

## Cabinet

10 September 2014

### Housing Stock Transfer: Outcomes of Stage 2 Formal Consultation: Ballot



Key Decision R&ED/09/14

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#### Report of Corporate Management Team

**Ian Thompson, Corporate Director, Regeneration and Economic Development**

**Councillor Neil Foster, Cabinet Portfolio Holder for Regeneration**

**Don McLure, Corporate Director, Resources**

**Councillor Alan Napier, Cabinet Portfolio Holder for Finance**

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#### Purpose of the Report

- 1 To provide Cabinet with details of the positive ballot result and set out the next steps to meet the target date for transfer in March 2015.

#### Background

- 2 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, when 21,908 Offer Document packs (which set out the Council's proposal and potential implications for tenants) were hand delivered to tenants. Over 15,500 tenants were spoken to by employees of the Council, Dale & Valley Homes and East Durham Homes. 1371 tenants responded to the Offer Document during the 28 day representation period that followed delivery of the Offer Document.
- 3 In July 2014 Cabinet agreed to accept the outcomes of the first stage of consultation and decided not to change the promises made in the Offer Document. Cabinet also decided to proceed to the second stage of formal consultation and to issue all secure and introductory tenants with a Stage 2 Notice, which explains the Council's decision and advises tenants that a ballot on the transfer proposal will follow. The ballot is required under Schedule 3A of the Housing Act 1985 to demonstrate to the Secretary of State for Communities and Local Government the level of support from the Council's tenants.
- 4 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).

- 5 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?”*
- 6 The ballot provided a variety of ways for tenants to vote, all of which were controlled and managed by ERS:
- Postal vote
  - SMS text
  - Online (via the internet)
  - Telephone
- 7 The ballot ended at midday on Monday 18<sup>th</sup> August 2014:
- The total number of votes cast was 11,316 (a turnout of 51.2%).
  - 157 ballot papers were found to be invalid. Therefore 11,159 votes were counted as being valid.
  - 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).
- 8 The Council received a formal report of voting from ERS which is attached an Appendix 2.

### **Next Steps**

- 9 Paragraph 3 (6) of the Housing Act 1985 requires the council to write to all tenants (whether or not they voted) informing them of the result at the end of the ballot period. The council should also inform its tenants of its decision and, if the council has decided to proceed with the transfer, next steps in the process.
- 10 If Cabinet decide to proceed with the transfer process, the Council will need to meet 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.
- 11 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. 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.

- 12 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 will 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 the key pieces of work set out at paragraph 11 and in particular be in a position to appoint an executive management team.
- 13 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.
- 14 It is also essential for the Council to underwrite any employment costs in the period leading up to transfer, if for whatever reason it does not go ahead. The Council must agree to the indemnification agreement before the recruitment process for an executive management team begins. Due to challenging project timescales the recruitment process is due to begin on the 12 September 2014.
- 15 A Transfer Agreement between the Council and the proposed new group of landlords would be developed. The Transfer Agreement would be a detailed document which would be made up of a number of different schedules that include:
- A series of schedules and contracts agreeing the transfer of land and other assets to the proposed new housing Group.
  - A Deed of Covenant which underpins the delivery of the promises set out in the Offer Document.
  - Service Level Agreements between the Council and the proposed new housing group.
  - Development Agreement.
  - Transfer of Undertakings and Protection of Employment (TUPE) transfer issues for staff affected by the transfer proposal.

- 16 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.

## **Recommendations**

It is recommended that Cabinet:

- I. Note the positive result of the ballot of all secure and introductory tenants on the Council's transfer proposal.
- II. Agree to proceed with the proposed transfer, subject to Cabinet's final approval of the terms of the transfer and obtaining all necessary statutory consents.
- III. Recommend to the Council that in accordance with the Housing Strategy 2010 -2015 the County Durham Housing Group Ltd be established.
- IV. Agree 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.
- V. 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.

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## **Appendix 1: Implications**

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### **Finance**

The Council is currently operating within a HRA self-financing debt cap of £245m (as of April 2012). This debt cap has almost been reached and the Council is therefore unable to borrow any further to invest in areas such as new build housing development. The proposed housing stock transfer will enable the new group of landlords to borrow additional funds to invest in housing, regeneration and support services for tenants. In order to qualify for debt write-off, Government have however directed that the transfer must be completed by 31 March 2015.

Transfer will come at a cost to the Council and previous reports have identified an annual cost to the General Fund of £3.6m. Provision for this cost has been built into the latest MTFP Model which identifies this loss of income from 2015/16 onwards. Failure to proceed with the transfer process would mean that the Council would continue as landlord which would mean a continuation in the Council's borrowing abilities which would affect investment in homes, neighbourhoods and services.

Implementing stock transfer will incur costs for both the Council and the proposed new housing group in the development of the Transfer Agreement and the establishment of the proposed new group landlords, which is estimated to be in excess of £4million.

### **Staffing**

Detailed work continues on the impact of the proposed transfer on the Council's services and staff associated with Council housing and its support. This work is being undertaken by Human Resources and Legal Services in full consultation with potential staff affected. Staff potentially affected by a TUPE transfer either from the Council or within the proposed new group of landlords will be fully informed and consulted with as part of the formal TUPE consultation.

### **Risk**

The transfer of the Council's homes must be planned and managed effectively by both the Council's transfer team and the transfer team of the proposed new group of landlords to ensure the challenging deadline is achieved by the end of March 2015.

### **Equality and Diversity**

The formal consultation process has provided all individuals and organisations with an interest in the future of the Council's housing stock with the best opportunity to express their view on the transfer of the Council's homes in County Durham. The formal consultation process has been delivered through the implementation of a communication and consultation plan and active tenant engagement in the development of the Offer Document.

The Offer Document makes specific provisions for:

- Tenants with a disability
- Elderly tenants

- Young tenants
- Tenants experiencing problems with managing money and debt
- Improving quality of life for tenants across the county

According to the Equality Impact Assessment undertaken on the proposed transfer it will impact on protected characteristics. Impacts in terms of stock transfer are positive, as accessing additional funding will improve housing, neighbourhoods and services and will stimulate the local economy. This may be particularly beneficial for women who have an increased demand for social housing and disabled and older people who require homes to meet specific housing needs. Younger people and people raising a family will also benefit from an improved social housing offer resulting from stock transfer. Transfer may also enable access to additional funding to strengthen and improve tenancy support services to mitigate the effects of welfare reform.

### **Accommodation**

The proposed new group of landlords will continue to work with the Council to identify suitable accommodation for the proposed new County Durham Housing Group Limited ahead of the transfer deadline.

### **Crime and Disorder**

None

### **Human Rights**

None

### **Consultation**

Formal consultation has been undertaken with all secure and introductory tenants, providing an opportunity for 21,908 tenants and 193 leaseholders to comment and vote on the Council's transfer proposal.

### **Procurement**

None

### **Disability Issues**

None

### **Legal Implications**

There is a clear process for the transfer of homes set out in the Government's Housing Transfer Manual. The transfer of homes can only go ahead if the Council observes the outcome of the ballot that a majority of tenants voting in the ballot voted in favour of the proposal.

The transfer process will continue to be supported by the Council's legal advisers for stock transfer (DWF) and the proposed new group of landlord's legal advisers (Trowers and Hamlins). The Council's Legal Services will work closely with DWF to ensure the Council's interests are protected throughout negotiations with the proposed new group of landlords and that any commercial deal agreed with the proposed new group is properly documented in a Transfer Agreement.