

Cabinet

11 February 2015

Housing Stock Transfer – Final Update Prior to Transfer Completion



Key Decision R&ED/10/14

Report of Corporate Management Team

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Purpose of the Report

- 1 The report seeks Cabinet approval to complete the transfer of ownership of the Council's housing stock to the new County Durham Housing Group Ltd (CDHG) and its component housing management organisations; Dale & Valley Homes, Durham City Homes and East Durham Homes, before the Government's deadline of 31 March 2015.
- 2 The report also highlights issues arising from the project work completed so far and seeks to summarise the latest position prior to transfer which is scheduled for 23 March 2015.

Background

- 3 The Department for Communities and Local Government approved the Council's application to transfer its homes to a group structure of the existing housing providers in March 2014 and allowed the Council to proceed to formal consultation with its secure and introductory tenants. Formal consultation began in June 2014 and concluded with a ballot of tenants in July and August 2014.
- 4 On 10 September 2014 Cabinet received a report which outlined the consultation and ballot process and Cabinet agreed to proceed with the transfer process in accordance with the positive ballot outcome. Over 11,000 tenants (51.2%) took part in the ballot, 9,149 (82%) tenants voted in favour of the transfer.

- 5 At the same meeting Cabinet also approved a report which set out the proposed principles around the transfer negotiations and agreed the appropriate delegations to enable progress towards completing the housing stock transfer within the timetable required by the Department for Communities and Local Government (DCLG).
- 6 Transfer of the Council's housing stock to the County Durham Housing Group represents a significant opportunity to increase investment in homes, local neighbourhoods and housing services to further improve the lives of tenants.
- 7 The new group of landlords will also include a "parent" organisation (County Durham Housing Group Ltd) which will lead on all governance and financial viability issues for the group and will provide support services to the three new landlords. This parent organisation will pass ownership of the housing stock from the Council to each of these three new landlords at the point of transfer.
- 8 Formal consultation with tenants, including the ballot, was founded upon and featured the Council's extensive Offer Document, "Your home, Your Future, Your Choice" produced in partnership with tenants. Besides illustrating the issues and opportunities relating to the transfer proposal, the document contained a range of specific promises and proposals aimed at achieving environmental, service and neighbourhood amenity improvements in addition to the major commitments to continue improving housing standards. These additional promises and proposals will now be accommodated in the formal transfer agreement for delivery by County Durham Housing Group following the proposed transfer in March.

Achieving a successful transfer – Update and Transfer Agreement

- 9 There are a number of key groups and parties to the transfer whose requirements must be met, reconciled and documented legally for the transfer to succeed.
- 10 The main parties are:-
 - Durham County Council (DCC)
 - County Durham Housing Group (CDHG)
 - Transferring housing tenants
 - Transferring Council and ALMO employees
 - The funders
 - Department for Communities and Local Government (DCLG)
 - Homes and Communities Agency (HCA)
 - Other regulators, notably HMRC and FCA
- 11 The main tasks to be achieved by and with the parties are:-
 - Assure post-transfer delivery of the Council's Offer Document promises to tenants

- Create the new organisations to become the County Durham Housing Group
 - Agree, define and document the assets to transfer
 - Obtain funding for the transfer transaction and CDHG's project finance needs
 - Achieve registration and / or regulatory approvals for CDHG
 - Achieve fully functional business and service continuity for CDHG, tenants and employees at transfer day
 - Mutually manage the transfer of employees as diligent and enlightened employers
 - Address post-transfer implications for Durham County Council
 - Agree, define and document post-transfer services and partnership relationships between the Council and CDHG
 - Agree define and document warranties, and indemnities between the Council, CDHG and the funders
 - Conclude the transfer negotiations with a comprehensive, legally enforceable transfer agreement
 - Obtain Secretary of State (DCLG) consent to transfer.
- 12 To succeed with the tasks the Council and CDHG have dedicated work programmes and monitoring arrangements which are timed to achieve completion of the transfer on 23 March 2015, within the Government's deadline. The Homes and Communities Agency, which acts on behalf of the Government in managing the transfer process up to final consent stage, has agreed this date with the Council.
- 13 Many of the tasks are interdependent, both within the respective work programmes and between them too. Accordingly the two main parties, DCC and CDHG, work closely together throughout the process besides holding joint meetings accompanied by specialist advisers.
- 14 The Council and CDHG have dedicated specific resources to the project and have additionally engaged specialist advisers to deal with particular issues. In the case of CDHG these resources are funded from the Council's loan, under Section 25 provisions, repayable at the point of transfer. Additionally the project draws on the work and expertise of Council officers and the employees of Dale & Valley Homes and East Durham Homes for specified tasks.

- 15 Monitoring of progress against the transfer plan is managed through a series of project governance arrangements used by the Council and CDHG. Progress and key issues are highlighted and addressed at monthly joint meetings when all advisers and key officers are present.
- 16 The process has intensified as transfer date approaches and final stages are about to be completed. Concluding respective agreements, warranties and indemnities with the funders will dominate the final stages prior to obtaining Government consent.

Achieving a successful transfer – progress

- 17 Across the extensive range of transfer commitments and issues to address considerable progress has been made against the tight timetable.
- 18 The commitments made in the Council's Offer Document to tenants will be delivered against the enforceable terms of the Transfer Agreement. Various drafts of the document have been produced and shared to date and are progressively expanding to capture all the detail of agreements, obligations and demarcations between the parties.
- 19 County Durham Housing Group has established the new constitutions of its four component organisations with Council support to create the essential rule amendments permitting the new organisations to become Community Benefit Societies.
- 20 Achieving registration with the HCA as Registered Providers of social housing is a major milestone in project progress and a basic requirement before transfer can be completed. Initial consideration by the HCA's Registration Committee is planned for 5 February 2015.
- 21 CDHG additionally recruited its new Chief Executive and Finance Director by the end of 2014 and followed with recruitment of the remaining two executive directors in January and February 2015. This is critical to effective leadership of the new organisation towards transfer and beyond.
- 22 CDHG has received a provisional offer of funding from Barclays Bank and M&G and this effectively means that CDHG now has a fully funded business plan and therefore starts out with the required strong financial foundations to delivery promises made to tenants as part of the consultation process.

Maintaining Services to Tenants

- 23 Besides all the critical activities unique to achieving agreement and consent to transfer, there remains an overriding need to maintain service to tenants, avoiding any gaps, disruption or doubt at the point of transfer. This objective of achieving business continuity is shared by the Council and CDHG.

- 24 The Council and CDHG have continued to sustain this duty, both for the present and looking ahead to the future. Besides giving the preservation of service standards high priority, there has been a significant amount of communication to keep tenants informed of progress and prepare them for transfer day.

Principles and Terms of Transfer

Assets to Transfer

- 25 The transfer of assets and land is a major aspect of the proposal and in September 2014 the Council agreed a transparent and balanced approach to their transfer. The principles behind this work were based upon the principles and experiences evidenced within former district councils who have already pursued housing stock transfer in County Durham, for example Sedgefield Borough Homes (now livin), as well as best practice examples from other authorities.
- 26 Cabinet agreed that the land and assets listed below should transfer to the 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 Right to Buy disposals)
 - 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.
- 27 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 space located between main roads and dwellings in Council housing estates
 - Play areas and
 - Land beneath adopted highways.
- 28 Cabinet agreed that If at any point during negotiations a need arose to change or deviate from the principles set out at paragraphs 25 and 26 above the Corporate Director Regeneration and Economic Development and Corporate Director Resources, in consultation with the Portfolio Holder for Regeneration and Portfolio Holder for Finance had joint delegated authority to negotiate any changes in the best interests of the Council.
- 29 The Transfer promise to tenants includes delivery of 700 units of new housing within the first seven years of transfer. Officers have worked with the three providers to identify suitable sites in each of the provider areas which could support a new build programme.
- 30 Principally this land forms part of the Housing Revenue Account, to ensure it can be delivered alongside neighbourhood and environmental improvements, but also includes a small proportion of General Fund land which was acquired, in most circumstances, for housing purposes by the former district council's in the area.
- 31 A separate 'Development Agreement' will be executed with the County Durham Housing Group, to sit alongside the traditional transfer agreement, to ensure the Council retains appropriate control and authority over development of the land.

Sale Price of Stock to CDHG

- 32 The price that CDHG will pay for the housing it acquires through transfer is based on its Tenanted Market Value (TMV). This valuation of housing stock for stock transfer is entirely different to Open Market or Right to Buy values.
- 33 The Transfer Price of the dwellings and associated assets is largely determined by a prescribed formula set by Government and reflects the current value of future income/ expenditure streams of the assets over the next 30 years. In broad terms, the Transfer price is the amount of money which a registered provider purchasing the properties would be able to borrow to buy them and fulfil the Council's transfer promises and then repay the loan by the end of year 30 using all the annual net income streams.
- 34 The valuation submitted to Government as part of the process of gaining consent to transfer was £114m and this is the price that CDHG will pay to the Council for the stock.

- 35 The Council's housing debt at the point of transfer will be £244m. The capital receipt from the sale of the housing stock to CDHG must be used to repay any housing debt in the first instance which leaves a residual housing debt of £130m (£244m less £114m). DCLG has agreed to write off this remaining debt and any associated premiums associated with early repayment. This is subject to the transfer being completed by 31 March 2015.

Financial Implications for the General Fund

- 36 Previous reports have detailed the financial implications to the Council and its General Fund as a consequence of transferring stock to CDHG. To recap, the cost to the General Fund is £3.550m and this has been accommodated into the MTFP and annual budget for 2015/16.

Service Level Agreements

- 37 The Council and CDHG have focussed on minimising and smoothing operational changes at the point of transfer, both by facilitating changes required of CDHG and by formalising a number of service provisions between the Council and CDHG for continuation at transfer for varying periods of time. These Service Level Agreements (SLAs) are currently being finalised but will number approximately 20 in total and will be captured within the Transfer Agreement. The most significant of these in value are ground maintenance and ICT provision.
- 38 When Service Level Agreements expire CDHG will make business and service choices about future provision. Maintaining and improving services to tenants will be the predominant consideration. Value for money and market testing will feature in the processes. In some cases the Council will wish to tender for service renewals.
- 39 On a related point, there will be a number of contracts that the Council holds with external providers in connection with the management and maintenance of the housing stock and these contracts will be novated or assigned to the CDHG on transfer.

VAT Shelter

- 40 In normal circumstances, housing associations are not able to reclaim VAT on improvement works to dwellings. A VAT shelter is an arrangement whereby a housing association can reclaim VAT on future improvement works to the transferred stock. This scheme has been devised and implemented in nearly all stock transfers since 2003 and has approval from Her Majesty's Revenue and Customs (HMRC) and the Government.
- 41 A similar arrangement is being developed for this transfer and any savings arriving from the VAT Shelter will be shared equally on a 50/50 basis between the Council and CDHG.

TUPE implications for Durham County Council employees

- 42 Officers from Durham County Council, Dale and Valley Homes, and East Durham Homes and the County Durham Housing Group have worked 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.
- 43 It is anticipated that 198 Durham County Council employees will be affected by the transfer and therefore subject to the provisions of TUPE. Of that number, 114 employees will transfer to the CDHG parent, including 108 from Neighbourhood Services DLO, and 6 from strategic landlord and corporate support functions, 81 employees will transfer from the Council's housing management functions to the newly established Durham City Homes subsidiary, and 3 employees currently employed by DCC as Rent Officers, but seconded to East Durham Homes, will have their employment transferred to EDH as part of this exercise.
- 44 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 will continue to be the case under the proposed group arrangement. The exception to this will be in relation to any functions which may be delivered by the parent organisation rather than the individual landlords.
- 45 In relation to any service level agreements between the Council and CDHG that are not continued in future, then it is likely that the posts of employees largely or fully deployed on the work will be subjected to deferred TUPE provisions. The potential implications in this regards are being formally identified through the Transfer Agreement in conjunction with the relevant SLA documentation.

Pensions

- 46 Under provisions of TUPE regulations that govern the transfer of a business from one body to another, the pay, terms and conditions of transferred employees are protected – but participation in the Local Government Pension Scheme (LGPS) is not protected. Government guidance states that when public sector employees are transferred to a new employer in this way the new employer must either:-
- a) Provide a 'Broadly Comparable Pension Scheme' for the transferring employees to join; or
 - b) Apply to join the LGPS as an 'Admitted Body' via an Admission Agreement.

- 47 In line with practice in previous stock transfers in Durham, it has been agreed that the four organisations forming the CDHG will join the LGPS as 'Admitted Bodies' and that staff will continue to have access to that pension scheme on an 'open scheme' basis. Where necessary, guarantee bonds or guarantees from other Fund employers will be put in place.
- 48 The Council has a long term strategy for dealing with pension contributions and liabilities including any deficit. Pension deficit payments are made annually and the budgets currently set aside for this will be transferred and retained by the CDHG. This element of expenditure has been included in the CDHG business plan and is reflected in the sale price of the housing stock.
- 49 Admission agreements will be prepared for execution by all the relevant parties to allow the new employers to participate in the Pension Fund.

Warranties

- 50 The new landlord(s) will require the Council to provide warranties relating to certain matters affecting the property to be transferred. A warranty is, in effect, a declaration that certain types of information provided are correct.
- 51 Where the Council knows that, in a particular situation, there may be issues that should be drawn to the attention of the purchase, a disclosure should be made. Warranties generally fall into three categories: business warranties, title warranties and environmental warranties.
- 52 The Council is required to provide warranties to both CDHG and its Funders that there are no matters in connection with the land and property transferring that could cause CDHG or its Funders any loss. It is a normal commercial requirement in LSVT transfers for the Council to give separate Warranties to both the Purchaser CDHG and its Funders.
- 53 The Council will purchase insurance to give financial protection against certain environmental warranty claims.

Developing the Final Transfer Agreement

- 54 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 continuing dialogue and negotiations up until the day of transfer.
- 55 To address this, Cabinet agreed in September 2014 to provide delegated authority to the Corporate Director Regeneration and Economic Development and Corporate Director Resources, in consultation with the Portfolio Holder for Regeneration and Economic Development and the

Portfolio Holder for Resources, to negotiate the final transfer agreement in the best interests of the authority.

Formal Consents to Transfer

- 56 Transfer can only proceed with the formal consent of the Secretary of State for Communities and Local Government under the terms of sections 32-34 and 43 of the Housing Act 1985. A formal application to seek that consent must be submitted by the Council a minimum of four weeks prior to the proposed transfer date. In Durham's case that creates a deadline of 23 February 2015.
- 57 Additionally in Durham's case consent needs to be sought at the same time to transfer any remaining assets in the Housing Revenue Account (to General Fund accounts and authorities) and to close the Housing Revenue Account.
- 58 The application is accompanied by considerable documentation required to validate the final proposal and assure Government of the viability of the new organisations and the overall benefit of and support for the transfer.
- 59 Engagement with both the DCLG and HCA has been maintained by the Council, both throughout the lengthy options appraisal process prior to the DCLG granting consent for the Council to commence formal consultation with tenants, and onwards from the announcement of the tenants' ballot result in late August 2014.

Conclusions

- 60 The housing transfer project has made significant progress towards achieving completion before the end of March 2015.
- 61 Major changes and new organisations have been established for delivery of the commitments made in the Council's offer document upon which tenants favourably voted in August 2014.
- 62 Processes and delegations are in place to address the remaining administrative matters and negotiating points.

Recommendations

- 63 Cabinet is recommended to:
 - a) Note progress made in moving toward stock transfer by 23 March 2015.
 - b) Confirm approval to complete the transfer of ownership of the Council's housing stock to the new County Durham Housing Group Ltd (CDHG) and its component housing management organisations;

Dale & Valley Homes, Durham City Homes and East Durham Homes.

- c) Authorise the submission to the Secretary of State for Communities and Local Government the application for consent to transfer.
- d) 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 authorise completion of all agreements necessary to implement stock transfer.
- e) Agree to receive a further report detailing the final outcome after conclusion of the transfer.

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Appendix 1: Implications

Finance

The council is currently operating within a HRA self-financing debt cap of £245m. 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 has enabled the new group of landlords to secure firm offers 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 £3.55m, 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.

Cabinet authorised in September 2014 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 was made available by the Council, subject to a commercial rate of interest and will be repayable when the transfer completes.

Staffing

Transfer involves significant TUPE implications. The key facts and details of the extensive work undertaken to manage these are referenced in the report.

Risk

Equality and Diversity / Public Sector Equality Duty

n/a

Accommodation

There are no accommodation issues relating to the Councils' requirements resulting from the transfer.

Crime and Disorder

n/a

Human Rights

n/a

Consultation

The council has delivered 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 Issues

n/a

Legal Implications

Referenced in the body of the report