

Birmingham City Council

Report to Cabinet

17th January 2023



Subject: Private Rented Sector Leasing Scheme – Capital Grant - Extension of delegation

Report of: Paul Langford, Acting Strategic Director, City Housing

Relevant Cabinet Member: Councillor Sharon Thompson, Cabinet Member for Housing & Homelessness

Relevant O & S Chair(s): Councillor Mohammed Idrees, Housing and Neighbourhoods

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 010913/2023		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 In September 2022, Cabinet agreed to delegate authority to the Strategic Director for City Housing, in consultation with the Director Council Management, to determine the optimal solution to make use of an expected Department for Levelling Up, Housing & Communities (DLUHC) capital grant of £3.8m to set up a private rented sector leasing scheme to accommodate families experiencing homelessness.
- 1.2 The expected award of the DLUHC grant did not take place due to ministerial changes since September and it has only become clear very recently that it could

still be available. However, the availability of the DLUHC grant is conditional on it being spent by the Council before the end of the financial period 2022/23.

- 1.3 There is insufficient time to run a competitive procurement process and implement in order to spend the DLUHC grant within the time available. The value of the grant funding is over the threshold for the Public Contract Regulations 2015 (PCR) to apply. Therefore, the Council would need to rely on Regulation 32 (2)(c) (negotiated procedure without prior publication, brought about through reasons of extreme urgency) to directly award contracts. An extension of the delegated authority already agreed, to enable the direct award of contracts to deliver the scheme is therefore required.
- 1.4 In addition to the urgent Cabinet decision, due consideration is being requested to approve immediate implementation to enable the Council to spend the grant before the end of 2022/23.

2 Recommendations

That Cabinet:

- 2.1 Extends the existing delegated authority to the Strategic Director for City Housing, in consultation with the Assistant Director, Procurement (or their delegate), the Strategic Director, Council Management (or their delegate) and the City Solicitor & Monitoring Officer (or their delegate) to include authority to make use of the negotiated procedure without prior publication under PCR Reg 32(2)(c) due to the urgent timescales and waives the requirement under the Procurement and Contract Governance Rules to report the award to Cabinet for approval.
- 2.2 Authorises the City Solicitor to negotiate, execute and complete all necessary documentation to give effect to the above recommendations.

3 Background

- 3.1 In September 2022, Cabinet agreed to:
 - 3.1.1 Accept the £3.8m DLUHC grant via the WMCA to set up a private rented sector leasing scheme.
 - 3.1.2 Delegate authority to the Strategic Director for City Housing, in consultation with the Director Council Management, to determine the optimal solution following further investigation of whether to make use of InReach as a Wholly Owned Company or procure such services to take on leases to accommodate families experiencing homelessness.
 - 3.1.3 Delegate authority to the Strategic Director for City Housing, the Assistant Director Corporate Procurement (or their delegate), in conjunction with the Director of Council Management (or their delegate), and the City Solicitor (or their delegate) to approve the procurement strategy and award of any subsequent contract (if required).

- 3.1.4 Authorise the City Solicitor to negotiate, execute and complete all necessary documentation to give effect to the above recommendations.
- 3.2 At the time of the September Cabinet it was expected, based on discussion with DLUHC officials, that an award of capital grant was likely to be imminent. It was also understood that it would be sufficient to have committed the funding received within the financial period of 2022/23 and not to have spent the whole of the funding received.
- 3.3 However, since then there have been two changes of Prime Minister, and accompanying ministerial changes, which meant that the payment of the grant to the Council was not approved and it became very uncertain if it would be approved at all.
- 3.4 On 30th November 2022 the Council received e-mail confirmation that the grant might still be awarded but that this could only be the case if the Council was able to spend the whole of the funding by the end of March 2023.
- 3.5 This delay was outside the Council's control. It would not have been prudent to start a procurement exercise without this information, as it was not at all clear that new ministers would have the same policy in this area.
- 3.6 The current timing makes a competitive procurement exercise impractical, because it would take too long to be able to conduct the procurement activity and award the contract in time.
- 3.7 It has also become clear since September Cabinet that InReach are not well placed to deliver the programme.
- 3.8 A way in which this issue may be resolved is to work with registered housing associations working in the Birmingham area to deliver the programme through advance payment before the end of the financial period 2022/23.
- 3.9 Whilst this still leaves very little time to make the arrangements, officers believe that awarding contracts in this way can both achieve value for money for the Council and allow the DLUHC grant to be spent within the 2022/23 the financial period if an expedited process is followed.
- 3.10 This is, of course, subject to the DLUHC grant being confirmed and also dependent on one or more housing associations being willing to work with us in this way. However, DLUHC officials have confirmed by email that such an arrangement would be acceptable to them, and the Council has already begun discussions with the Birmingham Social Housing Partnership (BSHP) group to establish the level of interest of local housing associations.
- 3.11 If the proposed route of awarding the payment in advance is not taken it is currently difficult to see how the Council could avoid losing the DLUHC grant funding. Robust provisions will be put in place to mitigate this particular risk through review and management of the contract.

- 3.12 DLUHC have agreed that their grant will be governed by a memorandum of understanding (MoU) with the Council, rather than with WMCA, and that this will specify the purpose of the funding, that it is for leasing properties in order to reduce use of B&Bs for homeless families, but will not specify delivery model or milestones as DLUHC are content for the Council to determine what works best locally.
- 3.13 DLUHC have also agreed that the funding could be paid direct to Birmingham City Council rather than through WMCA.
- 3.14 Whilst the grant will be Section 31 funding and would be difficult for the government to attempt to claw back after award, the draft MoU, whilst not legally binding, makes clear that DLUHC expects the Council to spend all grant funding by the end of the financial year 2022/23 and that the parties enter into the MOU intending to honour all their obligations.

4 Options Considered and Recommended Proposal

- 4.1 These are set out in the 6 September 2022 Cabinet report.

5 Consultation

- 5.1 Consultation is as discussed in the September Cabinet report with additional consultation having taken place with InReach, DLUHC, West Midlands Combined Authority (WMCA) and BSHP to arrive at the position set out above.

6 Risk Management

- 6.1 Risks and mitigations are as set out in the September Cabinet report, with the new key risk that grant will not be received unless it can be spent within the 2022/23 financial period, which has been discussed in the above paragraphs.

7 Compliance Issues:

How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1 The proposal is in compliance with the priorities in the Corporate Plan 2022/26, notably the priorities to tackle poverty and inequality, to support and enable all children and young people to thrive, and to tackle homelessness.

7.2 Legal Implications

7.2.1 Under Section 1 of the Localism Act 2011 ('the LA'), the Council has the power to enter into the arrangements set out in this report, which are within the remit and limits of the general power of competence (Section 2 and 4 of the LA).

7.2.2 The proposal will enable the Council to comply with its statutory duty under the Homelessness Suitability of Accommodation Order 2003.

7.3 Financial Implications

7.3.1 These are as set out in the 6 September 2022 Cabinet report, with the addition of:

7.3.2 Without taking a direct award approach to deliver the scheme, it is unlikely that any DLUHC grant will be received.

7.3.3 The proposal creates no financial commitment from BCC to provide ongoing funding beyond the value of the external funding and is based on covering costs for providers so creates no VAT implications for BCC.

7.4 Procurement Implications

7.4.1 The Procurement Strategy will set out the approach to be taken and options considered. The procurement approach will follow the required due diligence under PCR Reg 32(2)(c) which permits direct awards where, for reasons of extreme urgency brought about by events unforeseeable, competitive procedures cannot be complied with.

7.5 Human Resources Implications

7.5.1 No specific issues identified.

7.6 Public Sector Equality Duty

Equality Impact Assessment is attached at Appendix 1.

8 Appendices

Appendix 1 – Equality Impact Assessment

9 Background Documents

September Cabinet Report on Private Sector Leasing Scheme – Capital Grant