

 Brent	Cabinet 9 th March 2020
	Report from Strategic Director, Community Well Being
Co-operation Agreement with Network Homes	

Wards Affected:	All Wards
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	One – Co-operation Agreement (For Information)
Background Papers:	Not Applicable
Contact Officer(s): (Name, Title, Contact Details)	Hakeem Osinaike Operational Director of Housing hakeem.osinaike@brent.gov.uk David Guy Head of Supply and Partnerships david.guy@brent.gov.uk

1.0 Purpose of the Report

- 1.1 This report is seeking Cabinet approval to enter into the agreement (attached as **Appendix A**) with Network Homes to share resources and expertise in accordance with Regulation 12(7) of the Public Contracts Regulations 2015.
- 1.2 As part of its Housing Strategy, the Council promotes a strong, local cross-sector co-operation with housing providers operating within Brent to develop and deliver its strategies. This reports presents an opportunity to harness shared values and principles for largescale housing delivery, as per our commitments to 1000 new council homes. It is a way to formally bring together partners for the benefit of people who need affordable homes in Brent.
- 1.3 Officers from both the Council and Network Homes have been working together to explore opportunities to co-operate on a range of projects to deliver new affordable housing.
- 1.4 The development of a co-operation agreement has been identified as the most appropriate mechanism to enable the Council to accelerate delivery. The basis

of the agreement being that a formal partnership is established, enabling the Council to utilise the resources and expertise available via Network Homes, whilst contributing its own to progress the development of new housing.

- 1.5 The agreement sets out the basis upon which both the Council and Network Homes would collaborate as two public sector bodies under Regulation 12(7) of the Public Contracts Regulations 2015 to achieve a common purpose (i.e. the delivery of improved housing within Brent).
- 1.6 Standing Orders 85(b) states 'any Partnership Agreement or Collaborative Procurement which includes delegation of powers shall be approved by the Cabinet (or where relevant, Full Council). The development of this agreement falls within this definition. It is on this basis that Cabinet approval to enter into an agreement with Network Homes is sought.
- 1.7 This agreement does not preclude similar agreements with others should this prove useful in future.

2.0 Recommendation(s)

That Cabinet:

- 2.1 Note the contents of this report.
- 2.2 Note the management arrangements in place to ensure adherence with the Council's standing orders and financial regulations.
- 2.3 Note that both organisations have taken legal advice in the development of the agreement to ensure compliance with Regulation 12(7) of the Public Contracts Regulations 2015.
- 2.4 Approve entering into an agreement with Network Homes on the basis that the Council and Network Homes operate as two public bodies concerned with the delivery of affordable housing, working in collaboration as per Regulation 12(7) of the Public Contracts Regulations.
- 2.5 Delegate authority to the Strategic Director of Community Wellbeing in consultation with the Director of Finance and Lead Member for Housing and Welfare Reform, to finalise and sign the agreement.
- 2.6 To agree that Network Homes internal rules and procedures should govern the procurement of contracts let under the agreement referred to in 2.4 above, with the Council contributing to Network Homes procurement and management costs.

3.0 Context

- 3.1 The Council is committed to improving the housing, environmental and economic outcomes for those who live within Brent. It wishes to ensure that the overall regeneration priorities for the borough are clear and that the strategies are consistent with its Community Plan, robust in the long term and deliverable.

- 3.2 The Council has set an ambitious strategic housing target to deliver 1,000 new affordable homes every year, over the next five years. Delivery of a total of 5,000 new affordable homes includes the provision of 1,000 directly by the Council by the 31st March 2024.
- 3.3 Given the diversity and scale of its requirements, the Council wishes to promote a strong, local cross-sector co-operation with housing organisations operating within Brent to develop and deliver its strategies. To be successful in delivering new affordable homes of the quality, mix and volumes required, the Council must work proactively with a wide range of partners.
- 3.4 Last year the G15, the representative body of the largest Registered Providers (RP's) in London, published their 'Offer to London', setting out how they would support the delivery of affordable housing when required.
- 3.5 Network Homes, a member of the G15 who are based nearby on Wembley Park, offered to work with the Council to provide professional services to assist in progressing the feasibility and design of a number of development sites.
- 3.6 The organisation is a social housing provider based within Brent and with significant housing stock in the borough. It possesses significant development and regeneration expertise, with a team of over 50 people, owns and manage over 20,000 homes and has a target of delivering 1,000 new homes each year.
- 3.7 Officers from both organisations have been working together to explore opportunities to co-operate on a range of projects to deliver new affordable housing. The development of a co-operation agreement has been identified as the most appropriate mechanism for enabling the Council to access through a partnership approach.
- 3.8 The agreement would enable both organisations to co-operate on a range of projects to achieve a common purpose in respect of meeting statutory housing obligations, i.e. the delivery of improved and affordable housing in Brent.

4.0 Co-operation Agreement

4.1 Rationale

- 4.1.1 The use of collaborative arrangements within the public sector where two or more organisations come together to deliver a joint programme or project(s) is common and there are examples of best practice across the country.
- 4.1.2 The development of a co-operation agreement with Network Homes provides the basis upon which both organisations can collaborate as two public sector bodies under Regulation 12(7) of the Public Contracts Regulations 2015. In doing so, any agreement made must be to achieve a common purpose.
- 4.1.3 In respect to this specific opportunity to work with Network Homes to take forward a number of joint projects; both organisations have a shared objective to meet our statutory housing obligations through the delivery of improved and affordable housing in Brent.

- 4.1.4 The scope of the agreement will focus upon delivery of four aspects of the development process, namely:
- Planning including resident consultation;
 - Detailed design including contractor procurement;
 - Management of construction; and
 - Co-ordination / resolution of defects.
- 4.1.5 The intention is for a joint client team of officers from the Council and colleagues within Network Homes, to work together to deliver a number of joint projects in line with the agreement and schedule of services incorporated. An external consultant team (appointed by the Council) would also provide support as required (i.e. Employers Agent, Cost Consultant etc.).
- 4.1.6 In order to ensure compliance with Regulation 12(7), contributions that the Council can make within the agreement for collaboration with Network Homes are defined through a schedule. This provides a more defined scope of services that both organisations will provide. The Council would contribute resources in relation to such matters as planning; building control; land ownership; community engagement etc. amongst a wider range of support services.
- 4.1.7 As the Council has received one of the largest allocations of grant in London, this creates a significant demand for staffing resource to manage the delivery of such a large programme. The expectation is that Council resources will be utilised whenever possible to manage delivery of development sites, but it is recognised that this cannot always be the case, given the size, scale and pace at which programmes and projects need to be delivered.
- 4.1.8 The approval of the agreement would enable the Council to ensure it could meet the Greater London Authority (GLA) deadline of 'start on site' by March 2022, ensure planning and construction of new affordable homes can be progressed more expediently through a partnership with another public body that shares the same aims and objectives.

4.2 Standing Orders

- 4.2.1 Standing Order 85 sets out the rules in which the Council is able to enter into a partnership agreement / collaborative procurement. These are summarised as follows:
- (a) No partnership arrangement can be entered into unless approved by the Director of Finance and a formal agreement is covering the arrangements signed by the parties.
 - (b) Any partnership arrangement of collaborative procurement which includes delegation of powers shall be approved by the Cabinet (or where relevant, Full Council).
 - (c) Any collaborative procurement shall comply with Council Standing Orders and Financial Regulations unless:

- (i) agreed otherwise in writing by the Director of Finance and the Director of Legal, HR, Audit and Investigations; or
 - (ii) in the case of a High Value Contract, the agreement of the Cabinet is obtained under Standing Order 84(a).
- (d) Any agreement between the Council and one or more other body which includes any payment by the Council in respect of the costs of carrying out a collaborative procurement shall comply with Standing Orders unless otherwise agreed in writing by the Director of Finance and the Director of Legal, HR, Audit and Investigations.

4.2.2 To ensure compliance with the Councils Standing Orders and Financial Regulations the following steps / measures can be confirmed:

- (a) The entering of the co-operation agreement will be completed by seeking the approval of the Director of Finance. A co-operation agreement (including schedule) has been drafted and will need to be signed by both the Council and Network Homes.
- (b) Cabinet is asked to grant delegated authority to the Strategic Director of Community Wellbeing, in consultation with the Director of Finance (Section 151 Officer) and Lead Member for Housing and Welfare Reform to finalise and enter into the co-operation agreement.
- (c) In commissioning 3rd party professional services both the Council and Network Homes will ensure compliance with relevant internal rules and procedures of the organisation commissioning services by evidencing both the procurement route(s) utilised and recording the decision making processes followed to demonstrate best value.
- (d) Payment arrangements are stipulated within the co-operation agreement. The Council will approve any financial commitments in relation to the professional services set out in the agreement in writing and work invoiced by Network Homes managed in line with Standing Orders and Financial Regulations.

4.2.3 The value of the co-operation agreement is based on the estimated value of the Council's part of the contract only as per Standing Orders. The Council will reimburse Network Homes for costs incurred in the development of the sites. As set out under the financial implications of this report, a total estimated cost of £2,667,828 +VAT has been calculated for the services to be provided by Network Homes during the lifetime of the agreement.

4.2.4 For Council sites, the Council will be responsible for all costs relating to securing planning consent, resident consultation, the professional design team and constructions costs. For context, the agreement is expected to enable the delivery of in excess of 345+ new homes with an estimated construction value of £93m over a 6-year period.

4.3 Value for Money

4.3.1 The benefit of entering into an agreement with Network Homes is that a full range of services can be utilised to the same standard as currently used by the organisation on their own new housing development schemes. Costs are based

on an estimated fee/staff time cost recharge during the period of the agreement and relative to the different expertise required at each of the different stages of the development process set out in the agreement / schedule.

- 4.3.2 The development sites included within scope of the agreement are significantly more complex than others in the New Council Homes Programme (NCHP). Successful delivery of these sites require significant expertise in managing the decanting of residents, securing vacant possession for properties, managing extensive stakeholder engagement, carrying out detailed viability testing and significant levels of programme / project management – all of which is included in estimated costs.
- 4.3.3 Officers have given consideration to the commissioning of these services to private sector organisations – i.e. professional services, planning and construction consultancies / agents as opposed to entering into a collaboration agreement with another public body. It is unusual to contract out the full range of services and therefore identifying a like for like comparison is difficult. However Employers Agents fees are usually in the range 6-8% dependent upon the scale and range of services provided.
- 4.3.4 Prior to receiving a formal fee proposal from Network informal advice was sought from Trowers & Hamlins (solicitors) regarding the level of fees to be expected from a Registered Provider undertaking development services on an agency basis. Trowers indicated that the Council should expect a minimum proposal of 8% of the Project Cost. Network have proposed a fee of 3% of Build Cost plus VAT to be paid in stages over the course of the project. The table below shows what percentage of the 3% fee they get paid at each stage of the development.

Programme Stage	Proportion of fee %
Pre-Planning Consent	40%
Pre-Start on Site	20%
Construction	35%
Defects Liability Period	5%

4.4 Scope of the Agreement

- 4.4.1 The objective of the agreement is to enable the Council in collaboration with Network Homes to:
- Meet housing needs within Brent by developing new housing schemes from conception through to securing planning consent.
 - Enhance the built and natural environment through incorporating high standards of design and place making.
 - Co-ordinate and make best use of the resources available between both organisations to deliver new housing schemes coherently.

- Develop and/or deliver programmes, projects and activities to progress the development of new housing schemes that are financially and legally compliant.
- 4.4.2 The following principles would be adopted by both organisations during the lifetime of the agreement when working together:
- Collaborate and co-operate with one another in pursuit of the objectives of the agreement.
 - Communicate openly about major concerns, issues and/or opportunities.
 - Share information, experience, materials and skills to learn from each other and develop effective working practices, and by working collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost.
 - Adhere to statutory requirements and comply with applicable laws and standards.
 - Endeavour to act in a timely manner, recognising timescales and working proactively together to seek to achieve identified key dates and milestones.
 - Act in good faith.
- 4.4.3 The agreement incorporates the following new housing schemes (or projects):
- Kilburn Square Clinic and 13-15 Brondesbury Road (located on the southern boundary of the Kilburn Square Estate where the building formerly used by the NHS can be demolished to provide between 80 and 100 new-build homes.
 - Windmill Court (Shoot Up Hill) where potentially between 40 and 70 new homes can be delivered on under-utilised open space and potential demolition of an existing car park.
 - Claire Court (Shoot Up Hill) where between 30 and 50 new homes can be delivered either through the demolition of a large podium covered parking area or the regeneration of two existing residential blocks.
 - Watling Gardens (Shoot Up Hill) where between 60 and 80 new homes can be delivered through the demolition of existing single storey bungalows on the south-west corner of the estate.
- 4.4.4 The agreement allows for the incorporation of additional new housing schemes in the future, subject to services provided by both organisations remaining compliant at all times with the Public Contract Regulations 2015 and the legal conditions within the agreement.
- 4.4.5 Subject to receiving Cabinet approval to enter into the agreement and delegate responsibility to officers, the co-operation agreement (including schedule) will be finalised and signed by both the Council and Network Homes. Advice and support continues to be provided by the Council's in-house legal team to continue to ensure compliance with relevant statute and guidance can be demonstrated.

4.5 Day-to-Day Management

4.5.1 The development of the co-operation agreement allows for the Council and Network Homes to co-operate on projects as defined within the agreement and in accordance with the schedule.

4.5.2 The Housing Supply and Partnerships Team will act as a single point of contact on behalf of the Council to ensure that:

- Service and performance requirements are clearly defined.
- Performance management arrangements are robust and effective.
- The agreement is proactively managed, in addition to the Council's relationship with Network Homes and reporting consistent with governance arrangements.
- Risk management arrangements are in place, with regular audits and periodic reviews used to maintain delivery to the standards required.
- Continuous improvement is sought through reviewing delivery against the agreement, specification and project plans, whilst ensuring compliance with regulation and legislation.
- Manage all aspects of the agreement, ensuring resources and expertise are fully utilised, whilst ensuring continuity of project delivery.

4.5.3 Within the agreement there is an acknowledgement that as both organisations would be working together in relation to projects, access to information and/or intellectual property rights would require both the Council and Network Homes to ensure confidentiality is maintained at all times. Measures to ensure confidentiality are specifically set out within the agreement.

4.5.4 A clear process to terminate the agreement (on either side) has been incorporated, enabling the Council to end the collaboration with immediate effect by giving notice in writing. Whilst it is not anticipated that termination of the agreement will be necessary, it is important to highlight within this report that such an action can be taken by the Council at anytime and that controls are in place to manage any potential risks in the future.

4.6 Key Risks

4.6.1 As with any joint collaboration of this nature there will always be risks to the Council that need to be managed, the following key risks and mitigations as set out in Table 4.6.1 apply:

Table 4.6.1 – Key Risks and Mitigation

Risk	Mitigation (Controls)
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<p>Collaboration between Council and Network Homes is not clearly defined and specifications, requirements are not robust enough.</p>	<ul style="list-style-type: none"> • Collaboration agreement includes clear objectives and scope. • Schedule sets out roles and responsibilities of both organisations, supported with a breakdown of estimated costs and key stages for delivery of the project.
<p>Contract management arrangements are not robust enough.</p>	<ul style="list-style-type: none"> • Project championed via Strategic Director for Community Wellbeing and Operational Director of Housing. • Contract and performance management arrangements set out within agreement. • Housing Supply and Partnerships Team to act as 'client' in managing and overseeing performance on a day-to-day basis. • Existing governance arrangements, i.e. CMT, PCG, HCIB to be used to oversee delivery of the agreement.
<p>Challenge from other Registered Providers (RPs) towards the Council entering into agreement specifically with Network Homes.</p>	<ul style="list-style-type: none"> • Agreement developed in line with Regulation 12(7) of the Public Contracts Regulations 2015. • Legal advisors engaged in development of agreement and schedule. • Option always available for Council to enter into similar collaboration agreements with other RPs where conditions set out in statute can be met.
<p>Lack of experience, expertise and/or capacity from the Council to deliver as per agreement.</p>	<ul style="list-style-type: none"> • Rationale to enter into agreement with Network Homes is to access and utilise skills, experience and capacity not available within the Council. • Management of agreement via the Head of Supply and Partnerships, in conjunction with officers within finance, procurement etc.
<p>Lack of resources to invest in agreement over the lifecycle of the projects.</p>	<ul style="list-style-type: none"> • Financial breakdown and payment terms clearly set out within agreement. • Budget available via existing resources that would traditionally be invested in external consultants and specialists. • Controls within the agreement allow for the Council to give notice at any time.

<p>Design and quality of construction enabled through the agreement not in line with Council requirements.</p>	<ul style="list-style-type: none"> • Controls in place within agreement that clearly set out requirement for Council to approve key stages of project delivery. • Network Homes will be responsible for presenting design proposals and taking forward construction in line with schedule. • Existing governance arrangements within the Council will be used to scrutinise and approve individual designs and development proposals.
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4.7 Next Steps

4.7.1 Subject to approval from Cabinet, the intention is to finalise the agreement (including the schedule of services) with Network Homes in order to satisfy the Public Contract Regulations 2015 and crucially enable the delivery of new development sites to be progressed expediently by both public bodies.

4.7.2 Delegated responsibility to the Strategic Director of Community Wellbeing, in liaison with the Director of Finance and the Lead Member for Housing and Welfare Reform, will be used to finalise and sign the agreement.

5.0 **Financial Implications**

5.1 The Council will be responsible for all costs relating to securing planning consent, resident consultation, the professional design team and constructions costs. The Council will also reimburse Network Homes for any costs it incurs in the development of the sites as set out within the agreement. Existing Council financial policies and procedures will be followed at all times and payment made as per the conditions set out in the agreement.

5.2 Network Homes estimated total charges (excl. VAT) covering all development sites currently to be included within the agreement, to be reimbursed by the Council at each stage of the process are summarised below (Note: as per breakdown set out in agreement / schedule):

- Kilburn Square – Phase 1: £1,018,089
- Kilburn Square – Phase 2: £329,769
- Kilburn Square – Phase 3: £95,642
- Watling Gardens: £869,039
- Windmill Court: £355,289

5.3 The actual charges to be paid by both the Council and Network Homes must be supported by monthly invoices provided in accordance with the conditions set out in the agreement and based on the durations above. Invoices can be submitted by either organisation to the other at the end of each calendar month and must in compliance with the approach set out in the agreement. All costs submitted are to be exclusive of VAT.

- 5.4 Payment of an invoice will be made by either party within 30 days of the receipt of a valid and undisputed invoice. If either the Council or Network Homes fail to make a payment in line with the conditions set out in the agreement, interest can be charged on the overdue amount.
- 5.5 From a Council perspective all invoices and payments are to be managed in accordance with Standing Orders and Financial Regulations and are subject to existing financial processes and procedures. This includes regular financial reporting to the Housing Care and Investment Board, in addition to the Capital Programme Board, CMT and Cabinet in line with existing governance and reporting arrangements.

6.0 Legal Implications

- 6.1 Approval is sought to enter into an agreement with Network Homes pursuant to Regulation 12(7) of the Public Contracts Regulations 2015. Regulation 12(7) codifies the Hamburg Waste judgment (C-480/06 - Commission v Germany). It provides that an agreement concluded between two or more contracting authorities shall not be deemed to be a public contract (and thus subject to procurement) where all of the following apply:
- (i) There must be 'cooperation', meaning some meaningful mutuality of contribution or pooling of resources,
 - (ii) The cooperation must relate to public services, in respect of which all of the participating authorities have functions,
 - (iii) The aim must be to ensure the delivery of the functions or common objectives,
 - (iv) The arrangement must be solely governed by public interest considerations,
 - (v) Less than 20% of the activities must be conducted on an open market.

From the information detailed in the report, the conditions outlined above are met, enabling the Council to enter into a cooperation agreement with Network Homes pursuant to Regulation 12(7).

- 6.2 As detailed in paragraph 4.2.1, Contract Standing Order 85 sets out certain requirements for the entry into a partnership agreement and for collaborative procurements. These requirements are further outlined in the main body of the report.
- 6.3 The recommendations contained in this report seek authority to meet the requirements of CSO 85, to include seeking delegated authority to the Strategic Director of Community Wellbeing to finalise and authorise execution of the agreement.

7.0 Equality Implications

- 7.1 The public sector equality duty, as set out in section 149 of the Equality Act 2010, requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) and sexual orientation. The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications.
- 7.2 Equality Impact Assessments (EIAs) will be completed as part of the planning application process to demonstrate that the Council has considered the quality impacts of its decisions in relation to design and development.
- 7.3 The development and delivery of stakeholder consultation and engagement activities to be facilitated by Network Homes will take into account equality and diversity requirements set out by the Council. It is anticipated that the GLA will require projects within the agreement to be considered for community ballot and should this be necessary, EIAs will be completed.

8.0 Consultation with Ward Members and Stakeholders

- 8.1 Subject to the approval of the agreement, Ward Members and Key Stakeholders will be actively engaged and encouraged to shape the planning and design of housing development sites that are within scope of the agreement on a project-by-project basis.
- 8.2 The agreement incorporates early projects to take forward development opportunities within Kilburn Square, Windmill Court and Watling Gardens. Ward Members will be engaged throughout the process. Within the schedule that forms part of the agreement, there are a number of key areas in which Ward Members and a variety of stakeholders will be engaged covering pre-planning, design and construction, onsite handover.
- 8.3 Within scope of the agreement, both the Council and Network Homes have a shared responsibility for ensuring that stakeholders are proactively involved in taking forward the projects. Regular reports will be presented as part of this approach to CMT, PCG and Cabinet in the future.

9.0 Human Resources / Property Implications

- 9.1 The agreement due to its specific nature facilitates the sharing of resources between the Council and Network Homes. This includes the utilisation of officers consultants and contractors.
- 9.2 There are four initial projects within scope of the agreement that directly affect land and property assets and which will be considered on a project-by-project basis as the development of development schemes evolve from conception to completion.

- 9.3 The agreement also allows the inclusion of additional development sites at a later date, subject to ongoing compliance with legislation, satisfying the conditions of the agreement itself and the delivery of joint services to the satisfaction of both parties.

Report sign off:

Phil Porter

Strategic Director for Community Wellbeing