

DURHAM COUNTY COUNCIL - LSVT

PLAIN ENGLISH SUMMARY OF THE TRANSFER AGREEMENT

1 INTRODUCTION

1.1 The Transfer Agreement is the contract which sets out the rights, responsibilities, covenants and requirements of Durham County Council (the “**Council**”), and County Durham Housing Group (“**CDHG**”). It also contains all the necessary arrangements to enable CDHG to receive and manage the properties and the Council to enforce all the promises made to tenants during the consultation period.

2 THE TRANSFER AGREEMENT

2.1 The Transfer Agreement takes the form of a contract for sale with numerous schedules and annexes containing supporting information.

2.2 The agreement contains:

- 2.2.1 covenants by the Council and CDHG in favour of each other;
- 2.2.2 an assignment of Rent Arrears which will be entered into within 28 days of the completion of the transfer;
- 2.2.3 provisions dealing with the ongoing contractual obligations of the Council with third parties, which are relevant to the stock being transferred;
- 2.2.4 employment provisions in respect of Council staff transferring to CDHG and also in respect of the staff of the two arm's length management organisations who will become CDHG staff on completion of the transfer. These include warranties that the Council has given CDHG all material facts and matters relating to the staff and that there are no employment related claims arising from the transfer;
- 2.2.5 provisions for the actual transfer of the tenanted dwellings and associated land;
- 2.2.6 warranties by the Council in respect of the undertaking and property being transferred;
- 2.2.7 provisions for both parties to comply with the provisions of the Data Protection Act 1998; and
- 2.2.8 all other necessary provisions to transfer the housing function to CDHG as a going concern.

- 2.3 The clauses in the agreement are as follows:
- 2.3.1 Clause 1: contains the definitions used throughout the agreement.
 - 2.3.2 Clause 2: sets out the Council agreeing to sell and CDHG agreeing to purchase the property and assets comprised in the stock transfer.
 - 2.3.3 Clause 3: sets out what the property is sold subject to, and has the benefit of. This includes incumbrances, tenancies, rights, leases, wayleaves, and the development agreement.
 - 2.3.4 Clause 4: sets out where the completion will take place and when, the payment provisions and adjustment to the price for works under the development agreement.
 - 2.3.5 Clause 5: sets out the covenants for title whereby the Council sells with full title guarantee subject to the matters in clause 3.
 - 2.3.6 Clause 6: refers to the Law Society's standard conditions of sale used on every day property transactions, changed to reflect the circumstances of this transfer.
 - 2.3.7 Clause 7: sets out what happens with rent arrears. On completion, the Council will transfer over to CDHG the rent and service charge arrears due from existing and former tenants and leaseholders which will allow CDHG to continue to take action against the relevant tenants if required. CDHG will pay an agreed sum for these arrears in two stage payments.
 - 2.3.8 Clause 8: sets out that CDHG and the Council will enter into a VAT sharing arrangement; and a disposals clawback arrangement.
 - 2.3.9 Clause 9: is an apportionment clause. The Council is responsible for payment for services up to 00.01 hours on the completion date and CDHG will be responsible for payment for services from 00.01 hours on the completion date.
 - 2.3.10 Clause 10: deals with what will happen to all the contracts the Council have which relate to the property being transferred to CDHG.
 - 2.3.11 Clause 11: deals with damage to the property. If any properties are destroyed or damaged before completion as a result of an insured risk, then the Council will reimburse CDHG for the reasonable cost of their reinstatement. After the completion date, CDHG will insure the property for its full reinstatement cost against fire and all other usual perils.

- 2.3.12 Clause 12: deals with the staff transferring to CDHG. From the completion date, CDHG will be the employer of the transferring staff by virtue of the TUPE regulations. There are also provisions for the transfer of staff to CDHG following the expiry of the (short term) service level agreements.
- 2.3.13 Clause 13: deals with Pensions. CDHG will be admitted to the Durham County Pension Fund of the Local Government Pension Scheme so that the staff's pension rights will continue. The Council is giving the pension fund a guarantee in respect of CDHG's obligations to the pension fund.
- 2.3.14 Clause 14: sets out the Council's responsibilities. The Council will supply CDHG with all management records and accounts relating to the property and tenancies not later than 28 days from the completion date, and transfer all performance bonds, guarantees and indemnities relating to the property (if any) within three months of the completion date. This clause also covers the Council agreeing to carry out the VAT Scheme qualifying works at its own expense.
- 2.3.15 Clause 15: sets out CDHG's responsibilities. These include obligations to comply with the offer document promises.
- 2.3.16 Clause 16: sets out the obligations of CDHG in the event of civil emergency.
- 2.3.17 Clause 17: sets out the obligations on the Council and CDHG for disrepair claims made pre and post transfer.
- 2.3.18 Clause 20: requires CDHG to repay the Section 25 Loan made to it by the Council.
- 2.3.19 Clause 32: confirms the two ACMO Management Agreements terminate on completing the transfer.
- 2.3.20 Clause 34: contains a provision giving the Council an option to buy back Numbers 49 and 50 Market Place, Bishop Auckland if and when CDHG get the occupying tenant to decant to another CDHG property. The Council needs these properties as part of their wider regeneration plans for Bishop Auckland Town Centre.
- 2.3.21 Clause 35: commits the Council to procure the adoption of the unadopted roads on the property being transferred to CDHG and for CDHG to contribute to the cost of bringing them up to adoptable standards.

The rest of the clauses, before we come to the schedules, are “housekeeping” clauses dealing with dispute resolution, service of notices, VAT and so on.

3 THE SCHEDULES

- 3.1 The first schedule: gives details of all property to be transferred to CDHG.
- 3.2 The second schedule: contains the nomination rights arrangements which will apply if the current choice based letting scheme is ever ended. The percentage of dwellings the Council will be able to nominate into is 75%.
- 3.3 The third schedule: contains details of the contracts affecting the property including those to be novated or assigned to CDHG and any retentions or guarantees that will be held by the Council.
- 3.4 The fourth schedule: contains details of the staff to transfer along with warranties and indemnities the Council will give CDHG in respect of them.
- 3.5 The fifth schedule: contains the Council’s covenants to CDHG.
- 3.6 The sixth schedule: sets out CDHG’s covenants to the Council. These include compliance with the offer document promises.
- 3.7 The seventh schedule: contains warranties by the Council to CDHG as regards the undertaking and property transferred.
- 3.8 The eighth schedule: contains the housing benefit service standards agreement.
- 3.9 The ninth schedule: lists any outstanding insurance claims as regards the property being transferred.
- 3.10 The tenth and eleventh schedules: contain the service level agreements between the Council and CDHG for matters such as IT and grounds maintenance.
- 3.11 The twelfth schedule: contains the form of deed of assignment of rent arrears.
- 3.12 The thirteenth schedule: is not used. .
- 3.13 The fourteenth schedule: contains a disposals clawback agreement enabling the Council to share in any "windfall" gains made by CDHG selling parts of the property for commercial gain.
- 3.14 The fifteenth schedule: contains the VAT sharing arrangement (a 50:50 share).
- 3.15 The sixteenth schedule: contains a list of pending RTBs

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