

## **Cabinet**

**10 September 2014**

### **Housing Stock Transfer – Principles of Transfer**



**Key Decision R&ED/08/14**

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#### **Joint Report of**

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

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

**Don McLure, Corporate Director Resources, and**

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

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#### **Purpose of the Report**

- 1 Following the positive ballot outcome of council housing tenants in support of the council's Housing Stock Transfer proposal, this report seeks 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.
- 2 The report seeks 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 will also need to underwrite any employment costs in the period leading up to transfer.
- 3 The report also describes the TUPE implications associated with the proposed transfer and seeks 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.

#### **Background**

- 4 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.

- 5 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.
- 6 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 does not pose any legal obstacle or concern for the council.
- 7 The council has worked with representatives from the proposed new group of landlords to consider and establish a broad set of principles which identifies the assets that could transfer to the new group and those which could be retained by the authority. Due consideration has also been given to the potential TUPE implications of transfer, 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.
- 8 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 seeks agreement to the broad principles of transfer which will be used to guide discussions around all land and assets to transfer to the County Durham Housing Group; provides details of the potential TUPE implications of transfer; and outlines the Section 25 loan arrangements which will be put in place for the new organisation.
- 9 The report also outlines some of the key Heads of Terms and negotiating parameters that will need to be considered further in the coming months, and prior to finalising the transfer agreement with the County Durham Housing Group.

### **Principles of Transfer**

- 10 Transfer of the council's housing stock to the County Durham Housing Group represents a significant opportunity to increase investment in local

neighbourhoods and housing estates and further improve the lives of council housing tenants.

- 11 The council has already invested significantly in recent years to ensure all of its housing stock meets the Decent Homes standard by 31 March 2015. Transfer of the housing stock to the County Durham Housing Group would however ensure this investment is maximised even further, with significant improvements proposed by the group to raise standards within the housing stock to an agreed 'Durham Standard', improve local neighbourhoods and provide much needed new homes following transfer.
- 12 Clearly assets and land are therefore a major aspect of the transfer proposal and there is a need to ensure a transparent and balanced approach is taken to their transfer to the new group, as well as those to be retained by the council. A team of officers, supported by advisers to the council, has been established to consider the broad principles of transfer which could be applied and which would ensure the proposed County Durham Housing Group would be able to deliver the promises made to tenants in the council's recent Offer Document. This work has been based upon the principles and experiences evidenced within former district councils who have already pursued housing stock transfers in County Durham, for example Sedgefield Borough Homes (now Livin), as well as best practice examples from other neighbouring and regional authorities.
- 13 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 yet been formally agreed with the County Durham Housing Group Ltd Board. Options ranged from a transfer of minimal land and assets, essentially only houses, gardens and brick built garages, to a maximum proposal where all assets and land would transfer within a council housing estate boundary.
- 14 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.
- 15 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.
- 16 The above mentioned 'principles of transfer' would not only ensure the council is able to retain ownership and control of larger areas of open space within housing estates, they would also enable the proposed new group to deliver the environmental and neighbourhood improvements set out in the council's Offer Document to tenants.
- 17 In most cases the principles (should they be adopted) will enable the new group to remodel transferred housing stock without the need to receive consents or acquire additional land from the council.
- 18 The council proposed in its Offer Document to tenants that land would be transferred to the proposed new group to support a significant new build programme. Such a commitment could only be achieved with the provision of development land from the council and in this regard a suitable Development Agreement will be drawn-up with the new group as part of the final transfer agreement. It is envisaged the new group will be able to develop new affordable housing on land transferred to them, however where there are proposals for land to be developed for market housing the council will include clauses to ensure it receives a fair proportion of any future development value attained.
- 19 A clawback provision would also be included in the transfer agreement to ensure any land sold to a third party (excluding houses, garages, and Right to Buy gardens) would be subject to clawback provision, in favour of the council, over and above a determined figure.
- 20 Future grounds maintenance costs associated with the estates would be shared between the council and the proposed new group, attributed on the basis of ownership and ensuring the council only pay for maintenance of those open spaces retained within its ownership. The proposed new

group will be responsible for all maintenance, inspection, litter clearance and drainage issues associated with all land transferred to them.

- 21 Should these principles be adopted by the council, officers will use them to map all land and assets to transfer to the new group over the coming months. Discussion about potential liabilities or value from the transfer of assets would be part of the development of the transfer agreement and the business plan for the proposed new group.
- 22 There may well be a very small number of exceptions which do not fall comfortably within the 'principles' as officers begin to map the land to transfer. In any such instances, officers would seek to address the issues individually and for the mutual benefit of the council and the proposed new group.
- 23 If at any point during negotiations a need arises to change or deviate from the principles set-out at paragraphs 13-14, approval is sought 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 be provided with joint delegated authority to negotiate any changes in the best interests of the council.

## **Section 25 Loan**

- 24 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.
- 25 The proposed new group would have no assets or income prior to the transfer taking place. Therefore, the council would essentially provide for the establishment of the proposed new group until the housing stock transfers to the proposed new landlords. These costs are usually met via the provision of a loan facility to the proposed new group.
- 26 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.
- 27 Following officer discussions, a loan facility up to the value of £4.5 million will be made available to cover these set-up costs. This has been built up from costs related to specific budget heads.
- 28 The council will charge a commercial interest rate on the loan to County Durham Housing Group. It is important to note that should the full loan facility not be utilised, the group would only be charged interest on actual expenditure incurred.

- 29 If the transfer should not proceed for any reason, any expenditure incurred from the loan will need to be written off by the council. It is also important to note that the council will incur costs and will also need to budget separately for its own post-ballot expenditure, predominantly associated with lead advisors and consultants to the transfer process. The council will also need to underwrite any employment costs in the period leading up to transfer, as detailed in the report received by Cabinet on 10<sup>th</sup> September 2014 on the outcomes of the ballot of all secure and introductory tenants on the transfer proposal.

### **TUPE Implications for Durham County Council Employees**

- 30 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. Its key purpose is to preserve the continuity of employment, and terms and conditions, of those employees who are transferred to a new employer when the relevant transfer takes place. The employees will automatically become employees of the new employer (transferee), and it will be as though their contracts of employment had always been with them.
- 31 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.
- 32 For information, the majority of employees currently working for the council's arms-length housing management organisations (Dale and Valley Homes and East Durham Homes) will not be impacted by TUPE, as they are already employed directly by them, and this would continue to be the case under the proposed group arrangement. The exception to this will be in relation to any functions (yet to be determined) which may be delivered by the parent organisation rather than the individual landlords.
- 33 The TUPE Regulations place a joint duty on both the transferor (in this case, Durham County Council), and the transferee (the proposed County Durham Housing Group Ltd or Durham City Homes) to comply by informing and consulting representatives of its employees who may be affected by the transfer, or measures taken in connection with the transfer.
- 34 The council has significant experience of handling transfers, both as transferor and transferee, and in every instance apply agreed Change Management Protocols in relation to TUPE to ensure its obligations under the Regulations are met. The Protocols ensure that not only are all affected employees and their representatives fully informed and consulted

with at the earliest opportunity, but also through the development of close working relationships with the new employer and the sharing of relevant due diligence information in a timely manner, that there will be a smooth transition at the point of transfer, supporting a positive outcome for the employees and also for the continuity of service delivery.

- 35 Whilst there are no prescribed timescales in relation to TUPE consultation, arrangements within the Regulations, and indeed final due diligence, information is not required to be provided to the new employer until 28 days before the transfer, the council's Change Management Protocols, and best practice, would support formal consultation commencing with affected employees and trades unions at the earliest opportunity.

### **Developing the Final Transfer Agreement**

- 36 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, such as those set-out at paragraphs 13-14 in respect of land and assets, 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.
- 37 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. This will include the council's position with regard to;
- open spaces and grounds maintenance,
  - unadopted footpaths and highways,
  - land which could support new build housing development by the County Durham Housing Group,
  - pension scheme proposals for those staff affected by the transfer,
  - warranties provided to the County Durham Housing Group,
  - all Service Level Agreements (SLA's) currently in place across the council's existing housing management organisations,
  - the transfer/sale of rent arrears to the new group,
  - office accommodation and any associated leases, and
  - all equipment and furniture.
- 38 To ensure the most suitable solution is achieved in respect of these issues, it is recommended 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.

## Conclusions

- 39 As part of the council's housing stock transfer proposals, officers propose a set of broad principles which identifies those areas of land and assets that would transfer to the proposed new group and those which would be retained by the council should transfer proceed.
- 40 A set of principles for the transfer of land and assets has been developed (outlined at paragraphs 13-14) which will be used to identify those assets to transfer to the proposed new group should the transfer go ahead. Should the need arise to change or deviate from these principles, approval is sought 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 be given joint delegated authority to negotiate any changes in the best interests of the council.
- 41 In addition to these principles, the council would also provide a Section 25 loan to the proposed new group to fund necessary start-up costs should the transfer process proceed. An initial loan facility up to the value of £4.5 million will be made available to the County Durham Housing Group, upon which the council will charge a commercial rate of interest. The council will also need to underwrite any employment costs in the period leading up to the transfer.
- 42 183 council staff have been identified as potentially affected by TUPE transfer should the transfer of the council's homes proceed. The council may need to consider whether arrangements would change for council staff members that do not transfer to the proposed new group. The TUPE Regulations place a joint duty on both the transferor (in this case, Durham County Council), and the transferee (the proposed County Durham Housing Group) to comply by informing and consulting representatives of its employees who may be affected by the transfer, or measures taken in connection with the transfer.
- 43 There is no specific timescale for consultation, but information relating to TUPE should be provided to appropriate staff representatives with enough time to allow meaningful consultation and the achievement of challenging project timescales. The council is obliged to provide the appropriate information to the transferee (County Durham Housing Group Ltd or Durham City Homes) 28 days in advance of the transfer taking place.
- 44 As tenants have voted positively in the recent ballot of all tenants and are supportive of the council's transfer proposal, officers will continue to work together to finalise a number of key elements of the final transfer agreement with the County Durham Housing Group. Areas for negotiation are likely to include suitable solutions in respect of key areas such as



warranties to the proposed new group, continuing SLAs and/or contracts with the council, land to support new build development and pension scheme proposals.

- 45 To ensure the transfer process progresses well and continues to meet challenging timescales it is proposed delegated authority be 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.

### **Recommendations**

- 46 Cabinet are asked to note and agree;
- a) the 'principles of transfer' set out at paragraphs 13-14
  - b) the position in respect of TUPE and the provision of a Section 25 loan facility to the County Durham Housing Group,
  - c) 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
  - d) 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

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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). The level of borrowing the council has means that the 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 prescribed that transfer must complete by 31 March 2015.

Transfer will come at a cost to the council. Prior reports have identified an annual cost to the General Fund of £3.6m, with provision for this cost built into latest MTFP model which identifies the loss of income from 2015/16 onwards. In addition a number of existing Service Level Agreements (SLAs), such as those relating to grounds maintenance, could be subject to change.

This report also notes the offer of a Section 25 loan facility from the council to the County Durham Housing Group to fund necessary start-up costs. An initial loan facility up to the value of £4.5 million will be made available upon which the council will charge a commercial rate of interest.

### **Staffing**

Transfer will inevitably involve TUPE implications. Work is now at an advanced stage to identify those staff affected by TUPE and who would potentially transfer to the County Durham Housing Group.

### **Risk**

It is important the 'principles of transfer' outlined in this report are agreed by Cabinet to provide a guide for decisions around those assets to transfer to the County Durham Housing Group. Such agreement is needed now to ensure officers are able to map all land and assets to transfer during the summer months and to ensure any potential liabilities or value from the transfer of assets is built into the final transfer agreement and developing business plan of the new group.

If such discussions are not held early, there may well be a risk of transfer negotiations being delayed, something which must be mitigated for as far as possible to ensure the 31 March 2015 transfer deadline is achieved.

### **Equality and Diversity**

N/A

### **Accommodation**

N/A

### **Crime and Disorder**

N/A

**Human Rights**

N/A

**Consultation**

The council plans to deliver an extensive formal consultation programme, with all stakeholder groups, as part of its transfer proposal. Extensive dialogue will also be held by officers with representatives from the County Durham Housing Group throughout the process.

**Procurement**

N/A

**Disability Discrimination Act**

N/A

**Legal Implications**

N/A