

Report to the Council Housebuilding Cabinet Committee



Report reference: ***CHB-004-2015/16***
Date of meeting: ***4 June 2015***

**Epping Forest
District Council**

Portfolio: **Housing**

Subject: **Accelerating The House-building Programme and Resources
Required to Meet the Programme**

Responsible Officer: **Paul Pledger, Assistant Director (Housing Property
& Development) (01992 564248)**

Democratic Services Officer: **Jackie Leither (01992 564756)**

Recommendations/Decisions Required:

- (1) That the Council Housebuilding Programme be accelerated further, and that the construction periods of Phases 3 onwards be brought forward to overlap, as set out in Appendix 1;**
- (2) That the programme delivery risks of bringing forward overlapping construction phases be noted and accepted;**
- (3) That recommendations be made to the Cabinet that, subject to the costs being able to be met from the Council Housebuilding Capital Budget:**
 - (a) Should it be identified by the Director of Communities that there is a risk of one-for-one replacement capital receipts having to be passed to the Government, delegated authority be granted to the Housing Portfolio Holder to authorise the purchase of individual vacant properties for sale on the open market (either existing properties or new build);**
 - (b) Delegated authority be granted by the Cabinet Committee to authorise the Director of Communities to enter into Development Agreements with private developers, and agree terms for the purchase, for affordable rented housing required to be provided by developers in accordance with Section 106 Agreements, where an opportunity is presented that is considered suitable and appropriate; and**
 - (c) If outline planning application is granted for development on Council-owned land held by the General Fund at Pyrles Lane, Loughton and the Cabinet subsequently decides to sell the site on the open market, the sale be subject to a requirement that the required affordable housing element (expected to be between 40-50% of the total number of properties) be sold to the Council on practical completion, on agreed terms (to be set out in a separate Development Agreement) to be approved by the Cabinet when considering the sale of the site;**
- (4) That, should it be identified that individual vacant market properties need to be purchased to avoid one-for-one capital receipts being passed to the Government:**

(a) The Director of Communities be authorised to source such properties for sale, make verbal offers to purchase and make recommendations to the Housing Portfolio Holder to agree their purchase; and

(b) Approval be given to the Director of Communities to appoint, on appropriate terms, a suitable consultant / organisation to act on the Council's behalf to negotiate the purchase of such properties - including to identify properties, assess their condition, undertake financial viability assessments, make recommendations and, if approved, make offers on behalf of the Director of Communities;

(5) That, where the Council agrees to purchase affordable rented housing from developers in accordance with Recommendation 3(b) and/or 3(c) above, the Director of Communities be authorised to employ a suitable organisation as the Council's Employers Agent to act on the Council's behalf during the construction period or, alternatively, to employ a Clerk of Works (or similar) to undertake this role as appropriate;

(6) [An Appropriate recommendation relating to the staffing resources required to pursue legal issues on sites is to follow in advance of the meeting]

Executive Summary

There are many risks outside of the Council's control that could result in delays in house-building. Therefore, this report explores the options available to ensure that all 1-4-1 Receipts from Right to Buy sales are spent within the required 3 years of receipt and none are passed on to the Government, with interest. These options include purchasing street properties or land on the open market, purchasing affordable homes built on Section 106 sites or providing local authority grant(s) to one of the Council's Preferred Housing Association Partners to fund affordable housing schemes in need of grant.

Reasons for Proposed Decision

The Cabinet Committee have decided that all useable receipts (1-4-1) that are being accumulated from the sale of Council housing through the Right to Buy are to be reinvested back into building replacement Council housing at affordable rents. The Cabinet Committee have also considered a report on financing an accelerated House-building programme so as to ensure that all 1-4-1 Receipts from Right to Buy sales are spent within the required 3 years of receipt and none are passed on to the Government, with interest.

Other Options for Action

There are a range of options set out in the report

Background

1. In July 2013, the Cabinet Committee authorised the then Director of Housing to sign, on behalf of the Council, a Standard Amendment to the Standard Agreement that the Council previously entered into with the CLG - which enabled local authorities to retain any additional Right to Buy (RTB) receipts generated as a result of the increased maximum RTB discount, in order to fund the provision of replacement Council homes in their district. This followed the launch of the "Reinvigorating Right to Buy and One for One Replacements" Policy by the CLG in March 2012.

2. At the same time, in July 2013, the Cabinet Committee put in place plans to build, initially, around 20 affordable homes per year for 6-years. This was subsequently increased, in April 2014, to an average of 30 affordable homes per year for the 7 years following Phases 1 and 2, as a result of the higher than expected number of Right to Buy (RTB) sales being completed (53 sales in 2013/14, compared to the DCLG's expectations of 10 sales prior to the maximum discount being increased to £75,000); it was noted at the time that these increased sales now presented a real risk that not all of the Council's "1-4-1 Receipts" (i.e. those that can be spent on new housebuilding, to replace those lost due to the RTB) would be able to be spent within the required 3 years of receipt.

3. Again, in July 2013 as part of that decision to establish the house-building programme, the Cabinet Committee agreed that 1-4-1 Receipts could also be used to purchase properties from the open market as a contingency, if it was identified at any time that 141 receipts would have to be passed to the CLG.

4. In January 2015, the planning application for 52 new affordable homes at Burton Road, making up Phase 2 of the house-building programme was refused permission, which has led to a delay in the delivery of the Programme. The consequences of this delay were highlighted when the Cabinet Committee next considered a report on the current financial position with regard to 1-4-1 receipts at its meeting in March 2015.

Accelerating the Programme - the preferred option for delivering the Programme

5. The best value for money option for the Council continues to be building affordable housing on free Council owned land; therefore, the first option is to accelerate the house-building programme further than agreed in April 2014, bringing forward phases so that they now overlap each other. An assessment of the spending profile required to meet this timescale is set out elsewhere on the agenda. However, profiling the phasing in the form of a programme has been carried out and is set out at appendix 1 of this report.

6. It is important for the Cabinet Committee to understand, though, that this preferred option brings with it a number of risks, since a multitude of problems and delays can arise – both before and after works commence. A particular and real risk already identified of seeking to bring forward the commencement of works is that there are many site-specific legal issues that need to be resolved before tenders can be sought (e.g. unauthorised pedestrian and vehicular accesses over sites and, in the case of Queens Road, North Weald the need to seek the agreement of UK Power Networks to relocate an electricity sub-station).

7. If the phasing slips in any way, then the Council will be faced with the risk of paying back 1-4-1 receipts, with interest. Therefore, at the request of the Cabinet Committee, this report explores the other options available to ensure 1-4-1 Receipts will be able to be spent within the required 3 years of receipt. The report also identifies and sets out the resources that will be required to deliver the Programme.

Purchase of Properties (or land) on the Open Market

8. Purchasing properties (or land) on the open market is perhaps the least value for money option available for spending the Council's 1-4-1 receipts on delivering new affordable housing in the district. In the current climate, research shows that house-prices are quickly rising, with market values outstripping new-build costs by almost 100%. However, it is the quickest way of acquiring homes; and without being part of a chain (particularly through the purchase of empty properties), measures can be put in place to purchase properties at relatively short notice.

9. Identifying which properties (or land) to buy will be restricted to what is available on the market at any time. Ideally, the Council would look to purchase former Council properties (flats or houses) as they are located in areas already managed and maintained by the Council and generally have the same materials. Other options include targeting empty homes, or purchasing new-build properties where short-term maintenance costs will be minimal.

10. Buying land would be better value than buying properties as any new homes built on the land would be built to the Council's own development standards and would require less maintenance over its lifetime.

11. To assist the Council, it will be necessary to appoint an Agent to act on the Council's behalf to identify properties, assess the condition, undertake a financial viability assessment, make a recommendation to Officers and, if approved, make an offer. This would be on a fixed fee basis per property. An allowance would need to be included for the Council's Legal Services to complete the conveyancing process.

Section 106 Developments

12. From time to time, developers come forward seeking planning approval for residential developments on privately owned land. Where thresholds are triggered, some developments require a proportion of the properties to be delivered as affordable housing, which is laid out in the Council's Local Plan. Usually, the affordable housing is provided by one of the Council's Preferred Housing Association Partners, whilst retaining nomination rights. However, on appropriate and selected development that may arise, the Council may wish to negotiate directly with the developers to purchase the completed affordable home when built and deliver the affordable housing.

13. The main benefits to this are that the land value would be subsidised by the developer, to a large extent, properties may be able to be built to meet the Council's Design Standards and would come with a 10-year guarantee as standard. Also the short term maintenance liabilities would be minimal, making this option relatively good value for money.

14. The main disadvantages are that the Council would not be able to control all of the standards and the delivery programme, meaning the Council runs the risk of not meeting the timescales for spending 1-4-1 receipts. However, this option is a credible one for the medium/longer term.

15. The Council would not need any additional resources to deliver these sites (other than the capital funding to purchase the dwellings) as the developer would lead on the design and build at their own risk and the Council would purchase the properties upon completion based on an agreed value. However, the Council would need to employ an Employers Agent to act on the Council's behalf during the construction period or, alternatively, employ a clerk of works (or similar) to undertake this role.

Development on Council General Fund sites – (e.g. Pyrles Lane)

16. The Council currently owns a site at Pyrles Lane, Loughton that has been earmarked for sale for residential development, subject to receipt of planning permission. This land is held within the Council's General Fund, and an outline planning application is due to be submitted and subject to approval will be sold, with all proceeds being retained by the General Fund. However, the site could either be purchased using 1-4-1 receipts by the Housing Revenue Account and all properties being developed as Council housing, or the site could be sold with a requirement that the required 40% affordable housing

element must be sold to the Council on completion, on agreed terms set out in a separate Development Agreement.

17. The best value option for the Council would, by far, be the latter option, since this would enable the Council to maximise the capital receipt for the General Fund to the same level as simply selling it without an associated Development Agreement, whereas the capital receipt that would be obtained if the whole site was developed for affordable housing would be significantly less.

18. Any other sites in the Council's ownership held by the General Fund could also be sold in a similar way with the same requirements and expectations.

19. Should this option be agreed, then it would be necessary to appoint either an Employers Agent or a Clerk of Works to oversee the works on site to ensure compliance with the Council's Employers Requirements and to ensure the standard of workmanship is acceptable.

Providing grant to one of the Council's Preferred Housing Association Partners to fund affordable housing schemes

20. The Council has already identified this option as a back-up measure, and it is recommended that this remains an option. However, this is less advantageous to the Council as the rent collected from the properties would revert to the Housing Association, with the Council only securing nomination rights.

21. The Council has in the past not only provided significant amounts of Local Authority Social Housing Grant or Section 106 contributions received from Developers to Housing Associations, but has given away free land for them to develop affordable housing.

Other factors requiring additional resources

22. Each of the 65 potential development sites identified for Council house-building have now undergone a detailed legal search and an assessment of issues that will require negotiations with adjacent land-owners on matters such as purchasing land, stopping up unauthorised access across the Council's land, terminating licences, dealing with land-grabs etc.

23. Each of the issues has been risk assessed and prioritised so that those issues that are likely to take the longest to resolve are tackled soonest. However, the Council does not have any existing resources available to pursue these, nor other legal matters on the other sites. Therefore, the Council has made enquiries with East Thames to take the lead on dealing with these issues, supported by the Council's own Housing Management Officers and Legal Services. The cost of providing this service is estimated to be [Cost to be updated as a verbal report at the Cabinet Committee]. This compares to recruiting staff directly for 2-years at an estimated cost of [Cost to be updated as a verbal report at the Cabinet Committee] including on-costs.

24. Negotiations over compensation payments, land values etc will be undertaken by East Thames Group at an additional cost. However, it is recommended that in order to maintain a reasonable momentum and meet the timescales to deliver the schemes, the Director of Communities be delegated authority, in consultation with the Housing Portfolio Holder, to agree the reasonable level of payments necessary to achieve the required outcome of bringing forward sites for development.

Resource Implications:

The cost of appointing as Agent to purchase street properties is being explored and an indication of cost will be made available at the meeting.

The cost for dealing with the legal issues that are identified for each site is being explored and an indication of cost will be made available at the meeting.

The cost of appointing an Agent to act on the Council's behalf to negotiate and purchase street properties, based on a fixed fee basis per property is being explored and an indication of cost will be made available at the meeting.

An allowance would need to be included for the Council's Legal Services to complete the conveyancing process. The cost is being explored and an indication of cost will be made available at the meeting.

The cost of appointing an Employers Agent or, alternatively, to employ a Clerk of Works (or similar) to act on the Council's behalf during the construction period of any sites delivered on Section 106 sites would need to be identified and reported separately should this option be agreed.

Reasonable level of payments necessary to achieve the required outcome of bringing forward sites for development will need to be considered on a case by case basis, and will be undertaken in consultation with the Housing Portfolio Holder.

Legal and Governance Implications:

It is good governance to properly monitor costs and expenditure, and keep financial forecasts up to date – especially for such a high profile, high cost programme.

Legal matters associated with conveyancing will apply as will all legal matters associated with rights of way and access rights.

Housing Act

Safer, Cleaner and Greener Implications:

None – in relation to this report.

Consultation Undertaken:

None

Background Papers:

None

Impact Assessments:Risk Management

Not meeting the Governments timescales for the delivery of new build affordable homes could lead to the Council having to pay back to the Government any 1-4-1 RTB receipts not spent, with interest. This report sets out a range of options to mitigate that risk. However, each of the options has its own risks, which are explored within the body of the report.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

Within the Housing Service Strategy, it has been identified that the target groups that are affected by the Council's house building programme are people in need of:

- Affordable Housing,
- Homelessness assistance,
- Supported housing for special needs groups,
- Owners and occupiers of poor condition housing
- Council and housing association tenants.

From that, it was identified that generally, there is an under provision of suitable accommodation for nearly all target groups. This has been reaffirmed in the most recent Strategic Housing Market Assessment.

Decision making is affected by funding and other factors, such as the availability of building land suitable for particular groups e.g. the elderly or young families.

There is no evidence of unlawful discrimination in relation to the provision of affordable housing.