

Agenda Item No: 8.2

Report Title: Housing Development Update

Report To: Cabinet Date: 23 April 2018

Cabinet Member: Cllr. Ron Maskell, Cabinet Member for Housing

Ward(s) Affected: All

Report By: Ian Fitzpatrick, Director of Regeneration and Planning

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Purpose of Report:

To report on the progress made to develop phase 1 of an affordable housing delivery pipeline providing homes directly and through Aspiration Homes LLP (“Aspiration Homes”) & Lewes Housing Investment Company (“LHICL”)

Officers Recommendation(s):

- 1** To note the Council’s affordable housing development pipeline of homes to be delivered through the Housing Revenue Account (“HRA”), Aspiration Homes & LHICL by a mix of purchasing land for new development and acquisitions of existing properties.
- 2** To approve the associated loan amounts required to develop or acquire the homes set out in appendix A which requires a lending facility of up to £35m to deliver homes that will be partly covered by £20m approved in the Council 2018/19 Council Budget. To authorise the Deputy Chief Executive, in consultation with the Lead Member for Finance, to determine the terms of any loan which is to be offered.
- 3** To authorise the Assistant Director for Legal and Democratic Services to ensure that a “Funding Agreement” pursuant to the existing “Deed of Entrustment” is entered into by Aspiration Homes with the Council so that right to buy receipts are appropriated in accordance with legislative requirements and the retention agreement with Government in relation to “social housing”. To give delegated authority to The Director of Regeneration and Planning to determine the terms of such agreements.
- 4** To give delegated authority to The Director of Regeneration and Planning in consultation with the Lead Member of Housing, to dispose of land currently held in the HRA as listed in the table in Appendix A and identified as held within the HRA

to Aspiration Homes or LHICL pending due diligence. This delegation is to include authorisation not to dispose by auction or invitation of tenders following public advertisements (sought under Contract Procedure Rules 18.1). To further give delegated authority to the Director of Regeneration and Planning to determine the terms for the disposals, that may be below market value.

- 5 To note the Council's future housing delivery approach for Aspiration Homes LLP & LHICL in order to provide more new homes for the District.
- 6 To delegate authority to the Director of Regeneration and Planning and the Lead Member for Housing (and where appropriate the Deputy Chief Executive and Assistant Director – Legal and Democratic Services) to progress the projects through the Clear Futures Energy & Sustainability Joint Venture if they consider it appropriate, and at an appropriate future stages to decide if the projects should be put forward to the Clear Futures Steering Board for inclusion as Part 1 and/or Part 2 projects.

Reasons for Recommendations

The overarching reason for the recommendations is to maximise the Council's ability to provide affordable housing within the District, partly through the full utilisation of receipts received from affordable homes sold under the Right to Buy.

1. The pipeline shows the scale and detail of the Council's current housing development programme, providing background behind the required loan facility in recommendation 2.
2. In order for either entity to purchase land from the Council and develop them for housing they will require access to up front capital investment.
3. For Aspiration Homes to use Right to Buy receipts to fund new affordable housing the necessary legal agreements need to be in place to allow this and these must be used in accordance with the terms of our right to buy receipt retention agreement.
4. The locations listed in Appendix A have a variety of pre-construction issues to resolve, and may be brought forward in a number of different phases. By giving delegation to the Director of Regeneration and Planning, disposal and delivery of housing can take place as site issues are resolved.
5. The future development strategy outlines the approach to how the programme will be shaped with regards to households and tenures.
6. The involvement of Clear Futures can significantly improve a range of efficiencies in the delivery of the projects.

Information

1) Background

The registered need for both affordable rented and intermediate sale, such as shared ownership housing remains very high. The affordability and accessibility of housing remains a challenge for many local residents and this applies to single people, couples and families of all ages. As the local Housing Authority, Lewes District Council has a duty to meet the housing needs of its residents, which includes considering all opportunities for delivering additional affordable housing.

Aspiration Homes was incorporated on 30th June 2017 as a Limited Liability Partnership with Eastbourne Borough Council with the primary purpose of delivering new affordable housing. Lewes Housing Investment Company Limited (LHICL) was incorporated on the 4th July 2017 to deliver increased housing options through a range of tenures for Lewes District Council.

2) Development Pipeline Projects

As outlined in the January 2018 Cabinet Report “Garage Sites Redevelopment Phase 2”, Lewes District Council has a number of locations within its Council Housing Estates that offer development potential for new housing. Beyond those locations highlighted in the above report, there are a further number of locations with potential to be included in the Council’s wider development pipeline.

The current pipeline is shown in Appendix A, and is made up of several separate projects. Each of the projects is completely independent of each other with no project reliant on another for either planning permission or finance. Equally within the projects each and every development location is separate and not reliant on others, however the links have been made where possible for efficiency savings. It should be noted that each location will each be subject to full due diligence before development is finally approved.

With reference to Appendix A, a small number of locations schemes have already been given full Cabinet Approval and others are expected to come forward on private-schemes where the Council is acquiring the affordable housing to ensure on-site delivery. For the remaining projects the approval sequence for each individual location will be as follows:

- a) Approval of land acquisition (below market value) by either Aspiration Homes or LHICL Board.
- b) Legal acquisition of land from the Council’s HRA
- c) Local Consultation –prior to a planning application
- d) Planning application submitted and considered at either Lewes or South Downs National Park Planning Committee

If planning approval granted:

- e) Reports submitted to Cabinet to approve development of each location
- f) Construction commences

The actual timeline for these approvals will vary across different projects, with some having planning submissions within 2018/19 and others in future financial years.

3) Tenure Strategy

The Council has the powers to develop new housing through a range of different tenures including affordable rented, intermediate sale such as shared ownership and shared equity. The Council also has the power build private rented homes and market sale homes where the financial viability of a scheme or the wider programme would necessitate their inclusion. In order to effectively match the local needs of each area of the District, the wider housing supply and market is being considered as the programme develops and an area theme summary has is included in Appendix B to outline the overarching strategy.

4) Short and Long Term Financing

To deliver the development programme Aspiration Homes and/ LHICL require a significant financial investment to both acquire the land and to finance the build costs. However the locations within the programme are all appraised and plans are established for financing any borrowing upon the completion of build, through a combination of sales receipts, rental yields, right to buy receipts and utilising any appropriate Government grant that is available.

The financial sums included in Appendix A are included to assist the Council's financial planning but are mainly based upon provisional or estimated sums, rather than fixed tendered prices.

5) Delivery through Clear Futures

The development of future new homes under this programme will primarily be through the Council's procurement and delivery framework, Clear Futures. It was developed by Lewes and Eastbourne Councils in a contractual joint arrangement with Robertson Capital Projects Limited and AECOM Limited, with a focus of innovative, sustainable development.

6) Affordable Housing Secured Through Planning Requirements

The Council has previously relied upon housing associations to acquire the 40% of affordable housing built by private developers as part of their planning requirements. Over the past 10 years the majority of housing associations have increased their lower threshold for acquiring the affordable housing from approximately 4 dwellings up to 15-20 dwellings. This could leave a large number of residential schemes without any affordable housing deliverable on site, so the Council have included capacity with its programme to acquire these dwellings through Aspiration Homes.

7) Legal Implications

Contract Procedure Rules (Section 2 – Disposal of interests in land)

The Council's CPRs say that no sale of land where the value exceeds £50,000 or £25,000 if amenity land shall be made except after auction or the invitation of tenders or

expressions of interest following appropriate public advertisement, unless authorised by Cabinet.

The disposals of the various sites listed in Appendix A have been authorised by Cabinet by the giving of delegated authority in accordance with Recommendation 4 of this report.

Disposal powers for land held in the HRA

Section 32 of the Housing Act 1985 requires that the Secretary of State's consent for the disposal of land held for the purposes of that Act (i.e. HRA land). The General Housing Act Consents 2013 apply to the disposal of land under Section 32.

Consent A3.2 of the General Consent enables the Council to dispose of vacant land at any price determined by it. "vacant", in this context means land on which (a) no dwelling-houses have been built or (b) where dwelling-houses have been built, such dwelling-houses have been demolished or are no longer capable of human habitation and are due be demolished.

If the Council are intending to dispose of the vacant land at less than market value then it will need to comply with the General consent for Financial Assistance (gratuitous benefit) and also the rules on State aid.

Financial Assistance Section 24/25 Local Government Act 1988

The Council, with the Secretary of State's consent, can provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation. The Council also needs the Secretary of State's consent if it wishes to provide a "gratuitous benefit" such as the disposal of an interest in land or property at significantly less than its market value.

The General Consent C under section 25 of the Local Government Act 1988 (Local Authority assistance for privately let housing) 2010 enables the Council to provide a loan to AH or LHICL for this purpose. It does not allow the disposal of an interest in land or property as a gratuitous benefit.

The General Consent AA issued under section 25 of the Local Government Act 1988 (Local Authority assistance for privately let housing) 2014 does allow for the disposal of land at less than market value of vacant HRA land subject to a number of conditions which includes that the development is for "privately let housing" completed within 3 years of disposal (provision may be made for that date to be varied in the event of circumstances beyond the purchaser's control); completion of the disposal is by transfer of the freehold, assignment of a lease with an unexpired term of 99 years or more or grant of a lease for a term of 99 years or more; any housing accommodation on the land at disposal is vacant and is not to be used again for housing and is to be demolished; the Council is not, under any agreement or other arrangement made on or before the disposal, entitled to manage or maintain any of the housing accommodation to be developed on the land. No further consent of the Secretary of State to a disposal under this consent shall be required by virtue of section 32(2) Housing Act 1985.

State aid

In disposing of any land or interest in land the Council must ensure that it does so in accordance with State aid rules. The European Commission's Communication on the Sale of Land (the "Land Communication") sets out an automatic assumption that no State aid is present in a sale of land and buildings provided its terms are followed. The Land Communication requires the sale of land for "market value" through (i) an open and unconditional bidding process or (ii) an expert valuation.

If the vacant land is not to be disposed of at market value then the Council will be able to ensure state aid compliance by using the Services of General Economic Interest (SGEI) Decision of the European Commission Decision of 20 December 2011 if the properties are to be "social housing" as defined under that provision and the requirements of that Decision are put in place in advance and the on-going requirements of the Decision are then followed. For this purpose the Council has already entered into a Deed of Entrustment with Aspiration Homes and would require the entry into a further Funding Agreement in relation to any new development where a subsidy or funding is being provided.

It is also possible to provide a loan on non-commercial terms or grant funding under the SGEI Decision so that Aspiration Homes could purchase the land/properties at market value from the Council.

Right to Buy receipts will be passed to Aspiration Homes under the SGEI Decision.

Other issues

Further advice will be obtained in relation to the terms of any loan agreement from the Council to Aspiration Homes and LHICL, including any SDLT payable on the purchase and any other necessary issues.

[007217-LDC-CJEC – KS 10 April March 2018]

8) Financial Appraisal

8.1) As shown in Appendix A, the total indicative cost of the housing development pipeline projects is in the region of £35m. The recommendations in this report are that Aspiration Homes and LHICL acquire the sites from the Council and develop the new homes, which they will then either retain in their ownership or, in some cases, sell in the open market. It will be for Aspiration Homes/LHICL to determine how the acquisition and development costs are to be financed – the sale of some homes on the open market will generate income and grants may also be received, including from the Council. The majority of the cost would be funded through long term borrowing, with the rent generated from the new homes being used to repay the principal borrowed and associated interest charges.

8.2 Financial implications for the Council are:

Capital receipts from sale of land: as explained above, disposal of sites to Aspiration Homes/LHICL will generate capital receipts for the Council. These receipts can be used to finance future capital projects or for the repayment of borrowing

Retained right to buy receipts: under an agreement with the Government, the Council has retained a share of the receipts generated under Right to Buy on condition that the amounts retained are used within a rolling three year period to part-fund the development of new affordable housing. Retained receipts used in this way must not exceed 30% of the development costs. Any retained receipts not used within three years must be paid to the Government (with interest). While the Council has until now met the rolling three year targets (eg by part-financing the recent development of former garage sites) there is a risk that it will be unable to do so in the future. The agreement with the Government allows the Council to pass the retained receipts to another body for use in the development of affordable homes. Through this mechanism the Council could make a grant to Aspiration Homes (a condition within the Government agreement precludes a grant payment to LHICL).

Long-term loans: the Council can make long term loans to Aspiration Homes/LHICL enabling them to fund their development costs. The approved capital programme currently includes a provision of £20m in total for such loans. Due to the phasing of the pipeline of projects the capital programme approved in the 2018/19 Council Budget provides sufficient capacity for spending up to March 31st March 2019. An increase in the capital programme can be included in 2019/20 Council Budget. A loan facility agreement is in place with Aspiration Homes which sets out the core principles of any loan and specifies an interest rate of 4.5% unless otherwise agreed. As noted above, it is recommended that the terms of any loan offered would be determined by the Deputy Chief Executive in consultation with the Lead Member for Finance. A range of factors would be considered including the duration of the loan and market interest rates at the time of the loan advance. Any loan would be secured against the property assets of Aspiration Homes/LHICL. Interest paid to the Council by Aspiration Homes/LHICL would be credited to the General Fund. In order to have the cash available to lend to Aspiration Homes/LHICL, the General Fund would itself need to borrow and could do so from either the Government's Public Works Loans Board or other lenders (the Council's treasury advisors will support officers in deciding the most appropriate option before any new borrowing is undertaken). The cost of servicing this new General Fund borrowing would be less than the interest payments received from Aspiration Homes/LHICL, generating a net income stream for the Council.

9) Risk Management Implications

A risk assessment has been completed.

The following risks will arise if the recommendations are implemented, and proposals to mitigate these risks in the following ways:

- There is a risk that the Government may change legislation that covers local Council's powers to use housing companies to deliver their housing programmes, which could leave the programme incomplete and incur additional tax charges in selling back to the HRA.
 - The Council is reducing this risk by using the resources of Clear Futures to ensure rapid build at periods and so that our housing entities are not retaining undeveloped land for long periods.

The risk of not doing anything is that the Council will not have sufficient borrowing capacity within the Housing Revenue Account to finance the build costs of the Housing Development Programme, and many of the will remain undeveloped and not able to provide additional housing supply

10) Equality Screening

The Equality Screening has showed that no protected groups will be negatively impact by the recommendations of this report.

Although no protective groups are specifically being targeted through this report positive impact, there will be a number of new homes that will be designed to meet the needs of both older people and disabled people.

Appendices

Appendix A: Table of Housing Development

Appendix B: Housing Type Theme Summary

Background Papers

Equalities Impact Report