

Item 6

REPORT TO COUNCIL

27 February 2009

REPORT OF CHIEF EXECUTIVE

Portfolio:

Title: LARGE SCALE VOLUNTARY TRANSFER OF THE COUNCIL'S HOUSING STOCK TO SEDGEFIELD BOROUGH HOMES

1 SUMMARY

- 1.1 This report seeks Members' approval to the transfer of the Council's Housing Stock to Sedgefield Borough Homes. It gives a summary of the assets that will transfer, together with the overall financial consideration. The report also covers key elements of the transfer and other legal agreements.

2 RECOMMENDATIONS

- 1) That Sedgefield Borough Council agrees to the Large Scale Voluntary Transfer of its Housing and related assets to Sedgefield Borough Homes as set out in the Transfer Agreement and subject to the terms and conditions therein.
- 2) That the Chief Executive, in consultation with the leader of the Council, be delegated to make final adjustments to the Transfer Agreement up to the date of transfer.
- 3) That the Chief Executive consults with the Corporate Director of Resources of Durham County Council to ensure that he is appraised and satisfied with any final alterations to the details of the Transfer Agreement.

3 BACKGROUND

3.1 Options Appraisal

The Government in the Sustainable Communities Plan 2003 requires each housing stock owning Local Authority to undertake a formal 'option appraisal' to determine the preferred option to meet the investment needs to achieve the Decent Homes Standard, tenants' aspirations and to support wider plans for delivering sustainable communities.

Sedgefield Borough Council's options study considered:

- The outcome of financial modelling on the future investment needs of the housing stock set against available resources over the next 5 years
- The findings of the Council's Stock Options Appraisal Group
- The findings of a survey of all Council tenants

In simple terms, the outcome of the financial modelling concluded that whilst the Council could meet the minimum Decent Homes Standard, tenants' aspirations for their homes and estates would require an additional £65 million for the next 5 years.

The Stock Options Appraisal Group concluded that LSVT was the preferred option for the future ownership and management of the housing stock to deliver both tenants' aspirations and the Council's wider strategic objective.

The Council on 26 October 2007 (minute reference C.56/07 refers) approved Large Scale Voluntary Transfer (LSVT) to a standalone Registered Social Landlord (Housing Association to be called Sedgefield Borough Homes) as the preferred option for the future ownership and management of the Council's housing stock.

3.2 Consultation and the Ballot

On 24 April 2008 the Council formally accepted and approved the offer to be made to tenants, the 'Offer Document'. That document detailed to tenants the consequences of a majority 'Yes' vote and detailed all of the principles for consultation.

In July 2008 tenants were formally balloted as to whether they supported the Council's proposal to transfer the stock and associated assets to Sedgefield Borough Homes. The ballot was intended to show the Secretary of State the level of support from the Borough's tenants for the stock transfer.

The ballot of secure and introductory tenants commenced on 4 July and ended on 1 August 2008. The ballot was undertaken by the Electoral Reform Society (ERS), the results of which were advised to the chief Executive on Friday 1 August 2008. The outcome of the ballot was as follows:-

(a)	Percentage of tenants taking part in the vote (turnout)	66.7%
(b)	Percentage of tenants supporting the proposal	74.2%
(c)	Percentage of tenants not supporting the proposal	25.8%

On 6 August 2008 Members agreed that the Council proceeds with the transfer to Sedgefield Borough Homes subject to the Council's final approval of the valuation, the terms of the transfer contract and to the obtaining of all necessary statutory consents.

3.3 Section 24 Approval

Section 24 of the Local Government and Public Involvement Act 2007 directs authorities which will cease to exist on 1 April 2009 to seek approval to dispose of any land with a value greater than £100,000. On 25 April a report was considered by the County Council's Implementation Executive at which time they agreed that "The Large Scale Voluntary Transfer of housing and associated land held within Sedgefield Borough's Housing Revenue Account to a standalone Registered Social Landlord, subject to a successful tenants ballot and the Secretary of State's consent under Part s 32-34 and/or 43 of the Housing Act 1985".

3.4 Transfer Process

Officers and advisors from the Council and Sedgefield Borough Homes have met regularly to negotiate the terms of the transfer agreement. Whilst the principles and the terms are acceptable to both parties, the final details will be subject to adjustment up to the date of transfer.

4 **PRINCIPLES AND TERMS**

4.1 Assets to Transfer

Areas of land and assets including those currently managed by the Housing Revenue Account that will be transferred to Sedgefield Borough Homes are as follows:

- The housing stock and land within the curtilage of individual properties
- Garages and garage sites
- Allotment gardens
- Areas of land that would normally transfer as garden land under Right to Buys
- Areas between open plan dwellings
- Incidental areas of open space adjacent to housing
- Areas of land where housing has previously been demolished
- Unadopted car parking areas within council housing estates
- Shops and other leased land and property within council housing estates.

It should be noted that all land transferred to SBH, with the exception of previously developed land, will be protected under a 'Development Agreement' which will ensure that the land cannot be developed without the prior consent of this Council or its successor.

Areas of land and assets that will be retained by the Council include:-

- Areas of open space separated from houses by estate roads and footpaths
- Larger areas of open spaces located between main roads and dwellings
- Play areas
- Land beneath adopted highways
- All major areas of land with significant development value.

4.2 Tenanted Market Value

The price that SBH 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.

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 social landlord 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.

A final valuation will need to be submitted to Government as part of the process of gaining consent to transfer and whilst this is still subject to negotiation, will be in the order of £4.1 million.

4.3 Staffing Issues

Staff transferring to SBH are protected by TUPE arrangements. As well as approximately 140 staff transferring to the new organisation directly, a number of new posts have been created and are currently being advertised initially within the Council.

4.4 Pensions

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:

- provide a 'Broadly Comparable Pension Scheme' for the transferring employees to join; or
- apply to join the LGPS as an 'Admitted Body' via an Admission Agreement

It has been agreed that SBH will join the LGPS as an "Admitted Body" and that staff will continue to have access to that pension scheme for their future service, to ensure continuity of pension accrual.

The Council has a long term strategy for dealing with pension contributions and liabilities including any deficit. The pension fund for transferring staff is currently in deficit and this will need to be addressed. It is therefore considered prudent to utilise income arising from the VAT shelter to cover this cost.

4.5 VAT Shelter

In normal circumstances, housing associations are not able to reclaim VAT on improvement works to dwellings. A VAT shelter is an arrangement whereby SBH 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.

On the basis of **£230m** of improvement works, an estimated **£40m** of VAT will be recoverable over the next 15 years. The first call on these receipts is to cover the pension deficit of transferring staff (the VAT Shelter will therefore be 'top sliced' to take account of the cost estimated to be around **£7m**), and thereafter the VAT savings will be shared 45% to the Council and 55% to SBH – an estimated total after meeting the pension fund deficit of almost **£15m** for the Council.

4.6 The Preserved Right to Buy

Local Authority tenants who change landlord to a registered social landlord, such as SBH, as a result of stock transfer retain their statutory right to buy their home at a discount.

It is usual for an agreement to be made between the Council and the RSL which entitles the Council to a financial settlement from the RSL, arising from the sale of each home where the tenant had a 'preserved' right to buy entitlement.

The agreement is structured so that the impact on SBH's business plan of losing rental income is neutral. These figures are agreed in advance and included in the transfer agreement.

The negotiated position with SBH is that RTB sales proceeds after compensating SBH for loss of income and administration costs are to be split with 75% going to the Council and 25% going to SBH. This agreement covers a 15 year period.

An evaluation of the financial impact shows that the Council is expected to receive around **£19m** over a 15 period.

4.7 Housing Debt

Over the years the Council has borrowed money to help to pay for housing and has accrued a Housing Debt.

At the start of the year there was a gap of £5m in the Council's actual debt position in comparison to Government assumed HRA debt. Following advice from its Treasury Consultants the Council took out a £5m PWLB loan in October 2008 (reported and approved by Council on 21 November 2008) – taking the total debt position to £23.3m.

Where the net capital receipt (gross minus set-up costs) is **greater** than the Council's housing attributable debt it is the local authority's responsibility to ensure it makes provision for the repayment of this debt.

However, if the net capital receipt from the sale of local authority housing and associated assets is **less** than the housing debt, the authority will have **overhanging debt**, and be eligible for grant subsidy from the Government.

In this proposed transfer, the Council qualifies for overhanging debt grant and therefore the HRA debt will be repaid by

- A one-off payment from Central Government estimated to be around £26.2m (including all premiums payable on the redemption of debt).

4.8 Service Level Agreements

In common with most housing transfers a number of Service Level Agreements have been negotiated to ensure that services are uninterrupted following transfer. Examples include the provision of office accommodation, cash collection, grounds maintenance etc.

5 **FORMAL DOCUMENTS**

The formal documentation relating to the transfer are extensive and include the following important elements

5.1 Transfer Agreement

This is the main agreement between the council and SBH. It transfers the principle assets and ancillary items such as vehicles, computers, equipment, desks, chairs etc.

It also contains detailed provisions relating to the transfer of staff to SBH transfer of rent arrears and existing third party contracts that will be assigned to SBH.

5.2 Warranties

The new landlord 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.

Where the Council knows that, in a particular situation, there may be issues that should be drawn to the attention of the purchaser, a disclosure should be made.

Warranties generally fall into three categories: business warranties, title warranties and environmental warranties.

The Council is required to provide warranties to both SBH and its Funders that there are no matters in connection with the land and property transferring that could cause SBH 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 SBH and its Funders.

The Council will purchase insurance to give financial protection against certain environmental warranty claims and this has been built into the set up costs.

5.3 Deed of Covenant

(i) By the Company (SBH)

In this document the company covenants to fulfil the promises made to tenants in the Consultation Document. The potential remedies to the Council should SBH breach the Deed of Covenant are an action in damages (if loss can be proved) or an action in specific performance requiring the Company to remedy the breach.

(ii) By the Council

In this document the Council covenant to comply with the Housing Benefit Regulations.

6 RESOURCE IMPLICATIONS

A full and detailed breakdown of the financial implications of transfer has been undertaken and the following summarises the key financial details:-

Under the agreed proposals **Sedgefield Borough Homes** would have around £100 million to spend on the housing stock of around 8,500 properties in the first 5 years. This is approximately **£65 million** more than the Council would have available over the same period.

Over the first 5 years, SBH's planned programme of works includes budgets of:

- £22.3 million to improve around 5,500 kitchens
- £10.8 million to upgrade around 5,400 bathrooms
- £2.7 million to install up to 5,400 over-bath showers
- £1.25 million to install external lights to properties and entrances to flats – enough for around 5,000 security lights
- £3.2 million for new fencing, gates and boundary walks
- £6.5 million for new external doors, enough for around 16,000 doors
- £6 million for new internal doors, around 75,000 doors
- £6.6 million set aside to improve sheltered housing as part of the overall investment promises

The Council will also benefit considerably from the stock transfer:

- Long term debt of just over **£23m** will be fully repaid making the Council debt free
- Included in the above is General Fund debt of **£9m** which when repaid will save £0.5m in interest annually
- The Council will benefit from an extra **£5m** in cash balances as a result of earlier decision to 'top up' loan debt.
- **£19.m** in receipts arising from a share of future house sales over 15 years
- **£7m** Pension Fund Deficit repaid
- **£15m** in receipts arising from VAT savings over 15 years
- HRA reserves of around **£1.5m** transferrable to General Fund on closure of HRA

Overall the net revenue position on the General Fund will improve by around £750,000 as a result of transfer.

These financial arrangements taken together with the other conditions of the stock transfer are very beneficial because:

- **The aspirations of housing tenants for significant additional investment in the stock can be secured; and**
- **Significant improvements to the stock and services will be delivered; and**
- **It also provides good value for the Council's tax-payers**

7 OTHER MATERIAL CONSIDERATIONS

7.1 Consultation

The LSVT process has been the subject of significant and detailed consultation with tenants, leaseholders and other partners and stakeholders. In addition, in

accordance with the Local Government Act 1972 Section 123, 1, (2a) the public open space that is to transfer as part of the agreement has been advertised in the local press. A summary of the feedback will be provided for members at the meeting.

- 7.2 The County Council has also been fully consulted and their Corporate Director of Resources has confirmed that he is satisfied with the principles and terms of transfer as summarised in the report. He will be further consulted on any final adjustments to the Transfer Agreement.

7.3 Links to Corporate Objectives / Values

The transfer of Sedgefield's Housing staff will contribute to our corporate aim to Secure Quality Sustainable Housing.

7.4 Legal Implications

The Funders will require the Solicitor to the Council to give an opinion to confirm that the Council has complied with all its internal rules and standing orders and therefore has the power to enter into the documents on completion. This opinion creates a separate liability for the Council under the documents to the Funders just in case some administrative error has been made. It does not create any personal liability.

7.5 Risk Management

Both the Council and Sedgefield Borough Homes have undertaken a rigorous and robust Risk Management Assessment given the very tight timescales to which we are working and the additional complication of not completing transfer by vesting day. A key date in the timescale is approval by Council at today's meeting from which all other approvals will flow.

7.6 Health and Safety Implications

No additional implications have been identified.

7.7 Sustainability

The provision of additional funding for Social Housing in the Borough and the Environment will significantly add to the sustainability of our housing estates and the communities that live there.

7.8 Equality and Diversity

No additional implications

7.9 Social Inclusion

No additional implications

7.10 Procurement

No additional implications

8 OVERVIEW AND SCRUTINY IMPLICATIONS

8.1 No additional implications

Contact Officers: B Allen
Telephone No: (01388) 816166 ext 4305
Email Address: ballen@sedgefield.gov.uk
Ward(s): All

Key Decision Validation:

Background Papers

Letter to Brian Allen, Chief Executive, Sedgefield Borough Council from CLG 15 April

Report to Sedgefield Borough Council 26 October 2007 Updating the Stock Options Appraisal Study

Report to Sedgefield Borough Council Cabinet 13 March 2008 Transfer of Assets Agreement of Principles

Report to Sedgefield Borough Cabinet 26 April 2008 Formal Offer Document

Stock Transfer Financial Appraisal February 2009

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer's representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>

This page is intentionally left blank