

## ***Report to the Cabinet***

***Report reference: C/025/2005-06.***

***Date of meeting: 11 July 2005***



**Epping Forest  
District Council**

**Portfolio: Housing.**

**Subject: Development of Small Council Housing Sites.**

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### **Recommendations:**

- (1) That, to assess whether Estuary Housing Association's contractor's build costs for the development of the Council's small housing sites are reasonable, a quantity surveyor be appointed with their fees met by Estuary Housing Association;**
- (2) That, subject to the quantity surveyor advising that the build costs are reasonable, the receipt of detailed planning permission and Estuary Housing Association bearing the commercial risks associated with the proposed market sales:
  - (a) That, in order to maximise the amount of affordable housing that can be provided on the eight Council sites that have outline planning permission and have previously been agreed by the Council for development, the £1m Social Housing Grant (SHG) included within the Housing Capital Programme be allocated to Estuary Housing Association;**
  - (b) That the numbers of properties developed across the eight development sites be increased from that previously agreed;**
  - (c) The currently proposed mix of properties be noted;**
  - (d) That, in order to maximise the total amount of affordable housing provided across the sites, some of the developed properties be sold on the open market, with the financial surpluses used to cross-subsidise the affordable housing provision;**
  - (e) That should there be any resultant surplus arising from the project, through higher sale proceeds or lower build costs, they be utilised by Estuary Housing Association to provide additional affordable home(s) for rent within District, including the possible tenure conversion of propert(ies) intended for sale within the project to affordable homes for rent; and**
  - (f) That, in order to maximise the total numbers of properties that can be provided as affordable housing for rent through the detailed planning process, the Head of Housing Services be given delegated authority to agree the final numbers, property mix and tenure of properties on each of the sites; and****
- (3) That, if the quantity surveyor advises that Estuary Housing Association's contractor's build costs are unreasonable, the Housing Portfolio Holder reports back to the Cabinet with a recommendation for an alternative proposal.**

## **Background:**

1. In February 2002, the former Executive Committee agreed in principle that eight small Council-owned sites throughout the District should be developed by a housing association to provide affordable housing, in partnership with the Council, and that outline planning permission should be sought for each of the sites. It was also agreed that the associated Council land should be leased to the housing association free, in return for the Council receiving nomination rights. The Executive Committee also allocated £1.8m Local Authority Social Housing Grant (LA SHG) to the project within the Council's Capital Programme.
2. These sites had been identified by the Head of Housing Services as under-utilised within the Council's estates (e.g. disused garage sites), for which the Head of Environmental Services had subsequently undertaken feasibility studies into their potential development for affordable housing. Following the successful receipt of outline planning permission, the Housing Portfolio Holder selected Estuary Housing Association to undertake the developments. This was before the Housing Corporation introduced its pilot Strategic Partnering Initiative, and before the Council introduced its Scheme of Preferred RSL Partners and Joint Commissioning. As a result of the Housing Corporation not selecting Estuary as one of its 71 strategic partners nationally, they were not eligible to become one of the Council's Preferred RSL Partners, which were recently selected by the Housing Portfolio Holder.
3. Due to the abolition of LA SHG by the Government, the Council withdrew the LA SHG funding from the Housing Capital Programme. As a result, Estuary Housing Association made a bid to the Housing Corporation to fund the schemes for the two-year period 2004/5-2005/6. However, this was not successful due, it is understood, to the comparatively high unit costs of the developments (because of their small scale nature and associated development constraints – e.g. the need to relocate an electricity sub station, provide a lift, and provide sewerage pumping stations) and to the number and total value of lower cost bids throughout the East of England Region. It is unlikely that, for the same reasons, the Housing Corporation would fund the developments in the next two-year allocation period (2006/7-2007/8).
4. At the meeting of the Cabinet on 15 November 2004, when considering the Council's new Capital Strategy and the priority to be given to the Key Capital Priority of "Meeting Housing Need", it was agreed that £1m should be re-instated within the Capital Programme for the provision of Social Housing Grant (SHG) to a housing association to provide affordable housing in the District. The thwarted small development sites project was highlighted as an appropriate scheme to utilise the funding, bearing in mind the successful receipt of outline planning permission and the currently poor use of the sites. The Housing Portfolio Holder was asked to report back to the Cabinet on how the additional funding should be allocated.

## **Estuary Housing Association's Proposed Approach:**

5. Following the Cabinet meeting in November 2004, Estuary worked with one of its contractors through a "design and build" approach to re-appraise the feasibility designs for each of the proposed development sites and, based on layouts produced by their contractor's architect, concluded that the number of properties that could be developed across the eight sites could, potentially, be significantly increased from that previously assessed. Accordingly, Estuary and their contractor consulted planning officers on their proposed increased numbers, who confirmed their acceptance in principle, but pointed out that each amended proposal would need to be the subject of a new planning application, the receipt of which would trigger public consultation and full consideration of the planning merits.
6. The following table lists the locations of all the development sites, together with the numbers of properties for which outline planning permission has been obtained (based on the Council's original assessment of maximum numbers), and the numbers

or properties currently proposed by Estuary and their contractor, based on more recent discussions with planning officers. As can be seen, they have been able to increase - in principle - the number of properties to be provided by 90%, from 30 to 57 properties:

<b>Site</b>	<b>Original no. of Properties</b>	<b>Estuary HA's Proposed</b>
Adjacent to Pyrlles Lane shops, Loughton – including provision of a lift to the Council's existing properties	4 X flats	9 X flats
Adjacent to 61 Homefield, Waltham Abbey	3 X houses	3 X houses
Rear of 42-48 (even) Hornbeam Rd, Buckhurst Hill	4 X flats	4 X flats
Rear of 2-56 (even) Acres Avenue, Shelley, Ongar	6 X houses 4 X bungs	6 X houses 9 X flats 7 X bungs
Adjacent to 28 Hillyfields, Loughton	3 x flats	3 X bungs
Opposite 33/37 Oakley Court, Loughton	2 X houses	4 X flats
Rear of 30-36 Poundfield Rd, Loughton	2 X bungs	3 X bungs
Adjacent to Oakfields, Loughton	2 X houses	9 X flats
<b>Total</b>	<b>30</b>	<b>57</b>

7. However, due to the high numbers of properties proposed, the amount of SHG that would be required to provide all the properties as affordable housing is higher than the £1m allocated within the Capital Programme. Therefore, Estuary has formulated a scheme that achieves the following objectives:
- To ensure that all of the sites are developed;
  - To maximise the numbers of properties that can be provided as affordable housing for rent;
  - To provide additional subsidy to that provided by the £1m SHG from the Council, to fund the funding shortfall; and
  - To not require any additional SHG from the Council.
8. The approach proposed by Estuary is that, once built, Estuary will sell some of the properties on the open market, and use the resultant profit/surplus to meet the funding shortfall for the affordable housing. Estuary have calculated that 18 properties would need to be sold, in order to generate a sufficient cross-subsidy to enable the 39 remaining properties to be provided as affordable housing, without the need to provide any additional SHG. In order to maximise the open market value of the sale properties and to retain the properties that have the greatest demand as affordable housing, Estuary have proposed that the following properties be sold:
- 9 bungalows from those proposed at Acres Avenue, Hillyfields, and/or Poundfield Road; and
  - All 9 houses at Homefield and Acres Avenue.
9. It should be noted that, if this approach is adopted, the number of properties (or the property mix) provided on some of the sites may have to change through the detailed planning process. If this happens, it could affect the required ratio of sale:affordable properties. Therefore, it is suggested that - under these circumstances - the Head of Housing Services be given delegated authority to vary the proposed numbers, mix and tenure (sale /affordable) across the sites as necessary, in order to meet the objectives set out in Paragraph 7 above.
10. It has been agreed with Estuary that, through the relevant legal agreements, they will take on the associated risk of the proposed approach; once the developments have received detailed planning permission and all the Council's land has been transferred to Estuary, they will not be able to vary the number or mix of the affordable housing, even if they are unable to obtain the anticipated market values for the sale properties.

Estuary has provided officers with a report on their development proposal, including details of estimated construction costs and estimated market values for the private properties. This has been reviewed by the Head of Finance, who is satisfied that the assumptions appear reasonable. However, the Head of Finance asked that a guarantee be obtained from Estuary covering how any surplus on the scheme, arising from higher sale proceeds or lower build costs, would be shared. In response, Estuary have agreed that any surplus arising will be re-invested in the form of grant towards the additional provision of affordable housing within the Epping Forest District.

#### **Consultation with the Leader of Council:**

11. In bringing this report to the Cabinet, the Housing Portfolio Holder has consulted the Leader of the Council, in his role as Finance and Performance Management Portfolio Holder, who has raised some concerns about the proposed approach. His concerns mainly centre around the fact that neither Estuary nor its partner contractor have been appointed through a competitive process and, as a result, the Council may not be obtaining best value for money.
12. These concerns were raised with Estuary, whose representatives met with the Leader of Council to explain the financial aspects of their proposal in more detail. In response to the concerns regarding value for money, Estuary have proposed that the Council appoints its own quantity surveyor, the costs of which would be met by Estuary, to independently evaluate the building costs of their proposals.
13. It should also be noted that the total cost of Estuary developing the proposed affordable housing is 15% less than the Housing Corporation would expect the development of affordable housing by a housing association to cost in Epping Forest (by reference to the Housing Corporation's "total cost indicators (TCIs)").
14. However, in the light of the Leader of Council's concerns, the remainder of this report sets out a range of other options for the Cabinet to consider, together with the main advantages and disadvantages of each one.

#### **Option 1 – Undertake a competition amongst housing associations:**

15. The Council could invite Estuary and the Council's four Preferred RSL Partners (or a selected number) to each submit their own development proposals for the eight sites. The submission that best maximised the sites and offered the lowest construction costs could be selected. The advantage of such an approach would be that the Council could have a choice of proposals, and would be able to demonstrate value for money through competition.
16. However, there are a number of drawbacks to such an approach:
  - Estuary was selected to work in partnership with the Council by the Housing Portfolio Holder. In response, they have spent a lot of time, effort and money progressing their proposals to this stage on the basis that they would undertake the developments. The Council has built up good working relationships with a number of housing associations over the years, including Estuary, which has led to mutual faith and trust. If the Council were to renege on its understanding to work with Estuary, after they had progressed their proposals to this advanced stage, and then undertake a competition amongst housing associations, the Council's reputation of being an effective enabler of affordable housing through good partnership working with housing associations could be affected. As a result, it is quite possible that housing associations would not be prepared to work with the Council on joint developments, unless the Council gave an undertaking to underwrite any aborted costs. (See Paragraph 18 below as an example).

- It is now rare for housing associations to be asked to compete for developments by local authorities, especially on such a small-scale developments where relatively detailed design proposals would need to be formulated by each association. There are a number of reasons for this:
  - Housing associations often take the same approach financially to developments, so there is often little financial difference between them. The main difference relates to the price agreed between the housing associations and their contractors.
  - Because of the amount of design work involved, the associated costs and the unfavourable odds of being successful, many housing associations are not interested in taking part in competitions for small developments. This option has been discussed informally with the Council's four Preferred RSL Partners, who have all said that they would be reluctant, and therefore unlikely, to work up detailed tender submissions for such small scale developments, for these reasons.
  - Local authorities and housing associations are now encouraged by the Government and the Housing Corporation to adopt a partnering approach towards the procurement of developments, in accordance with the Egan principles. This is one of the reasons why the Council has recently introduced its Joint Commissioning Scheme, whereby the Council works with just one selected Preferred RSL Partner on affordable housing developments.
- In view of the partnering approach advocated by the Government and the Housing Corporation, most larger housing associations now have strategic partnerships with selected contractors and do not undertake competitive tendering for the construction of individual schemes. Therefore, it is unlikely that any housing associations submitting proposals through a competition would, themselves, seek competitive tenders from contractors, especially in view of the limited time that would be available to submit their own tender submissions.
- The Council could not use the development proposals put forward by Estuary and their contractor, since they do not belong to the Council. Therefore, each association would have to start from scratch, with only the Council's own proposals (which have outline planning permission) provided as a guide.
- It is quite possible that any competition would not result in any better value for money being obtained, than that offered by Estuary.
- It is unlikely that the sites could be maximised much further in development terms, to that proposed by Estuary and their contractor. In any event, the main constraints to the development potential of each site are set by the Head of Planning Services, which would apply to any housing association.
- Each housing association would have to discuss their proposals for each site with the Council's planning officers, which would lead to duplication of planning officers' time.
- It is likely that each housing association would provide different proposed mixes of properties and ratios of market housing: affordable housing. Therefore, a transparent way of selection would need to be formulated.
- It would take time to prepare the tender documentation, invite tenders and appraise the tenders received. In the meantime, building costs for all parties involved are likely to increase.

## **Option 2 – Estuary to seek competitive tenders from contractors for the works:**

17. The Council could request that Estuary seeks competitive tenders for the works from a number of contractors. The benefit of such an approach would be that the Council and Estuary would be satisfied that the lowest possible price was being obtained for the construction works. Any resultant surpluses that may arise from such a competition, if sufficient, could be used to convert some of the required market housing into affordable housing.
18. This option has already been explored with Estuary. Although they have been advised by their own quantity surveyors that the build cost proposed by their currently selected contractor is lower than the average that would be obtained through tendering, they have confirmed that, if requested by the Council, they would undertake such an approach. However, they have pointed out that since housing associations have recently been classified as public bodies for the purposes of EU Procurement Rules, they would be required to follow the protracted EU procurement process. This would require an advertisement to be placed in the Official Journal of the European Union (OJEU), followed by specified notice and tendering timescales.
19. Estuary have advised that, if this approach was taken, they would incur additional costs - in excess of £30,000 - for the tendering exercise. They have said that, whilst they would be prepared to meet these additional cost themselves, they would only do so if they received an assurance from the Council that they were able to undertake the developments, irrespective of the outcome of the tender exercise.
20. However, Estuary have also pointed out that it would not be necessary to follow the EU Procurement Rules if they undertook the developments with their current contractor, since the contractor was selected prior to the EU Rules being extended to housing associations
21. There are some further drawbacks to this approach:
  - It would take time to advertise in the OJEU, comply with notice requirements, prepare the tender documentation, invite tenders and appraise the tenders received. In the meantime, building costs are likely to increase. Even if Estuary's currently selected contractor was successful with their tender, it is likely that the price already agreed would be higher for this reason.
  - Estuary could not tender the works on the basis of the current proposals, since they have been produced by Estuary's current contractor's architect (who would be one of the tenderers), unless their current contractor gave its express permission. Therefore, either Estuary would have to produce its own design, which would extend the tendering process (and therefore risk increased costs), or each contractor would be invited to provide proposals on a design and build basis.
  - If tenders were sought on a design and build basis:
    - Each contractor would have to discuss their proposals for each site with the Council's planning officers, which would again lead to duplication of planning officers' time.
    - As for Option 1, each contractor would provide different proposed mixes of properties and associated build costs. This would result in Estuary proposing different ratios of market housing : affordable housing for each contractors' proposal, so a transparent way of selection would need to be formulated.
    - Since the proposed property mixes would be different, a detailed

analysis would have to be undertaken to compare the different tendered build costs to ascertain the contractor that offered best value for money.

- What would the Council and Estuary do if one contractor proposed a design that was considered to be the best, but the proposed build costs were considered to be high?

### **Option 3 – Council develops the sites itself:**

22. There is no legal reason why the Council could not develop the sites itself, and then let the properties as Council properties. The Council would then receive the rental income (approximately £3,000 - £3,500 per property annum). However, the disadvantages are as follows:

- The build costs for Estuary's proposed scheme are around £5.4m, excluding fees (which if the Council undertook the development would be around 10%, totalling around £5.9m). Therefore, the Council would have to make budget provision within the Capital Programme for around £5m more than currently included, utilising usable capital receipts. This would mean that capital receipts would have to be taken away from other capital projects and/or that the Council would lose the investment income of unused capital receipts.
- If the Council tendered the construction works, all the issues set out under Option 2 above would apply.
- Although the Council would receive the rental income from the constructed properties, this income would be offset (as a guide) by an average of around £1,200 per property per annum, that would have to be paid to the Government, since the Council is in "negative" HRA subsidy (i.e the Council does not receive subsidy from the Government for its council housing, it must pay money to the Government).
- Although around £4m of the additional capital costs could be offset by selling some of the properties (in the same way as proposed by Estuary):
  - the capital receipts from these sales would not be received until the properties were built and sold, the investment income would be lost in the meantime.
  - 75% of the capital receipts (possibly around £3m) would have to be paid to the Government, through its pooling arrangements under its capital financing rules, which therefore does not benefit the Council or the District in any way.
  - the Council would have to take the commercial risk associated with the market housing sales. Although sales income may be more than estimated, it could also be less.

### **Option 4 – Sell the vacant development sites for a developer to build market housing:**

23. The Council could sell the sites to one of more developers at open market value, for the developer(s) to build market housing for sale. If this approach was adopted, it would be prudent to first seek and obtain revised outline permission for greater densities than currently granted on the sites (as proposed by Estuary), to increase the land value. The Council would receive a capital receipt for the land sale, possibly around £2.7m, of which 50% (£1.35m) could be retained by the Council to use as it wished. The remaining 50% would, in theory, be required to be passed on the Government and pooled. However, as long as the capital receipts were spent either on the provision of affordable housing (perhaps a grant to a housing association for

another affordable housing development) or on a regeneration project, then they too could be retained. The Council could use the £1m allocated for affordable housing on either another affordable housing scheme or another Council capital project.

24. However, the main disadvantage of this approach is that no affordable housing would be provided on the site, which is one of the Council's medium term priorities. The current difficulty is finding land for affordable housing developments, not so much funding them

**Option 5 – Transfer the sites (for free) to a developer, with a requirement that the developer provides all, or a proportion, as affordable housing:**

25. The Council could sell the sites on the open market to a private developer, through some form of tendering process, with a requirement that all, or a proportion, of the built accommodation is provided as affordable housing either for rent and/or as “low cost market housing” (i.e. providing a discount on the usual open market value). If rented affordable housing was provided, this approach would be similar to the proposed approach with Estuary, except the development would be undertaken and controlled by a private developer. The Council could provide the land free, and a £1m grant, in the same way. The developer offering the best value-for-money proposal may be able to build the properties at a lower price than Estuary and its selected contractor.
26. If “low cost market housing” was sought or offered, it is likely that the discount on the open market value that would be offered by the developer would be equivalent to the subsidy that was being provided to them by the Council, in the form of the free land and £1m grant. This is estimated, in total, at around £3.7m. For illustrative purposes only, if 57 properties were provided on the sites (as proposed by Estuary), the average discount on the open market value would therefore be around £66,000. Again for illustration only, the average sales price assumed by Estuary for the 18 properties that they propose to sell is £225,000, so the discount would be around 30% on the open market value. Instead of 18 out of the 57 properties being sold at full open market value, all 57 could be provided as low cost market housing.
27. However, the disadvantages of this approach are:
  - Most of the disadvantages set out under Option 2 above would apply, except the EU procurement rules would not apply.
  - Developers are generally not interested in owning and managing rented affordable housing. Therefore, in reality, if rented housing is to be provided by a developer, it is likely that they would work in partnership with a housing association to sell the properties on to. Therefore, the approach taken would be the same as currently proposed by Estuary, except the developer would take its development profit, which would not benefit the scheme, whereas Estuary is a not-for-profit organisation.
  - If low cost market housing was provided:
    - There are currently around 3,000 applicants on the Housing Register, which has more than doubled over the past three years. Many of these are in receipt of housing benefit. The last Housing Needs Survey (2003) established that 99% of new households forming in the next year have incomes below £35,000 p/a. Therefore, the majority of applicants on the Council's Housing Register would not be able to afford to access even discounted market housing. As a result, because low cost market housing would exclude so many people on the Housing Register, the affordable housing provided would not be targeted at those in most need, as defined by the Council's Allocations Scheme



- The monthly cost to applicants of occupying low cost market housing is significantly higher than for a rented housing association property.
- Crucially, the property loses its ability to be available to future occupiers as affordable housing, since the occupier can re-sell at full open market value.

**Option 6 – Estuary’s proposed approach:**

28. This option is the one proposed by Estuary, set out in Paragraphs 5-10 above. However, in order to confirm that value for money was being obtained, the Council would first accept Estuary’s offer to meet the costs of the Council appointing its own quantity surveyor to independently evaluate the building costs of their proposals. If the quantity surveyor advises that Estuary’s contractor’s build costs are reasonable (after considering the proposals for, and constraints of, each site), the Council would proceed with this approach - the next step being the seeking of detailed planning permission by Estuary.
29. However, if the quantity surveyor considers the build costs to be unreasonable, it is suggested that the Housing Portfolio Holder reports back to the Cabinet with a recommendation for an alternative proposal.

**The Housing Portfolio Holder’s view:**

30. Having considered all of the options set out in this report, the Housing Portfolio Holder is of the view that Option 6 is the most appropriate way forward.

**Statement in Support of Recommended Action:**

31. The proposed approach will maximise the amount of affordable housing that can be provided on the Council’s small development sites, without the need for any additional SHG, with the scheme only proceeding if the Council’s quantity surveyor confirms that value-for-money is being provided.

**Other consultation undertaken:**

32. In addition to the Leader of Council, in view of the potential impact on Planning Services that some of the options would have, the Portfolio Holder for Planning and Economic Development has also been consulted on this report. His views are as follows:

*"Given the Council's commitment to providing affordable housing, in particular on small under-utilised sites, it is important to find the most efficient and effective way of implementing its policies. This report suggests sensible ways forward that make better use of Officer time and Council resources. Naturally, detailed planning permissions will still be needed but expensive and time consuming multiple applications will be avoided. At the same time using our own Council QS to review the plans will ensure fair value for money. I welcome the Report "*

33. Local residents adjacent to all the development sites were consulted on the proposed developments at the time of seeking outline planning permission.

**Resource implications:**

**Budget provision:** £1m social housing grant.

**Personnel:** Nil.

**Land:** Transfer of land to the housing association, free of charge (already agreed).

**Council Plan/BVPP reference:** “Meeting Housing Needs”.

**Relevant statutory powers:** Housing Act 1985.

**Background papers:** Report from Estuary Housing Association on proposal.  
**Environmental/Human Rights Act/Crime and Disorder Act Implications:** Nil.  
**Key Decision Reference (if required):** None.