



RECORD OF EXECUTIVE DECISIONS

The following is a record of the decisions taken at the meeting of **CABINET** on **WEDNESDAY 10 SEPTEMBER 2014**.

The decisions will come into force and may be implemented from **MONDAY 22 SEPTEMBER 2014** unless the Overview and Scrutiny Management Committee or its Committees object to any such decision and call it in.

Housing Stock Transfer: Outcomes of Stage 2 Formal Consultation: Ballot [Key Decision R&ED/09/14]

Summary

The Cabinet considered a joint report of the Corporate Director, Regeneration and Economic Development and the Corporate Director, Resources which provided details of the ballot result and set out the next steps to meet the target date for transfer in March 2015.

The first stage of formal consultation on the Council's proposal to transfer ownership and management of its homes was completed in early July 2014. In July 2014 Cabinet agreed to accept the outcomes of the first stage of consultation and to proceed to the second stage of formal consultation and to issue all secure and introductory tenants with a Stage 2 Notice, which explained the Council's decision and advised tenants that a ballot on the transfer proposal would follow. The Council's Stage 2 Notice was approved by the Homes and Communities Agency (HCA) and was sent to all secure and introductory tenants from mid July 2014. The secret ballot of all the Council's secure and introductory tenants followed the Notice and was undertaken independently by Electoral Reform Services (ERS).

The question set out on the ballot paper and which tenants were asked to respond to was agreed with the Homes and Communities Agency (HCA) and the Department for Communities and Local Government and was:

"Are you in favour of the Council's proposal to transfer the ownership and management of its homes to the County Durham Housing Group Limited and then to your local housing services provider?"

The ballot ended at midday on Monday 18th August 2014:

- 9149 tenants voted "yes" to the transfer proposal (82% of the valid vote).
- 2010 tenants voted "no" to the transfer proposal (18% of the valid vote).

The Council received a formal report of voting from Electoral Reform Services which was attached to the report at Appendix 2.

There is a significant amount of work to complete if the proposed new group of landlords are to be successfully established and registered as providers of social housing with the HCA by the end of March 2015. The Council will need to meet the statutory requirements of the Secretary of State for Communities and Local Government to transfer homes and complete the transfer by the end of March 2015.

Key pieces of work include:

- The appointment of an executive management team for the proposed new group.
- The development and issuing of a business plan and financial prospectus for the proposed new group to potential funders.
- The development of a Transfer Agreement.
- The registration of the County Durham Housing Group Ltd, Dale & Valley Homes, Durham City Homes and East Durham Homes as Registered Providers with the HCA.
- The development of an agreement with funders to obtain access to borrowing facilities.

In order to meet challenging timescales and achieve the transfer by the end of March 2015 the Council and the proposed new group of landlords would work closely together. It is also necessary for the County Durham Housing Group Ltd to be constituted as a corporate body so it is able to complete key pieces of work and in particular be in a position to appoint an executive management team.

The proposed new group would own no assets and have no income prior to the transfer taking place in March 2015. Therefore the Council would provide for the establishment of the new group until the transfer is complete. Costs are usually met via the provision of a loan to the proposed new group by way of a Section 25 loan (under the Local Government Act 1988) which is repaid to the Council by the new group of landlords at the point of transfer.

It is also essential for the Council to underwrite any employment costs in the period leading up to transfer. The Council must agree to the indemnification agreement before the recruitment process for an executive management team begins. Due to challenging project timescales the planned date for the start of the recruitment process is the 12 September 2014.

A Transfer Agreement between the Council and the proposed new group of landlords would be developed. The Council would also continue to consider the implications of the transfer on the services it would be responsible for (should the transfer go ahead) and how it could work with the new group of landlords to achieve its wider strategic objectives for County Durham.

Decision

The Cabinet:

- Noted the positive result of the ballot of all secure and introductory tenants on the Council's transfer proposal.
- Agreed to proceed with the proposed transfer to the incorporated County Durham Housing Group, subject to Cabinet's final approval of the terms of the transfer and obtaining all necessary statutory consents.
- Agreed to recommend to the Council that officers be authorised to update the Housing Strategy 2010-2015 to reflect the developments set out in this report.
- Agreed to provide an indemnification agreement to underwrite employment costs (in case of the transfer not taking place) to allow the County Durham Housing Group Ltd to begin the recruitment of an executive management team.
- Agreed to provide joint delegated authority to the Corporate Director Regeneration and Economic Development and Corporate Director Resources, in consultation with the Portfolio Holder for Regeneration and Portfolio Holder for Finance, to continue to work with representatives of the proposed new housing group, to negotiate the development of the Transfer Agreement.

Housing Stock Transfer - Principles of Transfer [Key Decision: R&ED/08/14]

Summary

The Cabinet considered a joint report of the Corporate Director, Regeneration and Economic Development and the Corporate Director, Resources. which sought approval to the principles of transfer which will be followed by officers when identifying and agreeing land and assets to transfer to the County Durham Housing Group.

In January 2014 the council applied to Government for agreement and financial support to transfer ownership of its homes to a group structure of its existing housing management organisations; Dale & Valley Homes, Durham City Homes and East Durham Homes. The Department for Communities and Local Government approved the council's application in March 2014 and allowed the council to proceed to formal consultation with its secure and introductory tenants. Formal consultation began in June 2014. Following a positive tenant ballot outcome on 18 August 2014, and subject to final Secretary of State consents in March 2015, the council plans to transfer ownership of its homes to its existing housing management organisations, who would in turn each become landlords in their own right. Durham City Homes would, prior to transfer, become a newly constituted company separate to the council and would work with Dale & Valley Homes and East Durham Homes under a group structure known as the County Durham Housing Group, to ensure they can maximise investment in homes, neighbourhoods and local services.

The report sought approval to the provision of a Section 25 loan from the council to the proposed new group. Section 25 of the Local Government Act 2008 provides the council with the power to make a loan to fund necessary set-up costs required prior to the transfer date. The council would also need to underwrite any employment costs in the period leading up to transfer.

The report also provided details of the TUPE implications associated with the proposed transfer and sought delegated authority for the Corporate Director Regeneration and Economic Development and Corporate Director Resources, in consultation with the Portfolio Holder for Regeneration and Portfolio Holder for Finance, to negotiate the final transfer agreement. The estimated costs of establishing the new group and the facility for the council to provide a Section 25 loan to the new organisation to fund the costs that are likely to be incurred in establishment of the proposed new group. This loan would be repaid to the council at the point of transfer.

The proposed new group of landlords would also include a parent organisation (County Durham Housing Group Ltd) which would lead on all governance and financial viability issues for the group, and would provide support services to the three new landlords. It is this parent organisation that would pass ownership of the housing stock from the council to each of the three new landlords upon transfer. This would not pose any legal obstacle or concern for the council.

There is a fundamental appreciation by all parties that impacts of the transfer upon the council's General Fund and retained housing services must be limited as far as practicable. This report therefore sought agreement to the broad principles of transfer which would be used to guide discussions around all land and assets to transfer to the County Durham Housing Group; provided details of the potential TUPE implications of transfer; and outlined the Section 25 loan arrangements which would be put in place for the new organisation.

The report also outlined some of the key Heads of Terms and negotiating parameters that would need to be considered further in the coming months, and prior to finalising the transfer agreement with the County Durham Housing Group.

A range of options for the transfer of land and assets have been considered and discussed with colleagues from the Council's housing management organisations: Dale & Valley Homes, Durham City Homes and East Durham Homes. The approach has not been formally agreed with the County Durham Housing Group Board Limited. Following extensive consideration, officers propose the land and assets listed below should transfer to the proposed new group as part of the transfer agreement;

- the housing stock and land within the curtilage of individual properties (including the freehold reversion of any prior Right to Buy disposals),
- brick built garages and garage sites within or adjoining council housing estates,
- shops and other leasehold land and/or property within council housing estates,
- areas of land which could be subject to garden land transfers under Right to Buy provisions,

- areas of land between open plan dwellings,
- incidental areas of open space adjacent to housing,
- areas of land where housing has previously been demolished within council housing estates, and
- unadopted car parking areas, roads and footpaths within council housing estates

The report also sought approval for the Corporate Director, Regeneration and Economic Development and Corporate Director, Resources, in consultation with the Portfolio Holder for Economic Regeneration and the Portfolio Holder for Finance to be provided with joint delegated authority to negotiate any changes in the best interests of the Council, if at any point, during negotiations a need arises to change or deviate from the principles set out above

It is also proposed that the following areas of council ownership and responsibility would be retained by the council should the transfer go ahead:

- areas of open space separated from houses by adopted roads and footpaths within council housing estates,
- larger areas of open spaces located between main roads and dwellings in council housing estates,
- play areas, and
- land beneath adopted highways.

Following a positive tenant ballot outcome, it is usual for the council to provide a loan to the proposed new landlord to assist in the development and set up of the proposed new management and ownership arrangements. Generally the loan is made to the proposed new organisation from the council by way of a Section 25 loan, which is then repaid to the council at the point of transfer. Section 25 of the Local Government Act 1988 (as amended) provides the council with the power to make such a loan to the proposed new group. Following officer discussions, a loan facility up to the value of £4.5 million would be made available to cover these set-up costs. This has been built up from costs related to specific budget heads.

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) is a piece of legislation which applies in the event of a business transfer or a service provision change. Officers from Durham County Council, Dale and Valley Homes, and East Durham Homes are continuing to work together to consider the TUPE implications associated with the establishment of the County Durham Housing Group. All of those council employees who are assigned, or otherwise essentially dedicated to the delivery of council housing services, or directly support its delivery at the point of transfer, will be affected by TUPE. An estimated 183 council employees have been identified from those relevant work groups as being subject to a TUPE transfer, should the proposals go ahead.

It is usual as part of any housing stock transfer proposal for discussions and negotiations to be undertaken on behalf of the council and the new organisation up until the point of transfer. Whilst every effort will be made to ensure transfer details are agreed at the earliest opportunity, there will no doubt be a need for on-going dialogue and negotiations up until the end of March 2015 when the housing stock is scheduled to transfer to the new group.

Following the positive ballot outcome of council housing tenants, officers will now work to finalise a number of key negotiating parameters which will be used to guide and influence the final transfer agreement to the County Durham Housing Group. To ensure the most suitable solution is achieved in respect of these issues, it was recommended that delegated authority is provided jointly to the Corporate Director Regeneration and Economic Development and Corporate Director Resources, in consultation with the Portfolio Holder for Regeneration and Portfolio Holder for Finance, to negotiate the final transfer agreement in the best interests of the authority.

Decision

The Cabinet agreed;

- the 'principles of transfer' set out in the report,
- the position in respect of TUPE and the provision of a Section 25 loan facility to the County Durham Housing Group,
- to provide joint delegated authority to the Corporate Director Regeneration and Economic Development and Corporate Director Resources, in consultation with the Portfolio Holder for Regeneration and Portfolio Holder for Finance, to negotiate the final transfer agreement with the County Durham Housing Group, and
- to receive a further report in due course which sets out the final terms of the transfer and the financial position once negotiations are complete.

Forecast of Revenue and Capital Outturn 2014/15 for General Fund and Housing Revenue Account – Period to 30 June 2014

Summary

The Cabinet considered a report of the Corporate Director, Resources which provided Cabinet with a forecast of 2014/15 revenue and capital outturn for the period to 30 June 2014 for the Council's General Fund and Housing Revenue Account. The report provided the first indication of the revenue and capital outturn for 2014/15 based on actual expenditure and known commitments as at 30 June 2014, together with the forecast balances on general and earmarked reserves at 31 March 2015. The report also provided an update on the Collection Fund in terms of Council Tax and Business Rates forecast outturn.

Revenue

It was reported that the following adjustments have been made to the Original Budget agreed by Full Council in February 2014:

- agreed budget transfers between Service Groupings;
- additions to budget for items outside the cash limit (for Cabinet approval);
- planned use of or contribution to Earmarked Reserves (details were included at Appendix 4 to the report).

Capital

The General Fund (GF) capital budget for 2014/15 was set at £166.292m by Council on 26 February 2014. Re-profiling from the 2013/14 capital programme outturn into 2014/15, amounting to £22.341m, was reported to Cabinet on 16 July 2014.

The 2014/15 Housing Revenue Account (HRA) Capital budget of £50.489m was also approved by Council on 26 February 2014.

The Council's Member Officer Working Group (MOWG) that closely monitors the capital programme has since recommended approval to Cabinet of further revisions to the capital programme, taking into account additional resources received by the authority and further requests for re-profiling as Service Management Teams continue to monitor and review their capital schemes.

Decision

The Cabinet:

- Noted the projected change in the Council's overall financial position for 2014/15.
- Agreed the proposed 'sums outside the cash limit' for approval.
- Agreed the revenue and capital budget adjustments.
- Noted the forecast use of Earmarked Reserves.
- Noted the forecast end of year position for the Cash Limit and General Reserves position.
- Agreed that Schools be advised of the need to have minimum and maximum balances at 31 March as detailed in the report.
- Noted the position for the Housing Revenue Account, Capital Programme and the Collection Funds in respect of Council Tax and Business Rates.

Flooding – Scrutiny Review Report

Summary

The Cabinet considered a report of the Assistant Chief Executive which presented key findings and recommendations of the Environment and Sustainable Communities Overview and Scrutiny Committee review group report on flooding.

At a meeting of the Environment and Sustainable Communities Overview and Scrutiny Committee on the 21 June 2013 members as part of the refresh of the work programme for 2013-2015 identified flooding as a future Scrutiny Review project. The key findings of the review group were identified in the Appendix 2 to the report which resulted in the formulation of the following recommendations:

- That Durham County Council continue to maximise the funding opportunities available for flood prevention schemes through the Flood Defence Local Levy,

the Flood and Coastal Risk Management Grant in Aid Scheme and the EU funding programme 2014-2020.

- That the Environment and Sustainable Communities Overview and Scrutiny Committee in their role as the designated Flood and Coastal Erosion Risk Management Committee formalise the process for engaging with the Flood Risk Management Authorities within County Durham by meeting on an annual basis. As part of this role the committee would receive information from Northumbrian Water Limited on sewerage treatment capacity within County Durham.
- That the Environment and Sustainable Communities Overview and Scrutiny Committee receive the minutes of the Northumbria Regional Flood and Coastal Committee (NRFCC) and the Durham Strategic Flood Prevention Group (DSFPG) on a quarterly basis together with regular updates.
- That the importance of Policy 46 in the emerging County Durham Plan is highlighted in relation to managing flood risk.
- That Durham County Council establishes the appropriate mechanisms to enable it to collect any charges in respect of Sustainable Urban Drainage Systems (SuDS) that have been adopted by the Council.
- That Durham County Council as part of the Customer First Strategy introduces a flooding hotline number for use during flooding emergencies.
- That a review of this report and progress made against recommendations will be undertaken six months after the report is considered by Cabinet and that those members who have experienced flooding incidents within their localities receive an update of the progress made against the recommendations.

Neighbourhood Services welcomed the key findings and recommendations of the report. The report highlighted the close partnership working within County Durham which has resulted in the development of a strong policy and planning framework which will be built upon, maximising the funding opportunities available to carry out further flood mitigation projects in the future.

Decision

The Cabinet noted the recommendations in Appendix 2 to the report and agreed to formulate a response within a six month period for the systematic review of recommendations.

Quarter 1 2014/15 Performance Management Report 2014/15

Summary

The Cabinet considered a report of the Assistant Chief Executive which presented progress against the council's corporate basket of performance indicators and reported other significant performance issues for the first quarter of 2014/15 covering the period April to June 2014.

Decision

The Cabinet:

1. Noted the performance of the council at quarter 1 and the actions to remedy under performance.
2. Agreed all changes to the Council Plan outlined below:

Altogether Wealthier

- i. Agree the development plan of Elvet waterside by September 2014. Revised date: October 2014.
- ii. Construction of a new roundabout at Sunderland Bridge by April 2015. Revised date: September 2015.
- iii. Adoption of the County Durham Plan by March 2015. Revised date: September 2015.
- iv. Deliver the first Durham County Council market housing scheme for rent and sale by June 2016. Revised date: January 2017.

Altogether Better Council

- v. New website to improve access to customer information and services by August 2014. Revised date: October 2014.
- vi. Improve complaints reporting and monitoring: Complete Corporate Complaints Pilots to inform revised process by June 2014. Revised date: October 2014.
- vii. Increase the level of external funding attracted: Develop a community led local development structure to maximise involvement of Area Action Partnerships to increase resources for local actions by September 2014. Revised date: March 2015.

Deleted Actions

Altogether Wealthier

- i. Deliver a County Durham Apprenticeship Programme to support people into work through the provision of wage subsidy to employers.

Altogether Greener

- ii. Produce a new Waste Management Strategy for County Durham.

3. Agreed changes to performance indicator targets outlined below:

Altogether Wealthier

- i. Affordable homes – A target of 300 homes was agreed. A revised target of 400 is now considered to be more realistic to reflect the outputs of various programmes aimed at increasing the number of affordable homes, each of which have their own specific programme targets attached.
- ii. Homes completed in and near all major settlements, as a proportion of total completions - Although the County Durham Plan will include policies which will aim to increase completions in and near major settlements, the house building activity required to actually deliver these completions are led by developers. A target of 70 was agreed however it is considered more appropriate for this indicator to be a tracker.

Colette Longbottom
Head of Legal and Democratic Services
12 September 2014