

Report to the Cabinet

Report of the Housing Scrutiny Panel ***(Chairman – Cllr S Murray)***



**Epping Forest
District Council**

Report reference: C-037-2011/12
Date of meeting: 5 December 2011

Portfolio: Housing.

Subject: Council House Building Programme

Responsible Officer: Alan Hall (01992 564004).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) That a housing association be appointed to provide a House Building Development Agency Service for the Council, including all development and project management services, and the provision of all professional building services, including (but not exclusively): architectural, employer's agency, quantity surveying, cost consulting, planning supervision, engineering and surveying, but excluding works construction;

(2) That the Housing Portfolio Holder be authorised to appoint a Development Agent:

(a) Following a competitive tender process using the EU OJEU Restricted Procedure procurement process;

(b) That has existing development partner status with the Homes and Communities Agency (HCA);

(c) Based on the most economically advantageous tender (in terms of price and quality) received from at least 5 housing associations, shortlisted through a Pre-Qualification Questionnaire (PQQ) process, in accordance with pre-determined evaluation criteria;

(d) After the Housing Portfolio Holder has previously approved the evaluation criteria to be used for both the PQQ Stage and Tender Stage, prior to the implementation of each stage (in accordance with procurement requirements);

(e) On the recommendation of a Selection Panel comprising the Housing Portfolio Holder, Chairman of the Housing Scrutiny Panel, Director of Housing and Asst. Director of Housing (Property); and

(f) For a four-year period, with options to extend the contract for three further individual years;

(3) That the Essex Procurement Hub be asked to undertake the EU procurement

process for the appointment of the Development Agent, on behalf of the Council;

(4) That a suitably experienced housing development consultant be appointed to undertake the appointment process for the Development Agent, in liaison with the Essex Procurement Hub, funded from within the existing resources of the HRA's Housing Feasibilities Budget;

(5) That, through the contract with the Development Agent, all the Development Agent's consultants be required to provide the Council with collateral warranties, as a safeguard to enable the Council to take legal action against a consultant direct if problems arise in the future due to negligence;

(6) That the evaluation of PQQs and tenders be undertaken by officers and the housing development consultant, in accordance with the pre-determined and approved evaluation criteria;

(7) That the Housing Portfolio Holder be authorised to agree any other aspects of the appointment process for the Development Agent, not covered by this report or recommendations/decisions;

(8) That, once the initial desktop development assessments of garage and other housing sites have been completed by officers, and the HRA Financial Plan agreed, reports be submitted to the Cabinet on a proposed Council House Building Development Programme, based on the completion of around 20 new affordable homes per annum, and seeking approval to undertake development appraisals and seek planning permission for specific sites;

(9) That, once the Cabinet has approved the House Building Programme, further reports be submitted to the Cabinet on the required budgetary provision for the Housing Capital Programme;

(10) That, in the meantime, appropriate capital provision for the House Building Programme be included within the Indicative HRA Financial Plan to be considered by the Cabinet at its meeting on 5th December 2011;

(11) That appropriate revenue provision be made within the Housing Revenue Account from 2012/13, to fund the associated revenue costs of the House Building Programme, including a budget for abortive fees for developments that do not proceed;

(12) That Affordable Rents (not Social Rents) be charged for the completed Council properties, in accordance with the Government's Affordable Rents Framework, with rent levels to be charged for individual properties agreed as part of development appraisals;

(13) That the Cabinet approves all financial and development appraisals, any borrowing requirements and the required Housing Capital Programme funding for proposed "development packages" by the Council on an individual basis;

(14) That such development packages be funded from the following sources (with full details to be set out in the development appraisals for individual schemes approved by the Cabinet), on the basis that the Council House Building Programme is self-funded, without any financial support from the General Fund:

(a) Housing Revenue Account (HRA) surpluses;

- (b) HCA funding (where possible);**
 - (c) S106 Agreement contributions from developers in lieu of on-site affordable housing provision;**
 - (d) Borrowing (if necessary);**
 - (e) Cross-subsidy from the sale of other development sites within the House Building Programme on the open market if necessary; and/or**
 - (f) Capital receipts from future Right to Buy sales, if the Government introduces its recently-announced policy to increase discounts under the Right to Buy, and replace each property sold with a new affordable home;**
- (15) That, once the Development Agent has been appointed, a Development Strategy be formulated setting out the proposed approach to planning and delivering the House Building Programme, for adoption by the Cabinet;**
- (16) That a new part-time Senior Housing Officer (Development) post (18 hours per week) be established once the Development Agent has been appointed; the post be job-evaluated; and appropriate budget provision be made within the Housing Revenue Account for 2012/13 once the salary grade has been determined;**
- (17) That, once appointed, the selected Development Agent seeks development partner status for the Council from the HCA, and completes the Pre-Qualification Questionnaire on behalf of the Council; and**
- (18) That the appointed Development Agent be required to procure contractors to construct the properties within the development packages on behalf of the Council, in accordance with the Council's Contract Standing Orders and EU procurement requirements (if necessary).**

Executive Summary:

The Cabinet has previously agreed in principle that the Council undertakes a modest Council House Building Programme, and asked us to consider the detailed issues of implementing the Programme, and to make recommendations to the Cabinet accordingly. We met on the 25 October 2011 to consider our proposed approach and the content and recommendations for this report to the Cabinet.

The Council has a number of difficult-to-let garage sites and other sites that could be developed to provide an estimated 120 homes over a 6-year period. Our proposed approach is to appoint an existing housing association, through a competitive tender process, to act as a Development Agent and provide all the required development and project management services - including the provision of all professional building services - rather than the Council employing its own professional team of staff. Development Appraisals for each of the identified sites would assess whether or not they have development potential, the costs and anticipated income.

We propose that rents charged for the new developments should be at the new "Affordable Rent" levels, up to 80% of market rent levels, but that the rent levels charged for individual properties should be agreed as part of development appraisals, which could result in rents of less than 80% being charged, dependent on the viability of the schemes and the affordability of the rents.

We understand that grant funding from the Homes and Communities Agency (HCA) may be available in the future, but we suggest that any shortfall in capital funding for developments should be met through the sale of some development sites on the open market, and that the Programme is self-funded, without any financial support from the General Fund.

We suggest that a Development Strategy should be adopted by the Cabinet in the future, setting out the proposed approach to the House Building Programme, and that the Cabinet should also approve the budgetary requirements for the Housing Capital Programme.

It is currently estimated that capital funding of around £2.5m per annum would be required for the construction of 20 properties each year, and that a Programme of 120 properties over 6 years would cost around £16m (including provision for inflation and additional costs).

We have assessed that a new part-time post would be required in due course, funded from the HRA, to resource the Council's responsibility for the House Building Programme, for which some of the costs could be capitalised. A start on site for the first phase of the Programme is unlikely to take place until 2014, with completion in late 2014/15 – although we feel that this does have some benefits in terms the Council's ability to fund the Programme, and the possibility of obtaining grant from the HCA through any future National Housing Programme the Government may implement from 2015.

Reasons for Proposed Decision:

The Cabinet has agreed in principle that the Council undertakes a modest Council House Building Programme; it is now necessary to agree the proposed approach to be taken. Taking account of all the current circumstances, the proposed approach appears to offer the most effective and efficient way of developing a Council House Building Programme.

Other Options for Action:

In view of the wide coverage of the report, there are a myriad of alternative options that we feel could be taken, and the list of alternative options is not mutually exclusive. However, we feel the following appear to be the main alternative options:

- (a) Not to undertake a Council House Building Programme, and to either not develop the Council's potential housing sites, or transfer them to one of the Council's Preferred Housing Association Partners (or another housing association) to develop, own, manage and receive the rental income.
- (b) Undertake the House Building Programme in-house, through the appointment of an in-house development and construction team, with some/all professional consultant services tendered and appointed direct by the Council.
- (c) Only appoint the Development Agent to provide the main development and project management services, and the Council appoints its own professional consultant services.
- (d) Not to authorise the Housing Portfolio Holder to appoint the Development Agent, on the basis set out in Recommendation 2, but to delegate/reserve the appointment (or some of the components of Recommendation 2) to the Director of Housing or Cabinet.
- (e) Not to appoint the Development Agent on the basis of the most economically advantageous tender, but only on the basis of price.
- (f) To have a different composition of Selection Panel to recommend the appointment of

Development Agent to the Housing Portfolio Holder, to the composition proposed.

(g) To have a different contract period for the Development Agency contract, or different periods (or number) of contract extensions.

(h) Not to ask the Essex Procurement Hub to assist with the procurement process.

(i) Not to appoint a housing development consultant to undertake the appointment process.

(j) Not to authorise officers and the housing development consultant to evaluate the PQQs, in accordance with the pre-determined evaluation criteria, or require the evaluation/shortlisting to be subject to the approval of the Housing Portfolio Holder.

(k) To seek a House Building Programme on the basis of less or more than 20 properties constructed each year.

(l) Not to include the required revenue budgetary provision within the HRA at this stage.

(m) To charge Social Rents for the newly constructed Council properties, instead of Affordable Rents (with a much reduced number of affordable housing provided), or a mix of the two rent types.

(n) To delegate approval of financial and development appraisals to the Housing Portfolio Holder in consultation with the Finance and Economic Development Portfolio Holder, or the Director of Housing in consultation with the Director of Finance and ICT.

(o) To fund the development packages in a different way to that proposed (e.g. using General Fund capital receipts, and/or by not cross-subsidising with the sale of some development sites).

(p) Not to formulate a Development Strategy, once the Development Agent has been appointed.

(q) Not to appoint a part-time Senior Housing Officer (Development), or to make the post full-time, or with less hours.

(r) Not to seek development partner status with the HCA in order to seek grant funding.

(s) Include the works construction within the appointment of the Development Agent, and not competitively tender each development package.

Report:

1. At its meeting in July 2011, the Cabinet considered a report from the Housing and Finance & Economic Development Portfolio Holders on the treasury management issues relating to the introduction of a Council House Building Programme and agreed the following (Minute 24):

“ (a) That the Cabinet’s previous decision, in principle, to commence a new affordable house building programme once the Housing Revenue Account (HRA) had moved to a self-financing basis be confirmed, subject to financial appraisals confirming the viability of such a programme;

(b) That the agreement in principle of the potential amount of resource to be allocated to

house building, and whether this should be financed from borrowing or through surpluses generated on the HRA, be subject to the consideration of a further report to the Cabinet; and

(c) That the Housing Scrutiny Panel be requested to consider the detailed issues relating to the feasibility of undertaking, and the best way of implementing, such a house building programme and to make recommendations to the Cabinet accordingly. “

2. At our meeting on 25 October 2011, we received a detailed and comprehensive report from the Director of Housing on how a new Council House Building Programme could be implemented by the Council, which we considered and discussed. This has enabled us, in accordance with (c) above, to present this report to the Cabinet, setting out the proposed approach that we feel the Council should take, together with our associated recommendations.

Background

3. The last new Council property was built in June 1985 (19 houses built for sale at Mountbatten Court, Buckhurst Hill). Since 1977, the Council has sold around 6,160 properties, predominantly through the Right to Buy. The Council currently owns and manages around 6,500 properties.

4. Since the 1980s, councils have been discouraged by successive governments from building new social housing themselves, and encouraged to act as “enablers”, by facilitating housing associations to build new social housing. To discourage councils from building, the Government has previously established financial rules that penalise many local authorities that build – a high proportion of rent received from Council properties has had to be passed on to the Government, in the form of negative housing subsidy (for this Council – around £11.3m in 2011/12), and 75% of any capital receipts received from the sale of properties under the Right to Buy has had to be passed to the Government under its pooling arrangements.

5. However, the policies of the previous and current Governments have changed and, mainly as a result of the collapse of the property market in 2008, local authorities have more recently been encouraged to build once again. In particular, in August 2009, the previous Government introduced new regulations which removed the two major financial disincentives. These changed the revenue and capital rules and allow local authorities to:

- Retain all of the rental income received from new properties built after August 2009; and
- Retain all of the capital receipts from the sale of properties that were built after the introduction of the changes.

6. Not only has the Government removed the previous financial disincentives, with the introduction of Self-Financing for the Housing Revenue Account (HRA), local authorities are being given even more autonomy and increased financial ability to fund house building through prudential borrowing, funded from future rental income.

7. In February 2010, the Cabinet received a detailed report from the Affordable Housing Sub-Group, a body of members that our Scrutiny Panel established to consider ways to increase the provision of affordable housing within the District. One of the Cabinet’s decisions (Minute 128), based on the recommendations of the Affordable Housing Group, was that a programme of new social house building by the Council be agreed in principle. However, at that time, there was a potential detrimental effect on the General Fund (related

to the Council's HRA and General Fund Capital Financing Requirements (CFRs)) and the Cabinet therefore also agreed that such a Programme should not be undertaken until the detrimental financial effect on the General Fund either no longer existed or was only minimal. It was also agreed to explain this detrimental effect to the Government and to request assistance to overcome the problem, and the Leader of Council at the time wrote to the then Minister for Housing and Planning accordingly.

8. In response, the Minister for Housing and Planning advised that the problem should be overcome through new accounting regulations, when HRA Self-Financing was introduced (which at that time was proposed as a *discretionary* scheme for local authorities).

9. Since the current Government has now decided to introduce HRA Self-Financing on a mandatory basis, there is now no reason why there should be any additional detrimental effect on the Council's General Fund if the Council commences a house building programme.

10. The Council has a number of small potential development sites – mainly difficult-to-let garage sites – which can provide the required land for a House Building Programme, which is explained later in this report

Why undertake a Council House Building Programme?

11. The main reasons we feel a new House Building Programme should be introduced, and the reasons we understand the Cabinet decided in principle to introduce such a Programme, are that:

(a) The Council's HRA land could be developed for much-needed affordable housing (with 5,700 applicants currently on the Housing Register);

(b) The Council would receive the associated New Homes Bonus (NHB) – equivalent to around £6,700 per property over the six-year NHB period, to use for any Council purpose;

(c) The land and constructed buildings would be retained as a Council asset - rather than transferring the land to a housing association at a subsidised price, for the housing association to develop the affordable housing;

(d) The Council would benefit from the net rental income in the future, once the development loan has been covered;

(e) It may be possible for the Council itself to receive the benefit of capital grant funding from the Homes and Communities Agency;

(f) The Council would have greater control over the future use of the affordable homes;

(g) The cost of construction would be less than for a housing association, since the Council can recover the cost of VAT for fees from Her Majesty's Revenue and Customs (HMRC), which housing associations cannot; and

(h) It would enable the Council to increase its housing stock, instead of continuing to reduce the stock through the Right to Buy, and thereby slowly reduce the associated unit costs of managing and maintaining the Council's housing stock.

12. With the exception of (a) and (b) above, all the other benefits would only be received if the Council undertook the developments itself. The alternative approach would be for the

Council to transfer the ownership of these small sites to a housing association (as it has done previously – before the Council was able to develop sites itself), for the housing association to develop the sites, and then own, manage, maintain and receive the rental income from the properties. The benefits of this latter approach would be that the Council would not take on the risks of undertaking the building programme, and would not have to make provision for the initial capital outlay. We understand that the Cabinet has previously weighed up the benefits of each approach and concluded, in principle, that the best approach would be for the Council to undertake such developments itself - an approach with which we agree.

Potential House Building Programme

13. We have been advised that the Council has around 80 small garage sites which are designated as “difficult-to-let” (i.e. having more than 20% of the garages vacant, with no waiting list). Over a period of time, the Council’s Senior Architectural Assistant has visited each site and undertaken a very brief desk-top assessment of its development potential. This very initial sifting process has established that around 50 garage sites may have development potential. In addition, a further 3 non-garage sites have been identified as also having development potential. At the time of our meeting, a further 10 difficult-to-let garage sites still needed to be assessed.

14. Officers have advised us that this initial process has established that those sites that have already been assessed could, potentially, be developed to provide an estimated maximum of around 200 new properties. However, they have stressed that many of these sites are very problematical to develop and the actual number of properties that can be developed is likely to be much less than this number, and will only be known once more detailed feasibility studies have been undertaken and planning permission granted. As a working estimate, officers consider it unlikely that more than 120 new affordable properties could actually be provided.

15. In view of the difficult and problematical nature of developing these small sites, with each site only providing an average of around 4 new properties (with some only providing single properties), and the borrowing constraints of HRA Self-Financing, we understand that officers suggested to the Cabinet at its meeting in July 2011 that the working target for the maximum number of Council properties to seek to develop through a House Building Programme each year should be around 20 properties, which officers advised us at the meeting they still feel is an appropriate target. However, as the House Building Programme and the Council’s HRA Financial Plan develops, this target could be reviewed and refined.

16. We propose that, once the initial desktop assessments have been completed and the HRA Financial Plan agreed, further reports should be submitted to the Cabinet on a proposed Development Programme (which would probably span around 6 years), and to seek approval to undertake development appraisals and seek planning permission where appropriate for specific sites.

Appointment of Development Agent for the Council House Building Programme

17. When the Council last built Council properties in the 1980s, it had a fairly large in-house team with the required skills and experience to undertake the design and to project manage the construction. However, following the effective Government moratorium on new Council building, these skills and experience have been largely lost to the Authority. The Council now only has one Senior Architectural Assistant, who is already fully committed on a range of projects and does not have the capacity to undertake even a small new house building programme. Moreover, officers have advised us that it is unlikely that the Council would pass the Pre-Qualification Questionnaire (PQQ) process to become a development partner of the Homes and Communities Agency (HCA), and possibly access grant funding in

the future on its own (see below), since it could not be demonstrated that the Council has either sufficient technical capacity or experience.

18. We proposed, therefore, that the Council takes a similar approach to many smaller housing associations, and some other local authorities (e.g. Crawley DC) who want to build new affordable housing – by appointing an existing housing association, through a competitive tender process, to act as a Development Agent and provide all the required development and project management services. Housing associations are well experienced and resourced to develop affordable housing through a partnership approach, and have good working arrangements with the HCA and a knowledge of its practices and regulations. The Development Agent role would also include the provision of all professional building services, for which most developing housing associations already have framework agreements with selected consultants including: architectural, employers agency, quantity surveying, cost consulting, planning supervision, engineering and surveying.

19. Under our proposal, the Council would enter into a Development Agreement with the selected Development Agent and, in return for a fee (generally based on a percentage of the works cost for each development, but in accordance with a comprehensive tendered/agreed fee structure, to be determined), the Development Agent would provide a full development service on behalf of the Council. It would use its existing framework agreements and contracts with its appointed consultants to provide the development team to undertake the development process.

20. The Council would pay the Development Agent for both its own and its consultants' services under the Development Agreement. The cost of VAT would not be incurred by the Council since, as a local authority, the Council can recover VAT back in full from HMRC.

21. Since the Council would only have contracts with the Development Agent and the works contractors, it would have no automatic contractual relationship with the Development Agent's consultants, whose work will affect the integrity of the buildings into the future. Therefore, we would recommend that – through the contract with the Development Agent - all the Development Agent's consultants are required to provide the Council with collateral warranties which, if necessary, would enable the Council to take legal action against a consultant direct if problems arise in the future due to the professional negligence of the consultant, in the same way as the Council would be able to if it had a direct contractual relationship with the consultant itself.

22. We propose that the Development Agent should be appointed following a competitive tendering process. Since the total value of the Development Agreement (which would have to include the costs of the Development Agent's consultants) would be in excess of the EU Procurement Threshold for Services, we are advised buy officers that it would be necessary to follow the OJEU (Restricted Procedure) procurement process to appoint the Development Agent.

23. In view of the potential number of applicants, interested housing associations would be asked to complete a PQQ, from which a shortlist of at least five housing associations would be selected (in accordance with Contract Standing Orders), using a pre-determined criteria, and invited to provide detailed tender submissions. We propose that the Development Agent should be appointed based on the most economically advantageous tender (MEAT) to the Council, taking account of both price and quality, and that up to three tenderers that appear to provide the most economically advantageous tenders should be invited to give presentations to, and have an interview with, a Selection Panel comprising the Housing Portfolio Holder, Chairman of the Housing Scrutiny Panel, Director of Housing and Assistant Director of Housing (Property). The Selection Panel would then recommend an appointment to the Housing Portfolio Holder, who would we feel should make the formal

decision on the appointment.

24. We have been advised that it would be necessary to formulate evaluation criteria for shortlisting/selection at both the PQQ Stage and the Tender Stage. We feel that these would need to be carefully formulated, after detailed consideration, and we suggested that, once formulated, the proposed evaluation criteria should be approved by the Housing Portfolio Holder.

25. Following advice from officers, we propose that the Development Agreement should be for an initial four-year period, with options to extend the Agreement for three further individual years.

26. We are of the firm view that the introduction of a Council House Building Programme and the appointment of a Development Agent through the EU procurement process will be a major and high profile undertaking for the Council. The Cabinet will be aware that the Council is a member of the Essex Procurement Hub, and we propose that the Hub (assisted by the Council's Procurement Officer) should be asked to undertake the EU procurement process on behalf of the Council, which would be at no additional cost to the Council's annual subscription. However, the bulk of the appointment process will not involve the Hub, including:

- The formulation of the technical housing elements of the PQQ and the associated evaluation criteria for shortlisting;
- Responding to enquiries from applicants about the technical housing criteria during the PQQ process;
- Evaluation of the submitted PQQs (in liaison with others);
- Fundamentally, the drafting of the detailed Specification, Invitation to Tender (ITT) and Evaluation Criteria;
- Management of the ITT process, and dealing with queries raised during the tender period;
- Evaluation of tenders in accordance with the Evaluation Criteria; and
- Arrangement of the interviews/presentations.

27. Although the Director of Housing and Asst. Director of Housing (Property) have the expertise to undertake the above, they do not have the capacity to undertake this major project with their other commitments and responsibilities. We therefore propose that a suitably experienced housing development consultant should be appointed to undertake the appointment process, in liaison with the Procurement Hub and our officers. We would suggest that this be funded from within the existing resources of the Housing Feasibilities Budget.

28. We feel that the evaluation of PQQs and tenders should be undertaken by officers and the housing development consultant, in accordance with the pre-determined evaluation criteria that, as explained above, would need to be have been previously approved by the Housing Portfolio Holder.

29. We have been advised that the Council's own legal service may not have either the expertise or the capacity to draft the required Development Agreement with the appointed Development Agent. If this is the case, it would be necessary to appoint a firm of solicitors specialising in this area to undertake the legal work, for which budgetary provision would need to be made, if necessary, at the appropriate time.

30. Once appointed, the Development Agent would undertake detailed Development Appraisals for each of the identified sites, which would assess whether or not an identified

site has development potential, the expected costs and the anticipated income. Under our proposal, for each site (or package of sites) with development potential, the Cabinet would decide whether or not it wishes to proceed and approve financial and development appraisals, borrowing requirements (if necessary) and the required Housing Capital Programme funding.

31. Once proposed development packages have been approved by the Cabinet, the Development Agent would then seek planning permission from the Council and, if possible, capital funding from the HCA on the Council's behalf (see below).

32. Once planning permission and any funding approval has been obtained, the Development Agent would then undertake a tendering process to appoint the contractor to undertake the works, and then oversee the construction process. The Development Agent would comply with the Council's Contract Standing Orders and, since the works costs for individual development packages are unlikely to be above the thresholds for works within the EU procurement regulations, the Council could either tender amongst the Development Agent's framework contractors, or through Constructionline.

33. At practical completion, the newly-constructed homes would be handed over to the Council for letting to applicants on the Council's Housing Register. The properties would be owned by the Council and the Council would receive the rental income, and manage and maintain the properties.

Funding the House Building Programme, Development Strategy, Rent Levels and HCA Grant Funding

34. Based on the previous indicative target set by the Cabinet, we propose that individual sites be grouped together in "development packages" of around 20 properties (i.e. around one package per year).

35. We had quite a discussion at our meeting about rent levels that should be charged for the new properties. After due consideration, we propose that rents charged for the new developments should be at the new "Affordable Rent" levels, and not the "Social Rent" levels that the Council charges for its existing housing stock. Affordable Rent levels have to be set at up to 80% of market rent levels (including service charges), whereas Social Rents are around 40%-50% of market rents. We are proposing this approach for a number of reasons:

- In accordance with Government policy, the majority of all new properties developed by housing providers across the country, including the Epping Forest District, must charge Affordable Rents. If housing associations were to develop the Council's sites themselves, instead of the Council, they would have to charge Affordable Rents.
- Due to the introduction of the Affordable Rent regime, the Government has significantly reduced the amount of capital grant funding made available by the HCA for affordable housing. This is because, to a large extent, the need for capital grant funding is obviated by the ability of housing providers to fund increased borrowing from the increased rental income received.
- The HCA will only consider providing capital grant funding to a development partner (housing association or Council) if Affordable Rents are charged.
- Crucially, with the absence of capital grant funding, the proposed Council Housebuilding Programme will not be viable without significant additional subsidy, either from the Council's own capital receipts or cross-subsidy from sales of

development land within the Development Programme (thereby reducing the amount of affordable housing that can be provided on the Council's sites).

36. Since the Government's Affordable Rents Framework stipulates that affordable rents should be at a level **up to** 80% of market rents, we identified that rents do not need to be set **at** 80%. We have been advised by officers that in some areas, notably London Boroughs, where market rents are high, affordable rents are being set at levels below 80% since, otherwise, it is considered they would be unaffordable. This is particularly the case for larger properties, with large household compositions, especially when the effects of the proposed cap on the new Universal Credit within the Government's Welfare Reform Bill are taken into account.

37. Therefore, whilst we are recommending that affordable rent levels should be charged for the new properties built by the Council, we are recommending that the actual rents charged for individual properties should be agreed as part of development appraisals, which could result in rents of less than 80% being charged, dependent on the viability of the schemes and the affordability of the rents.

38. However, even through charging Affordable Rents, it is possible that there would be a shortfall in the required funding to develop the Council's sites. We propose, therefore, that any shortfalls are funded in one or more of the following ways:

- Capital grant funding from the HCA;
- S106 Agreement contributions received from developers in lieu of on-site affordable housing provision on private development sites;
- Capital receipts from future Right to Buy sales, if the Government introduces its recently-announced policy to increase discounts under the Right to Buy, and replace each property sold with a new affordable home;
- Housing Revenue Account (HRA) surpluses that may accrue;
- Cross-subsidy from the sale of housing development sites within the Development Programme on the open market; and
- Borrowing (if necessary)

39. Clearly, the preferred approach would be to obtain grant funding from the HCA. However, to do so, the Council would, firstly, need to obtain development partner status from the HCA (to make it eligible for funding) and then, secondly, have an "offer" accepted by, and enter into a contract with, the HCA to provide grant funding in return for the delivery of a specified number of affordable homes.

40. Advice that officers have received from the HCA is that the Council could seek development partner status with the HCA at any time. It simply requires the submission of a Pre-Qualification Questionnaire (PQQ) to the HCA, explaining the Council's (and, more importantly, the Development Agent's) credentials, which the Development Agent would be required to complete on the Council's behalf.

41. However, the receipt of grant funding is more difficult. The HCA is undertaking a 4-year "Affordable Homes Programme", between 2011 and 2015. Existing HCA development partners were invited to submit "offers" to the HCA for grant funding over this period. Although the HCA has since accepted a number of offers from housing associations, and is currently entering into formal contracts, many offers from large and well-established developing housing associations were not accepted. We have been advised that the totality of the offers accepted, together with existing commitments, should utilise nearly all of the £4.5 billion grant funding available over the four-year period. Therefore, the HCA has advised officers that it is unlikely that the Council would be eligible for any grant funding

within the HCA's current Affordable Housing Programme.

42. However, we feel that there may be some scope within the process of appointing the Development Agent to seek to “lever-in” some grant funding allocated to the selected Development Agent (if it has any) for the Council's development schemes, especially if the selected Development Agent experiences difficulty in spending its grant allocation and meeting its HCA target. We suggest that this possibility is explored by officers further - through the formulation of the tender documents, the associated evaluation criteria and the selection process.

43. We understand that the Government has also not yet decided whether or not to fund a further Affordable Homes Programme beyond 2015, or what form it would take if it does. Even then, the Council would have to be successful with its offer to the HCA.

44. It is also important for the Cabinet to note that, under the Government's Affordable Rents Framework, grant funding will not generally be available for Council-owned sites. However, officers feel that since the development sites will provide 100% affordable housing (as opposed to, say, only 40% affordable housing on Section 106 sites), there is a good argument to be made to the HCA that grant funding would provide “additionality” (a term used by the HCA relating to the additional amount of affordable housing that can be built by the HCA providing grant funding, beyond the level that otherwise would be provided).

45. Another source of funding for the House Building Programme is the use of financial contributions received from developers, through Section 106 Agreements on private development sites, in lieu of on-site affordable housing provision. At present, the Council's only un-spent S106 contribution for affordable housing is already committed (to the Council's Open Market Shared Ownership Scheme). However, financial contributions amounting to £1.2million have been negotiated and included within a further seven Section 106 Agreements, which the Council is due to receive over the next few years, and which could be used to help subsidise the Council's House Building Programme.

46. Additionally, at the recent Conservative Party Conference, the Prime Minister announced an intention to increase discounts under the Right to Buy (to stimulate more RTB sales), and to introduce arrangements to replace each property sold with a new affordable home. There is limited further information available at present; the Government has said that further information will be contained within its proposed new National Housing Strategy, which it says will be published within the next few months. If the Government introduces such a proposed announced policy, it may be possible to utilise capital receipts from future Right to Buy sales to fund the Council's own House Building Programme, rather than using them to provide grants to housing associations for them to build, with no financial benefit arising to the Council.

47. Once all these funding options have been considered and utilised where possible, if there is still a shortfall in funding for development packages, we suggest that the shortfall should be met through the sale on the open market of one or more of the Council's development sites in the Development Programme, with planning permission. The net capital receipt expected to be generated from the sale could then be used to subsidise the development of the affordable housing – which would all be set out in the proposed Development Strategy (see below) and in the individual development appraisals approved by the Cabinet.

48. Our proposed general approach is that the Council House Building Programme should be self-funded, without any financial support from the General Fund.

49. We suggest that, once the Development Agent has been appointed, it works with

officers to formulate a Development Strategy for the Council, setting out the proposed approach to planning, funding and delivering the House Building Programme, including the approach taken and the assumptions used for development appraisals, for adoption by the Cabinet. The Development Strategy would be required, in any event, for the Council's application to the HCA for development partner status.

50. Once the Cabinet has approved the proposed House Building Programme and Development Strategy, we would suggest that further reports should be submitted to the Cabinet on the required budgetary provision for the Housing Capital Programme.

51. It will also be necessary to make appropriate revenue provision within the Housing Revenue Account from 2012/13, to fund the associated revenue costs of the House Building Programme which, in later years, will need to include a budget for abortive fees for developments that do not proceed (e.g. due to the refusal of planning permission).

52. With the assistance of officers, we have made every effort to attempt to ensure that this report is as comprehensive as possible, to enable the successful appointment of a Development Agent and the introduction of a Council House Building Programme. However, we have recognised that it is possible that issues will arise during the process on which further approvals will be required, probably at short notice. We therefore suggest that the Housing Portfolio Holder should be authorised to agree any other aspects of the appointment process for the Development Agent, not covered by our report.

The HRA Financial Plan

53. With the introduction of Self-Financing for the HRA, we feel it is much more important to have a carefully formulated 30-Year Financial Plan for the HRA than it has been in the past, based on the Council's housing objectives, likely income and planned expenditure. As the Cabinet is aware, we will be having a special joint meeting with the Finance and Performance Management Scrutiny Panel on 28 November 2011, to consider the report of CIHConsult (the Council's HRA Business Plan consultants), the options available for using the additional resources that are expected to be available for the Council's Housing Service over the next 30 years, and to provide the Scrutiny Panels' comments to the Cabinet for consideration at your meeting on the 5th December 2011.

54. The capital resources required for the House Building Programme will need to be taken into account within the HRA Financial Plan, along with the other housing expenditure requirements. Officers' current working-estimate is that around £2.5m per annum would be required within the Capital Programme, from around 2014/15, for the construction of 20 properties each year (although some provision would be required within the Housing Capital Programme for fees over the previous year). A Building Programme of, say, 120 properties over 6 years is likely to cost in the region of £16m (including provision for inflation and additional costs), which will need to be taken into account within the Council's Treasury Management Strategy, which we understand will follow on from adoption of the Indicative HRA Financial Plan.

Staff Resources

55. The appointment of the Development Agent is being led by the Director of Housing. We have been advised that, once the Development Agent has been appointed, responsibility for delivering the agreed Development Programme will be led by the Assistant Director of Housing (Property). Experience from previous developments of Council garage sites, which have been developed by housing associations for themselves, has shown that a significant staffing resource is required by the Council. A major Council House Building Programme, including the client role of contract managing the Development Agent, will require an even

greater input from Council officers, for which we accept there is not sufficient capacity within the Housing Directorate, and which will also require appropriate development expertise.

56. An assessment of the workload involved once the Development Agent has been appointed, excluding the time that the Assistant Director of Housing (Property) will need and be able to devote, has established that a new part-time Senior Housing Officer (Development) post for 18 hours per week should be sufficient. We therefore propose that such a post be established, once the Development Agent has been appointed, that the post be job-evaluated in accordance with Council policy, and that appropriate budget position be made within the Housing Revenue Account for 2012/13 once the salary grade has been determined. We have been advised that it may be possible to capitalise much of the revenue cost of this post, related to schemes that come to fruition and result in a capital asset.

Indicative Timescales

57. The Cabinet needs to be aware that the lead-in period for the commencement of the House Building Programme will be quite lengthy. In view of the complexity of the appointment of the Development Agent, and since it has to be made in accordance with EU Procurement Regulations (which have a number of lengthy notice and return periods) we have been advised that the procurement period from start to end will be around 10-12 months.

58. Once appointed, the Development Strategy will need to be formulated and Development Partner status sought from the HCA. Concurrently, the Development Agent will start undertaking development appraisals of the first sites identified within the Indicative Development Programme and, once completed, the appraisals will be considered and signed off by the Cabinet. Construction plans would then need to be drawn-up, planning permission obtained and a contractor selected through a tender process.

59. Therefore, we anticipate that a start on site for the first development package will not take place until around 2014, with completion in late 2014/15. However, we have identified two benefits that arise from such a lengthy timescale. Firstly, it should enable the Council to avoid having to increase its capital borrowing above that required to fund the £180m+ payment to the Government for Self-Financing, since the debt repayment profile could be formulated in a way to build up revenue balances from April 2011 (instead of repaying debt in the early years of the Financial Plan), which could then be used to fund the capital requirements for the House Building Programme.

60. Secondly, the Council should be in a position to bid for any HCA grant funding that may be available if the Government decides to have a further National Housing Programme (or similar) from 2015, which may be able to provide grant funding for subsequent phases of the Council's House Building Programme.

Resource Implications:

Capital:

Estimated at around £16m over 6 years for works and fees.

Revenue

Housing Development Consultant - £9,750 all inclusive

Abortive feasibility costs – Unquantifiable at present

Part-time Senior Housing Officer post - £13,810 p/a (including on-costs and assumed at Grade 6)

Possible fees for specialist external solicitor to draft the Development Agreement - £3,000-£5,000.

Legal and Governance Implications:

The Cabinet will make the main/key decisions, with appropriate decisions delegated to the Housing Portfolio Holder and officers as appropriate, all set out in the Recommendations.

The Council has the legal ability to undertake build Council properties, by virtue of the Housing Act 1985.

The EU Procurement Rules will need to be followed, as set out in the report.

Safer, Cleaner and Greener Implications:

Since many of the garage sites that will developed are unsightly and attract vandalism and anti-social behaviour, their development for affordable housing should make them safer, cleaner and greener.

Consultation Undertaken:

The Tenants and Leaseholders Federation has previously been consulted on the concept of introducing a Council House Building Programme, which it supports.

Background Papers:

None.

Impact Assessments:

Risk Management

The following are the key identified risks, together with the proposals for mitigation, which would b included within the Housing Risk Register, with the highest risks included within the Council's Corporate Risk Register:

Risks	Mitigation
Contractual risks associated with a modest sized building programme	<ul style="list-style-type: none">• Ensure that the appointment of both the Development Agent (and its consultants) and, subsequently, contractors are robust, and include an appropriate element of assessment of the parties' ability to undertake the roles and their quality• Ensure Evaluation Criteria at PQQ and Tender Stage are comprehensive, with key factors weighted appropriately• Ensure that the Council's risks are minimised through the legal agreements• Consider the use of use of external legal specialists• Ensure that the Development Agent and consultants have sufficient Professional

	Indemnity Insurance
Significant budgetary overspends for construction works and/or fees	<ul style="list-style-type: none"> • Ensure robust consideration of development appraisals in the first instance • Include sufficient provision for contingencies • Ensure effective project management arrangements, to include identification of potential overspends early • Report to Cabinet quarterly on progress (works and costs)
Development Agent does not perform to a satisfactory standard	<ul style="list-style-type: none"> • Ensure that the appointment of the Development Agent and its consultants properly assesses the housing associations' ability to provide a good standard • Appoint the Development Agent on the basis of price and quality • Ensure Evaluation Criteria at PQQ and Tender Stage are comprehensive, with key factors weighted appropriately • Ensure that the Development Agent and consultants have sufficient Professional Indemnity Insurance • Include appropriate provisions within the Development Agent's contract to deal with unsatisfactory performance, including the determination of the contract
Contract with the Development Agent is terminated whilst projects/works are in progress	<ul style="list-style-type: none"> • Ensure collateral warranties are in place with the Development Agent's consultants, to enable EFDC to appoint them direct • Ensure that the Development Agent and consultants have sufficient Professional Indemnity Insurance • Ensure the Asst. Director of Housing (Property) and proposed Senior Housing Officer (Devt) are sufficiently involved with the progress of projects to take over the co-ordination and management, and supervision of consultants
Worked-up schemes do not receive planning permission, or have to be aborted for other reasons, incurring abortive costs	<ul style="list-style-type: none"> • Ensure involvement of planning officers at early stages and ongoing, to receive advice on the planning merits • Ensure development feasibility studies are sufficiently detailed and robust to identify potential site problems • Ensure a sufficient revenue budget to cover the cost of abortive work

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?

No.

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?

N/A – But an EQA has been undertaken for Housing Strategy and Development (which covers this issue)

What equality implications were identified through the Equality Impact Assessment process?

None.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

N/A.