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Local Authority Lending & Prudential Borrowing Briefing

Local Authorities have the power to make loans to organisations, predicated on their own "prudential borrowing" powers, which can make it possible to offer loans on preferential terms.

Leeds CC and Hull CC have both made loans to community housing organisations in the recent past. -

- In Leeds the council have lent Latch Housing Project c £670k at 3.75% fixed for 30years (matched by a grant from the LAs Right To Buy Receipts Grants Programme) to refurbish vacant properties &

- In Hull the council have lent Goodwin Trust £2.2m over 30 years @ 3.5% fixed , as match funding in relation to a specific new build scheme for affordable housing funded by Homes England.

LAs can borrow under the principles set out in the "*The Prudential Code*" (see below). In accordance with those principles each authority must set a total borrowing limit for itself. The borrowing limit will be related to the revenue streams available to the local authority, with which it can repay the debt. *Authorities are prevented by law from using their own property as collateral for loans.*

Local authorities may borrow money from a number of different sources. These include:

- borrowing on the markets;
- using the Public Works Loan Board or
- municipal bonds.

Their choice of lender at any one time will depend on from where they can obtain the best terms and rates. However, they cannot breach the overall limits on their borrowing set by the Prudential Code regime.

A further attraction of a loan form a local authority is that there can be flexibility regarding the terms and conditions, such as; no early repayment or overpayment penalties, a reduced set up fee and possibly a one-off legal fee for a "facility", which could remain in place and facilitate further borrowing

Local authorities should be conversant with their own powers and obligations relating to the offer of loans and to borrowing under the terms of the Prudential Code. Below, is an outline guide to those powers and obligations.

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Annex

1. Local Authority Power To Make Loans

A local authority can make a loan in connection with housing provision using the following powers:

- **Chapter 1 Section 12 of the Local Government Act 2003** provides the power *to invest*. "Section 12 states that authorities have power to invest, for any purpose relevant to its functions under any enactment, or for the purposes of the prudent management of its financial (Local Government Act 2003 Commentary : http://www.legislation.gov.uk/ukpga/2003/26/pdfs/ukpgaen_20030026_en.pdf)

- ***Section 1 of The Localism Act 2011 The General Power of Competence*** to borrow and to make loans under this Act*.* This power is not to be relied upon as a specific power to lend or invest, but rather *to supplement* Section 12 of the Local Government Act 2003 or Section 24 of the Local Government Act 1988 when investing or lending.

2. Local Authority Borrowing Under The Prudential Code

Under **Part 1 Chapter 1 Section 1 of the Local Government Act 2003**, a local authority may borrow for any purpose relevant to its functions or for "the prudent management of its financial affairs". *Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146), as amended. http://www.legislation.gov.uk/ukpga/2003/26/pdfs/ukpga_20030026_en.pdf*

Local authorities are required by Regulation to have regard to T*he Prudential Code,* developed by CIPFA, when carrying out their duties in England and Wales under Part 1 of the Local Government Act 2003.
http://www.cipfa.org/policy-and-guidance/publications/t/the-prudential-code-for-capital-finance-in-local-authorities-2017-edition-book

The key objectives of the Prudential Code are to ensure that the capital investment plans of local authorities are affordable, prudent and sustainable. As part of this framework, the Prudential Code sets out the factors that must be used. The Prudential Code does not prescribe formulae allowing the exact calculation of prudential limits, relying instead on the judgement of the local authority chief finance officer, and on 'generally accepted accounting practices'.

3. State Aid Implications

Such loans to community housing projects should be unaffected by state aid rules, because the provision of social housing is deemed exempt from state aid regulation as a Service of General Economic Interest (SGEI) , which means that the recipient of the subsidy must be placed under an obligation to provide the social housing with the subsidy. Leeds CC took this into account when making their loan to Latch.

https://www.gov.uk/guidance/state-aid