

To: **Executive**
17th October 2023

Future of Downshire Homes Limited
Executive Director: Resources / Executive Director: People

1 Purpose of Report

- 1.1 The report considers future management arrangements for residential properties owned by the Council's wholly owned housing company, Downshire Homes Limited and proposes that they are transferred to the Council at a market value, to be managed alongside the Council's own stock of residential properties. This is intended to streamline and simplify the housing management arrangements of the stock and minimise overheads arising from operating a separate legal entity.

2 Recommendation(s)

That the Executive:

- 2.1 Agrees to consolidate the ownership and management of the Council's housing portfolio by transferring (at market price) the Downshire Homes Ltd properties to the Council by March 2024;
- 2.2 Agrees that the 4 properties currently occupied by tenants holding assured shorthold tenancies (ASTs) are offered for sale to registered social landlords, noting that they will be included in the transfer of properties to the Council if sales cannot be secured in the timescale above;
- 2.3 To facilitate the consolidation in the most tax efficient way, supports the director(s) of DHL to progress a solvent liquidation of the company, through which its assets will transfer to the Council as shareholder and agrees to indemnify the directors, the company and the appointed liquidator against any potential claims arising from this act;
- 2.4 Notes that a key factor in the proposed approach will be the value of the existing loans from the Council to DHL compared with their original purchase price and funding from Council loans and that current expectations based on indicative valuations of a sample of the properties are that the sums will broadly match;
- 2.5 Agrees that, in the event that the value of the properties has increased materially at the time of the transfer compared with the original purchase price, the Executive Director: Resources be authorised to use Council reserves to settle any resultant capital gains tax liability, as set out in paragraph 5.20.
- 2.6 Authorises the Legal Services Manager to conclude the appropriate legal agreements to enact the proposals above.

3 Reasons for Recommendation(S)

- 3.1 The transfer of stock from DHL to the Council is recommended on the basis that this will facilitate a more streamlined and simplified approach to managing temporary

accommodation and the small volume of supported housing properties held in the DHL portfolio, reducing the administrative burden and additional overhead costs created by the current arrangement.

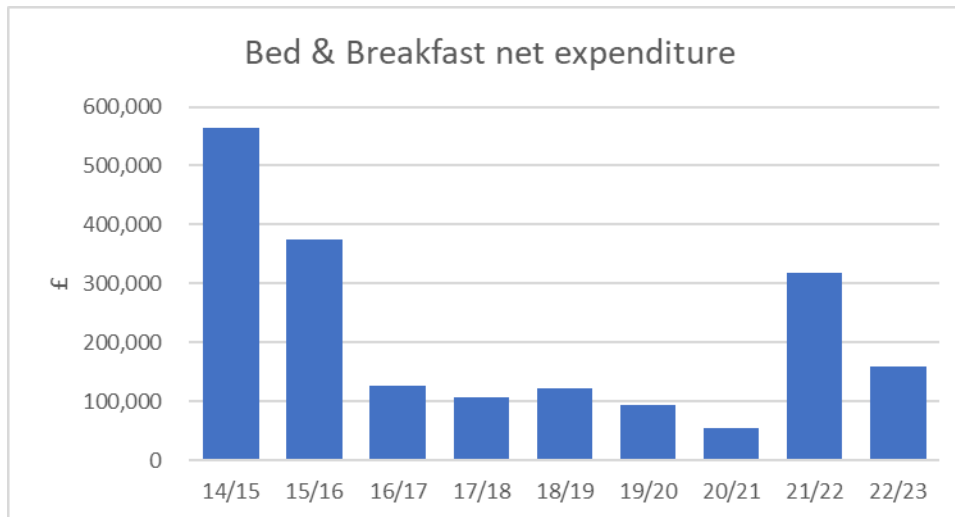
4 Alternative Options Considered

- 4.1 Do nothing - retain housing stock both with the Council's wholly owned housing company DHL and with the Council directly. This is not recommended since the proposed approach enables the benefits obtained by having the DHL housing stock to be retained at a lower overall cost to the Council.
- 4.2 Trickle transfer – to gradually transfer properties from DHL to the Council over time. This option has been discounted due to the additional costs that would be incurred in Stamp Duty Land Tax, which can be avoided by taking the recommended approach.
- 4.3 To transfer the Council's directly owned housing stock to DHL. This is not recommended because the Council would need to undertake additional borrowing to on-lend to DHL for the company to fund the purchase of its properties for “best consideration”. In addition, the company needs to pay VAT on its expenditure which the Council does not, meaning that such a transfer would cost more than currently, with no added benefit.

5 Supporting Information

Background

- 5.1 Downshire Homes Limited (DHL) is a company set up in 2015 which is wholly owned by Bracknell Forest Council. In line with its agreed objectives, DHL has purchased a portfolio of housing accommodation which it primarily lets to clients who have presented to the Council as statutorily homeless. The purchase of the property portfolio has been funded by interest bearing loans from the Council.
- 5.2 DHL currently owns 64 properties. The original purpose of DHL was to enable the Council to achieve savings by:
 - 5.2.1 increasing the availability of housing for homeless families and enable the Council to discharge its homeless duty. In particular, increased availability of such accommodation assured a reduction in the need to use Bed & Breakfast accommodation (which is expensive and usually unsuitable);
 - 5.2.2 enable savings in care costs for Adult Social Care clients with Learning Disabilities by procuring shared properties, enabling sleep-in carers to provide support for a number of clients.
- 5.3 DHL became operational in 2015/16 with the first properties purchased in April of that year. Analysis of Bed & Breakfast expenditure shows that the company has been successful in helping the Council reduce the use of this accommodation. The graph below shows expenditure for the two years prior to DHL and the subsequent financial years.



- 5.4 Aside from the 64 residential properties held in DHL, the Council currently also directly owns 69 houses, 7 properties used for adults with learning difficulties, a 10 bed hostel and a 3-bed non-licensable house with multiple occupation (HMO). These, together with circa 30 private sector leased properties, are all managed by the Council's Housing Service and are used as temporary accommodation for homeless households.
- 5.5 With effective move-on arrangements to ensure throughput of households into longer-term accommodation making more efficient use of the stock and a proactive approach to homelessness prevention, the Council does not need to substantially expand the capacity of its temporary accommodation further. Should that position change, the Council is permitted to hold a maximum of 199 properties without having a separate Housing Revenue Account. The Council's HRA was closed when its housing stock was transferred to Silva Homes in 2008. The operational, financial and legal implications of re-opening the HRA are significant and external specialist advice would be needed should this be considered as an option at a future time.

Future Options – Summary

- 5.6 A review of different options has been undertaken with specialist housing and legal input and concluded that there is no significant advantage in retaining stock in a separate vehicle, while managing stock held both within a company and directly owned adds an unnecessary layer of complexity and cost. Further, whilst it was initially felt that the housing company had potential to operate at some point as a new build development vehicle, the Council has since entered into a Joint Venture with Countryside Properties, a leading UK mixed-tenure developer, to redevelop a number of council owned sites as part of the phased regeneration of Bracknell town centre. Through this partnership arrangement the Council benefits from significant development expertise and resources which do not exist in DHL.
- 5.7 Given the complexity associated with a relatively large-scale transfer of assets between a wholly-owned company and its local authority owner, specialist advice has

been sought from DHL's auditor Hazlewoods, who also provide tax and business restructuring services. They have advised that a straightforward "re-purchase" of the properties by the Council from DHL would attract significant Stamp Duty Land Tax liabilities. Their recommended approach to best achieve the transfer of the properties while legitimately minimizing tax liabilities is through a managed "solvent liquidation" of the company. This secures the winding up of the company, with its assets transferring to the Council as shareholder in return for cancellation of the loans, although it technically remains solvent and able to continue to trade.

- 5.8 The solvent liquidation would need to be declared by the company directors. With the retirement of the former Chief Executive last year and the changes to elected Councillors in May, the only current director is the Borough Solicitor, who has been appointed to undertake a director role on behalf of the Council. At this stage, it is not proposed that additional directors are appointed to the company, given the direction of travel in this report. Should an alternative approach be approved by the Executive, consideration will need to be given to the appointment of additional directors to ensure the effective running of the company into the future.
- 5.9 The director(s) will need to certify that the company is in a solvent position. The company's accounts and the on-going support from Bracknell Forest Council indicate that this is the case. However, it is normal in such circumstances that indemnities are provided from the shareholding entity (in this case Bracknell Forest Council) to the company, the individual director(s) and the appointed liquidator to cover the unlikely event of a claim being made by a third-party creditor that could potentially be viewed as casting doubt on its solvency and possibly trigger an unwanted insolvency situation. It is proposed that the Council provides such indemnities, in a form to be advised by a qualified external body. Given that the Council is the sole owner, funder and major creditor of DHL, the risk of any indemnity needing to be called upon is low.
- 5.10 It is recommended that the Council uses its powers under Part 2 of the 1985 Housing Act to transfer the DHL stock as this will give it more flexibility in relation to the use of the properties in future. Properties acquired under alternate legislation (as detailed below under Legal Advice) could only be used as temporary homeless accommodation.

DHL Tenancy Agreements

- 5.11 Several distinct types of occupation agreements have been used by DHL. 6 of the properties are used to accommodate people with learning disabilities in shared houses. These 6 properties can all be transferred from DHL to Bracknell Forest Council with no adverse implications arising from the existing landlord and tenant agreements.
- 5.12 The majority of the other properties are used as temporary accommodation for homeless households. Of these, 60 could be transferred immediately, with no adverse implications.
- 5.13 There are, however, 4 remaining Assured Shorthold Tenancies in place for DHL properties that have been used to discharge the Council's full homelessness duties, a

figure that has been significantly reduced by the Council's Housing team working pro-actively with tenants over the past 2 years to identify suitable alternative accommodation and their status will therefore alter upon transfer as the Council becomes their landlord. An alternative option that is being explored is agreeing a sale of the those properties to a registered social landlord (RSL), who commonly offer such tenancies.

Financial Impact

- 5.14 DHL is a wholly owned company within the Bracknell Forest Council "group". Thus, while it operates as a separate entity, the company's finances are intertwined with the Council's. Indirectly, this is seen in the reducing costs to the Council of bed and breakfast accommodation since DHL was established, as illustrated in the chart under paragraph 5.3. More directly, the loan arrangement, housing management and support services are provided by the Council and paid for by DHL. While the loans provided to the company to purchase its properties are interest bearing, the Council has not budgeted to receive this income, since DHL's ability to service the interest payments are dependent on the company's trading and cash positions.
- 5.15 There are a range of burdens arising from operating DHL, albeit with less of an obviously quantifiable financial impact. For example, the company's existence requires the production of group accounts and therefore creates additional work for the finance team and external audit at year-end. The Board has been made up of unremunerated senior officers and members, which involves a time commitment associated with the operation of the company. IT provide support to install the accounting software. Additionally, the requirement to keep separate accounting records and require suppliers to invoice differently, depending on whether a property is Council or DHL owned, adds administrative burdens.
- 5.16 A summary of DHL's financial performance for the last six financial years is set out below, before financing costs. This provides an indication of the underlying "trading" position of the company that the Council will inherit when the properties are transferred.

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-2023
	£0	£0	£0	£0	£0	£0
Cash Revenue	-426	-603	-779	-845	-849	-810
Cash expenses excl. premises, repairs and renewals	56	162	130	117	101	113
Cash expenses - premises, repairs and renewals	47	100	162	110	389	341
Cash (profit) / loss before finance costs	-323	-342	-487	-619	-360	-369

- 5.17 Repairs and renewals costs were significantly higher in 2021/22 than in the preceding years and are continuing at a high level into the current financial year. However, a large part of these are one-off remediation, compliance and thermal efficiency works while the turnover of tenants was much higher than would normally be expected for

the reason set out in paragraph 5.13 above, attracting higher void costs. The Council would also deal with larger scale works as part of its capital programme allocation for housing property structural maintenance, on a prioritised basis. A working assumption is that a realistic annual budget for revenue repairs and renewals would be £250k, giving a budgeted cash operating surplus of around £0.4m for the company.

- 5.18 There are, however, a number of adjustments that need to be made to that to reflect the different financial regime the Council operates within. These are set out in the following table.

	£m
Estimated cash surplus (excluding financing costs) – DHL	-0.40
Reduction in DWP subsidy for tenants receiving benefits (since private landlords attract more favourable subsidies)	0.07
Reduced VAT costs	-0.05
Reduced audit, computer software, and professional fees	-0.05
Adjusted cash surplus – BFC	-0.43
Less: depreciation charged in DHL accounts	-0.20
Replaced with Minimum Revenue Provision (MRP) in BFC accounts	0.25
Net impact on BFC budget	-0.38
(Note: excludes impact of property revaluations / impairments which affect DHL's calculated profit / loss but have no net impact on BFC's finances)	

- 5.19 In order to enable a solvent liquidation of DHL, the market value of the properties at the point of transfer needs to exceed the value of its loan to the Council (£20.31m) This was comfortably the case at the last balance sheet date of 31 March 2023, when the assets were valued in DHL's accounts at £23.40m

- 5.20 However, an increase in value of the properties overall will attract a capital gains tax liability at the point of transfer of ownership. A sample of properties have been assessed by the Council's Property team, who have indicated that their sale value can realistically be expected to be broadly in line with the original acquisition price and thus the level of Council loans to DHL. There remains a possibility that a corporation tax liability could arise. It is proposed that the Executive Director: Resources be authorised to use Council reserves to cover any corporation tax liability incurred up to a value of £0.1m, a one-off sum far lower than the on-going savings that the transfer will realise.

- 5.21 In the very unlikely event that the asset values fall significantly, the Council will need to write off a proportion of the loan to ensure that it is covered by the value of the assets transferring. This would create a neutral overall financial position for the Council since, were the dwellings to have been purchased by the Council rather than DHL, it would have needed to borrow the same sum for the original purchase. Any such write off will be dealt with in line with delegations included in the Council's constitution.

6 Consultation and Other Considerations

Legal Advice (provided by Legal Services Manager – People)

- 6.1 There are 3 distinct types of occupation agreements that are in use by DHL, namely:
- a) an Excluded licence to occupy agreement for interim accommodation;
 - b) a non-secure licence agreement for temporary accommodation; and
 - c) an assured shorthold tenancy (AST).
- 6.2 A stock transfer to the Council on a tenanted basis would result in different outcomes for occupants depending on the occupation agreement in use.
- 6.3 The non-secure /excluded licence agreements can be transferred on a tenanted basis without creating secure tenancies where the premises are being used for the purposes of Part 7 of the Housing Act 1996 (the 1996 Act). This is because there is an exception for temporary accommodation at paragraph 4 of Schedule 1 of the Housing Act 1985 (the 1985 Act) which states that a tenancy granted for the purpose of fulfilling any function provided under Part 7 of the 1996 Act is not a secure tenancy unless the local authority has notified the tenant that the tenancy is to be regarded as a secure tenancy. The ASTs are being kept under review.
- 6.4 Accordingly, it is also recommended that the Acquisition Agreement (the key terms which are summarised at Appendix 1) will bind DHL to sell (and the Council to purchase) all of the properties owned by DHL.

Temporary accommodation

- 6.5 The Council can use its powers under Part 2 of the 1985 Act (s17) to acquire the properties from DHL. It is possible for the Council to use this power for acquiring temporary accommodation, although alternatively it could use its powers under Section 120 of the Local Government Act 1972 (to acquire) and Part 7 of the 1996 Act (to operate) temporary accommodation.
- 6.6 Any accommodation acquired using the power under Part 2 of the 1985 Act would ordinarily need to be accounted for within a Council's HRA. However, as the Council does not hold an HRA, there is an exception that it could rely on which would mean it would not need to re-open an HRA. The Council is able to hold up to 199 properties

without re-opening a HRA; these properties can be used for permanent or temporary accommodation.

- 6.7 For completeness sake, a dwelling owned by the Council (irrespective of whether it is held in an HRA or not) will be a secure tenancy unless one of the exemptions in the 1985 Act apply; the most relevant of which is where accommodation has been provided to homeless persons under Part 7 of the 1996 Act.
- 6.8 If property is developed or acquired using the Council's powers under Part 2 of the 1985 Act then once the 200 dwelling threshold had been reached, the Council would be required to account for those properties in a re-opened HRA under the terms of the Local Government and Housing Act 1989.
- 6.9 If the Council relied on its powers under Section 120 of the Local Government Act 1972 (to acquire) and Part 7 of the 1996 Act (to operate) to acquire temporary accommodation, it would need to account for the properties in the General Fund, irrespective of the 200 dwelling limit.
- 6.10 It is recommended that the Council uses its powers under Part 2 of the 1985 Act as this will give it more flexibility in relation to the use of the properties in future: if it uses its powers under Part 7 of the 1996 Act, it must continue to use the properties for those purposes (i.e. its homelessness duties).
- 6.11 Given that the Council currently directly owns 89 residential properties (the details being set out in paragraph 5.4) aside from the 64 properties held in DHL, the question about re-opening an HRA does not immediately arise because it will be under the 200 dwelling threshold referred to above and certainly the Council would not be required to re-open its HRA as a result of the acquisition of DHL's stock.

Accommodation for people with learning disabilities

- 6.12 As noted above, six of the DHL properties were used to accommodate people with learning disabilities in shared houses (as non-licensable HMOs. Five of these dwellings were leased by DHL to Look Ahead Care, Support and Housing, However Look Ahead served notice on DHL to end their leases in January 2023. Upon termination of the Look Ahead Leases the Council immediately entered into Private Sector Leasing agreements for these dwellings with DHL being the Private Sector Leasing Properties and thus subsequently the occupiers of these properties have entered into new excluded licences with the Council (who is now the head tenant under the Private Sector Leasing Agreement with DHL of the Private Sector Leasing Properties) with no adverse implications arising from the existing landlord/licensor and tenant/licensee agreements.
- 6.13 As this accommodation is being used to permanently accommodate people with learning disabilities, the Council would not be using its powers under Part 7 of the 1996 Act to acquire the properties and therefore, it is expected that the Council will use its powers under Part 2 of the 1985 Act to acquire this housing.

- 6.14 The terms of the draft Acquisition Agreement will need to be reviewed if the option of a managed “solvent liquidation” of the company is to be pursued as opposed to a ‘trickle transfer/purchase’ approach.

Financial Advice

- 6.15 Finance have been involved in the consideration of the financial impact of closing the company, set out in the main body of the report.
- 6.16 In setting the 2023/24 budget, Council approved a saving of £0.24m, which was the estimated impact at that time of effecting a closure of DHL mid-way through the financial year. DHL’s financial performance in 2022/23 was below expectations and the closure has been delayed to help avoid a large one-off corporation tax liability. The budgeted saving will therefore not be achieved in 2023/24, although the full year expected saving of £0.4m will assist the 2024/25 budget.

Other Consultation Responses

- 6.17 N/A

Equalities Impact Assessment

- 6.18 No equality impacts have been identified. A number of ‘tenanted’ properties would be transferred from DHL to the Council. In these cases it is the Council who has entered into the non-secure agreements with occupants rather than DHL. The transfer of the freehold of these properties to the Council would not therefore have an impact on the existing ‘landlord/tenant’ relationship. The properties are managed by the Housing Service and the Council is the landlord. Occupants of these temporary accommodation properties would continue to receive the same service from the Council’s Housing Management Team. Rent is set at Local Housing Allowance levels (i.e. benefit eligible) and this would not change.

Strategic Risk Management Issues

- 6.19 The dissolution of the Company and resulting transfer back to the Council of the Housing Stock will eliminate any residual financial risks relating to insolvency as well as legal risks e.g. relating to Directors liabilities for wrongful trading, breach of health and safety legislation and conflicts of Interest.

Climate Change Implications

- 6.20 The recommendations in Section 2 above are expected to have no impact on emissions of CO2. DHL’s housing stock is currently managed and maintained by the local authority’s Housing Service and would continue to be post transfer to the authority. The Council has been working in partnership with the Council’s Sustainability Officer to identify opportunities to improve the thermal efficiency of the temporary accommodation portfolio. Some energy grants to provide insulation at reduced cost which are available for private sector stock (including DHL) would not be available once the properties transfer to the Council.

Background Papers

Appendix 1 - Key Terms for Acquisition Agreement

Contact for further information

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Appendix 1

Key Terms for Acquisition Agreement

1 The Parties

1.1 Downshire Homes Limited (the **Company**); and

1.2 Bracknell Forest Council (the **Council**)

2 The Transaction

2.1 The Parties will enter into an Acquisition Agreement (the **Agreement**) whereby:

2.1.1 The Council agrees to buy and the Company agrees to sell the Properties on the terms of the Agreement.

2.1.2 On the **[Initial Completion Date]**, the Company shall transfer the Private Sector Leasing Properties, Non-Secure Agreement Properties and the relevant AST Properties (where the Condition Precedent has been satisfied) to the Council for the Purchase Price.

2.1.3 On each further AST Property Completion Date, the Company shall transfer the relevant AST Properties to the Council for the Purchase Price.

2.1.4 Each AST Property is sold with vacant possession on completion. The Company shall decant the AST Properties in accordance with a plan agreed with the Council.

3 Condition Precedent

3.1 The transfer of each AST Property will be conditional upon satisfaction of the Condition Precedent.

3.2 Neither Party may waive the requirement for the Condition Precedent to be satisfied in relation to any AST Property.

3.3 The Parties shall keep each other informed of the progress in satisfying the Condition Precedent and in particular when each Party considers that the Condition Precedent has been satisfied in relation to an AST Property.

4 Form of Transfer

In relation to each Property, the Company will transfer its freehold estate to the Council by way of a transfer in the form of the Transfer which is to be appended to the Agreement.

5 **Title**

5.1 The Company will transfer each Property to the Council with full title guarantee.

5.2 The Company shall dispose of the Properties free from encumbrances other than any existing encumbrances, which shall include:

5.2.1 The occupancy agreements for interim and temporary accommodation in relation to the Non-Secure Agreement Properties; and

5.2.2 The excluded licences between the occupiers and the Council in relation to The Private Sector Leasing Properties

5.3 The Council shall raise no pre-completion enquires.

6 **Council Loan**

On the transfer of each Property by the Company to the Council, the Council shall write down the Council Loan by the amount of the Purchase Price paid by the Council for the relevant Property.

On the transfer of the last Property the Council shall write down the Council Loan in its entirety.

7 **Definitions**

AST Properties means the [x] existing residential properties owned by the Company and let to tenants on an Assured Shorthold Tenancy as set out in Part 1 of Schedule 1 and "AST Property" shall mean any one of them as applicable;

AST Property Completion Date means the date [x] working days after the Condition Precedent Satisfaction Date;

Condition Precedent means the requirement for each AST Property to be void;

Condition Precedent Satisfaction Date means the date which the relevant AST Property becomes void;

Council Loan means the loan for [£x] from the Council to the Company dated [x];

Initial Completion Date means the date for completion of the sale of the Private Sector Leasing Properties, Non-Secure Agreement Properties and the relevant AST Properties (where the Condition Precedent has been satisfied) by the Company to the Council;

Private Sector Leasing Properties means the [5] existing residential properties owned by the Company and leased by the Company to the Council as set out in Part 2 of Schedule 1 and "Private Sector Leasing Property" shall mean any one of them as applicable;

Non-Secure Agreement Properties means the existing residential properties owned by the Company and let to occupants on a non-secure licence agreement as set out in Part 3 of Schedule 1 and “Non-Secure Agreement Property” shall mean any one of them as applicable;

Properties means together the existing residential properties owned by the Company as set out in Schedule 1 and “Property” shall mean any one of them as applicable;

Purchase Price means the market value of each Property as set out in a schedule to the Agreement.