Cheltenham Borough Council

Cabinet – 5th April 2022

Appropriation of Assets between the General Fund and Housing Revenue Account

Accountable member	**Councillor Peter Jeffries, Cabinet Member for Finance and Assets**
Accountable officer	**Paul Jones, Executive Director Finance and Assets (Section 151 Officer)**
Accountable scrutiny committee	**Overview and Scrutiny Committee and Budget Scrutiny Working Group**
Ward(s) affected	**All**
Key/Significant Decision	**No**
Executive summary	The budget for 2022/23 included £300k of savings to be delivered through maximising opportunities to strengthen the Cheltenham Borough Council / Cheltenham Borough Homes Partnership. The proposals within this report will ensure that £184k of the savings target is achieved, reflect the use of the assets more appropriately, allow for appropriate recognition on the Council's Balance Sheet and align with the guidance published by the Department for Levelling Up, Housing and Communities (DLUHC) in November 2020.
Recommendations	**1. To approve the appropriation of assets between the Housing Revenue Account (HRA) and the General Fund (GF) as set out in Appendix 2, with effect from 1st April 2022.**

Financial implications	The appropriation of assets between the Housing Revenue Account (HRA) and the General Fund (GF) will require the transfer of debt, at the market value, of the appropriated assets. The Council's borrowing limits (General Fund and HRA) are governed by the Prudential code requiring the Council to demonstrate that borrowing to finance capital projects is prudent and that the full lifecycle costs, including debt financing costs, are affordable and sustainable and can be contained within the current and future financial plans of the authority. An appropriation will "trigger" the net transfer of debt, changing the debt financing costs attributable to the revenue accounts of the HRA and General Fund. The proposed transfer of assets at Appendix 2 will result in a net transfer of debt to the GF from the HRA of £2,116,933. As the capital expenditure incurred on these assets was before 1st April 2008, Minimum Revenue Provision (MRP) is determined in accordance with the former regulations that applied on 31st March 2008, modified to a more prudent basis as permitted by the Guidance. Since 2016/17 MRP has been based on repaying the non-housing debt in equal annual instalments over a 35-year period (this is Option 1 in the Guidance). Using Option 1, from 2022/23 non-housing debt is repaid in equal annual instalments over a 29-year period. As such, the MRP calculation for the transfer of £2,116,933 debt to the GF correlates to an increased MRP of £72,997 per annum. In return, the GF will benefit from the rental income derived from these properties, which currently realises £256,585 per annum. The net benefit to the GF from these appropriations therefore equates to £183,846 per annum before taking into account the change in interest charges to the HRA. The financial impact on the HRA will be a reduction in income of £256,585 offset by an increase in dwellings rental income of approximately £10,000 and a reduction in net interest payable. **Contact officer:** Paul Jones, paul.jones@cheltenham.gov.uk 01242 264365

Legal implications	Expenditure and income relating to property listed in section 74 of the Local Government and Housing Act 1989 (“the 1989 Act”) must be accounted for in the HRA. This comprises mostly housing and other property provided by authorities under Part II of the Housing Act 1985 (“the 1985 Act”). Schedule 4 to the 1989 Act (as amended by section 127 of the Leasehold Reform, Housing and Urban Development Act 1993) specifies the debit and credit items to be recorded in the HRA. The Housing (Welfare Services) Order 1994 specifies the welfare services which must be accounted for outside the HRA. The HRA is a statutory ring-fenced account within the GF and Secretary of State consent may be required to authorise the appropriation of assets from the HRA account if any of the assets are, or have in the past, been used for housing purposes. Advice will be given on a case by case basis as needed. Section 122 Local Government Act 1972 states that a Council may appropriate for any purpose for which the Council is authorised, any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation, subject to the requirement to obtain Secretary of State consent (if required). An appropriation of land held in the HRA that is or includes a house requires prior consent from the Secretary of State under section 19 Housing Act 1985 (as amended). There is no general consent under this section, so a specific application would need to be made if the section is engaged. "House" is given an extended statutory meaning, and includes hostels and lodging houses, as well as flats and amenity areas over which the occupiers of the dwellings enjoy rights. **Contact:** One Legal **E-mail:** legal.services@onelegal.org.uk **Tel no:** 01684 272691
HR implications (including learning and organisational development)	There are no direct HR implications evident. **Contact officer**: Clare Jones (HR Business Partner) clare.jones@publicagroup.uk 01242 264364
Key risks	As detailed in Appendix 1.
Corporate and community plan Implications	As detailed in Section 4.
Environmental and climate change implications	Cheltenham Borough Homes will be tasked with exploring the opportunity to make 9 Grasmere Road a zero carbon home.
Property/Asset Implications	As detailed in the report and Appendix 2. **Contact officer:** Gemma Bell, Gemma.Bell@cheltenham.gov.uk 01242 264124

1. Background

1.1 In November 2020 the Department for Levelling Up, Housing and Communities (DLUHC) formally known as the Ministry of Housing, Communities and Local Government's (MHCLG), issued guidance on the operation of the HRA ring-fence. The statutory provisions referred to within the legal implications section above reflect the Government's policy that the HRA remains a ring-fenced account within the General Fund; it should still be primarily a landlord account containing the income and expenditure arising from a housing authority's landlord functions.

1.2 At its most basic, when taking any decision on whether expenditure or income should be accounted for in the HRA, the test that should be applied is "Who benefits?" That is to say: who is the major contributor of the item of income, or the major beneficiary of the expenditure under consideration? Hence, should the HRA bear the full cost or only part, or should it benefit from the entirety of the income, or is some of it applicable to the General Fund?

1.3 The main consideration when deciding whether the costs and income associated with a particular property should be accounted for in the HRA is the powers under which the authority is currently providing that property. Section 74 of the 1989 Act sets out the property that must be accounted for in the HRA, by reference to the powers under which that property is held.

1.4 A property has to be accounted for within the HRA if it is currently provided under Part II of the 1985 Act or any of the other powers specified in section 74 of the 1989 Act (referred to here as "Part II housing"). The account also extends to any outstanding debts or receipts which arose when a property was so provided and which are still outstanding following its disposal.

1.5 Equally, properties which may originally have been provided under one of the powers in section 74 of the 1989 Act (or their predecessor powers) may no longer fulfil their original purpose. In these circumstances, the authority should consider their removal from the HRA by appropriating the property to a different purpose. Examples of properties which might fall into this category are estate shops and other commercial premises, such as banks, post offices, workshops, public houses, industrial estates and surgeries, where there is no longer any connection with the local authority's housing.

1.6 The decision is for the authority to take, though it should be able to explain the basis of its decision to its external auditor and tenants, if called upon to do so.

2. Reasons for recommendations

2.1 Assets which are no longer of beneficial use to HRA tenants should be either disposed of or transferred out of the HRA. Financial reporting standards and government guidance require that assets are categorised according to the purposes for which the Council holds them. Equally, the 2 properties being appropriated to the HRA will add to its existing housing stock to meet permanent family and individual accommodation needs.

2.2 The proposed appropriation of assets set out in Appendix 2, aim to reflect more appropriately the assets' use, allow for appropriate recognition on the Council's Balance Sheet and align with the guidance published by DLUHC in November 2020.

2.3 Retail properties also carry a commercial level of risk in terms of rent arrears, bad debt, irrecoverable service charges and voids that are inappropriate to hold within the HRA and contrary to protecting the interests of residential tenants under the relevant guidance and legislation.

2.4 The correct classification should reduce risk of challenge from auditors, residents and tenants. For statutory reasons the appropriation of assets between revenue accounts has to take place at market value. An exchange of assets is therefore proposed to mitigate the impact upon both revenue accounts.

2.5 The budget for 2022/23 included £300k of savings to be delivered through maximising opportunities to strengthen the Cheltenham Borough Council / Cheltenham Borough Homes Partnership. The proposals within this report will provide a net financial benefit to the GF of £184,338 per annum.

3. Alternative options considered

3.1 A number of other properties have been identified for potential future appropriation. Officers are working with colleagues from Cheltenham Borough Homes to assess whether these assets can deliver additional homes for Cheltenham.

4. How this initiative contributes to the corporate plan

4.1 The proposals within this report and in future reports proposing appropriation of assets will help to increase the supply of housing and investing to build resilient communities. In addition, through sound estate management of our property portfolio, we will be able to ensure we deliver Services that meet the needs of our communities.

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Appendices	1. Risk Assessment 2. HRA and GF Appropriations
Background information	https://www.gov.uk/government/publications/operation-of-the-housing-revenue-account-ring-fence/operation-of-the-housing-revenue-account-ring-fence

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	**Risk description**	**Risk Owner**	**Date raised**	**Impact 1-5**	**Likeli-hood 1-6**	**Score**	**Control**	**Action**	**Deadline**	**Responsible officer**	**Transferred to risk register**
	The incorrect classification of assets could lead to a challenge from auditors, residents and tenants	ED Finance and Assets	22/03/22	2	1	2		Accept the recommendation within the report.	05/04/22	ED Finance and Assets	
	Retention of retail properties within the HRA carry a commercial level of risk contrary to protecting the interests of residential tenants under the relevant guidance and legislation	ED Finance and Assets	22/03/22	2	1	2		Accept the recommendation within the report.	05/04/22	ED Finance and Assets	