

Subsidy Advice Unit Report on the proposed subsidy to Barking and Dagenham Homes Limited

**Referred by the London Borough of Barking and
Dagenham Council**

27 November 2024

Subsidy Advice Unit

Part of the Competition and Markets Authority



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1. The Referral

- 1.1 On 11 October 2024, the London Borough of Barking and Dagenham Council (LBBD Council) requested a report from the Subsidy Advice Unit (the SAU)¹ in relation to their proposed subsidy to Barking and Dagenham Homes Limited (BDHL) (the Subsidy) under section 52 of the Subsidy Control Act 2022 (the Act).²
- 1.2 This report evaluates LBBD Council's assessment of compliance (the Assessment) of the Subsidy with the requirements of Chapters 1 and 2 of Part 2 of the Act.³ It is based on the information and evidence included in the Assessment.
- 1.3 This report is provided as non-binding advice to LBBD Council. It does not consider whether the Subsidy should be given, or directly assess whether it complies with the subsidy control requirements.

Summary

- 1.4 The Assessment uses the four-step structure described in the Statutory Guidance for the United Kingdom Subsidy Control Regime (the [Statutory Guidance](#)) and as reflected in the SAU's Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit (the [SAU Guidance](#)).
- 1.5 In our view, LBBD Council has considered in detail the compliance of the subsidy with the subsidy control principles. It has set out a clear policy objective and equity rationale and explained why a subsidy is necessary. However, we identified several areas of the Assessment that should be improved either through including supporting evidence or by making better use of the information contained in the evidence provided to support LBBD Council's conclusions.
- 1.6 We have also identified the following specific areas for improvement:
 - (a) With regard to the counterfactual, the Assessment should set out in more detail what LBBD Council could have done otherwise in relation to this housing without providing a subsidy to BDHL. Given the properties have already been built, the Assessment should consider whether there would be other options to make some affordable housing available and at least partially satisfy the policy objective.

¹ The SAU is part of the Competition and Markets Authority

² [Referral of the proposed subsidy to Barking and Dagenham Homes Limited by the London Borough of Barking and Dagenham Council - GOV.UK](#)

³ Chapter 1 of Part 2 of the Act requires a public authority to consider the subsidy control principles and energy and environment principles before deciding to give a subsidy. The public authority must not award the subsidy unless it is of the view that it is consistent with those principles. Chapter 2 of Part 2 of the Act prohibits the giving of certain kinds of subsidies and, in relation to certain other categories of subsidy creates a number of requirements with which public authorities must comply.

- (b) When analysing how the Subsidy's characteristics are designed, the Assessment should:
 - (i) more systematically reflect the Statutory Guidance, in particular in considering the size of the Subsidy in relation to the size of the beneficiary and the relevant markets and the Subsidy's duration; and
 - (ii) evidence its view that other housing management organisations would be unwilling to provide the service.
- (c) The Assessment should more systematically analyse potential impacts on competition and investment by describing the affected markets in more detail, and including more evidence on why the Subsidy is considered unlikely to crowd out private investment.
- (d) The Assessment should take fuller account of potential negative effects, including the scale of potential market distortions to competition and investment, in balancing benefits and negative effects of the Subsidy.
- (e) The Assessment should explain compliance with the full list of SPEI requirements specified in s29 of the Act.

1.7 We discuss these areas below, along with other issues, for consideration by LBBB Council in finalising its Assessment.

The referred subsidy

1.8 LBBB Council is proposing to award a subsidy of £291,690,711 in the form of a low-interest rate loan, to BDHL with a term of 52 years (including an initial two-year interest only period).⁴ The Subsidy is for the provision of affordable housing within the London Borough of Barking and Dagenham (the Borough).

1.9 LBBB Council intends to enter into long lease agreements with BDHL for a number of affordable housing projects, comprising 569 affordable homes, which have either already been completed or will be by May 2025. LBBB Council will retain ownership of the freehold. The construction of these projects was funded by LBBB Council with grant funding from the Greater London Authority's Affordable Homes Programme. We recognise the somewhat unusual circumstances that this Assessment must therefore reflect, given that construction of the housing is complete or near completion, and take this into account throughout this report.

1.10 This affordable housing is intended to be let at London Affordable Rent levels, or other target rent levels to residents requiring affordable or social housing. BDHL

⁴ BDHL is a wholly owned subsidiary of LBBB Council.

will offer assured shorthold tenancies to eligible residents. Some homes will also be offered for sale as shared ownership properties.

- 1.11 In return for the long leases, BDHL will be required to pay a lease premium to LBBB Council equivalent to the costs of construction, net of any grant. BDHL lacks the liquidity to pay the lease premium in a single payment, and as the homes are to be let at an affordable level below the market rate, it is unlikely that repayment will be possible in the future solely from surplus rental income received from tenants. LBBB Council therefore intends to offer a loan of that amount, to spread repayment of the premium amount over a longer period of time. A lower rate of interest will be charged by LBBB Council than could be achieved in the commercial market, but which is higher than LBBB Council's rate of borrowing.
- 1.12 The Subsidy's notional value amounts to the difference between what BDHL would have to pay in interest in the commercial market, compared to the low interest loan granted by LBBB Council. The value of the Subsidy amounts to about twice the value of the underlying loan. LBBB Council said that the size of the Subsidy appears large due to the long loan length offered, and because commercial market rates have increased since LBBB Council agreed the loan rates with the recipients in December 2021.
- 1.13 LBBB Council told us it considers the provision of this affordable housing to be a Service of Public Economic Interest (SPEI).
- 1.14 LBBB Council explained that the Subsidy is a Subsidy of Particular Interest because the proposed subsidy exceeds £10 million in value.
- 1.15 The SAU received another request from LBBB Council on 11 October to produce a report regarding a substantially similar proposed subsidy to Barking and Dagenham Reside Weavers LLP. We have published a separate report on that proposed subsidy.⁵

⁵ See [Referral of the proposed subsidy to Barking and Dagenham Reside Weavers LLP by the London Borough of Barking and Dagenham Council - GOV.UK](#)

2. The SAU's Evaluation

2.1 This section sets out our evaluation of the Assessment, following the four-step structure used by LBBB Council.

Step 1: Identifying the policy objective, ensuring it addresses a market failure or equity concern, and determining whether a subsidy is the right tool to use

2.2 Under Step 1, public authorities should consider compliance of a subsidy with:

- (a) Principle A: Subsidies should pursue a specific policy objective in order to remedy an identified market failure or address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns); and
- (b) Principle E: Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.⁶

Policy objectives

2.3 The Assessment states that the policy objective of the Subsidy is to increase the affordable housing supply within the Borough, to overcome the market failure of under-provision and to deliver the associated social equity benefits.

2.4 It explains that the Subsidy will enable LBBB Council to enter into leases with BDHL, ensuring good management of 569 new affordable homes, and thereby contributing to the policy objective to deliver much needed affordable housing within the borough.

2.5 The Assessment sets out how the Subsidy aligns with several national, regional and local housing policies and targets.⁷ This includes LBBB Council's Local Plan to 2037, and the Barking and Dagenham Local Plan. These identify the Borough as a fast-growing area that needs a long-term approach to housing to ensure adequate supply against affordable housing targets.

2.6 In our view, the Assessment clearly describes and evidences the specific policy objective of the Subsidy, helpfully setting it within a wider policy context and demonstrating how the Subsidy aligns to existing plans intended to address the

⁶ See [Statutory Guidance](#), paragraphs 3.32–3.56 and the [SAU Guidance](#), paragraphs 4.7–4.11 for further detail.

⁷ For example: the National Planning Policy Framework (2023); the Homes England Strategic Plan (2023-2028); the London Plan (2021); and the London Housing Strategy (2018).

supply of affordable housing and associated social equity concerns within the Borough.

Market failure

- 2.7 Market failures arise where market forces alone do not produce an efficient outcome. When this arises, businesses may make investments that are financially rational for themselves, but not socially desirable.⁸
- 2.8 The Assessment states that the policy objective is intended to overcome the market failure of under-provision and describes several market failures that it considers are present within the Borough's housing market. These include the following:
- (a) Public goods – the Assessment considers that while not a pure public good (non-rivalrous and non-excludable), affordable housing provides significant social benefits and so the provision of affordable housing represents a 'quasi-public good' that is typically under-provided by the market.
 - (b) Under-provision of positive externalities – the Assessment argues that affordable housing promotes stable communities and social cohesion by facilitating long term residency, which in turn, fosters stronger societal networks and community bonds. In addition, affordability allows for greater disposable income resulting in a positive multiplier effect in the local economy, with increased provision of affordable housing also contributing to improved physical, health (including mental health) and wellbeing levels.
 - (c) Information asymmetry - Potential homebuyers and renters often have less information about the housing market than developers and landlords that can impact prices, quality and long-term value.
 - (d) Market power – large developers and property owners may restrict supply of affordable housing to keep prices high, or land bank by holding onto land without developing it until its value increases, further restricting supply.
- 2.9 The Assessment states that the impacts of the market failure are exacerbated by the characteristics of London's housing market where supply and demand challenges apply. It states the demand for housing is extremely high, but the supply of housing is severely limited due to the scarcity of land, lengthy planning processes, and high costs in the construction industry, which all restrict new housing developments.
- 2.10 In our view the Assessment identifies some well-established and generic housing issues in line with HMT Green Book and DLUHC (now MHCLG) appraisal

⁸ [Statutory Guidance](#), paragraphs 3.35–3.48.

guidance. However, some of these market failures (information asymmetry, market power) do not appear relevant to this context, while the 'quasi-public good' rationale appears to describe matters covered under the equity objective. In our view LBB Council could instead consider framing the market failure more directly in terms of positive externalities, as this would allow it to focus its analysis where the evidence appears most relevant.

Equity Objective

- 2.11 Equity objectives seek to reduce unequal or unfair outcomes between different groups in society or geographic areas.⁹
- 2.12 The Assessment states that the Subsidy will address equity objectives by providing affordable housing in an area where market outcomes alone are insufficient to meet the demand for affordable housing. It states that this will address significant social equity concerns within the Borough, including ensuring basic housing needs, addressing income inequality, promoting social inclusion and contributing to better health and social outcomes. It states that public intervention will ensure that all residents have access to safe, stable and affordable housing.
- 2.13 The Assessment also describes supply and demand challenges facing the Borough's housing market, characterised by economic disparities, housing supply constraints, unmet demand and significant waiting times for social housing, and issues arising from gentrification and displacement that disproportionately impact lower income families and further exacerbate equity concerns. It provides evidence on growth in private rents and affordability ratios (monthly private rent as a percentage of gross monthly income).
- 2.14 In support, LBB Council provides evidence and statistics demonstrating that the Borough has high levels of deprivation, lower levels of income, poor health outcomes and higher levels of crime relative to other parts of London and other areas of the country.
- 2.15 In our view, the Assessment clearly describes and evidences the equity rationale and objective that the Subsidy seeks to address, with appropriate statistics used to demonstrate the existence of inequalities between the Borough, Greater London, and other areas of the UK.

⁹ [Statutory Guidance](#), paragraphs 3.49-3.53.

Appropriateness

- 2.16 Public authorities must determine whether a subsidy is the most appropriate instrument for achieving the policy objective. As part of this, they should consider other ways of addressing the market failure or equity issue.¹⁰
- 2.17 The Assessment explains that LBBD Council considered the following means to achieve the policy objective:
- (a) regulation, such as planning policy changes, whereby stricter regulatory measures such as increased policy requirements or quotas are introduced for the provision of affordable housing;
 - (b) provision and management of affordable housing directly by LBBD Council; and
 - (c) loans or equity investment on commercial terms.
- 2.18 The Assessment sets out that regulation was not considered appropriate given the risk of unintended consequences. For example, increased quotas on the proportion of affordable housing in new developments could result in a viability gap for developers, ultimately causing a reduction in overall housing development. The Assessment also considered the risk that increased quotas might prompt developers to seek more profitable opportunities elsewhere, and that housing quality and diversity within the Borough would be impacted.
- 2.19 The Assessment states that direct provision and management of affordable homes by LBBD Council was discounted as it does not have the necessary capital or operational capacity or experience to efficiently manage substantial additions to its existing portfolio.
- 2.20 It also explains that loans or equity investments made on commercial terms would not address viability gaps that exist for development of affordable housing projects.
- 2.21 LBBD Council concluded that more flexible and direct financial approaches were needed. It identified the following benefits of providing a direct financial subsidy:
- (a) Lower development costs – helping to address any viability gaps.
 - (b) Increased housing supply – making development feasible will increase the overall supply of affordable housing.

¹⁰ [Statutory Guidance](#), paragraphs 3.54-3.56.

- (c) Enhanced financial stability – the Subsidy can increase the financial stability of registered providers, allowing them to focus on quality management and the long-term sustainability of affordable housing projects.

2.22 In our view, the Assessment demonstrates that LBBB Council has considered other ways of achieving its policy objective and clearly explains and justifies why a subsidy was considered the most appropriate option.

Step 2: Ensuring that the subsidy is designed to create the right incentives for the beneficiary and bring about a change

2.23 Under Step 2, public authorities should consider compliance of a subsidy with:

- (a) Principle C: Subsidies should be designed to bring about a change of economic behaviour of the beneficiary. That change should be something that would not happen without the subsidy and be conducive to achieving its specific policy objective; and
- (b) Principle D: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.¹¹

Counterfactual

2.24 In assessing the counterfactual, public authorities should consider what would likely happen in the future – over both the long and short term – if no subsidy were awarded (the ‘do nothing’ scenario).¹²

2.25 The Assessment sets out that the investment decision had been taken under the prevailing State Aid legislation prior to the Act coming into force, and therefore the housing developments were already under construction or completed at that time. The Assessment states that given their construction, the provision of the Subsidy will enable BDHL to lease them from LBBB Council and manage the new homes, thus contributing to the policy objective.

2.26 The Assessment states that, in the absence of the Subsidy, it would not be financially viable for BDHL to obtain a market rate loan, which typically come with higher borrowing costs and strict lending criteria. Therefore, BDHL would not be able to enter into lease agreements with LBBB Council to manage the 569 housing units.

2.27 The Assessment also notes that absent the Subsidy, a market rate loan would create financial viability challenges surrounding the potential profitability of

¹¹ See [Statutory Guidance](#), paragraphs 3.57-3.71 and the [SAU Guidance](#), paragraphs 4.12-4.14 for further detail.

¹² [Statutory Guidance](#), paragraphs 3.60-3.62.

affordable housing for the developers and management companies. It also notes that social rent housing is often occupied by low-income households, including those on benefits or in low-paying jobs and that these tenants may struggle with consistent rent payments, and may require additional support services, thus increasing operational costs and complexity, the risk of rent arrears and also financial instability for the developer. It says that without the Subsidy, housing market conditions are likely to worsen significantly, and developers and management companies will prioritise market-rate projects.

- 2.28 In our view, the Assessment describes what would be likely to happen without the Subsidy, detailing that in its absence, it is not financially feasible for BDHL to enter into commercial lease agreements with LBB Council for these properties. However, the Assessment should set out in more detail what LBB Council could have done otherwise in relation to this housing without providing a subsidy to BDHL. Given the properties have already been built, the Assessment should consider whether there could be any other options to make some affordable housing available, and to at least partially satisfy the policy objective.

Changes in economic behaviour of the beneficiary and additionality

- 2.29 Subsidies must bring about something that would not have occurred without the subsidy.¹³ They should not be used to finance a project or activity that the beneficiary would have undertaken in a similar form, manner, and timeframe without the subsidy ('additionality').¹⁴
- 2.30 The Assessment lists all the relevant housing schemes with their tenure and allocated subsidy value. It explains that in the absence of the Subsidy, LBB Council would not be able to have lease agreements with BDHL for the 569 new affordable homes (see paragraph 2.26). As a result, the Assessment argues that the affordable housing units resulting from the Subsidy are 'additional', although a full financial analysis was not provided.
- 2.31 In our view, the Assessment concisely explains how the Subsidy will allow BDHL to contribute to the policy objective, but this could be improved by following the statutory guidance¹⁵ to demonstrate and evidence that it would not be financially viable to let the existing units as affordable housing without the Subsidy. The Assessment could include an evaluation against other possible courses of action, as suggested in paragraph 2.28.

¹³ [Statutory Guidance](#), paragraph 3.64.

¹⁴ [Statutory Guidance](#), paragraphs 3.63-3.67.

¹⁵ [Statutory Guidance](#), paragraphs 3.63-3.65.

Step 3: Considering the distortive impacts that the subsidy may have and keeping them as low as possible

2.32 Under Step 3, public authorities should consider compliance of a subsidy with:

- (a) Principle B: Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it; and
- (b) Principle F: Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.¹⁶

Proportionality

2.33 The Assessment describes how the rate of the subsidised loan is a key assumption for the financial appraisal of each housing development under the overall subsidy. It explains that interest rates vary between developments, with lower rates for social housing and higher rates for affordable rent properties. Subsidised loan interest rates are also set above LBBD Council's average long-term borrowing rate, allowing a margin of profitability for LBBD Council, but low enough to provide a small acceptable return on each development.

2.34 The loan rates offered to the beneficiary were agreed in December 2021. At that time, these were close to commercial market rates, but commercial rates have since increased, substantially widening the gap with the agreed loan rate and thereby increasing the value of the Subsidy. In response to a clarification request, LBBD Council explained that the interest rate was set at the maximum level at which the lease and loan structure remains viable. This viability level was based on jointly-agreed assumptions, including future rental growth, operating costs, inflation, and levels of bad debt. It explained that movements in the market interest rate do not have an impact on this maximum viable level.

2.35 The size of the Subsidy then follows from the difference between the loan rate offered and the borrowing rate that BDHL could have achieved under market conditions. This market interest rate was calculated by adding a risk premium on the European Commission Inter Bank Operating Rate (IBOR) based on the actual or implied credit rating and the collateral for each development.¹⁷

2.36 Through loan agreements, the interest rate for each development can be decreased, if developments are not viable at assumed rates, or increased, if a development provides higher returns than expected. This mechanism is intended

¹⁶ See [Statutory Guidance](#) paragraphs 3.72-3.108 and the [SAU Guidance](#), paragraphs 4.15-4.19 for further detail.

¹⁷ This was calculated based on January 2024 1-year IBOR.

to allow LBBD Council to limit the beneficiary's return to the agreed acceptable level and so keep the size of the Subsidy to the minimum necessary.¹⁸

- 2.37 In our view, the Assessment explains how the interest rate was set at a level to minimise the size of the Subsidy. It also describes mechanisms, through clauses in the loan agreements, to adjust the size of the Subsidy depending on future developments (for example if outcomes differ from the underlying assumptions for calculating the interest rate). These loan agreement adjustment mechanisms should help ensure that the Subsidy is then adjusted to the minimum necessary.

Design of subsidy to minimise negative effects on competition and investment

- 2.38 The Assessment considers how several of the Subsidy's characteristics could serve to minimise negative effects on competition and investment. It argues that the nature of the instrument chosen, a loan, is less distortive than a grant, because a loan needs to be repaid. It outlines ringfencing and monitoring and evaluation mechanisms to ensure that the Subsidy is spent only on relevant activities and the recipient cannot use it to cross-subsidise activities outside of the intended scope and that do not contribute to achieving the policy objective.
- 2.39 The Assessment also describes that the Subsidy will go to a single beneficiary. It emphasises that the beneficiary's ownership structure is crucial for the chosen subsidy design because, while other Registered Providers could be interested in the scheme, they would be unlikely to accept a long leasehold. The Assessment expects them to instead prefer a freehold or virtual freehold, which would risk the properties not remaining affordable housing in perpetuity.
- 2.40 The Assessment also regards the arrangements on subsidy size and clawback mechanisms, described in paragraph 2.36, as minimising the Subsidy's potential distortive effects. It mentions that a financial viability appraisal has been carried out for each housing development to ensure that the beneficiary will receive a reasonable return only and implies that these appraisals limit the risk of distortions. The Assessment also argues that the Subsidy levels the playing field, and as such minimises distortions by supporting only projects that might otherwise be unviable, ensuring that affordable housing can compete with more lucrative market-rate developments.
- 2.41 Under Step 1, the Assessment also explains that LBBD Council had considered capital grants, and operating subsidies as alternative means of subsidy. However, subsidised loans had been preferred as they require less immediate expenditure compared to grants, that the repayment of loans plus interest provides a continuous cash-flow which can support further affordable housing projects, and

¹⁸ This acceptable return is determined from a combination of financial key performance indicators, and is intended to ensure a minimal level of profitability to reduce the risk of financial distress.

that the loan recipient is more likely to ensure the financial viability of their projects and use funds provided through subsidy efficiently, as the recipient knows that loans must be repaid.

- 2.42 In our view, the Assessment should more systematically reflect the Statutory Guidance¹⁹ when analysing how the Subsidy's characteristics are designed to minimise distortions to competition and investment; in particular:
- (a) it should consider the size of the Subsidy in relation to the size of the beneficiary and the relevant markets, and address whether a shorter duration could reduce potential distortions while still achieving the policy objective;²⁰
 - (b) it should also outline the evidence for its view that other housing management organisations would be unwilling to provide the service under the parameters of the proposed Subsidy. This could include the terms and conditions or costs under which other housing management organisations operate; and
 - (c) while the Assessment mentions briefly that loans are generally less distortive than grants, it could go beyond the language in the Statutory Guidance and tailor its analysis to the specific context of the proposed Subsidy, extending it to the other intervention options discussed under Step 1.

Assessment of effects on competition or investment

- 2.43 The Assessment identifies the affordable housing market in the Borough as the primary market. It acknowledges that the competitive landscape includes wider housing markets, specifically market-rate housing and Greater London geographically.
- 2.44 The Assessment identifies private sector developers, non-profit organisations, housing associations, local councils and government agencies as the types of stakeholders affected by the Subsidy.
- 2.45 The Assessment lists three distortive market effects potentially arising from the Subsidy:
- (a) Crowding out of private investment: the Subsidy could make affordable housing projects more attractive than projects financed at market rates and so affect investment flows.

¹⁹ [Statutory Guidance](#), paragraphs 3.76-3.108

²⁰ Such consideration of how these characteristics may minimise potential distortions to competition and investment, could also help demonstrate how the Subsidy's design limits the subsidy to what is proportionate and minimally necessary for the policy objective.

- (b) Disproportionate market advantage: housing developers who receive the Subsidy could gain a competitive advantage over those who do not, in being able to operate at lower costs or higher profit margins for relevant projects. This could discourage competition from developers who do not receive a subsidy.
- (c) Dependency on subsidies: developers that receive subsidies may become reliant on them to keep projects viable and they may reduce developers' incentives to pursue cost efficiencies and innovation. Such dependency could stifle market-driven solutions and affects costs or quality in the long term.

2.46 The Assessment concludes that these potential distortive effects are minor in comparison to the high demand and insufficient supply of affordable housing which the Subsidy aims to mitigate. It further argues that the Subsidy will support projects that might otherwise be unviable, which it considers to be levelling the playing field rather than conferring a competitive advantage over other projects or developers.

2.47 In our view, the Assessment should more systematically analyse potential impacts on competition and investment, drawing on the relevant parts of the Statutory Guidance. While the Assessment identifies some affected primary and broader product and geographical markets, it should describe these markets in more detail and consider the scale and distribution of impacts, for example, clearly distinguishing between the markets for supplying and for managing housing.²¹

2.48 In particular, the Assessment should better evidence its assumption that the proposed Subsidy is unlikely to crowd out private investment. To support this, it could explore further, and provide evidence where possible, how substitutable affordable housing in the Borough is, in relation to these broader competitive markets from a renter, housing developer, and housing management perspective.²²

Step 4: Carrying out the balancing exercise

2.49 Public authorities should establish that the benefits of the subsidy (in relation to the specific policy objective) outweigh its negative effects, in particular negative

²¹ For example, high-level information on the level of market concentration, an overview of the largest providers in the relevant markets, which providers would be most likely to be affected and how, the stock and annual changes in affordable and other housing in relation to demand for housing and the level of housing supplied by developments associated with this Subsidy.

²² Such evidence could include the number or proportion of people moving from affordable to market rate housing (or vice versa) and movements into and out of the Borough (demand side), or statistics/ case studies on whether businesses that develop or manage affordable housing are typically also active in developing or managing market-rate housing (supply side).

effects on competition or investment within the United Kingdom and on international trade or investment.

- 2.50 The Assessment sets out a number of social equity impacts of the proposed Subsidy, through its provision of affordable housing. These include:
- (a) meeting the basic needs of the local population, through the provision of adequate housing;
 - (b) reducing income inequality, by providing affordable housing options which reduce the economic burden placed on many lower and middle-income households in the local area;
 - (c) promoting social inclusion by reducing socio-economic segregation, as the new affordable homes are located near to socio-economic resources and opportunities;
 - (d) improving public health, through providing better quality housing resulting in improved health outcomes; and
 - (e) contributing to reduced crime rates, in part due to promoting community cohesion and thus reducing the likelihood of criminal activity.
- 2.51 The Assessment then considers several anticipated negative effects, noting the potential distortive market effects that the Subsidy might pose (as set out in paragraph). The Assessment judges that the potential for distortive market impacts is outweighed by the benefits of delivering the policy objective of providing additional housing.
- 2.52 The Assessment concludes that the proposed Subsidy will have a negligible impact, if any, on international trade or investment.
- 2.53 In our view, while the Assessment sets out in detail the positive effects of the Subsidy in relation to the policy objectives, and its geographic impacts, its consideration of potential negative impacts is limited due to the shortcomings identified under Step 3. The Assessment should take fuller account of potential negative effects, including the scale of potential market distortions to competition and investment, in balancing the benefits and negative effects of the Subsidy.

Other Requirements of the Act

- 2.54 This step in the evaluation relates to the requirements and prohibitions set out in Chapter 2 of Part 2 of the Act, where these are applicable.
- 2.55 LBBD Council has identified that the Subsidy would engage Section 29 of the Act because it involves the delivery of a SPEI. The Statutory Guidance defines SPEIs

to be essential services provided to the public and may include, for example, social housing.²³ To designate a service as a SPEI, the public authority must be satisfied that the service is provided for the benefit of the public, and that the service would not be provided, or would not be provided on the terms required, by an enterprise under normal market conditions. SPEI subsidies must comply with the requirements set out in the Act.²⁴

- 2.56 The Assessment explains that the proposed Subsidy will be used exclusively for the provision of affordable housing within the Borough which falls under the remit of SPEI, and that the identified affordable housing would not be supplied by the market without the proposed Subsidy. It states that by submitting a subsidy declaration and formally documenting the loan, the requirements of the Guidance will be met. However, the Assessment does not include a detailed evaluation against the SPEI requirements, which would represent best practice.
- 2.57 Section 29 of the Act includes the following requirements:
- (a) the subsidy is limited to what is necessary to deliver the SPEI services having regard to costs of delivery and reasonable profits (s29(2));
 - (b) the subsidy is given in a transparent manner (s29(3)), meaning that the subsidy is given in accordance with a written contract (or other legally enforceable arrangement in writing), which sets out the terms of the subsidy and contains certain prescribed information (s 29(4) and (5)); and
 - (c) arrangements are in place to regularly review the subsidy to ensure it remains limited to the minimum amount necessary and that any excess funds can be recovered (s29(6) and (7)).
- 2.58 The points are addressed in the Assessment or can be inferred from the draft loan facilities agreement:
- (a) In relation to s29(2), the Assessment explains that the Subsidy amount is the minimum necessary to achieve the policy objective, and that there are ongoing interest rate adjustment mechanisms in the loan agreement, which will ensure that the Subsidy remains at the lowest possible level for the lifetime of the loan term.
 - (b) In relation to s29(3), the Assessment states that the proposed loan agreements will be formally executed and will create clear enforceable rights. Draft documents were provided showing that there are intended to be written, enforceable contracts detailing the terms on which the Subsidy is given, but

²³ [Statutory Guidance](#), paragraph 6.1.

²⁴ [Subsidy Control Act 2022](#) section 29.

these documents did not include all the information specified in s29(5) of the Act. We note it is best practice for contracts to be published.²⁵

- (c) In relation to s29(6) and (7), the Assessment states that the proposed loan agreements will have review clauses. Amongst other provisions, LBBD Council have the right to vary the interest rate if the beneficiary is deemed to be making higher than anticipated or higher than acceptable profits. At each stage of development, a financial appraisal is conducted, with the assumptions reviewed and updated. The minimum return criteria need to be met at each stage for the development to be agreed; interest rates can be adjusted accordingly. However, it is not explicitly stated in the Assessment that checks will include review of the use of the Subsidy or will be at least once every 3 years (see s29(6)(a) and s29(7)(a)), or specify a review at the end of the delivery period (see s29(7)(b)).

2.59 In our view, the Assessment should address compliance with the SPEI requirements as identified in paragraphs 2.58(b) and (c).

2.60 LBBD Council confirmed that no other requirements or prohibitions set out in Chapter 2 of Part 2 of the Act applies to the scheme.

27 November 2024

²⁵ [Statutory Guidance](#) paragraph 6.19.