

To: Finance and Performance Panel
Date: 06 December 2023
Report of: Finance Business Partner (HRA)
Title of Report: Acquisition vs Leasing of Properties and the HRA

Summary and recommendations	
Purpose of report:	To brief the Finance and Performance Panel following a request made at the previous meeting on 06 September 2023.
Recommendation(s): That the Panel resolves to:	
1. Note and comment on the contents of the report.	

Appendices	
Appendix 1	Extracts from the relevant Housing Acts

Introduction and background

- At its previous meeting on 06 September 2023, the Finance and Performance Panel requested a briefing: *“In relation to the choice between acquisition and leasing of properties, where the Council purchased a property outright there were sometimes implications as to whether or not the property could sit in the Housing Revenue Account (HRA).”*

Summary

- In respect of acquisition of homes for Temporary Accommodation (TA) the options available are:
 - Purchase of property for TA use using General Fund (GF) resources, and kept / maintained in the GF.
 - Purchase of property for TA use using Housing Revenue Account (HRA) resources, and kept / maintained in the HRA.
 - Lease properties for TA use. This would need to be resourced through the General Fund as accommodation leased to the Council for a period of 10 years or less cannot be included in the HRA.

Legislation

3. A Council's duties in respect of homelessness fall outside the scope of the Housing Revenue Account (HRA) as they are provided for under Part VII of the Housing Act 1996 (the 1996 Act) rather than Part II of the Housing Act 1985 (the 1985 Act). Therefore, any homeless administration services must be funded out of the General Fund.
4. However, Section 9 of the 1985 Act gives Councils the power to provide housing accommodation by erecting or acquiring houses (and "houses" for these purposes includes lodging-houses and hostels). This could include erecting or acquiring houses to be used for temporary accommodation. Any such temporary accommodation erected or acquired using the Section 9 power would need to be accounted for within the HRA by virtue of Section 74(1) of the Local Government and Housing Act 1989 (the 1989 Act), unless the accommodation was leased to the Council for a period of 10 years or less (in which case the Housing Revenue Account (Exclusion of Leases) Direction 1997 excludes these dwellings from the HRA: see also Homelessness etc.).
5. The construction or purchase of such accommodation could therefore be paid for from HRA surpluses and, further, in accordance with Part II, Schedule 4 to the 1989 Act, the repair, maintenance, supervision and management of temporary accommodation erected or acquired under the Section 9 power (which could include any accommodation already erected or acquired under this power) should also be debited from the HRA (together with any other items to be debited from the HRA pursuant to Part II).
6. In basic terms, therefore, it is possible (using a Council's Section 9 power) for the 'bricks and mortar' of the temporary accommodation to be paid for from HRA surpluses and thereafter for the repair and maintenance of that accommodation to be paid for from the HRA. However, any services provided pursuant to a Council's homelessness duties under the 1996 Act must be accounted for out of the General Fund.

Financial Implications of Purchasing or Leasing Temporary Accommodation

7. The purchase of Temporary Accommodation by the General Fund:
 - a. Longer Term Financial Commitment with potential borrowing costs if not possible to fund from existing reserves, resulting in:
 - i. Loan Interest (currently circa 5% on amount borrowed)
 - ii. Minimum Revenue Provision (MRP) (minimum 2% of amount borrowed)
 - b. Value of the asset is held in the General Fund at fair value and can be sold with no restrictions when no longer needed. Potentially an appreciating asset.
 - c. Any income received (e.g. Housing Benefit) would be credited to the General Fund.
8. The purchase of Temporary Accommodation by the Housing Revenue Account (HRA):

- a. Longer Term Financial Commitment with an increase in overall HRA debt, leading to:
 - i. Loan Interest (currently circa 4.6% (HRA rate) on amount borrowed)
 - ii. No MRP in the HRA
 - b. Value of the asset is held at Social Housing Value (Approx 40% of Open Market Value) in the HRA with restrictions on the sale and sales value of the asset. The asset would most likely be moved to General Needs Social Housing when no longer required rather than sold on the open market.
 - c. The rental income (at Social Rent rates) would be credited to the HRA.
9. The lease of Accommodation for use as Temporary Accommodation would have to be via the General Fund as the HRA cannot include properties leased for periods of less than 10 years.
- a. Shorter term financial commitment with direct revenue cost implications for the lease costs.
 - b. If the lease is more than 12 months then there is an accounting obligation to include a value of the lease for the property in the General Fund balance sheet, as well as the liability of the remaining lease payments. This could potentially have a negative impact on the balance sheet if the leased properties were no longer being used due to the financial commitment until the end of the lease period.
 - c. Income received is credited to the General Fund.

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Background Papers: None

Appendix 1: Extracts from the relevant Housing Acts

Section 9 of the Housing Act 1985 - Provisions of housing accommodation.

(1) A local housing authority may provide housing accommodation—

- (a) by erecting houses, or converting buildings into houses, on land acquired by them for the purposes of this Part, or
- (b) by acquiring houses.

(2) The authority may alter, enlarge, repair or improve a house so erected, converted or acquired.

(3) These powers may equally be exercised in relation to land acquired for the purpose—

- (a) of disposing of houses provided, or to be provided, on the land, or
- (b) of disposing of the land to a person who intends to provide housing accommodation on it.

(4) A local housing authority may not under this Part provide a cottage with a garden of more than one acre.

(5) Nothing in this Act shall be taken to require (or to have at any time required) a local housing authority itself to acquire or hold any houses or other land for the purposes of this Part.

Section 74 of the 1989 Act - Duty to keep Housing Revenue Account

(1) A local housing authority shall keep, in accordance with proper practices, an account, called the “Housing Revenue Account”, of sums falling to be credited or debited in respect of—

- (a) houses and other buildings which have been provided under Part II of the [1985 c. 68.] Housing Act 1985 (provision of housing);
- (b) land which has been acquired or appropriated for the purposes of that Part;
- (c) houses purchased under section 192 of that Act (purchase of house found on appeal against repair notice to be unfit and beyond repair at reasonable cost);
- (d) dwellings in respect of which a local authority have received assistance under section 1 or section 4(2A) of the [1926 c. 56.] Housing (Rural Workers) Act 1926;
- (e) any property which—

(i) with the consent of the Secretary of State given under section 417(1) of the Housing Act 1985,

(ii) with the consent of a Minister given under section 50(1)(e) of the [1958 c. 42.] Housing (Financial Provisions) Act 1958, or

(iii) by virtue of section 50(2) of that Act (houses vesting in local authority on default of another person),

was brought within the corresponding account kept under Part XIII of the Housing Act 1985 for years beginning before 1st April 1990; and

(f) such land, houses or other buildings not within the preceding paragraphs as the Secretary of State may direct.

(2) References in subsection (1) above and the other provisions of this Part to provisions of the Housing Act 1985 include, where the context so admits, references to the corresponding provisions of earlier enactments; and the reference in paragraph (b) of that subsection to land acquired for the purposes of Part II of that Act includes—

(a) land which a local authority were deemed to have acquired under Part V of the [1957 c. 56.] Housing Act 1957 by virtue of section 57(6) of that Act (land acquired for re-development in pursuance of re-development plan) before the repeal of that section on 25th August 1969; and

(b) any structures on such land which were made available to a local authority under section 1 of the [1944 c. 36.] Housing (Temporary Accommodation) Act 1944 (prefabs).

(3) Paragraphs (a) to (e) of subsection (1) above shall not apply to—

(a) land, houses or other buildings disposed of by the authority;

(b) land acquired by the authority for the purpose of disposing of houses provided, or to be provided, on the land, or of disposing of the land to a person who intends to provide housing accommodation on it;

(c) houses provided by the authority on land so acquired; or

(d) such land, houses or other buildings as the Secretary of State may direct;

and paragraph (a) of that subsection shall not apply to houses and other buildings provided on or before 6th February 1919.

(4) A local housing authority not possessing property to which subsection (1) above applies shall nevertheless keep a Housing Revenue Account unless the Secretary of State consents to their not doing so and they comply with such conditions (if any) as may be specified in the consent.

(5) In this Part—

(a) references to the houses or other property of an authority within the authority's Housing Revenue Account are references to the houses, dwellings or other property to which subsection (1) above for the time being applies; and

(b) references (however expressed) to a disposal are references to a conveyance of the freehold, or a grant or assignment of a lease (other than a shared ownership lease) which is a long tenancy within the meaning given by section 115 of the [1985 c. 68.] Housing Act 1985.

(6) Sections 417 to 420 of, and Schedule 14 to, the Housing Act 1985 (which are superseded by this section, sections 75 to 78 below and Schedule 4 to this Act) shall cease to have effect.