

Report to the Cabinet

Report reference: C-060-2016/17
Date of meeting: 2 February 2017



Portfolio: Housing

Subject: Agreement to pay grant to East Thames for development at Knollys Nursery, Waltham Abbey and the purchase of market properties for the Council

Responsible Officer: Alan Hall (01992 564004)

Democratic Services: Gary Woodhall (01992 564470)

Recommendations:

(1) That the Council enters into a legal agreement with East Thames by 31st March 2017 to pay the following levels of grant to them, in order to assist them with their development costs in providing the 38 affordable rented homes at the Knolly's Nursery, Waltham Abbey development and to purchase properties from the open market:

(a) £1.14 million by 31 March 2017; and

(b) A further £760,000 once East Thames has spent a total of £6.34million in development costs for the rented housing at Knolly's Nursery, in tranches to be agreed between the Director of Communities and East Thames;

(2) That the Council's grant be funded by a combination of:

(a) The unspent "one-for-one replacement" Right to Buy capital receipts ("141 Receipts") that must be spent by 31 March 2017 (estimated at £350,000); and

(b) The majority or all of the 141 Receipts that were previously paid "temporarily" to the DCLG from Quarters 1 and 2 of 2016/17 providing the balance;

(3) That, as part of the same agreement, East Thames be required to:

(a) purchase 3 properties in the District, from the open market, by 31 December 2017;

(b) purchase a further 2 properties in the District, from the open market, no later than 9 months after receiving the last tranche of grant funding;

(c) convey the purchased properties to the Council as soon as practicable after their purchase, free of charge, for the Council to own, manage and let at affordable rents; and

(d) obtain prior agreement from the Council to the 5 properties to be purchased;

(4) That the Director of Communities be authorised to agree the actual amount of grant to be provided to East Thames and the number of properties to be purchased and conveyed by

East Thames, in consultation with the Housing Portfolio Holder, based on the maximum grant payable under the provisions of the Council's agreement with the DCLG;

(5) That East Thames' separate bid for grant funding from the Homes and Communities Agency be noted and that, if their bid is successful, a Supplementary Report be provided to this Cabinet meeting on the outcome and implications; and

(6) That a request be made to the Chairman of Council to waive the usual call-in arrangements for the Cabinet's decisions on the grounds that, since the Cabinet's decisions would need to be actioned by 31 March 2017, it would leave insufficient time for any call-in of the decision to be considered by the Overview and Scrutiny Committee and any subsequent disagreement with the decision by the Committee to be considered by the Cabinet.

Executive Summary

At its meeting in November 2016, the Cabinet considered a detailed report on the utilisation of "one-for-one replacement" Right to Buy (RTB) capital receipts ("141 Receipts"), and the difficulties being experienced in spending them within the 3-year deadline required by the DCLG. As a result, the Cabinet agreed to introduce a temporary moratorium on the Council Housebuilding Programme with immediate effect and to "temporarily" pay over to the DCLG the £1.676million unallocated 141 Receipts that had accrued in Quarters 1 and 2 of 2016/17.

Since then, DCLG officials appear to have changed the advice they gave to the Assistant Director (Accountancy) at the time - that 141 Receipts "temporarily" paid over to the DCLG could be recovered from the DCLG up to the end of July 2017 - and that if the DCLG wants/needs to spend or re-allocate the money already paid to them by the Council for other housing purposes or programmes in the meantime, then it will - and the Council will then not be able to recover these 141 Receipts.

Moreover, at its meeting on 12 December 2016, the Council Housebuilding Cabinet Committee asked officers to pursue a proposal that the 141 Receipts that need to be spent by 31 March 2017, but are unlikely to be spent by this date (estimated at £350,000), be paid as a grant to one of the Council's housing association partners currently undertaking an affordable rented housing development in the District, to avoid the 141 Receipts and the associated interest having to be paid to the DCLG.

The Director of Communities has therefore been working with East Thames, the only housing association currently on site with an affordable rented housing development in the District (at Knollys Nursery, Waltham Abbey) to work up a proposal whereby not only would the estimated £350,000 unspent 141 Receipts be paid to East Thames in grant, but some or all of the £1.67million already temporarily paid to the DCLG would also be paid in grant - whilst, at the same time, enabling the Council to receive a benefit from the arrangement as well. This has resulted in the above recommendations, which result in a number of benefits for the Council, East Thames and Housing Register applicants.

Separately, the decision on a bid for grant funding from the Homes and Communities Agency (HCA) by East Thames is expected to be made on 23 January 2017. If their HCA bid is successful, East Thames has said that they would not be able to enter into the proposed legal agreement with the Council, since it is not permissible to fund affordable housing with both HCA grant and grant funded from 141 receipts. In such an event, a Supplementary Report will be provided to the Cabinet.

Reasons for Proposed Decision

The Council needs to spend otherwise unspent and unallocated 141 Receipts, including those already temporarily paid to the DCLG, otherwise they may become irrecoverable or must be paid to

the DCLG permanently, without any benefit to the Council or local residents – and the latest indication from DCLG officials is that the 141 Receipts already temporarily paid to the DCLG may be spent or re-allocated by them earlier than they had previously advised.

Other Options for Action:

The main options appear to be:

(i) To provide grant to East Thames, with no requirement for East Thames to purchase and convey to the Council any market properties (or, alternatively, to purchase and convey a lesser number of properties) – however, the only benefit to the Council would be that it would not have to pay interest on the estimated £350,000 unspent 141 Receipts that would otherwise have to be paid to the DCLG by 31 March 2017.

(ii) To not provide any grant to East Thames, pay the estimated £350,000 unspent 141 Receipts to the DCLG with interest, and hope that the DCLG does not decide to utilise the 141 Receipts that have already been “temporarily” paid to the DCLG before the Council decides whether or not it wants to recover them to fund Phases 4-6 of the Council Housebuilding Programme (on which the Cabinet has placed a temporary moratorium).

Report:

1. At its meeting in November 2016, the Cabinet considered a detailed report on the utilisation of “one-for-one replacement” Right to Buy (RTB) capital receipts (“141 Receipts”) and the difficulties being experienced in spending them within the 3-year deadline required by the DCLG, for the reasons that were set out in detail in that report.

2. As a brief reminder, in April 2012, the Government “reinvigorated” its RTB policy by reducing the eligibility period for the RTB and increasing the maximum levels of discount to, currently, around £77,000. At the same time, the Government introduced a new mechanism that allows local authorities to retain 100% of RTB receipts (after some deductions) from RTB sales above a specified number of RTB sales set by Government each year for each council. These are referred to as 141 Receipts, based on the notion that, at the national level, one new affordable home will be built for every RTB sale above the Government’s RTB thresholds for each local authority.

3. There are two core principles for using 141 Receipts:

- They can only be used to fund no more than 30% of eligible expenditure for the provision of new affordable rented homes; and
- They must be utilised within 3 years of them occurring.

4. “Eligible expenditure” can include:

- Council housebuilding;
- Grants to housing associations to build new affordable homes;
- Acquisition of properties on the open market; or
- Acquisition of affordable homes built by developers to meet Section 106 Agreement obligations.

5. In order for the Government to enforce the time period in which expenditure must be accounted for, the standard agreement signed by the Council and the majority of other councils nationally requires any 141 Receipts not utilised within the 3 year timeframe to be paid over to the Government, plus a punitive interest charge of 4% above base rate (i.e. 4.25% / 4.5% over the

previous 3 years), compounded every 3 months. However, local authorities can voluntarily pass over to the Government the 141 Receipts it has accrued in any Quarter, by the end of the following month, without paying any interest. They can also voluntarily pay over accumulated 141 Receipts at any time during the three year period, but must pay interest from the end of the month after the Quarter they were received.

6. The report explained that, for a number of reasons, there is currently uncertainty around:

- The amount of resources available to the Council in the future to continue with its Housebuilding Programme; and
- Whether or not the Council will want to refinance the first PWLB loan for the HRA, that is due to mature in 2022, and therefore continue with its existing Housebuilding Programme for Phases 4 – 6.

7. The report further explained that this has therefore caused a problem because, despite being able to utilise all the 141 Receipts that had accrued over the previous 3 years (up to the middle of Quarter 1 of 2016/17) on the Housebuilding Programme if, after undertaking its planned further HRA Financial Options Review, the Cabinet decides not to continue with the Housebuilding Programme beyond Phase 3, the unallocated 141 Receipts that had already accrued from Quarters 1 and 2 of 2016/17 would need to be paid to the Government, plus interest, since there would be no eligible expenditure for which the 141 Receipts could be utilised.

8. However, the Assistant Director (Accountancy) has been advised by DCLG officials that if the unallocated 141 Receipts for Quarters 1 and 2 were “temporarily” paid over to the DCLG, through the quarterly financial return, by 31 October 2016:

- No interest would be payable on these 141 Receipts; and
- The Council could recover these 141 Receipts from Quarters 1 and 2 back from the DCLG, up to the end of July 2017, if it intends to use them on new housebuilding.

9. Accordingly, at the November meeting, the Cabinet decided to:

- (a) Introduce a temporary moratorium on work to progress Phases 4–6 of the Housebuilding Programme with immediate effect;
- (b) “Temporarily” pay over to the DCLG the £1.676million unallocated 141 Receipts that accrued in Quarters 1 and 2 of 2016/17;
- (c) Undertake the planned further HRA Financial Options Review as soon as possible after the Government has provided the details of its proposal to require councils to sell their higher value empty properties to fund the new levy being introduced by the Government, and after the financial effects on the Council can be assessed, in order for the Cabinet to make early long term decisions on the future of the Housebuilding Programme and the funding of the HRA; and
- (d) “Temporarily” pay any further 141 Receipts that accrue in future Quarters to the CLG when they arise, until the further HRA Financial Options Review has been completed.

Current Position

HRA Financial Options Review

10. Later in November 2016, the Government announced that its proposed requirement for stock-retained councils to pay a levy to the Government, based on the value of councils selling their higher value void properties, would not be implemented until 2018/19 at the earliest. For this reason, the Housing Portfolio Holder has agreed that the planned further HRA Financial Options Review should be undertaken in two stages:

- Stage 1 – To be based on what the Council knows now and, in particular, to make decisions on the future approach to the Council’s Housebuilding Programme; and
- Stage 2 – When the DCLG decides to implement its High Value Voids Levy and announces the arrangements, to consider the implications for the Council and any required action to mitigate the financial effects of having to pay the Levy at that time.

11. The Council’s HRA Business Planning Consultant is therefore already producing the Stage 1 HRA Financial Options Review, which will be reported to the Finance and Performance Management Cabinet Committee, following consultation with the Communities Select Committee and the Tenants and Leaseholders Federation as previously agreed.

“Temporary” payment of 141 Receipts to the DCLG

12. Despite DCLG officials previously advising the Assistant Director (Accountancy) that 141 Receipts “temporarily” paid over to the DCLG could be recovered from the DCLG up to the end of July 2017 if the Council intends to use them on new Council housebuilding, DCLG officials have now advised him that this may not be the case and that, if the DCLG wants/needs to use or re-allocate the returned money for other housing purposes or programmes in the meantime, it will do - and the Council will not be able to recover its 141 Receipts. Furthermore, the DCLG has not been prepared to provide any deadlines for utilisation. Moreover, despite numerous requests, the DCLG has not confirmed or provided any guidance or advice on this issue in writing.

13. Therefore, the £1.67million “temporarily” paid over to the DCLG appears to be now at risk, unless it is spent relatively quickly.

Utilisation of 141 Receipts

14. At the Council Housebuilding Cabinet Committee held on 12 December 2016, a detailed report was provided on progress with Phases 1-3 of the Housebuilding Programme. It was reported orally at the meeting that, primarily due to delays with Phase 2 (as a result of the need for the contractor to assess and undertake unforeseen decontamination works), anticipated expenditure on Phase 2 had slipped. The resultant effect of this slippage is that some 141 Receipts that need to be spent by 31 March 2017 (estimated at £350,000 at the time of the Cabinet Committee meeting) will not be spent and, unless this can be spent in another way, would need to be paid over to the DCLG, with three years’ interest.

15. On discussion at the Cabinet Committee meeting, members asked officers to consider and pursue a proposal that this money instead be paid as a grant (allowed by the DCLG Agreement) by 31 March 2017 to one of the Council’s housing association partners who are currently undertaking an affordable rented development in the District, to avoid the money – and in particular the interest - having to be paid to the DCLG.

Proposed Approach to the Utilisation of Unspent and Unallocated 141 Receipts

16. There is currently only one housing association on site with an affordable rented development at present, which is East Thames at their Knollys Nursery development, Waltham Abbey - where they are building 38 affordable rented homes (and a further 25 shared ownership homes).

17. The Director of Communities has therefore been working with East Thames, within a short timescale, to work up a proposal whereby not only the estimated £350,000 unspent 141 Receipts are paid to East Thames in grant, but some or all of the £1.67million already temporarily paid to the DCLG is also paid in grant - whilst, at the same time, enabling the Council to also receive a benefit from the arrangement as well.

18. Under the Council's agreement with the DCLG, grant can only be provided to East Thames if their development costs on the affordable rented housing (for which the grant is provided) are incurred within 3 years of the 141 Receipts (that are funding the grant) being received by the Council.

19. East Thames has advised that:

- As at January 2017, they had already spent around £3.3million on the development of rented housing at Knollys Nursery; and
- They estimate they will spend a further £0.5million on the rented housing by 31 March 2017, totalling an estimated £3.8million by this date.

20. Therefore, the maximum grant that the Council can provide to East Thames by 31 March 2017 is 30% of this sum, totalling an estimated £1.14million. However, East Thames expects to spend a further £4million beyond March 2017, to complete the development, for which the Council could, potentially provide an additional £1.2million (30%).

21. As a result, it is proposed that the Council enters into a legal agreement with East Thames, by 31 March 2017, to pay them grant of:

- £1.14 million by 31 March 2017; and
- £760,000 once East Thames has spent a total of £6.34million in development costs (in tranches to be agreed between the Director of Communities and East Thames);

funded by a combination of:

- The unspent 141 Receipts that must be spent by 31 March 2017 (previously estimated at £350,000); and
- The majority or all of the unallocated 141 Receipts that were previously paid "temporarily" to the DCLG from Quarters 1 and 2 of 2016/17 providing the balance;

22. As part of the same agreement, it is proposed that East Thames be required to:

- Purchase 3 properties in the District, from the open market, by 31 December 2017;
- Purchase a further 2 properties in the District, from the open market, no later than 9 months after receiving the last tranche of grant funding; and

- Then convey the purchased properties to the Council as soon as practicable, free of charge, for the Council to own, manage and let at affordable rents.

23. To safeguard the Council's interest, East Thames would also be required to obtain prior agreement from the Council to the 5 properties to be purchased.

24. The difference in the costs to East Thames of purchasing and conveying the market properties to the Council (including all fees and expenses) and the grant paid to them will:

- Assist East Thames with their shortfall in funding for the development costs for their development at Knolly's Nursery; and
- Provide East Thames with a development fee for sourcing, purchasing and conveying the open market properties to the Council and for assisting the Council with the proposed arrangement.

25. The benefits of this proposed approach are as follows:

- The Council spends all of its unspent 141 Receipts, without having to pay them to the DCLG with 3 years' interest;
- The Council spends the majority or all of the £1.676million unallocated 141 Receipts that it has previously paid temporarily to the DCLG (which now appears to be at risk);
- The Council receives 5 properties for free, from which it will receive affordable rental income of around £46,000 per annum per property indefinitely;
- An additional 5 affordable rented Council properties will be provided in the District, that can be let to applicants on the Council's Housing Register; and
- East Thames receives financial support towards their development costs for Knolly's Nursery and a development fee.

26. Since the maximum grant payable to East Thames under the provisions of the Council's agreement with the DCLG will not be able to be confirmed until close to the 31 March 2017 (since it depends on the actual development expenditure incurred by East Thames on their affordable rented properties at Knolly's Nursery), it is proposed that the Director of Communities be authorised to agree the actual amount of grant to be provided to East Thames, and the number of properties to be purchased and conveyed by East Thames, in consultation with the Housing Portfolio Holder.

East Thames' Bid to the HCA

27. However, a potential problem for the Council with this proposal is that, some time ago, East Thames made a bid to the Homes and Communities Agency (HCA) for grant of £1.062million towards the development costs for Knolly's Nursery, on which they have been advised that a decision will be made by the HCA on 23 January 2017. If their HCA bid is successful, unlike the proposal outlined above, the grant would be free of any costs or requirements for East Thames and would therefore be financially more beneficial to them. Understandably, since it is not permissible to fund affordable housing with both HCA grant and 141 receipts, East Thames has said that if their HCA grant bid is successful they would not be able to enter into the proposed legal agreement with the Council.

28. In such an event, it is proposed that a Supplementary Report is provided to the Cabinet on the outcome and the implications.

Waiver of Call-In

29. Since the Cabinet's decisions would need to be actioned by 31 March 2017, leaving insufficient time for any call-in of the decision to be considered by the Overview and Scrutiny Committee and any subsequent disagreement with the decision by the Committee to be considered by the Cabinet, it is recommended that a request be made to the Chairman of Council to waive the usual call-in arrangement for the Cabinet's decisions.

Resource Implications:

There are a number of major financial implications, which are set out in the main report.

Legal and Governance Implications:

The Council has entered into a legal agreement with the DCLG to retain and utilise all 141 Receipts that have arisen every Quarter since 2012, and will continue to arise in future, subject to the conditions set out in the main report.

The Cabinet has established the Council Housebuilding Cabinet Committee to oversee all matters relating to the Housebuilding Programme that are covered in the Cabinet Committee's Terms of Reference. However, the matters covered in this report do not form a part of those Terms of Reference.

Safer, Cleaner and Greener Implications:

None identified.

Consultation Undertaken:

East Thames has been consulted on the contents of this report.

Background Papers:

None

Risk Management:

The main identified risks are as follows:

- 1) East Thames' bid for grant funding from the HCA could be successful, which would likely result in the Council being unable to enter into the proposed agreement with East Thames, and would probably result in the Council having to pay the estimated unspent £350,000 in 141 Receipts to the CLG, with interest.
- 2) The amount of unspent 141 Receipts may be more (or could be less) than the estimated £350,000, dependent on the actual payments made by the Council to contractors and consultants for the Housebuilding Programme by 31 March 2017, which will not be known until this date. Officers will ensure that as much payment legitimately due to contractors and consultants is paid before 31 March 2017.
- 3) The DCLG could spend or re-allocate some or all of the £1.676million 141 Receipts already paid "temporarily" to the DCLG, before the Council pays the proposed grant to East Thames or before the Council decides whether or not to spend them on Phases 4-6 of the Council Housebuilding Programme.

4) The proposed legal agreement may not be drafted, agreed and signed by the required deadline of 31 March 2017. However, in view of the importance, officers will do everything possible to avoid this happening, and the Council's Legal Team has already been notified of the potential requirement, so that they can prepare and commit the required amount of staffing resource.

Equality Analysis

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix to the report.