

**Body:** Cabinet

**Date:** 11<sup>th</sup> July 2018

**Subject:** Housing development update

**Report Of:** Ian Fitzpatrick, Director of Regeneration & Planning

**Cabinet member:** Councillor Alan Shuttleworth

**Ward(s)** All

**Purpose** This report sets out proposals for the next stage of housing development utilising previously approved loan facilities to Eastbourne Housing Investment Company Limited and Aspiration Homes LLP.

**Decision Type:** Key decision.

**Recommendations:**

(1) To note the Council's housing development pipeline of homes to be delivered through the Housing Revenue Account ("HRA"), Aspiration Homes ("AHLLP") & Eastbourne Housing Investment Company ("EHICL") by a mix of purchasing land for new development and acquisitions of existing properties.

(2) To give delegated authority to The Director of Regeneration and Planning in consultation with the Lead Member for Housing, to dispose of land currently held in the HRA as listed in the programmes set out in this report and identified as held within the HRA to Aspiration Homes or EHICL pending due diligence. This delegation is to include authorisation not to dispose by auction or invitation of tenders following public advertisements is usually required by the Council's Contract Procedure Rules (para 18.1). To further give delegated authority to the Director of Regeneration and Planning in consultation with the Lead Member for Housing to determine the terms for the disposals that may be below market value.

(3) In relation to loans from the Council to:

(a) note the loan amounts associated with the delegation at paragraph 2 above as follows:

(i) loan amount of up to £6,900,000 required to develop or acquire the homes set out under the AHLLP programme that will be covered by £10m loan facility approved in the 2017/21 Capital Programme; and

(ii) loan amount of up to £6,600,000 required to develop or acquire the homes set out under the EHICL programme that will be covered by £20m loan facility approved in the 2017/21 Capital Programme;

(b) agree that the Council makes a further loan facility available of up to £10m on market terms to Eastbourne

**Housing Investment Company Ltd (EHICL) for the purpose of enabling the company to purchase residential accommodation under the existing programme relating to the purchase of such accommodation; and**

**(c) 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.**

**(4) To approve a Housing Strategy feasibility budget of £200,000 for site assessments related to housing development. This budget will be spent on emerging development opportunities within the programme.**

**(5) 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.**

**(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:**

**(1) The pipeline shows the scale and detail of the Council’s current housing development programme.**

**(2) The locations listed in the report 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.**

**(3) In order for either entity (AHLLP or EHICL) to purchase land from the Council and develop them for housing they will require access to up front capital investment. To continue the street acquisitions programme under EHICL and purchase further property.**

**(4) Sites require significant assessment before establishing viability. This feasibility budget will allow assessments to take**

**place earlier and speed up housing delivery.**

**(5) 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**

**(6) The involvement of Clear Futures may sometimes significantly improve a range of efficiencies in the delivery of the projects.**

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## **1.0 Background**

- 1.1 In March 2017 Cabinet approved the allocation of up to £30m for the delivery of new mixed tenure homes and associated activities.
- 1.2 (EHICL) has been allocated £20m by the way of loan. (AHLLP) has been allocated £10m by way of loan. On 7<sup>th</sup> February 2018 these budgets were approved in the cabinet paper titled General fund revenue budget 2018/19 and capital programme 2017/21.
- 1.3 In December 2017 cabinet approved associated loans to AHLLP regarding the acquisition and development of Northbourne Road for a total of £1,700,000.
- 1.4 In July 2016 Cabinet approved that the council made a loan facility available of up to £5m on market terms to Eastbourne Housing Investment Company Ltd (EHICL) for the purpose of enabling the company to purchase residential street property and that the (then) senior head of community, in consultation with the lead cabinet members for community and finance, be granted delegated authority to agree the whole scheme lending parameters for purchases, to include types of property and financial viability.
- 1.5 The report highlighted: a housing need due to the increased demand for accommodation and placements in temporary accommodation; significant pressures on social housing (council housing managed by Eastbourne Homes Ltd and housing managed by registered providers); as well as increasing difficulties for tenants to secure private rented accommodation and how the new housing provided by EHICL would assist the Council meet its wider economic and regeneration aims.

## **2.0 AHLLP Programme**

- 2.1 Aspiration Homes was incorporated on 30th June 2017 as a Limited Liability Partnership with Lewes District Council with the primary purpose of delivering new affordable housing. An initial programme has been agreed to develop new sites.

2.2 These sites are:

	<b>Number of homes</b>	<b>Acquiring Organisation</b>	<b>Tenure</b>
183 Langney Road	10	Aspiration Homes	Affordable Rent
Biddenden Close	5	Aspiration Homes	Affordable Rent
Lanark Court 1	4	Aspiration Homes	Affordable Rent
Lanark Court 2	4	Aspiration Homes	Affordable Rent
Timberley Road	4	Aspiration Homes	Affordable Rent
Westerham Road	TBC	Aspiration Homes	Affordable Rent
Northbourne Road	12	Aspiration Homes	Affordable Rent
		Total Homes =	Up to 45
		Loan facility required up to =	£6,900,000

2.3 Recommendation 3(a) of this report outlines the associated loan facility required to fund these projects previously approved under the 2017/21 capital programme.

2.4 The terms of these loans to AHLLP are to be delegated to Deputy Chief Executive, in consultation with the Lead Member for Finance, to determine the terms of any loan which is to be offered.

2.5 This would leave £3,100,000 of the initial loan (of £10,000,000) remaining for further affordable housing development.

2.6 The majority of project loans will not be drawn down by AHLLP until planning permission is achieved. The project costs up to planning approval will be forward funding by the revolving feasibility budget.

### 3.0 EHICL programme

3.1 EHICL was incorporated on the 1st May 2015 to deliver increased housing options through a range of tenures for Eastbourne Borough Council.

3.2 EHICL have delivered over 50 homes so far comprising mainly of street acquisitions and refurbishment of existing council assets.

3.3 The next phase of delivery will focus on either private or mixed tenure developments to increase EHICLs portfolio. The identified projects are as follows, with several more under consideration:

	Number of homes	Acquiring Organisation	Tenure
Brede Close	6	EHICL	Private Rent
Cavendish Place	Up to 47 with retail	EHICL	Private Rent
		Total Homes =	53
		Estimated Land/Development Costs up to =	£6,600,000

- 3.4 Recommendation 3(a) of this report outlines the associated loan facility required to fund these projects previously approved under the 2017/21 capital programme.
- 3.5 This would leave £13,400,000 remaining of the initial loan (of £20,000,000) for further housing developments.
- 3.6 The project loan will not be drawn down by EHICL until planning permission is achieved. The project costs up to planning approval will be forward funding by the revolving feasibility budget.

#### **4.0 Revolving feasibility budget facility**

- 4.1 Before a new housing development site can be established as viable, there is extensive due diligence required including surveys and initial architect assessments.
- 4.2 At present, there is no allocated budget within EBCs Housing Strategy programme to allow for this upfront work. It is recommended up to £200,000 would allow enough headroom for sites to progress as quickly as possible.
- 4.3 If sites are progressed to the point of planning permission being achieved, the developing company will cover these costs as part of the purchase value. These costs will then be recycled back into the feasibility budget for future work.
- 4.4 If the site were not to progress these costs will become abortive and be deducted from the overall feasibility budget. On occasion, it may be some sites are not progressed but their abortive fees could be covered as part of a wider programme.

#### **5.0 Street Acquisitions budget**

- 5.1 To date EHICL has successfully acquired 15 x new residential units using approximately £2.2m of the initial funding approved, providing a variety of new homes and meeting a range of needs.
- 5.2 The remainder of the initial £5m loan, approximately £2.8m, has been ring-fenced by the EHICL Board to acquire the 15 x residential leaseholders within Victoria Mansions, helping to achieve the long-term strategy for the site.
- 5.3 Following the success of the street acquisitions programme so far EHICL would like to continue the programme under the same criteria as previously agreed at the July 2016 Cabinet and by securing a further loan facility of £10m with an aim to acquire a further 60-80 units. Recommendation 3(b) of this report outlines the further loan facility.

## 6.0 Key Risks

The key risks and mitigations are set out in the following table:

Ref	Risk	Mitigations
1	AHLLP or EHICL unable to serve loans	Each loan provided to AHLLP or EHICL has a legal charge in EBCs benefit in the event of a default.
2	Public objection to housing development	Public Consultations to be held as early as possible to allow feedback to be incorporated into designs.
3	Abortive fees under the feasibility budget	Where possible, abortive fees will be wrapped up into the wider development programme. Initial outlay will be kept to a minimum.

## 7.0 Staffing and resources

7.1 There are no direct staff implications. Acquisition and future management of development project will be within current resources in the initial phases. Allowance has been made within the scheme appraisal for appropriate initial resources, as may be required to deliver the projects.

## 8.0 Delivery through Clear Futures

8.1 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.

## 9.0 Legal Implications

### 9.1 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 identified in this report have been authorised by Cabinet by the giving of delegated authority in accordance with Recommendation 2 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 dwellinghouses have been built or (b) where dwelling-houses have been built, such

dwellinghouses 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 EHICL 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 EHICL, including any SDLT payable on the purchase and any other necessary issues.

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## **10.0 Finance Implications**

### 10.1 Financial implications for the Council are:

Capital receipts from sale of land: Disposal of land to Aspiration Homes/EHICL will generate capital receipts for the council, which 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). 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 EHICL).

The Council can make long term loans to Aspiration Homes/EHICL enabling them to fund their development costs. The approved capital programme currently includes a provision of £30m in total for such loans. A loan facility agreement is in place with Aspiration Homes which sets out the core principles of any loan. 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/EHICL. Interest paid to the Council by Aspiration Homes/EHICL would be credited to the General Fund. The Council will need to borrow to cover these loans and any such borrowing will be undertaken in line with the Councils Treasury Management Strategy. The cost of servicing this new General Fund borrowing would be less than the interest payments received from Aspiration Homes/EHICL, generating a net income stream for the Council.

## **11.0 Equalities and diversity**

### 11.1 The provision of good quality housing with a mix of tenure and affordability helps



meet the needs of the community. Affordable housing allows the Council to provide assistance to those most in need within our community.

**12.0 Appendices**

None

**13.0 Background Papers**

None

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