

Cabinet

16 July 2014 HOUSING STOCK TRANSFER: OUTCOMES OF FORMAL CONSULTATION - STAGE 1



Key Decision R&ED/07/14

Report of Corporate Management Team

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Purpose of the Report

- 1 To consider the outcome of the first stage of formal consultation on the Council's proposal to transfer ownership and management of its homes to its existing housing management organisations via the County Durham Housing Group Limited.

Background

- 2 Under Schedule 3A of the Housing Act 1985, the Council is required to consider representations made by its tenants during Stage 1 of formal consultation on its proposal to transfer ownership and management of its homes. The Schedule requires the Council to use the outcomes of the first stage of consultation to decide if any changes are required to the offers it has made to tenants as part of the transfer proposal; and whether to move to a ballot of all secure and introductory tenants.
- 3 The Council applied to the Government for agreement and financial support to transfer ownership of its homes to a new group structure of its existing housing management organisations in December 2012.
- 4 The Council's application to transfer its homes was approved by the Department for Communities and Local Government (DCLG) in March 2014. Following this approval, the Homes and Communities Agency (HCA) confirmed that the Council was able to proceed with formal consultation with all of its secure and introductory tenants on its transfer proposal throughout the summer of 2014.

- 5 Statutory guidance outlining the process the Council should follow to consult with all of its tenants on its transfer proposal is provided in the Government's publication "Statutory Guidance: The Housing Act 1985 - Schedule 3A". The guidance sets out a formal two stage consultation process that the Council must demonstrate it has followed if the Secretary of State is to grant final consent to the transfer by the end of March 2015.
- 6 The key requirements of consultation are that tenants should be fully involved in all plans and decision making over the future ownership of their homes. The Council must provide all affected tenants with sufficient information for each to express a fully informed opinion about the proposal in a statutory ballot on the proposal.
- 7 During the first stage of the consultation, the Council must serve a notice on its secure tenants and those with an introductory tenancy setting out:
 - The details of the transfer proposal including the identity of the prospective new landlord.
 - The likely consequences of the transfer for the tenants.
 - The effect of the provisions of Schedule 3A (i.e. the consultation requirements and the period over which tenants can make their representations to the Council).
 - The provisions relevant to the Preserved Right to Buy.
- 8 The notice is usually referred to as the Stage 1 notice of formal consultation or the Offer Document. The notice and Offer Document must invite representations within a reasonable period (usually 28 days). Once the representation period has ended, the Council must consider any representations received and may then wish to revise its transfer proposals and offers accordingly.
- 9 Durham County Council's Offer Document was prepared in partnership with a Customer Working Group (a group of thirty tenants from across the County); and the boards of the proposed new Group of landlords including the County Durham Housing Group Limited, Dale & Valley Homes, Durham City Homes and East Durham Homes. Staff members and other key partners were also included in the development of the Offer Document. The Offer Document was endorsed by all proposed Boards and the Homes and Communities Agency (HCA) and was finally agreed by Cabinet at its meeting on the 7 May 2014.

Consultation Process and Activities

- 10 The Offer Document was the central document in a package of information provided to all tenants that included a covering letter from the Council's Chief Executive (providing notice of the beginning of Stage 1 of the formal consultation); an easy read guide to the Offer Document; and a DVD (one per household).

- 11 The Offer Document pack was hand delivered to all secure and introductory tenants between the 2 June 2014 and the 6 June 2014 by Durham County Council staff and the staff of Dale & Valley Homes and East Durham Homes. Over 15,500 tenants were spoken to by staff members and were handed the Offer Document pack with an explanation of its contents and the importance of reading it.
- 12 There are currently no statutory requirements to consult with leaseholders on the transfer proposal but the statutory guidance states that it is good practice to do so and that they should be kept informed of progress throughout formal consultation. The HCA also asked that the Council advise its leaseholders that its application to transfer ownership of its homes received approval from the Department for Communities and Local Government (DCLG) on the condition that service charges for leaseholders for the capital works enabled by the transfer are capped over any five year period at £10,000.
- 13 Packs of information were also posted to the Council's 193 leaseholders over the same period, with a covering letter setting out the key consequences of the proposed transfer for leaseholders. It is important to note that should Cabinet decide to proceed to a ballot, leaseholders would not participate in the ballot.
- 14 Copies of the Offer Document were also provided to all members of the Council and to the county's MPs.
- 15 The Offer Document invited representations from tenants and leaseholders over a period of 28 days. The Offer Document pack included a free to post response card which allowed tenants to express their views. The pack posted to leaseholders included a tear off sheet for leaseholders to express their views. Tenants and leaseholders were also able to express their views by e-mail or by phone. The representation period ended at midday on Monday 7 July 2014.
- 16 The Council received 1374 responses from tenants and 6 responses from leaseholders. 540 responses included handwritten comments from tenants and 6 handwritten responses were received from leaseholders that ranged from questions about the transfer proposal to statements that the provision of a comment is "Not Applicable" (N/A) or "no comment".
- 17 The responses indicated that:
 - 1196 respondents (87.05%) were generally supportive of the transfer proposal.
 - 150 respondents (10.92%) were not generally supportive of the transfer proposal.
 - 23 respondents (1.67%) were unsure and felt they need more information on the proposal.
 - 3 respondents (0.22%) were generally supportive and felt they need more information on the proposal.

- 2 respondents (0.15%) were not generally supportive and felt they need more information on the proposal.
- 18 The individual responses and comments received from tenants have been deposited in the Members Library for consideration. Specific names and addresses have been removed. All respondents who have commented and provided contact details or requested further information have been contacted by the Council's Housing Directions Team or officers from Dale & Valley Homes, Durham City Homes and East Durham Homes.
- 19 The response to the first stage of consultation has been positive, when compared to response rates of other stock transfer consultation processes undertaken. For example in 2012 Rochdale Metropolitan Borough Council consulted with nearly 16,000 tenants during the first stage of formal consultation on its transfer proposal and achieved a rate of 395 responses to the Offer Document (less than 2.5% of the tenants eligible to vote).
- 20 However, the number of responses received from tenants in County Durham, reflects less than 10% of the 21,908 tenants eligible to vote in the ballot on the proposal and who received a copy of the Offer Document pack. It is expected that more tenants will take part in the ballot. The number of representations received as part of the first stage of consultation, and the support of respondents should not be regarded as a clear indication of the outcome of the ballot.
- 21 The delivery of the Offer Document was followed up by a further visit to tenants in the week commencing 16th June 2014 by Durham County Council staff and the staff of Dale & Valley Homes and East Durham Homes. The visit was intended to determine whether tenants had any queries or concerns about the transfer proposal that could be addressed; discuss the transfer proposal in more detail; and sign post the availability of Open Communities (Independent Tenant Adviser) and various opportunities to meet with other tenants to discuss the proposed transfer.
- 22 A series of drop in sessions were held across the county in the week commencing 23 June 2014. Over 60 tenants attended events in Bishop Auckland, Crook, Peterlee and Durham City to find out more about the Council's transfer proposal.
- 23 A freephone number was also provided to tenants for them to access independent and impartial advice from Open Communities (Independent Tenant Adviser). The freephone number will continue to be available for the duration of the consultation process to support tenants throughout and answer any queries they may have about the implications of the transfer.
- 24 Open Communities has provided the Council with its assessment of the first stage of the formal consultation process. The report is included at Appendix 2. Open Communities are happy to confirm that the consultation and participation programme the Council has provided on its transfer proposal has been comprehensive, thorough and appropriate. The Customer Working

Group has been comprehensively engaged throughout. Customer Working Group members have been proactive in their involvement throughout the process and have ensured the views of the wider tenant network have been clearly put forward. It has been clear that Customer Working Group involvement has been focussed on what is best for the tenants of Durham as a whole.

- 25 The comments, suggestions and views expressed by tenants during the first stage of the consultation indicate that the Council's transfer proposal and the offers it makes in the Offer Document should not be changed or amended.
- 26 The undertaking of Stage 1 of the formal consultation on the stock transfer proposal meets the requirements of the "Statutory Guidance: Requirements as to Consultation" and legal provisions at this stage in the consultation process.
- 27 Should Cabinet be satisfied with the consultation process and the outcomes of the first stage of consultation, the Council can proceed to Stage 2 whereby the Council advises its tenants that it has considered their comments and has decided to proceed to Stage 2 of the consultation process and ballot.

Formal Consultation: Stage 2 Notice

- 28 If Cabinet decide to proceed to the second stage of the consultation and the ballot paragraph 3(3) of Schedule 3A Housing Act 1985 requires the Council to serve a further written notice. Guidance states that this is best in the form of a letter. The letter should:
 - Describe any significant changes to the transfer proposal.
 - Explain that objections may be made to the Secretary of State within a period of at least 28 days.
 - Draw attention to the fact that the Secretary of State shall not give consent to a transfer if the result of the statutory ballot shows that a majority of tenants voting are opposed.
 - Explain that the ballot will follow shortly.
- 29 Subject to the Cabinet's decision, it is expected that after consultation and agreement with the HCA on the process the ballot would start in the summer of 2014. The ballot would be managed separately from the Council by Electoral Reform Services (ERS).
- 30 Cabinet may decide not to proceed with the ballot of tenants. Should this be the decision Cabinet takes, all expenditure incurred so far on the transfer project would fall onto the Housing Revenue Account and the General Fund.
- 31 The Council has selected an alternative option for the future of its homes should transfer not go ahead, which is the establishment of a single Arms Length Management Organisation. If the Council was to decide not to proceed with the ballot of its tenants or if a majority of tenants voting in the ballot were

to vote against the proposal the Council would remain the landlord and would continue to face restrictions on its ability to borrow.

- 32 If Cabinet decide to proceed with the ballot and the ballot is undertaken 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. If a majority of tenants who vote in the ballot, vote in support of the transfer it would mean the transfer could progress and the Council would inform tenants of how they intend to proceed. Conversely, if a majority of tenants who vote in the ballot vote against the transfer proposal, it would mean that transfer could not proceed and the Council would need to make this clear to tenants in its proposed next steps.

Conclusion

- 33 Under Schedule 3A of the Housing Act 1985 Cabinet is required to consider the representations made by Council tenants during the first stage of consultation on its transfer proposal. Cabinet should review the outcomes of consultation (which have been deposited in the Members Library) and decide if any changes are required to the offers it has made to tenants and whether to move to a ballot.
- 34 The Council has developed its transfer proposals in partnership with tenants, staff, Board members, Councillors and other key partners. All key groups endorsed the commitments made to the improvement of homes, neighbourhoods and services set out in the Offer Document.
- 35 The first stage of formal consultation began in early June 2014 when the Offer Document and a package of supporting information (including a DVD, an easy read guide and a covering letter) were hand delivered to tenants by staff members. Tenants then had a 28 day period to make their representations to the Council on the transfer proposal and the offers made.
- 36 The Council's 193 leaseholders were also provided with an Offer Document and a pack of information, although the Council has no obligation to consult with leaseholders, but recognises it is good practice to keep leaseholders informed of progress on the proposal. Leaseholders would not participate in the ballot.
- 37 The HCA also asked the Council to ensure that leaseholders are made aware of a condition on the availability of Government financial support for the transfer which requires that service charges for leaseholders for the capital works enabled by the transfer are capped over any five year period at £10,000. Leaseholders also had a 28 day representation period during which they could make their views known to the Council. Six leaseholders acknowledged receipt of the information and provided comments on the proposal.
- 38 Over a thousand (1374) responses were received from tenants with over 87% of respondents stating that they were in support of the transfer proposal. The comments, suggestions and views expressed by tenants during the first stage of the consultation indicate that the Council's transfer proposal and the offers

it makes in the Offer Document should not be changed or amended. The number of representations and support of respondents should not be regarded as a clear indication of the potential outcome of the ballot.

39 The formal consultation process followed by the Council meets the criteria set out in Schedule 3A Housing Act 1985 and has been endorsed by Open Communities (Independent Tenant Adviser).

40 The Council is in a position to proceed to the second stage (Stage 2) of formal consultation on its transfer proposal and issue a Stage 2 Notice to secure and introductory tenants, followed by a ballot in summer 2014, which would be managed by Electoral Reform Services.

Recommendations

It is recommended that Cabinet:

- I. Consider the representations made by tenants and leaseholders on the transfer proposal and Offer Document during Stage 1 of formal consultation.
- II. Agree that in the light of the representations received, no changes should be made to the offers made in the Offer Document.
- III. Agree to proceed to Stage 2 of the formal consultation process and issue a Stage 2 Notice to secure and introductory tenants and proceed to a ballot in summer 2014.
- IV. Provide delegated authority to the Corporate Director of Regeneration and Economic Development, the Corporate Director for Resources in consultation with the Cabinet Portfolio Holder for Regeneration and the Cabinet Portfolio Holder for Finance to take the actions necessary following the ballot result to issue any notices to tenants as required.

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Appendix 1: Implications

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 next stage in 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 group of landlords. The actual cost of undertaking the ballot is £40,000. This is already reflected in the estimates of costs for the Council in the pre ballot stage of the project. Should the Council not proceed with the ballot process, it would incur the loss of the costs invested in the project to date. This would affect both the General Fund and the Housing Revenue Account.

Staffing

Detailed work is ongoing to assess 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.

Risk

The transfer of the function to a new housing group needs to be planned and managed effectively otherwise there is a risk that the objectives and benefits of transferring the service are not achieved.

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

None

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 on the Council's transfer proposal. If the Council decides to move to the second stage of consultation all 21,908 tenants would be asked to vote on the proposal at a confidential ballot.

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 process for formal consultation on the transfer proposal is set out in Schedule 3A of the Housing Act 1985. The Council must undertake a ballot of all its secure and introductory tenants if the transfer is to proceed. The transfer of homes can only go ahead if a majority of tenants voting in the ballot vote in favour of the proposal.

If a majority of tenants voting in the ballot vote in favour of the proposal the Council's Legal Services will work closely with the Council's externally appointed solicitors, 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.

The Council continues to undertake a large-scale conveyancing exercise, documenting the Council's title to its housing stock and mapping the assets which are likely to transfer. If the transfer goes ahead, several issues for consideration would need to be referred to members and before the transfer could take place there would be a detailed report on these issues would be provided to Cabinet.