

**Report to:** Cabinet

**Date:** 11 June 2020

**Title:** HRA Capital Programme - Housing Delivery Update

**Exemption:** The appendices to this report contain exempt information as defined in Schedule 12A of the Local Government Act 1972.

Information relating to the financial or business affairs of any particular person (including the authority holding that information).

The public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**Report of:** Ian Fitzpatrick (Deputy Chief Executive / Director of Regeneration and Planning)

**Cabinet member:** Councillor William Meyer (Lead Member for Housing)

**Ward(s):** All

**Purpose of report:** To provide an update on the HRA Capital Programme for housing delivery.

**Decision type:** Key decision

**Officer recommendation(s):**

- 1) To approve the S106 acquisition proposals outlined within Appendix A (exempt) enclosed as part of the HRA Capital Programme for housing delivery subject to contract, valuation, legal advice and the usual due diligence. The overall project costs will be covered by a combination of sales receipts, Right to Buy (RTB) receipts and borrowing as required in accordance with the HRA Business Plan
- 2) To approve a waiver to the Contract Procedural Rules (CPR), as set out in Para. 2.4.1(a) of the CPR to allow the direct selection of the contractor(s) associated with any S106 proposals due to the developer(s) already owning the site(s) and being the only party with whom the Council could contract
- 3) To approve the revised scheme proposal for Saxonbury including the change in budget from £1.5m to £1.8m, the change in tenure and the use of RTB receipts to support the financial viability and delivery of new Council rented homes

- 4) To approve a waiver to the CPR, as set out in Para. 2.4.1(a) of the CPR to allow the direct selection of a main contractor for Saxonbury, due to the lack of 4 competitive tenders received in response to the Invitation to Tender**
- 5) To authorise the Director of Regeneration and Planning to carry out all necessary actions to facilitate the proposals outlined at Recommendations 1) and 3) including feasibility, development and determining the terms of all necessary documentation and to sub-delegate those actions as required. To also authorise the Director of Regeneration and Planning to authorise the signature of all necessary documentation to allow the purchase and development of the sites for residential housing as proposed and to let the homes to new tenants and dispose on shared ownership terms as required**
- 6) To approve the increase to the existing feasibility revenue budget as implemented in June 2017 to a total amount of £350,000 to enable the development of the new housing delivery project pipeline as part of the HRA Capital Programme and to delegate authority to the Director of Regeneration and Planning to approve all expenditure, to be sub-delegated as required**
- 7) To authorise and delegate authority to the Director of Regeneration and Planning, in consultation with the Lead Member for Housing and Chief Finance Officer, to carry out all necessary actions to progress and approve all acquisitions (including S106 acquisitions) as part of the HRA Capital Programme and to authorise the signature of all necessary documentation to allow the purchase(s) and further development of S106 sites subject to the development of a sound and financially viable business case presented in accordance with the HRA Business Plan and to let the homes to new tenants and dispose on shared ownership terms as required**
- 8) To note the continued progress of the Council's housing infills programme**

**Reasons for recommendations:**

- 1) To provide an update on the development of the HRA Capital Programme for housing delivery and highlight the opportunities coming forward**
- 2) To present proposals to meet the objectives of the HRA Business Plan to increase the amount, availability and accessibility of diverse Council housing within the district**
- 3) To progress projects that utilise retained Right to Buy receipts from social housing sales to support financial viability**
- 4) To develop existing budgets and approvals to enable the delivery of a consolidated, well-managed pipeline of housing delivery projects in accordance with corporate objectives**

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**1 Introduction**

- 1.1 On 10<sup>th</sup> February 2020 Lewes District Council (LDC) Cabinet agreed the Capital Programme for the Housing Revenue Account (HRA) following approval of the new 30 year Business Plan covering 2019/20 to 2048/49. The Capital Programme includes allocations for both residential property acquisitions and new build development schemes towards meeting the Council's strategic housing objectives and delivery targets. As part of the programme approval it was agreed that:
- Each proposed acquisition shall be individually modelled to ensure financial viability;
  - New build/conversion development schemes shall be brought back to Cabinet each time for approval.
- 1.2 Council officers have been working to develop a consolidated future pipeline of priority housing-led projects to meet the requirements of the Business Plan and focus the activities of the Council's Project Management Office (PMO). To support the potential of the programme's success, specifically property acquisitions, officers will need the autonomy to effectively progress schemes, negotiating and operating within a private market sector environment.

- 1.3 The formation and implementation of a well-managed capital pipeline ensures that the objectives of the Business Plan are met including the commitment and spend of Right to Buy (RTB) receipts. The Council may use the receipts from sales to fund up to 30% of the capital costs of 'replacement housing', spent within three years. The use of receipts can significantly improve financial viability and reduce the Council's reliance on borrowing.
- 1.4 In June 2017 Cabinet approved a £200,000 revenue budget to support the cost of feasibility expenditure to enable HRA schemes. Once projects have been developed to an approved stage the costs can then be capitalised therefore releasing the budget to enable new projects. A proportion of the budget is already committed whilst existing projects progress to the approval stage. The scope and ambition of the Council's capital programme has increased in recent months and additional capacity could greatly support in future delivery.
- 1.5 Cabinet previously approved a programme of housing infill development projects across Lewes district. The various sites are being taken through the feasibility stages to consider design, financial viability and procurement strategies to obtain optimum value. The schemes will be brought back to Cabinet at a future meeting.

## **2 Proposals**

### S106 Acquisitions

- 2.1 The Council has been approached recently by a number of housebuilders who have enquired whether the Council might be interested in acquiring the affordable housing elements of private developments required in accordance with S106 agreements. The number of units per scheme differs but, overall, are relatively small and therefore do not typically attract the interest of other larger Registered Providers.
- 2.2 The acquisition of S106 housing units presents an opportunity for the Council to ensure the affordable housing provision within the district is secured and accessible to meet local needs. This meets the Council's objectives to increase the availability of affordable housing and is in accordance with the HRA Business Plan.
- 2.3 Further details regarding the current acquisition opportunities and the supporting business cases can be found enclosed within Appendix A (exempt).

### Saxonbury

- 2.4 In 2017 Cabinet agreed a project budget of £1.5m to extensively refurbish the property known as 'Saxonbury', which is no longer fit-for-purpose and create 12 new homes. At the time it was proposed 50% of the homes were to be sold on the open market and the remaining sold as shared ownership. The consent of Historic England has recently been obtained and the construction tenders received in March 2020.

- 2.5 The costs of refurbishing the property have increased since the original estimates were presented in 2017. The variances in costs are broadly assessed due to: a) cost increases generally within the construction industry; b) increased fire regulatory requirements, and c) an increase in the requirements and expectations of Historic England. Local housing demand also demonstrates an increase in the immediate need for rented housing. The project has therefore been revised and re-appraised as a 100% Council rented scheme.
- 2.6 The change of tenure, amongst other things, also introduces the use of RTB receipts. This helps to ensure, even with the increased construction and project costs, that the scheme remains financially viable based on the known variables and assumptions and in accordance with the HRA Business Plan.

#### Programme Budget and Delegations

- 2.7 As the scope and pipeline of the HRA Capital Programme continues to be developed a range of projects are already coming forward from both within the existing Council asset portfolio and via other external sources. To properly develop a consolidated capital project pipeline a level of initial feasibility must be undertaken to determine viability and deliverability. The increased scope of the capital programme would therefore benefit from an increase to the existing feasibility revenue budget. Increasing the budget to £350,000 will help enable the pipeline to meet core corporate objectives. Delegating authority to the Director of Regeneration and Planning will also ensure the budget is effectively managed and monitored, together with a streamlined approvals process.
- 2.8 The inclusion of acquisitions within the Capital Programme fundamentally supports the Business Plan. The purchase of properties presents less risk, decreases the requirement for upfront capital and brings forward revenue more quickly than new build schemes are typically able to. The private market can however be very competitive and at times fast paced. To ensure a pipeline of acquisitions is actually deliverable there is merit in Cabinet considering delegating authority to the Director of Regeneration & Planning to make purchasing decisions, in consultation with the Lead Member for Housing.
- 2.9 The Capital Programme for the HRA approved by Cabinet in February of this year referred to acquisitions and new build schemes. S106 acquisitions are, effectively, a hybrid of acquisition and new build as they involve the Council entering into both a purchase contract and a build agreement.

Recommendation 7 seeks to delegate authority for the S106 acquisitions to be dealt with in the same way as other acquisitions (e.g. street property purchases) because the Council often needs to be able to act quickly to acquire the affordable housing and because the S106 schemes are controlled by private developers. New builds carried out by the Council on Council owned land will still be brought back to Cabinet for approval.

### **3 Strategic Outcomes**

3.1 The expected outcomes of the proposals are:

- Increasing the availability of affordable homes to meet local needs;
- Maximising existing assets to support the delivery of corporate objectives;
- Investing in quality homes that support sustainability objectives;
- Utilising procurement practices to meet local employment and training requirements;
- Providing officers with the flexibility and autonomy to develop a consolidated and well managed capital pipeline of housing-led projects.

### **4 Consultation**

4.1 The proposals have been considered as follows:

- Where required the proposals for housing projects have been taken through the statutory planning processes including public consultation;
- The proposals have been considered and supported in principal by the Council's internal Project Review and Sign-off Panel (PRSO).
- Homes First have considered the proposals and support the increase in Council housing availability.

### **5 Business Case**

5.1. The proposals maximise the Council's ability to provide affordable housing within the district, partly through the full utilisation of receipts received from Council homes sold under the RTB.

5.2. The full business cases supporting the S106 acquisition proposals are included and enclosed within Appendix A (exempt). When considering the business case for S106 acquisitions, the risk of not proceeding could ultimately decrease the overall affordable housing provision within the district, due both to a lack of outside market interest and uncertainties in the current economic climate, with a commuted sum being proposed instead.

#### Saxonbury

5.3. The revised scheme has been assessed through an options appraisal process. This takes into account the increased costs, changes in tenure and an added 10% contingency allowance. The financial outcomes demonstrate that, together with the introduction of RTB receipts, the scheme is financially viable and covers the additional project costs arising.

5.4. Should the revised scheme not be approved, the project would only rely upon a market sale model during a time when: a) the private market is at risk; and b) the Council requires more affordable rented homes to meet local housing demands.

## 6 Legal Implications

- 6.1. The Council has the power to both acquire housing into the HRA and erect housing on land acquired by them for the purposes of Part II of the Housing Act 1985 (i.e. land acquired for the provision of housing accommodation) pursuant to section 9 of the Housing Act 1985 (HA 1985). The Council therefore has the power to enter into S106 purchase contracts, any other purchase contracts and development agreements.

The Council can use the same power for Saxonbury to provide sub-market rented housing for its area – i.e. to address a gap in the housing market and meet the needs of the local community. Therefore the Council has the power to undertake the development. It is not necessary to appropriate the land and the development can therefore be accounted for within the HRA.

- 6.2. In disposing of properties, Section 32 of the HA 1985 permits the Council to let on secure tenancies without the requirement for Secretary of State consent. This will therefore deal with the affordable housing.

Section 32 does impose restrictions on certain disposals which require the Secretary of State's consent, however, the Council could use the General Consents 2013 for the disposal of any shared ownership properties using consent A3.5.1 (shared ownership leases for a discount calculated in accordance with that consent).

- 6.3. Legal title matters have been progressed as follows:

- **S106 Acquisitions** - The Council is taking legal advice as the transactions progress to ensure that it acquires good and marketable title to the properties. The Council is also taking advice to ensure that the contractual terms agreed are sufficient to protect the Council's position.
- **Saxonbury** - The Council has taken full advice on any title issues associated with the development and on appropriate ways to address those issues.

- 6.4. The Council's Contract Procedure Rules (CPR) state that four written tenders should be sought for contracts for works of the values presented within this report, however, a waiver of the CPRs is proposed to allow:

- the direct selection of the contractors for S106 acquisitions due to the developer(s) already owning the site(s) and being the only parties with whom the Council could contract.
- the direct selection of a main contractor for Saxonbury, due to lack of that number of tenders being received in response to the Invitation to Tender.

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## 7 Risk Management

7.1. The following risks will be managed:

### S106 Acquisitions

- **Risk:** Contractor(s) fail to complete homes due to financial difficulty.
- **Mitigation:** Contractual terms ensure that the Council pays for the delivery of housing on a staged basis.
  
- **Risk:** Scheme fails to deliver any affordable housing.
- **Mitigation:** Acquisitions by the Council will secure the on-site delivery of affordable housing.

7.2. Saxonbury

- Risk: Previous sales risk of reduction in market value.
- Mitigation: The change in tenure to rented homes removes the sales risk.

## 8 Equality Analysis

8.1. An equality impact assessment has been undertaken and has not identified any equality impacts.

## 9 Sustainability Implications

9.1. Where appropriate, the design of the proposals will undergo a full review of the sustainability features (both for the construction and usage of future residents) in accordance with Council corporate priorities and in consideration of the financial viability.

## 10 Appendices

10.1. 

- EXEMPT: Appendix A – S106 Acquisition Proposal(s)

## 11 Background Papers

11.1 

- HRA Housing Development Update - 26<sup>th</sup> June 2017
- HRA 30 year Business Plan Update – 10<sup>th</sup> February 2020
- HRA Budget 2020/21 – 10<sup>th</sup> February 2020