tenancy support, assisting tenants into employment, supporting carers, flood defence works
 - Education & Skills – use of technology for staff and tenants, youth employment schemes, training for tenants
- Infrastructure & Environment – safe homes, development of carbon agenda, solar PV, move from gas heating, electric vehicles, decent homes investment, delivery new homes at Berneslai Close

Health and Wellbeing	Business & Economy	Building Resilience	Education & Skills	Infrastructure & Environment
Great Place to Work Improving Mental Health Part of the BMBC Mental Health Partnership Active Travel - Staff cycling and walking to work Wellbeing of Tenants - Increased investment in aids and adaptations Homelessness Work with the Council to reduce homelessness	Excellent Governance Service Delivery Review of delivery methods to increase capacity and productivity Repairs online and dynamic scheduling Tenants at the Heart of Decision Making Great Performance	Supporting Communities Support for tenants into employment & housing coaches Support for carers - Harrys Pledge Support for care leavers Accessible Services Flood defence work	Employment & Training Employment projects expanded – Community Refurbishment scheme, ESF, Kickstart – Jobs led recovery Technology Expansion of free/low cost broadband (with BMBC)	Zero Carbon Zero carbon strategy with solar PV programme & Heating system replacement - moves away from gas Safe Homes Growth Social housing growth with BMBC

The key objectives for the period to April 2022 included in the strategy :-

- Creating employment and training opportunities for tenants and their families.
- Developing and implementing the approach to the zero carbon agenda, retrofitting homes, developing employment opportunities and reducing fuel poverty.
- Seizing opportunities to grow as an organisation and sustain levels of social housing in Barnsley.
- Working with tenants to embrace the outcomes of the Social Housing White paper (Autumn 2020) and the Hackitt Review on Fire Safety.

- Working with the Council to develop digitally inclusion throughout the Borough
- 7.3 As the Barnsley 2030 vision develops, the annual renewal of the plan will allow more detail on the alignment of the Berneslai Homes vision and objectives and the links to Barnsley 2030. A copy of the DRAFT Strategic Plan is located at Appendix B.

7.4 SECTION A: PROPOSALS AND JUSTIFICATIONS

In considering the evidence as provided above and the DRAFT Berneslai Homes Strategic Plan, it is proposed that Cabinet approve the proposed extension to the Services Agreement for a period of up to 10 years, in line with the recommendations above at paragraphs 2.1 to 2.6.

Over the last 5 years, Berneslai Homes has continued to deliver a value for money service with high levels of performance and customer satisfaction. Recent reviews of governance arrangements and proposed changes to the Berneslai Homes Board will seek to further strengthen the performance of the organisation and its abilities to assist the Council in delivering our housing management and maintenance services alongside wider strategic objectives as part of Barnsley 2030. Berneslai Homes has responded extremely well to the global pandemic of Covid19; maintaining key services and functions throughout and further assisting vulnerable tenants.

8. SECTION B: Governance Review 2020

- 8.1 In March 2020, Berneslai Homes commissioned DTP (David Tolson Partnership Ltd) to undertake an objective and independent health check of Berneslai Homes Board governance. The review was commissioned with an acknowledgement by the Board (and supported by Berneslai Homes SMT and the Council), that the governance of the company required review in order to identify those areas requiring re-focus or improvement following a significant period of change for the organisation and in the context of the negotiations for the contract renewal and development of the Strategic Plan.
- 8.2 A copy of the Governance Review report can be found at Appendix C. The recommendations in the report are largely focussed on governance improvement and strengthening. The consultants found some areas of weakness within the current arrangements, but have made suggestions for improvement and these have been positively received by Board Members who are willing to move forward productively and to make changes in relation to the governance culture and the board member role within this.
- 8.3 The key proposals to strengthen the structure and focus of the Board are included in the DTP report at Appendix C. Cabinet are asked to endorse the recommendations within the DTP report; including a change to the composition of the Board (which is set out in the Memorandum of Articles and Associations for Berneslai Homes Ltd and will need updating) to include:

- Reducing the number of Council and Tenant representatives from three to two board members (Article 13)
- Increasing the number of independent board members from three to four (Article 13)
- Reducing the number of consecutive terms from three to two consecutive three-year terms, with further one-year terms up to a maximum of nine years by exception. (Article 13)
- Removal of the prescriptive process of appointment of Chair. (Article 17)
- The addition of two co-optees to board and committees. (Article 18)

8.4 Chair of the Board Appointment:

It is a requirement of the Berneslai Homes' Memorandum of Articles and Association that there shall be an independent Chair of the Board appointed by a competitive recruitment process and selected by an independent panel, comprising of a nominated representative of the Council and two others. Following a recruitment process in August 2020, a new independent Chair has been selected by the panel. This report seeks Cabinet approval to appoint the preferred candidate, Sinead Butters MBE, into the role.

- 8.5 Given the independent audit of the Berneslai Homes board, and the steps already taken to strengthen governance arrangements, it is considered that the organisation will move positively into the new contract period with an invigorated and suitably qualified board which best meets the future needs of the organisation.

8.6 SECTION B PROPOSALS AND JUSTIFICATIONS

It is proposed that Cabinet support the findings and recommendations of the Governance Review of the Berneslai Homes Board and endorses the proposed new Board Structure and associated actions. As highlighted, any changes to the Berneslai Homes Board structure will require amendments to the Memorandum and Articles of Association for Berneslai Homes Ltd. A DRAFT revision to this document is included at Appendix D. It is recommended that Cabinet authorise the Legal Services Director to enter into all necessary legal documentation in connection with the amendments.

- 8.7 It is recommended that Cabinet approve the appointment of Sinead Butters MBE as the new Chair of the Berneslai Homes Board.

9. Implications for local people / service users

- 9.1 The renewal of the Services Agreement with Berneslai Homes will deliver continuity for tenants and residents of the borough in the performance of the housing management and maintenance function and wider community services.

10. Financial Implications

- 10.1 Consultations have taken place with representatives of the Service Director – Finance (S151 Officer).
- 10.2 This report requests Cabinet approve the renewal of the Services Agreement between the Council and Berneslai Homes for a period of up to 10 years (5+5 years - 1st April 2021- 31st March 2031).
- 10.3 The current annual management fee of £12.162M is already included within 2020/21 the Housing Revenue Account business plan and therefore has no immediate impact of the medium strategy of the HRA (see table below). The Berneslai Homes management fee charged to the HRA is reviewed annually as part of the 30 Year Business Plan during the budget setting process.

	2019/20 £	2020/21 £
Original BH Management Fee 2018/19	13,778,380	11,716,375
Fixed / Ongoing Costs		
Pay Award & Increments	271,368	215,640
Increase in Recharge for SharePoint	20,000	-
Other Inflation	52,100	-
	343,468	215,640
Revision to Charging Mechanism		
Grounds Maintenance	-1,266,640	-
Barnsley Connects	-795,680	-
IT Budget	282,600	-
Strategic Housing & Finance	-213,673	-
	-1,993,393	-
Investment & Other Policy Decisions		
HRA 4 - Environmental Improvement Apprenticeship Scheme		90,000
HRA 5 - Electrical Compliance Officer		42,427
HRA 6 - Occupational Therapy Contribution		19,000
HRA 7 - Fire Door Inspections		74,000
HRA 19 - Building Safety Manager		55,000
	-	280,427
Savings Proposals		
HRA 1 - BH Zero Based Budget Review	-205,340	-
HRA 2 - Customer & Estates Services Restructure	-206,740	-
Utilities		-34,300
Legal Fees		-15,700
	-412,080	-50,000
Proposed BH Management Fee	11,716,375	12,162,442

- 10.4 In addition to the savings referenced in section 5.4 Berneslai Homes have contributed savings realised in the HRA via the management fee. The table above shows savings to the management fee in 2019/20 of (£0.412M) and (£0.050M) in 2020/21.
- 10.5 Included within the current partnership arrangement with Berneslai Homes is the management responsibility of the Housing Repairs and replacement programme (PRIP). This is Public / Private Partnership with Berneslai Homes and Wates that has been delivered successfully and on budget over the current contract period of 2010 through 2020. The two thirds public contract was awarded to Berneslai Homes Construction Services and commenced on the 1st April 2020.
- 10.6 The contract award guarantees BHCS, as the public sector partner, a contracted minimum value of £14M per annum of works for the duration of the 10 year contract. The annual contract payments to Berneslai Homes, over the length of the last contract (2010 – 2020), totalled on average, around £20M per year, split between capital and revenue expenditure.
- 10.7 The financial implications are provided in Appendix A.

11. **Legal Implications**

- 11.1 The existing Services Agreement between the Council and Berneslai Homes contains provisions allowing the Council to renew the contract on 6 months' written notice provided that the Council is satisfied that the pre-agreed conditions on value for money, performance and governance set out in Schedule 2 of the agreement are met.
- 11.2 In order for the Council to protect its position contractually, the Council must serve notice on Berneslai Homes by no later than 30 September 2020 exercising its right to extend the existing contract. This would provide Berneslai Homes with the requisite 6 months' notice before the existing contract expires on 31 March 2021.
- 11.3 Subject to Cabinet approval, it is proposed that the notice be served to extend the existing contract by a further 5 year period (which would be renewable again for a further 5 year period if the Council are satisfied that Berneslai Homes have met the pre-agreed conditions set out in Schedule 2 of the Services Agreement at the end of the first 5 year period).
- 11.4 Whilst service of the notice to extend by the Council by 30 September 2020 will protect the Council's contractual position under the terms of the current Services Agreement, the Council intends to vary the terms of the Services Agreement as set out in paragraph 6 of this report. Therefore, following service of the notice to extend, it is intended (and recommended) that the Council and Berneslai Homes formally document all required variations to the Services Agreement and associated legal documentation in line with the suggested changes set out in paragraph 6 of this report.

12. Employee implications

- 12.1 There are no direct employee implications, at this time, should the recommendations set out in this report be approved.

13. Communications implications

- 13.1 There are no direct communications implications arising from this report. There will be a robust communications plan implemented following renewal of the contract and publication of the Strategic Plan. This will include both internal and external media releases.

14. Consultations

- 14.1 Consultation has been undertaken with BMBC finance, legal services, procurement and strategic housing; alongside the Council's DMT, SMT and Portfolio Holder. Robust consultations have taken place between BMBC and Berneslai Homes' Senior Management Team and staff, the Board and Tenants' Panel in respect of the automatic contract renewal and Strategic Plan. Officers from both BMBC and Berneslai Homes were consulted as part of the Governance Review process.

15. The Corporate Plan and the Council's Performance Management Framework

- 15.1 The Berneslai Homes Strategic Plan 2021-31 will strategically align with the Council's Corporate Plan for Barnsley 2030 and Housing Strategy (2014-33) contributing to the provision of high quality homes for social rent; investment in the borough and council assets; supporting people to manage tenancies, live independently and 'achieve'; and assist in the delivery of housing growth in promoting economic growth.

16. Promoting Equality & Diversity, Social Inclusion & Tackling Health Inequalities

- 16.1 The Services Agreement reflects the Council's Corporate Equality policy.
- 16.2 The existing frameworks for involving and engaging with a wide range of customers to support social inclusion and tackle health inequalities is underpinned within the Customer Involvement Agreement within the Strategic Plan. Berneslai Homes assists the authority in providing quality housing provision for those households on low incomes and vulnerable service users who cannot secure suitable housing privately.

17. Climate Change & Sustainability – Zero Carbon

- 17.1 Securing the continuity of contract delivery and management of stock by Berneslai Homes, and a fully aligned BH Strategic Plan, is integral to the Council's ambitions to delivering its Zero Carbon. The management and maintenance of the Council's 18,000 stock will need significant focus,

investment and strategic asset management if it is to increase energy efficiency of homes to an average of SAP rating C or above by 2040.

18. Risk Management Issues

- 18.1 The risks in renewing the contract with Berneslai Homes are considered low. Berneslai Homes has consistently delivered a high quality, well managed service to our tenants to date. The Compliance and Governance Reviews are positive examples of an organisation which reflects and reacts quickly to opportunities for improvement. With the support of the Council's Corporate Health and Safety and Risk Management Teams, Section 31 of the Services Agreement reflects the statutory duties with regards to Health and Safety.

19. List of Appendices

- Appendix A : Financial Implications (to be provided w/c 24/08/2020)
- Appendix B : BH DRAFT Strategic Plan 2021-31
- Appendix C : DTP Governance Review report and Recommendations
- Appendix D: DRAFT Memorandum of Articles and Associations – Berneslai Homes Ltd.
- Appendix E: Data Controller/Data Processor Summary Document

A copy of the evidence portfolio supplied by Berneslai Homes as part of the requirements under the Automatic Contract Renewal and an annotated version of the Service Agreement is available upon request.

20. Background Papers

Berneslai Homes: Services Agreement Renewal 2012 (Cab.18.1.2012/9.4)

Berneslai Homes: Services Agreement: Automatic Contract Renewal (Cab.4.11.2015/8)

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

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