Report No.
FSD22059

London Borough of Bromley

PART 1 - PUBLIC

Decision Maker:	**EXECUTIVE** **COUNCIL**
Date:	**Wednesday 13th July 2022** **Monday 18th July 2022**
Decision Type:	Non-Urgent Executive Key
Title:	**MEADOWSHIP HOMES PHASE 2**
Contact Officer:	Sara Bowrey, Director of Housing, Planning, Property and Regeneration Tel: 020 8313 4013 E-mail: sara.bowrey@bromley.gov.uk James Mullender, Head of Finance, Adults, Health & Housing Tel: 020 8313 4196 E-mail: james.mullender@bromley.gov.uk
Chief Officer:	Director of Housing, Planning, Property and Regeneration Director of Finance
Ward:	All Wards

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1. Reason for report

This report advises on the option to acquire up to approximately 320 properties under a funding arrangement with Orchard and Shipman for use as accommodation to help reduce the current pressures in relation to homelessness and temporary accommodation.

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2. RECOMMENDATION(S)

Executive is requested to:

2.1 Agree to enter into a new limited liability partnership (LLP) arrangement described in this report with Orchard and Shipman for the acquisition of up to 320 residential properties (final property numbers dependent upon final loan amounts and property purchase prices).

2.2 Agree that the acquired properties will be leased by the LLP to Orchard and Shipman Homes for a 50-year period on an FRI basis and immediately after that period freehold titles will be transferred to the Council for £1 with no outstanding debt payable.

2.3 Recommend that Council agrees the loan of up to £15m to the LLP for a period of 50 years with annual repayments starting from year 3 of 1.6% per annum and increasing annually by CPI (collared at 0-5%), funded from unallocated balances on the Housing Investment Fund, Housing Invest to Save Fund and New Homes Bonus earmarked reserves.

2.4 Recommend that Council agrees to enter into a guarantee agreement with the Funder to guarantee the loan facility of up to £100m to the LLP and undertake to meet the liabilities of the LLP in respect of the loan facility in the event of loan repayment default.

2.5 Agree to enter into (i) the Members' Agreement for the LLP (between the Council, Orchard and Shipman Residential Limited, and the LLP), (ii) a guarantee agreement with the Funder (see part 2 report) to guarantee the loan facility of up to £100m to the LLP and undertake to meet the liabilities of the LLP in respect of the loan facility in the event of loan repayment default, (iii) a loan facility agreement between the Council and the LLP for the loan made by the Council, and (iv) a Nomination Agreement with Orchard and Shipman Homes to secure nomination rights to the acquired properties (v) and all other ancillary documents in connection with the scheme.

2.6 Agree the proposed approach to managing changes in the Funder's rate before the agreements are finalised set out in paragraph 7.13.

2.7 Agree to delegate authority to the Director of Housing, Planning and Regeneration in consultation with the Director of Finance, Director of Corporate Services and the Portfolio Holder for Renewal, Recreation and Housing to carry out due diligence in connection with the scheme, agree the details of each agreement and enter into all relevant agreements in connection with this scheme.

2.8 Agree to appoint Sara Bowrey, Director of Housing, Planning and Regeneration and James Mullender, Head of Finance, Adults Health & Housing as the Council's nominees to the board of the LLP, with authority to act on behalf of the Council in relation to all matters not reserved to the Council under the Members' Agreement; such nominees to be indemnified by the Council and on the basis that the LLP will arrange suitable insurance for its Board members.

2.9 Note that subject to the approval of the above and final loan amounts/number of properties purchased, the scheme will provide full year savings of up to £1.9m per annum.

2.10 Note that should there be any material change to the scheme from the details set out in this report then a further report will be presented to the Executive to inform Members of such change.

Council is requested to:

2.11 Agree the loan of up to £15m to the LLP for a period of 50 years with annual repayments starting from year 3 of 1.6% per annum and increasing annually by CPI (collared at 0-5%), funded from unallocated balances on the Housing Investment Fund, Housing Invest to Save Fund and New Homes Bonus earmarked reserves.

2.12 Agree to enter into a guarantee agreement with the Funder to guarantee the loan facility of up to £100m to the LLP and undertake to meet the liabilities of the LLP in respect of the loan facility in the event of loan repayment default.

Impact on Vulnerable Adults and Children

1. Summary of Impact: The accommodation provided ensures that the Council is able to meet its statutory responsibilities in respect of housing

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Corporate Policy

1. Policy Status: Existing Policy: Homelessness Strategy 2018-2023
2. Making Bromley Even Better: CYP to grow up and thrive, People to make their homes in Bromley, manage our resources well providing value for money and efficient and effective services for Bromley residents.

Financial

1. Cost of proposal: Estimated Cost: up to £15m loan contribution to purchase of the properties
2. Ongoing costs: Estimated net savings of up to £1.9m per annum
3. Budget head/performance centre: Operational Housing
4. Total current budget for this head: £7.4m
5. Source of funding: Housing Investment Fund, Housing Invest to Save Fund and New Homes Bonus earmarked reserves (currently £17m unallocated)

Personnel

1. Number of staff (current and additional): 1 FTE additional post
2. If from existing staff resources, number of staff hours: N/A

Legal

1. Legal Requirement: Statutory Requirement: Further Details
2. Call-in: Applicable: Further Details

Procurement

1. Summary of Procurement Implications: Not Applicable

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): There are approximately 1,600 households currently placed in temporary accommodation of which almost 1,100 are in forms of insecure costly nightly paid accommodation. This scheme would provide up to around 320 good quality cost effective affordable housing units to fulfil the Council's statutory rehousing duties and reduce the current reliance on nightly paid accommodation.

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY – MEADOWSHIP HOMES PHASE 1

3.1. There are currently approximately 1,600 households in Temporary Accommodation (TA), of which approximately 1,100 are in costly forms of nightly paid TA, putting a continued strain on the Council's revenue budget.

3.2. The Council therefore continues to seek all opportunities to increase the supply of affordable housing and reduce the costs in providing temporary accommodation to meet statutory rehousing duties and in particular the reliance on costly forms of nightly paid accommodation.

3.3. In February 2021 Council agreed to enter into a limited liability partnership (LLP) arrangement with Orchard and Shipman (O&S), for the acquisition, refurbishment and management of approximately 242 residential properties (dependent upon final purchase price) for use as affordable rented accommodation.

3.4. The final documents were executed on the 4th August 2021, with £66.8m funding provided by Pensions Insurance Corporation (PIC) and a £20m loan from the Council, with the joint venture named Meadowship Homes.

3.5. This is a key scheme to help mitigate the Council's homelessness pressures, alongside the programme for the development of housing on Council owned sites. On average, each additional affordable home saves the Council around £6,200 per annum.

3.6. As at the end of June 2022, a total of 116 acquisitions have completed (of which 54 have been handed over for nomination), with a further 10 exchanges. In total 221 sales have been agreed and it is estimated that the total number acquisitions will be in excess of 250. Of these, around 30% are expected to be in Bromley, with the remainder in neighbouring boroughs, and the vast majority within 30 minutes of the Civic Centre.

3.7. Overall, progress is going well, and O&S have been able to adapt to the changing housing market. Although it is slightly behind the planned timetable O&S set, with current projections for the scheme showing full completion by the end of the financial year, this is roughly 6 months ahead of the more prudent estimate of 24 months assumed in the original financial analysis.

3.8. The main challenges to date have been:

- the turnaround time from completion to initial refurbishments works completing and properties being ready for tenanting has taken longer than projected, although O&S have said they are improving this with additional resources to help manage these works

- challenges with the conveyancing process – mainly as a result of PIC's legal/security requirements. If a phase 2 goes ahead then there are plans to amend the agreements to improve this

- meeting the original acquisition criteria (split between property sizes and houses/flats). A change to the criteria was agreed by Executive in February 2022 to allow a higher proportion of flats, although finding 3 bed properties that meet the financial model is still a challenge.

3.9. Orchard and Shipman are an established (and therefore regulated) registered provider with more than 30 years' experience in successfully acquiring and managing a range of affordable housing schemes on behalf of local authorities, developers, housing associations and government departments. Orchard and Shipman have worked in partnership with the Council for around 12 years sourcing and managing a portfolio of temporary accommodation including private sector leased accommodation and the council owned multi-facility units and a small number of street properties.

3.10. In October 2021 Pinnacle Group acquired Orchard and Shipman and integrated the whole of Orchard & Shipman within Pinnacle Group, including their registered provider (Orchard & Shipman Homes, which remains as a company in the group structure). The Pinnacle Group has a turnover of circa £107m and is a leading mixed-tenure housing management provider, for over 75,000 mixed tenure homes (on behalf of local authorities, registered providers, tenant co-operatives, institutional investors and developers). Prior to entering into the Phase 2 arrangements with Orchard and Shipman, due diligence will be carried out in respect of Pinnacle, including as to whether they may, if necessary, provide a guarantee in respect of the obligations of Orchard and Shipman as member of the LLP.

4. OPTIONS FOR PHASE 2

4.1 As set out in the original report, the scheme was designed with the option to be able to extend in the future with the mutual agreement of all parties. Officers have had initial discussions with O&S/Pinnacle, who are happy to progress with a second phase.

4.2 As set out above, each additional property will save the Council around £6,200 per annum, so a second phase of say 320 properties would result in total savings of around £1.9m per annum.

4.3 There are a number of benefits from extending the current arrangement:

- Minimal additional legal costs/time required so can be completed in a matter of months
- Potential economies of scale e.g. audit fees, valuation fees, security trustee fees
- O&S have the staffing and associated providers (conveyancers, trades for refurbishment etc) in place to be able to hit the ground running

4.4 The scheme is not exclusive, so the Council would be free to enter into a similar deal if a proposal is received from elsewhere. Clearly if this happened before the phase 2 acquisitions were complete then arrangements would need to put in place to ensure schemes were not competing against each other for properties.

4.5 Officers did undertake some market testing in late 2019 seeking proposal for a similar acquisition scheme; however, this received limited interest with only two submissions that could have been considered, as detailed in the part 2 report. As a result, a full procurement exercise was not progressed.

4.6 It is proposed that the basic legal and governance arrangements will mirror that of the existing scheme:

a. The purpose of the LLP will be to enable the purchase, refurbishment and management of affordable housing units.

b. The members' agreement for the LLP will govern the process for the LLP to identify properties to acquire for affordable housing against certain property standards, locations, types and size mix.

c. Orchard and Shipman will arrange the acquisition of properties into the LLP based on these parameters, and the properties will then be leased by the LLP to Orchard and Shipman Homes which is a registered provider.

d. Orchard and Shipman Homes will then be the landlord for the properties and subject to a nominations agreement with the Council. The locations would be a mix within and outside of the borough but not further than a 60-minute travel time. All properties would be approved by the Council to ensure they meet requirements under the Nominations Agreement before proceeding to purchase.

e. The total cost of purchase including all associated fees and any required refurbishment will be met from the funds raised by the LLP.

f. As noted above, once acquired the purchased properties will immediately be leased to Orchard and Shipman Homes Ltd on a 50-year full repairing and insuring lease basis. Orchard and Shipman will enter into a nominations agreement with the Council (on an exclusive basis) enabling the properties to be let to tenants nominated by the Council. The leasing arrangements will set out full requirements in terms of management and maintenance processes and standards.

g. The members' agreement for the LLP will also set out the arrangements for distribution of surplus rental income materially weighted to the Council. Further details are included in paragraph 7.20.

h. Orchard & Shipman Homes will pay a fixed rent to the LLP from the day of completion for each property, irrespective of rent receivable from any occupational underlettings.

i. Repayment of the loan facility will not start until year 3, providing time for all properties to be purchased and let and for funds from the rental stream to build up to ensure the facility payments can be serviced.

j. Rental levels will be set at the Local Housing Allowance level. The rental income received on the portfolio will then be used to cover the ongoing management and maintenance costs together with the funding facility repayments.

k. At the end of the 50-year period, the funding facility and security will be released and the Council will have the right to dissolve the LLP for a nominal payment and the assets of the LLP will belong to the Council.

l. The properties will be used to provide affordable housing in discharge of the Council's statutory rehousing duty. In terms of discharge of duty compared to temporary accommodation, in addition to of course being a better outcome for the tenants, the rental income is significantly higher. The proposed structure will also enable flexible use of the units as settled affordable homes or private rented dependent upon prevailing need during the term. This provides flexibility to deal with any future reduction in homelessness (which appears unlikely) and also provides the ability to generate higher income from private rents, where necessary i.e. this helps provide alternative income in the event of any freezes in local housing allowance which have a detrimental impact on the overall financial model.

m. The proposal is to offer Assured Shorthold Tenancies (AST) which can be for a fixed term or periodic. Right to Buy do not apply to AST's and as they will not be secure tenancies let by the Council are not subject to the HRA accounting rules. The government is proposing to bring forward legislation with the Renters Reform Bill to end use of fixed term AST's and abolish the ability of landlords to end tenancies using the section 21 no fault eviction ground. The proposal is to allow landlords to end tenancies on specific grounds defined in law. The government intends to ensure the ground for possession are comprehensive to cover all reasonable situations where the landlord will seek to end the tenancy.

4.7 A structure chart showing the relationships and cash flows between parties is shown in Appendix 1.

4.8 Due diligence has been undertaken to ensure that the financial and acquisition model is robust and mitigates against potential risks of delay in the acquisition programme, changes in the market, level of demand for such units. A summary of identified risks and mitigation can be found in Appendix 2 of this report.

4.9 An additional post is required in Housing to manage the additional workload in relation to the procurement of properties under the proposed scheme. This includes:

- Creating properties in the Housing system
- Allocation of properties
- Setting up rent accounts
- Monitoring of rent accounts
- Recording repairs history
- Producing regular reports

5. IMPACT ON VULNERABLE ADULTS AND CHILDREN

5.1 This scheme supports children and vulnerable people through the provision of good quality cost effective housing supply increasing access to local accommodation ensures that access to existing services and support networks can be maintained.

6. POLICY IMPLICATIONS

6.1 The Council has a published Homelessness Strategy which sets out the approved strategic policy in terms of homelessness. This includes temporary accommodation provision and reducing the reliance on nightly paid accommodation. The Council already works with a number of providers from the provision and management of temporary accommodation.

6.2 Officers will consider the Council's statutory obligations under the Equalities Act 2010 as the scheme progresses and take appropriate action.

7. FINANCIAL IMPLICATIONS

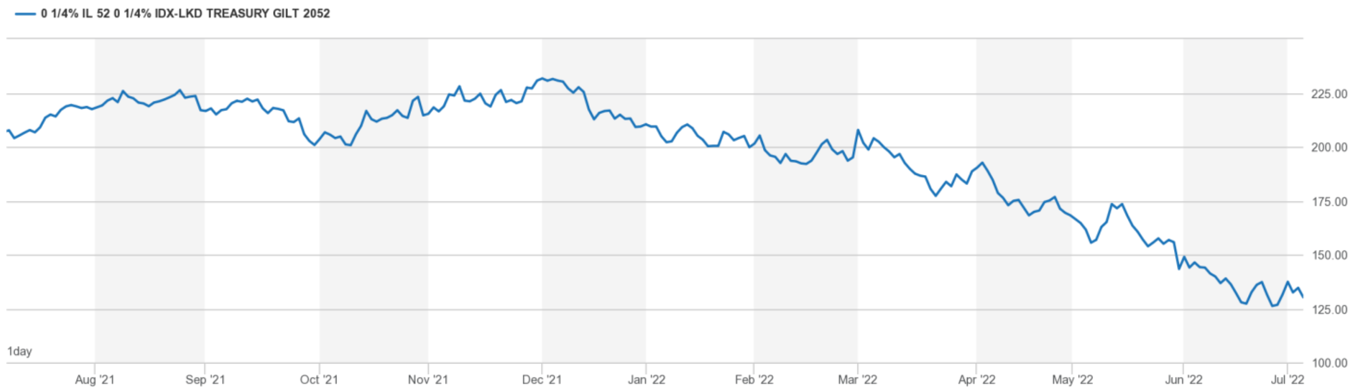
7.1. The proposed scheme would produce full year savings to the Council of around £1.9m per annum on temporary accommodation costs based on 320 properties being acquired. After 50 years the leasehold or freehold titles will be transferred to the Council for £1 with no outstanding debt payable.

7.2. One thing that has changed since the first phase was agreed is the cost of financing. The first phase was originally agreed on the basis of a £60m loan from PIC and £20m from the Council with annual repayments (capital plus effective interest) of 2.8% and 1.6% of the loan value, starting in year 3 and increasing by CPI (collared at 0-4%).

7.3. As PIC are insuring pension liabilities, their benchmark yield is set by index linked gilt rates. By the time the original deal was completed, gilt yields had reduced and a £66.8m loan was secured for the same annual repayment i.e. 2.51%. This will create surpluses within the scheme (subject to future CPI/LHA increases) which can be used to acquire further properties, or paid over to the Council.

7.4. As of the 7th July, the price of the benchmark index linked gilt (see 1-year chart below) results in an indicative yield on a further PIC loan of around 3.2% (interest plus capital) based on the same terms as phase 1.

7.5. To highlight the recent volatility, the gilt prices at the start of December 2021 would have equated to a PIC yield of around 2.1%.



7.6. PIC have provided alternative options for a phase 2 loan which would reduce the rate; however due to current inflation levels, they have increased the cap to either 5 or 6%, and have priced on the basis of no payment holiday at the start.

7.7. Revenue & Capital, who helped broker the original deal, have also looked at options to secure funding elsewhere at a lower rate, and have obtained indicative figures from an alternative funder (see the part 2 report). A summary of the financing for phase 1 along with indicative costs of a number of options for phase 2 from both PIC and the alternative funder are provided in Appendix 3A (part 2).

7.8. The options set out are based on the external funder providing £80m, and the amount of Council loan that would need to be provided in order to balance the initial loan repayments with the lease income from O&S.

7.9. It is recommended that option 2 from the Alternative Funder is used for phase 2 as it provides the best balance of financing rate and therefore the level of council investment required, and the base loan terms, as well as being a more flexible approach, for example not requiring security over individual assets.

7.10. It should be noted that due to lender security arrangements, financing from a funder other than PIC would require the creation of a new Joint Venture which would involve additional time and expense to complete. However, as can be seen from Appendix 3A (part 2), the options from the alternative funder are significantly better than from PIC. In particular, not only are PIC's equivalent rates higher, but they also don't include the first 2 year payment holiday. The alternative funder has also said they won't require security over the individual assets either which would help with the initial legal documentation as well as the acquisition processes, and also means no trustee costs will be incurred.

7.11. In addition, early discussions with the GLA indicate that any units acquired from the Council loan element could be eligible for grant funding, at the current rental levels assumed within the financial model i.e. not subsiding a reduced London Affordable Rent level, which could help improve the financial position.

7.12. The proposal is that the scheme will be financed by a loan of up to £100m from the Funder, repaid at around 2.6% per annum (subject to final agreement) and a loan of up to £15m from the Council, repaid at 1.6% per annum, both for a term of 50 years. Annual repayments for both loans increase annually by Consumer Price Index (CPI) (collared at 0-5%).

7.13. The scheme has been modelled on an external loan of £80m and a Council loan of £11m, but to mitigate any increase in the funder rate as a result of market conditions, approval is sought to increase the Council loan up to £15m, and reduce the funder's loan to £58m if required. Conversely, if the funder's rate decreases, then approval is sought for that loan to be increased to up to £100m. The impact of these changes is shown in Appendix 3B (part 2). In the event that the scheme could not be contained within these parameters then any amended proposal would be brought back to Executive for agreement.

7.14. The loan from the Council effectively secures equity in the properties whilst generating an income from the loan. It is proposed that the Council loan is funded from uncommitted balances on the Housing Investment Fund, Housing Invest to Save Fund and New Homes Bonus earmarked reserves, which currently stands at £17m.

7.15. Details of the lease income from Orchard & Shipman are provided in the part 2 report. Any shortfall in lease income compared to the loan repayments would be guaranteed by the Council.

7.16. The lease to Orchard & Shipman would be on a full repairing and insuring basis, so the risks of future repairs and maintenance costs would be Orchard & Shipman's risk, along with service charges, management, bad debts and void costs (unless the Council fails to nominate within timescales).

7.17. As the loan repayment amount includes principal repayments as well as interest, the Effective Interest Rate (EIR) is different to the rates in paragraph 7.12 above. Assuming annual CPI inflation of 1%, the total repayments on an £80m loan over 50 years is £130m, which equates to an EIR of 0.97%. In other words, £80m invested at 0.97% interest (accumulating), would be worth £130m in 50 years. The total loan repayments and EIR for CPI rates of 1, 2, 3, 4 and 5% is set out below:

	£80m funder (2.6%)		£11m Council (1.6%)	
CPI	Total repayment £m	EIR	Total repayment £m	EIR
1%	130	0.97%	11	0.00%
2%	172	1.54%	15	0.56%
3%	230	2.14%	19	1.15%
4%	313	2.77%	27	1.77%
5%	431	3.43%	36	2.43%

7.18. For the Council's loan, the EIR is likely to be less than the rate the Council might achieve through treasury management investments, so there may be a loss of treasury management income. The table below sets out the total net impact on treasury management over 50 years and average per annum for different combinations of CPI and treasury management rates:

Net gain/(loss) over 50 years (£'000)			
		CPI	
		1%	2%
Treasury management	1%	-3,024	1,046
	2%	-6,040	-1,438
Average gain/(loss) per annum (£'000)			
		CPI	
		1%	2%
Treasury management	1%	-60	21
	2%	-121	-29

7.19. As part of the funding agreement, there will be no repayments for the first two years which will eliminate the risk of a shortfall in rental income from tenants not being sufficient to cover loan repayments during that period.

7.20. This also means that any income from Orchard & Shipman during this period would generate a surplus within the LLP which could be used to purchase additional properties. This would effectively generate a return at the same rate as the lease to Orchard & Shipman. Alternatively, any surplus could be set aside, either in the LLP or transferred to a Council earmarked reserve to mitigate any future shortfalls as a result of LHA rate increases being lower than CPI, or to offset any loss of treasury management income as referred to in paragraph 7.18 above.

7.21. A key part of the financial model is how the various cashflows change over time. The loan repayments increase by CPI (collared at 0-5%), and rent income from Orchard and Shipman will increase in line with Local Housing Allowance (LHA) levels, which are linked to 30th percentile rent level for the area.

7.22. Scenario modelling was carried out for phase 1 to consider the potential impact of LHA rent inflation being lower than CPI, which showed that even if LHA rent inflation was at 1% compared to CPI assumed at 2% for the entire 50 years, the net deficit that the Council be guaranteeing would not exceed the savings on temporary accommodation at any point.

7.23. A key risk to the Council is therefore if CPI increase on the loan repayments exceed the LHA increase on rent payments from Orchard and Shipman. If the LHA increase is lower than CPI for a sustained period then the Council would have the option to mitigate this by letting the properties on alternative tenures including up to market rents. This would reduce the savings on temporary accommodation budgets, but would ensure the continued financial viability of the scheme overall.

7.24. As the Council has learned from the More Homes Bromley and Phase 1 schemes, there are two main other risks that could have a significant financial impact; that purchases are not completed in the expected timeframe, and that purchase prices exceed those in the financial model.

7.25. The first risk, of delayed acquisitions is mitigated by the fact that there are no loan repayments in the first two years. If the acquisitions still haven't been completed by this date, then the surplus built up in the first two years as set out in paragraph 7.20 above should further mitigate this risk.

7.26. There is no specific mitigation for the risk that purchase prices exceed the financial model; however there have been no significant issues to date with Phase 1, and the modelling has been updated to reflect current property prices.

7.27. In addition, there is a risk that the Council may have to provide top-ups where households may be affected by the benefit cap. These could potentially be funded from Discretionary Housing Payments, or from the Operational Housing homeless prevention budget which would reduce the savings on temporary accommodation. Officers will aim to ensure that this is minimised through the acquisition programme taking into consideration the number of bedrooms and relevant LHA levels for the area.

7.28. From an accounting perspective, the Council's Treasury Management advisors, Link Asset Services, have confirmed that the scheme should be accounted for as a Joint Venture. Under this proposed accounting treatment, if the Council's share of net assets exceeds material levels (roughly over £5m), then the Council would have to prepare group accounts and include an Investment in Joint Ventures line on the Balance Sheet showing its share of the net assets, as well as its share of the profit or loss in the Comprehensive Income and Expenditure Statement. A liability may also have to be recognised for the guarantee. In accordance with Capital Financing Regulations, the loan from the Council will have to be treated as capital expenditure, with the repayment treated as a capital receipt, although interest will be treated as revenue income.

7.29. As the proposed structure is an LLP, the Council's tax advisors, PSTax, have confirmed there are no Corporation Tax liabilities as may arise with a wholly-owned company structure (as LLP's are transparent for tax purposes); and that there are no other tax implications for the Council such as VAT and SDLT.

7.30. As set out in paragraph 4.9, there is a need for an additional post in Housing at a cost of approximately £45k which will be funded from the savings achieved.

7.31. In addition, there are additional one-off legal costs estimated at £32k that will be incurred during the acquisition phase for checking the legal documents for the properties purchased through the Council loan as the Council will have security over these properties.

7.32. Reflecting all the arrangements shown above there remain significant potential savings to the Council of up to £1.9m per annum on temporary accommodation costs based on 320 properties being acquired. Based on current estimates, the profile of the savings are shown below:

	£'000
2022/23	15
2023/24	704
2024/25	1,615
Full year	1,939

7.33. There will be a further significant benefit from the broadly self-financing scheme as after 50 years the leasehold or freehold titles will be transferred to the Council for £1 with no outstanding debt payable.

8. LEGAL IMPLICATIONS

8.1 The proposal is for the Council and Orchard and Shipman (being for these purposes a subsisting Orchard and Shipman company within the Pinnacle Group) to set up a limited liability partnership (LLP). LLPs are corporate bodies established under the Limited Liability Partnerships Act 2000, and have tax transparency (i.e. tax on profits is not applied to the LLP but to its members).

8.2 The funder (please see the part 2 report) would enter into a Loan Facility Agreement with the LLP to make up to £100 million available to the LLP for the purposes of the LLP acquiring and refurbishing properties. The Council will guarantee the liabilities of the LLP to the Funder under the Loan Facility Agreement, if and to the extent that the LLP is unable to meet the loan repayments. This approach has financial benefits in terms of the cost of the loan. The funder will take a floating charge over the assets of the LLP as security for the loan. Further, the Council will make a separate loan of up to £15 million to the LLP to acquire and refurbish properties.

8.3 Under the LLP arrangement, Orchard and Shipman as a member of the LLP will have responsibility for procuring properties and refurbishing the properties within the agreed budget per property. These obligations would be documented in the legal agreements. Orchard and Shipman will be responsible for instructing relevant professionals such as surveyors, external lawyers and works contractors (the costs of which will ultimately fall to the LLP). As noted, it is intended to establish greater efficiency with regard to the conveyancing process than under the first phase scheme. When a property is ready to let the LLP will grant a 50 year lease to Orchard and Shipman Home (OSH) which is a registered provider and part of the Pinnacle Group. OSH will enter into a Nomination Agreement with the Council giving the Council the right to nominate tenants to OSH for the properties leased to it.

8.4 A number of legal documents will need to be entered into to set up the LLP and capture the obligations of each party. These will be closely based on the first phase scheme documents, but amended to reflect the different loan amounts, any adjustment to the property criteria (in light of recent experience under the first phase), together with any other necessary and consequential changes. As noted, it is intended that there be a floating charge over the properties acquired but unlike the first phase, no fixed charge on individual properties. It is anticipated that the following key legal documents will again be required:

- LLP Members' Agreement between the Council, Orchard and Shipman, and the LLP;

- Nomination Agreement with OSH;
- Funding Agreement between the Council and LLP;
- Loan Facility Guarantee Agreement between Council and the Funder.
- Other documents in support of the arrangement will include:
- Form of appointment of LLP board nominees;
- Possible loan security instruments (in favour of the Funder and the Council);
- Template leases and tenancy agreements;
- Template forms of property acquisition documentation;
- Services agreements and contracts with relevant professionals (e.g. surveyors, lawyers and works contractors);
- Collateral warranties in support of the above-mentioned appointments and contracts (enabling recourse by the Council in particular);
- Services agreement between the LLP and Orchard and Shipman for the services provided by them to the LLP in relation to property acquisitions either stand-alone or as part of the Members' Agreement.

8.5 It is considered that the proposed transaction is not subject to the application of the Public Contracts Regulations 2015 as the dominant element of the transaction is the provision of finance by the Council to the LLP to support acquisition of properties by the LLP which is exempt from public procurement rules; noting that the Public Procurement Bill is currently before Parliament and not yet in force. The documentation for Phase 2 (based on the first phase) will follow these principles, whereby the property acquisition and related refurbishment work is by way of agreements between the LLP and Orchard and Shipman. The upkeep of the properties falls on Orchard and Shipman under the leases and the Council's ability to nominate is ancillary and not a services contract. State Aid rules are to be replaced by the regime established under the Subsidy Control Act 2022 (in October 2022). As with the first phase, no subsidy is being given to an "enterprise", principally because the loan from the Council will be on arms' length terms and at a market rate of interest. The Council guarantee, in favour of the Funder is supportable in subsidy control terms because it is a necessary commercial arrangement in support of the scheme. Further detailed consideration of any subsidy control issues will be undertaken (and legal advice obtained) to ensure that no unlawful subsidy is made, and having regard to the emerging guidance and general practice under the new Act.

8.6 The Council may rely on its general power under the Localism Act 2011 (Section 1) as well as section 9 of the Housing Act 1985 to be a member of the LLP and enter into the proposed arrangements for acquisition of properties for housing. Under the Localism Act, anything done for a commercial purpose must be done via a company (and not an LLP). However, provided the dominant purpose of the arrangement is to meet housing needs, there is no commercial purpose here. This legal position is established by the case of Peters v London Borough of Haringey [2018] EWHC 192 (Admin) where it was confirmed that a Limited Liability Partnership (LLP) structure can legitimately be used to create joint ventures with the private sector to promote regeneration objectives (being for a non-commercial purpose). In this case the purpose is not regeneration, but (as noted) housing supply. It does not matter for these purposes that the LLP itself may generate profit; it is the dominant purpose of the Council in being a member of the LLP that matters. Under the Limited Liabilities Partnerships Act 2000, a LLP has to be formed for carrying on a business *"with a view to profit"*. However, merely making a profit from activities or maximising return did not, in the Haringey case, mean that those activities were carried out with a commercial purpose.

8.7 The recommendations in this report seeks approval from members to delegate authority to the Director of Housing, Planning and Regeneration in consultation with the Director of Finance, Director of Corporate Services and Portfolio Holder for Renewal, Recreation and Housing to agree the details of each agreement and enter into all relevant agreements in connection with this scheme. Should there be any significant change to the scheme from the details set out in this report, then a further report will be presented to the Executive to inform members of such change.

Non-Applicable Sections:	Personnel; Procurement
Background Documents: (Access via Contact Officer)	Property acquisition Scheme Proposal; Council 1st March 2021 Meadowship Homes – Update and Change to the Acquisition Criteria; Executive 9th February 2022