

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Council Housebuilding Cabinet **Date:** Wednesday, 10 July 2013
Committee

Place: Committee Room 1, Civic Offices, **Time:** 7.00 - 10.05 pm
High Street, Epping

Members Present: D Stallan (Chairman), R Bassett, G Waller, C Whitbread and Mrs E Webster

Other Councillors: R Butler, Ms H Kane, A Mitchell MBE, B Sandler and Ms G Shiell

Apologies: W Breare-Hall and Ms S Stavrou

Officers Present: A Hall (Director of Housing), P Pledger (Assistant Director (Property and Resources)), P Maddock (Assistant Director (Accountancy)), G J Woodhall (Democratic Services Officer) and J Leither (Democratic Services Assistant)

Also in attendance: A Gatrell (Head of Development, East Thames Group), G Herrmann (Principal Project Manager, East Thames Group) and I Collins (Client Lead, Pellings LLP)

1. DECLARATIONS OF INTEREST

There were no declarations of interest pursuant to the Council's Code of Member Conduct.

2. SUBSTITUTE MEMBERS

The Cabinet Committee noted that Councillors C Whitbread and Mrs E Webster were substituting for Councillors W Breare-Hall and Ms S Stavrou.

3. MINUTES

Resolved:

That the minutes of the meeting held on 14 March 2013 be taken as read and signed by the Chairman as a correct record.

4. DEVELOPMENT AGENCY CONTRACT WITH EAST THAMES GROUP

The Assistant Director of Housing reported that the legal contract between Epping Forest District Council and East Thames Group for development agency services had yet to be finalised. A discrepancy had been highlighted by the Council's Legal Department in that East Thames Group had been referred to as East Region in the draft contract, which was different from the organisation's name included in its tender submission. The advice of the Council's Legal Department was that this matter may need to be referred to members for agreement. It was the view of the Director of Housing that this appointment could be approved by a Housing Portfolio Holder delegated decision, but further advice would be taken from the Legal Department and Democratic Services.

Recommended:

That, if necessary, authority to sign the Development Agent Agreement with East Thames Group be confirmed by a Housing Portfolio Holder delegated decision, subject to further advice from the Council's Legal Department and Democratic Services.

Reason for Decision:

The Council had previously agreed that the appointment of a Development Agent should be based on the most economically advantageous tender.

Other Options Considered and Rejected:

To not make an appointment and undertake another tender exercise. However, as the tender exercise had been subject to the EU procurement rules, the Council could be legally challenged if it did not appoint a tenderer that had satisfied the pre-determined Selection Criteria.

5. AFFORDABLE RENTS POLICY

The Director of Housing presented a report regarding the Affordable Rents Policy for properties built as part of the Council's Housebuilding Programme.

The Cabinet Committee had previously agreed that "affordable rents" should be charged for the properties built under the Council's Housebuilding Programme, which would be higher than the "social rents" charged for the Council's existing properties.

It was necessary for the Council to adopt a policy, explaining its approach to how affordable rent levels would be set within the HCA's Affordable Rent Model. The maximum affordable rent was 80% of the market rent for the same type of property in the same locality, including service charges.

The report explained that councils and housing associations generally charged "social rents" for their properties. These were set in accordance with a Government formula, based on:

- Property value;
- Average earnings for the county; and
- Property size.

The Government's Rent Convergence Policy (which had been adopted by the Council), sought to ensure that (within a 5% tolerance) similar rents were charged for the same type of property in the same location, irrespective of whether the landlord was a council or a housing association.

Members noted that the Government's target date for convergence to be achieved across the country was April 2015. However, the Council's target was to achieve rent convergence by April 2017 – although it was noted that many of the Council's properties would not reach their target rent by April 2017, because to do so would breach the Government's maximum annual rent increase for individual properties, which was currently RPI + 0.5% + £2 per week. As part of the Government's Comprehensive Spending Review (CSR) announced on 26 June 2013, the Government stated that social rents could be increased by the Consumer Prices Index (CPI) + 1% per annum from April 2015 for at least the following 10 years.

The Director of Housing explained that if an affordable rent was charged at a level that was higher than the "Local Housing Allowance" (LHA) for the "Broad Market Rental Area" (BMRA) in which the property was situated, the difference between the rent and the LHA could not be met from housing benefit. Therefore, a tenant in receipt of housing benefit would have to pay the difference between the LHA and the affordable rent.

The Rent Cap adopted by most housing associations that have one, generally took account of the Government's new Benefits Cap level (£500 per week for couples and single people with children and £350 per week for single people without children) and tenants' estimated living costs. Rent caps adopted by the Council's Preferred Housing Association Partners varied between £180 and £225 per week. It was the officers' view that, for the Epping Forest District, a Rent Cap of £180 per week would be appropriate, bearing in mind that an affordable rent at this level would be significantly higher than the social rents charged by the Council for their existing properties.

The Cabinet Committee noted that, for the proposed developments within Package 1 of the Council Housebuilding Programme, the proposed Affordable Rent Policy had been applied and that, as a result, it had been necessary for the rents of all the 3-bedroomed houses (10 properties on two sites) to be set at the proposed Rent Cap of £180 per week.

Decision:

- (1) That the Cabinet's previous decision to charge "affordable rents" for Council properties built under the Council's Housebuilding Programme be re-affirmed;
- (2) That when such properties are (re)let, the Council's affordable rents be set at a level equivalent to the lowest of:
 - (a) 80% of market rents for the locality in which the property is situated, as assessed by the Council's Estates and Valuations Division;
 - (b) the Local Housing Allowance level for the Broad Market Rental Area (BMRA) in which the property is situated; and
 - (c) a Rent Cap of £180 per week, irrespective of the size of the property.
- (3) That affordable rents be increased annually by the Retail Price Index (as at the preceding September) + 0.5% (or any other maximum increase determined by the Government), until the tenant vacates, when the affordable rent will be re-based in accordance with the Homes and Communities Agency's (HCA's) Affordable Rent Model and the policy at (2) above;
- (4) That the Council's Rent Cap level be reviewed annually by the Council Housebuilding Cabinet Committee; and
- (5) That the Director of Housing be authorised to enter into Short Form Agreements with the Homes and Communities Agency for all developments, to enable affordable rents to be charged for the properties built under the Housebuilding Programme, and that the "Provider Representative" named in the Agreements be a senior figure at East Thames Group.

Reasons for Decision:

It was necessary for the Council to adopt a policy, explaining its approach as to how affordable rent levels would be set, within the HCA's Affordable Rent Model.

Other Options Considered and Rejected:

The other main options were:

- (a) The Council could set rents at a lower level than 80% of market rents – but this would have implications for the viability of new developments.
- (b) No reference could be made to the LHA level – but this could result in rents not being covered in full for tenants in receipt of housing benefit.
- (c) No Rent Cap being imposed, or a lower or higher Rent Cap could be adopted. However, if a higher Rent Cap was adopted, it could have implications for tenants in receipt of housing benefit when Benefit Caps were introduced under the welfare reforms. If a lower Rent Cap was adopted, it could affect the financial viability of developments.

6. FUNDING THE COUNCIL HOUSEBUILDING PROGRAMME

The Director of Housing presented a report regarding the funding of the Council Housebuilding Programme.

The Director reported that, through its Terms of Reference, the Cabinet Committee had delegated authority to use various sources of funding (detailed in the report) in order to develop individual sites within the Council's Housebuilding Programme. The total potential amount of funding available from these sources to subsidise the proposed developments in order to make them viable was around £3.3m (although it was noted that some of this funding may not come to fruition), of which around £995,000 was currently available.

The Cabinet Committee considered the general approach to be taken to the utilisation of these sources of funding, in order to have sufficient capital resources available to meet the cost of works and fees for the construction of the properties.

The Director reported that the approach proposed for the Council's Housebuilding Programme was that the loan costs should be repayable within a period of 30 years, which was a generally accepted, prudent and common timeframe for affordable housing developments. However, for many of the Council's developments, this would not be possible, for the following reasons:

- (a) since the rents for affordable rented housing are lower than market rents, the rental income over a 30-year period may not be sufficient to repay the development's loan costs; and
- (b) all of the Council's potential development sites are very small, some only comprising one or two properties. Furthermore, since many of the sites are currently garage sites, a number have relatively long access roads and most require demolition works, which would add to the cost. Therefore, the unit costs of construction for the Council's Housebuilding Programme are relatively high.

Members noted that where the development did not break even within 30 years, one option would be to simply extend the financial appraisal period – i.e. allow the development to take longer to break even. It was accepted however, that this was not a prudent approach to take to the Programme and, in any event, some developments may never break even.

Decision:

(1) That the following sources of funding be utilised, in addition to the loan provisions received from the Public Works Loan Board, to provide the required subsidies for the Council's Housebuilding Programme:

(a) capital receipts from additional Right to Buy (RTB) sales, that must be utilised for new housebuilding (in accordance with the Council's agreement with the Department of Communities and Local Government (DCLG));

(b) all current and future financial contributions received by the Council from developers to fund affordable housing, through Section 106 Agreements, in lieu of the on-site provision of affordable housing;

(c) capital receipts from the sale of HRA land or buildings, where the Cabinet has specifically agreed that they should be used to help fund the Council Housebuilding Programme (including the capital receipts already allocated by the Cabinet to the Housebuilding Programme from the sale of Leader Lodge, North Weald and land at Millfield, High Ongar);

(d) any grant received from the Homes and Communities Agency (HCA) in the future, to fund the Housebuilding Programme; and

(e) any other external funding sources (e.g. the Harlow Growth Area Fund);

(2) That the use and provisional level of subsidy required for proposed developments be authorised through the signing-off of their financial appraisals, which shall include details of the estimated level of subsidy required;

(3) That, once the Cabinet Committee has authorised the use and provisional level of subsidy required for individual developments and/or development packages, the Director of Housing be authorised to allocate funding from the sources listed in (1) above to individual developments and/or development packages – utilising the most appropriate source of funding for the development(s), having regard to the time limits within which they must be utilised - up to and in excess of the provisional level approved by the Cabinet Committee, once tenders to undertake the works have been received from contractors, subject to:

(a) the amount allocated being no more than 15% of the level provisionally approved by the Cabinet Committee;

(b) sufficient funds being available at the time of allocation; and

(c) the Cabinet Committee receiving a report to its next meeting on the amount of subsidy allocated, and its source of funding;

(4) That a standard report be received by the Cabinet Committee at each meeting, setting out the current position with regard to funding from the sources listed in (1) above, showing the availability, use and commitments to date; and

(5) That, if the sources of funding listed in (1) above have been exhausted during the course of the Housebuilding Programme, a report be submitted to a future meeting of the Cabinet on the possible sale of some of the potential development sites earmarked for the Programme, with or without planning permission, to generate capital receipts to provide a form of cross-subsidy to continue with the Housebuilding Programme.

Reasons for Decision:

It was important to identify and quantify the potential sources of funding for the Housebuilding Programme, and to have an agreed approach to their utilisation.

Other Options Considered and Rejected:

The main options were:

(a) Not to utilise all or any of the identified potential sources of funding, or to only use some of the funding available from various sources – however, this could result in insufficient funding being available to provide the required levels of funding.

(b) Not to authorise the Director of Housing to utilise the most appropriate source of funding for the development(s), and to reserve approval to the Cabinet Committee – however, this could result in delays, which would result in time limits within which the use of the funding must be utilised not being met; furthermore, it was likely that sources of funding for the various developments could subsequently need to be switched, in order to meet all time limits and to ensure the most appropriate utilisation of resources.

(c) Not to authorise the Director of Housing to allocate funding in excess of the provisional level approved by the Cabinet Committee (and reserve the allocation of an excess funding to the Cabinet Committee), or to amend the maximum amount that can be allocated above the level approved by the Cabinet Committee, or to amend the provisos to the authority given – however, if tenders received were higher than expected, it was likely to take some time to arrange a Cabinet Committee meeting to approve any additional required funding, which could delay the commencement on site. It was felt that the proposed maximum level above the authorised amount was reasonable, bearing in mind the proposed caveats to the use of the authority.

(d) Not to agree the submission of a report to a future meeting of the Cabinet, if necessary, on the possible sale of some of the potential development sites earmarked for the Programme in order to fund other developments in the Programme – however, the Cabinet had previously recognised that such an approach could be necessary, and it was suggested that if the other identified sources of funding are exhausted, it would be appropriate for the Cabinet to consider this option.

7. DEVELOPMENT STRATEGY

The Assistant Director of Housing presented a report regarding the Development Strategy for properties to build as part of the Council's Housebuilding Programme.

The Assistant Director reported that the Cabinet had previously agreed to develop around 120 new Council properties over a 6-year period, with East Thames undertaking the role of Development Agent to deliver this Programme on behalf of the Council. In order to achieve this, a Development Strategy was required, setting out the approach the Development Agent and the Council would take, including what assumptions would be made, the standards used, the consultation methods that

would be adopted, the procurement methods used for construction works and the performance targets used to measure progress, and ultimately the success of the Programme.

It was noted that hard copies of the East Thames Design Guide had previously been provided to all members of the Cabinet Committee (with further copies made available at the meeting). Hard copies of the East Thames Employers Requirements were also available at the meeting. Both of these documents formed a part of the Development Strategy.

The Cabinet Committee queried how the selection was made for the developments proposed for the first year of the Programme.

The Assistant Director reported that the Red Cross site in Waltham Abbey was the most advanced, as there was secured funding of £90,000, from the Harlow Growth Area Fund which needed to be utilised as soon as possible otherwise the funding could be at risk, this had dictated the first scheme. A Gatrell from East Thames advised the Cabinet Committee that the most economical way forward was to keep developments in the same area together in the same package.

It was noted that approval to the adoption of the Development Strategy was reserved to the Cabinet, on the recommendation of the Cabinet Committee.

Recommended:

(1) That the Development Strategy, formulated by the Council's Development Agent in conjunction with Council Officers, and attached as an Appendix to the report to the Cabinet Committee be adopted with specific attention drawn to the following:

- (a) financial appraisals for each phase to be modelled on a 30-year pay-back period with a positive Net Present Value (NPV) over 30-years, using the financial assumptions set out in the appendix to the Strategy;
- (b) any financial shortfall to be met with subsidy, the details of which are set out in a separate report on "Funding the Housebuilding Programme" considered by the Cabinet Committee;
- (c) the Key Performance Indicators to be used, as previously agreed by the Cabinet;
- (d) the feasibility reporting format, consisting of:
 - (i) the design proposals (the number and nature of units to be developed);
 - (ii) a scheme budget estimate;
 - (iii) a procurement plan;
 - (iv) a financial appraisal of the site;
 - (v) a project time table;
 - (vi) a project risk assessment; and
 - (vii) a recommendation on how to proceed.
- (e) East Thames' existing EU-compliant Framework Agreement to be used for constructing the Council's new homes;
- (f) the East Thames Design Guide being adopted to inform the development of each site; and

- (g) the East Thames Employers' Requirements being adopted.

Reasons for Decision:

Approval of the Development Strategy remained the responsibility of the Cabinet. However the House-building Cabinet Committee was required to consider and then recommend its approval to the Cabinet.

Other Options Considered and Rejected:

- (1) Not to adopt the contents of the Strategy in the format presented and alter any of its statements, targets, standards, procedures or assumptions. However, this could have an effect on the feasibility studies presented elsewhere on the agenda.
- (2) To adopt alternative Design Standards and Employers' Requirements and develop the Council's own. However, this would be time consuming and ultimately delay the programme, and are unlikely to be much different from East Thames'
- (3) To procure the construction works independently of the East Thames framework of contractors. However, this would require an EU procurement exercise and all of the time and expense that goes with it, and that would mean a delay in Phase 1 of the Programme.

8. PHASE 1 FEASIBILITY REPORTS

The Assistant Director of Housing presented a report on the Feasibility Reports for the proposed Phase 1 of the Housebuilding Programme.

The Assistant Director reported that taking account of the Draft Development Strategy, Design Standards and Employers Requirements, East Thames had prepared individual feasibility study reports for: the former Red Cross Hall site and 3 further garage sites on Roundhills, Waltham Abbey; a garage site in Harveyfields, Waltham Abbey; and the former sheltered accommodation units at Marden Close, Chigwell Row.

Members noted that a financial viability assessment had been undertaken for each site individually and collectively as a package. In total, across all 3 proposed development sites, the package would deliver 25 affordable Council dwellings and a further 10 x 1 bedroom flats for social rent at a total estimated cost of around £4,442,285, using £425,000 subsidy to achieve a 30-year pay-back and a positive Net Present Value.

All of the ward members for the 3 proposed development sites, and Marden Close, had been invited to attend the Cabinet Committee meeting and those present were invited to provide their comments on the proposals. All ward members present were generally supportive of the development proposals.

Decision:

- (1) That the Phase 1 development feasibility studies, consisting of the site of the former Red Cross Hall and three further garage sites in Roundhills, Waltham Abbey together with the garage site at Harveyfields, Waltham Abbey be approved to progress to the detailed planning stage, and if planning permission is received, that invitation of tenders be issued;

(2) That the feasibility study for the conversion of the former sheltered accommodation at Marden Close, Chigwell Row be approved to progress to the detailed planning stage and, if planning permission is received, that invitation of tenders be issued;

(3) That the estimated combined capital investment required to deliver all 25 new affordable rented Council properties in Phase 1, together with the conversion at Marden Close, creating 10 new self contained 1-bed flats for general needs housing with social rents in the sum of £4,442,285 including fees and works, (broken down as £3,948,421 for Phase 1 and £493,864 for Marden Close) be noted;

(4) That an estimated subsidy of £425,000 be set aside for Phase 1 of the developments in order to achieve a pay-back period of 30 years with a positive Net Present Value (NPV);

(5) That the Housing Portfolio Holder be authorised to submit the detailed planning applications for each of the Phase 1 development sites and for Marden Close; and

(6) That provision be made within the Housing Revenue Account Capital Programme to fund the developments in Phase 1 of the Housebuilding Programme and at Marden Close, Chigwell Row.

Reasons for Decision:

It was a requirement that the House-Building Cabinet Committee considered and approved the package of feasibility studies and financial viability reports for each phase of works and for Marden Close, taking into account the views of the local Ward Members who represented each site, in order for each phase to progress to planning stage and the invitation of tenders.

Other Options Considered and Rejected:

(1) Not to progress with one or more of the schemes and develop a smaller number of sites.

(2) To amend the property sizes and types on any or all of the schemes.

9. PROCUREMENT OF WORKS CONTRACTOR

The Assistant Director of Housing presented a report regarding the Procurement of Works Contractors.

He advised that a significant part of the House-building Programme was the procurement of the construction works. The Council's Contract Standing Orders required the Council to undertake competitive tenders for all works over £50,000. However, in addition, EU procurement rules applied to all works contracts where the value was (currently) in excess of £4,348,350.

Members noted that in order to obtain the best value for money, it was proposed that the Council would seek to appoint a Works Contractor on a single contract for each phase of works. This would not necessarily reach the EU limits on a phase by phase basis, but would over the whole of the Programme. As part of the Council's Development Agency Agreement with East Thames, East Thames had the responsibility for procuring the Works Contractor on behalf of the Council. However, East Thames had already undertaken an EU-compliant procurement exercise to

select a list of approved Framework Contractors from which all contractors for their own House-building Programme was tendered and had offered the Council, as part of their tender for Development Agent, the opportunity to use this Framework Agreement, to avoid the necessity of the Council incurring the time and expense to produce a similar document.

The Cabinet Committee was advised that East Thames had taken legal advice from their Solicitors, Trowers & Hamblins, who had confirmed to the Council that the Council could legally use their Framework Agreement, and that its use by the Council would comply with EU procurement rules.

The Assistant Director reported that the Framework Agreement was based on a list of approved Contractors, who had all applied to join the Approved List to undertake construction works, based on a traditional JCT Design and Build Contract. The list was broken down into two separate contracts, one for contracts below £5m and one for contracts above £5m. The estimated value of the Council's works packages would determine which list of contractors would be invited to tender. There were at least two local contractors on each of the Approved Lists.

The Assistant Director further advised that invitations to tender would be issued to all contractors on the list, who would then provide a competitive bid, which would therefore satisfy Contract Standing Orders.

Decision:

That the Works Contractors for the Housebuilding Programme be procured using the current and any future East Thames EU-compliant Framework Agreement.

Reasons for Decision:

The procurement of works for the House-Building Programme would require the Council to undertake an EU-compliant tender exercise. However, East Thames have already undertaken an EU-compliant tender exercise, which would be available for the Council to use.

Other Options Considered and Rejected:

- (1) To undertake a separate EU procurement exercise, specific to just the Council's House-building Programme. This would be time consuming and costly.
- (2) Not to undertake an EU procurement exercise, and to let individual works contracts for each site. This would not generate savings through economies of scale and would be much more resource intensive to undertake. It would significantly delay the period between receipt of planning permission and starting on site.

10. RISK REGISTER

The Assistant Director presented a report regarding the Risk Register.

Members were advised that, since the Council's Housebuilding Programme was a major undertaking, involving significant amounts of money and risks, it was essential that the Officer Project Team and the Cabinet Committee recorded, monitored and mitigated those risks.

The Assistant Director reported that as part of the Council's Development Agency Agreement with East Thames, East Thames had the responsibility for producing and

keeping up to date the Risk Registers for the Housebuilding Programme. In turn, East Thames had instructed their building consultants, Pellings LLP, to undertake the administration of the Risk Registers on their behalf.

The Cabinet Committee noted that following approval by the Cabinet of individual developments and development packages, Pellings LLP would produce and keep updated Risk Registers for each development/package, which would be monitored by the Project Team at Project Team Meetings.

In addition, it would be appropriate for a "Programme-wide" Risk Register to be actioned, which would be a "live document" for the Housebuilding Programme. The Cabinet Committee considered the format of the Risk Register at the last meeting and the first iteration of the Programme-wide Risk Register.

The Cabinet Committee noted that all risks had been marked as "Low Risk" and the Cabinet felt this was not a true reflection of all of the risks. The Director of Housing suggested that Risks 6 and 8 should be moved to "Medium Risk", which was agreed.

East Thames and Pellings reported that the document was live and any input from the Cabinet Committee would be fed into the Register.

Decision:

- (1) That the Programme-wide Risk Register for the Council Housebuilding Programme be noted; and
- (2) That the Risk Register be reviewed by the Cabinet Committee at least every three months for the first year of the Programme.

Reasons for Decision:

The Council's Housebuilding Programme was a major undertaking, involving significant amounts of money and risks, it was essential that the Officer Project Team and the Cabinet Committee recorded, monitored and mitigated those risks.

Other Options Considered and Rejected:

- (1) Not to have a Risk Register – but it would not be appropriate to contemplate such an option; and
- (2) To request amendments to the format or content of the Programme-wide Risk Register.

11. ANY OTHER BUSINESS

The Cabinet Committee noted that there was no other urgent business for consideration.

12. EXCLUSION OF PUBLIC AND PRESS

The Cabinet Committee noted that there were no items of business on the agenda that necessitated the exclusion of the public and press from the meeting.

CHAIRMAN

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