

## **Report to the Cabinet**

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



**Portfolio: Housing**

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

**Responsible Officer: Alan Hall (01992 564004)**

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### **Supplementary Report**

#### **Recommendations:**

That the following recommendations replace the recommendations contained within the original report for this Agenda Item:

(1) That the successful outcome of East Thames' bid for funding to the Homes and Communities Agency (HCA) for its affordable housing development at Knolly's Nursery, Waltham Abbey be noted and that, as a result, it be further noted that East Thames has reluctantly advised the Council that it is unable to accept any grant from the Council, funded by "one-for-one replacement" Right to Buy capital receipts ("141 Receipts"), for this development;

(2) That the consequential requirement for the Council to pay to the Department of Communities and Local Government (DCLG) unspent 141 Receipts that have to be spent by 31 March 2017 (currently estimated at £350,000), with interest, be noted;

(3) That, in view of the continuing moratorium placed by the Cabinet on the Council Housebuilding Programme, the 141 Receipts previously paid "temporarily" and voluntarily to the DCLG from Quarters 1 and 2 of 2016/17, totalling £1.676million, continue to be retained temporarily by the DCLG until either;

(a) The Council has undertaken Stage 1 of its Further HRA Financial Options Review and, in particular, determined the future of its Housebuilding Programme; or

(b) The DCLG allocates the Council's 141 Receipts elsewhere for other purposes, as recently indicated by DCLG officials;

whichever is the earliest; and

(4) That the Stage 1 Further HRA Financial Options Review be undertaken as soon as possible, in line with the process previously determined by the Cabinet.

## **Executive Summary**

The report on this issue within the main agenda explains a proposal for the Council to provide East Thames with grant towards the development costs for their affordable housing development at Knolly's Nursery, Waltham Abbey. One of the benefits to the Council under the proposed arrangements would be that, in return, East Thames would purchase 5 properties from the open market and convey them to the Council free of charge.

However, the report also explained that East Thames had made a bid to the Homes and Communities Agency (HCA) for grant towards their development costs, on which a decision from the HCA was expected on 23rd January 2017. The report explained that, if East Thames' bid was successful, for the reasons explained in the report, they would not be able to enter into the proposed legal agreement with the Council. It was therefore also explained in the main report that, in such an event, a Supplementary Report would be provided to the Cabinet on the outcome and the implications.

East Thames has now informed the Council that its funding bid to the HCA was successful and that, regrettably, they are now unable to enter into the proposed legal agreement with the Council.

Therefore, the Council has little choice now but to accept that the unspent 141 Receipts that have to be spent by 31st March 2017 (currently estimated at £350,000) will have to be paid over to the DCLG, with interest, at the end of the current Quarter. Moreover, despite the risks explained in the report, it is now recommended that the 141 Receipts previously paid "temporarily" and voluntarily to the DCLG from Quarters 1 and 2 of 2016/17 should continue to be retained temporarily by the DCLG - until either the Council has undertaken Stage 1 of its Further HRA Financial Options Review or the DCLG allocates the Council's 141 Receipts elsewhere for other purposes, whichever is the earliest.

The First Draft Stage 1 Report is expected to be received at the end of January 2017 and the Final Report 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 requested by the Cabinet.

## **Reasons for Proposed Decision**

The Council was hoping to enter into a legal agreement with East Thames to provide them with grant towards the development costs for their affordable housing development at Knolly's Nursery, Waltham Abbey. However, the Council has recently been advised that their separate bid to the HCA was successful and, since this will be a much more beneficial arrangement for East Thames than can be offered by the Council, it is no longer possible to pursue the proposed arrangement with East Thames.

The Council therefore needs to make a decision on the most appropriate way forward under all of the circumstances.

## **Other Options for Action:**

The main options appear to be:

- (i) Recover the 141 Receipts previously paid temporarily to the DCLG, to remove the risk of them being re-allocated by the DCLG to another organisation or programme that would result in the Council no longer having access to them.

*However, the reason the Cabinet decided that they should be paid over to the DCLG in the first place was in view of the moratorium it had placed on the Council Housebuilding*

*Programme, and the possibility that the Stage 1 Further HRA Financial Options Review may result in the Housebuilding Programme being discontinued beyond the current Phase 3. In such an event, it would not be possible to utilise the increasing amount of unallocated 141 Receipts that have arisen, and will continue to arise, unless it was possible to provide them to a housing association as grant. Therefore, these unallocated 141 Receipts would have to be paid over to the DCLG at a later date, together with a punitive level of interest.*

(ii) Lift the temporary moratorium placed on the Council Housebuilding Programme, in advance of decisions being made through the Stage 1 Further HRA Financial Options Review, and implement Phase 4, and possibly Phase 5, of the Council Housebuilding Programme as soon as possible, to utilise the currently unallocated 141 Receipts from Quarters 1 and 2 of 2016/17, together with further 141 Receipts that arise in future Quarters, up to the utilisation of 30% of the total development costs

*However, the Leader of Council and Housing Portfolio Holder continue to consider that it would be imprudent to commit to any further phases of the Housebuilding Programme, until members are able to consider all of the options for the future and all of the associated expenditure and funding implications through the Stage 1 Options Review, especially since it is likely that it would be necessary for the Council to defer the repayment of the earliest PWLB loan that matures in 2019 for a couple of years in order to fund the other 70% of the housebuilding development costs.*

## **Report**

1. The report on this item within the main agenda explains that East Thames had made a bid to the Homes and Communities Agency (HCA) for grant of £1.062million towards their development costs for Knolly's Nursery, Waltham Abbey, on which a decision by the HCA was expected on 23 January 2017. The report explained that, if East Thames' bid was successful, the HCA grant would be free of any costs or requirements for them and would therefore be financially more beneficial to them than the proposal put forward within the original report on the Agenda.

2. Moreover, the report explained that since it is not permissible to fund affordable housing with both HCA grant and 141 Receipts, East Thames had said that if their HCA grant bid was successful, they would not be able to enter into the proposed legal agreement with the Council and that, in such an event, a Supplementary Report would be provided to the Cabinet on the outcome and the implications.

3. East Thames has now informed the Council that its funding bid to the HCA was successful and that, regrettably, they are now unable to enter into the proposed legal agreement with the Council.

4. The main driver for the proposals within the original report was to utilise the unspent 141 Receipts that must be spent by 31 March 2017 (currently estimated at £350,000), to avoid them having to be paid over to the DCLG, with interest (at 4% above Base Rate), as required by the standard legal agreement between the DCLG and the Council.

5. At the same time, it was being proposed to take the opportunity to utilise the £1.676million unallocated 141 Receipts that accrued in Quarters 1 and 2 of 2016/17, which the Cabinet agreed at its last meeting should be "temporarily" paid over to the DCLG, to provide additional grant to East Thames - for which the combined amount would result in East Thames purchasing 5 properties from the open market and conveying them to the Council free of charge.

6. There were particular benefits of including these additional 141 Receipts in the proposed arrangement, since 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.

7. Since Phases 1-3 of the Council Housebuilding Programme are being progressed as quickly as possible, it is not possible to take any further action to expedite this housebuilding any quicker, especially since there is only around 2 months until the end of the current Quarter. Moreover, in view of the moratorium on the Council Housebuilding Programme and associated expenditure, and the need to fund at least 70% of acquisition costs from HRA resources other than 141 Receipts, it would not be possible for the Council to purchase any further properties from the open market itself. In any event, from the experience of when the Council recently purchased 6 empty properties from the open market, prior to the introduction of the moratorium, it is extremely unlikely that it would be possible to purchase the required 3-4 properties, to utilise the estimated £350,000 unspent 141 Receipts (which can only fund 30% of the purchase costs), in time.

8. Therefore, the Council has little choice now but to accept that the unspent 141 Receipts that have to be spent by 31 March 2017 (currently estimated at £350,000) will have to be paid over to the DCLG, with interest, at the end of the current Quarter.

9. Moreover, despite the risks outlined above, it is suggested that, in view of the continuing moratorium on the Council Housebuilding Programme, the 141 Receipts previously paid “temporarily” and voluntarily to the DCLG from Quarters 1 and 2 of 2016/17 should continue to be retained temporarily by the DCLG until either the Council has undertaken Stage 1 of its Further HRA Financial Options Review (and, in particular, determined the future of its Housebuilding Programme) or the DCLG allocates the Council’s 141 Receipts elsewhere for other purposes.

10. Although the Cabinet had previously determined that the required Further HRA Financial Options Review should be delayed until such time as the DCLG had issued guidance on the operation of its requirement that councils, effectively, must sell their higher value void properties on the open market, to pay a levy to the Government, the Housing Portfolio Holder has recently asked officers to commission the Financial Options Review in two stages, with Stage 1 based on what the Council knows now (and, in particular, to make decisions on the future approach to the Council’s Housebuilding Programme), with Stage 2 undertaken once the DCLG announces the arrangements for the sale of high value void properties.

11. Accordingly, the Council’s HRA Business Planning Consultant, Simon Smith, has been asked to undertake the Stage 1 Review and to provide a report for the Finance and Performance Management Cabinet Committee as a matter of urgency, following consultation with the Communities Select Committee and the Tenants and Leaseholders Federation as previously requested by the Cabinet. At the time of writing, the First Draft Report is expected week commencing 30 January 2017.

12. For the reasons set out above, it is proposed that the recommendations at the commencement of this report replace the recommendations contained within the original report for this Agenda Item.

**Resource Implications:**

There are a number of financial implications, which are set out in both the original report on the main agenda and this Supplementary 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**

None.

## **Background Papers:**

None.

## **Risk Management:**

The main identified risks are as follows:

- 1) 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<sup>st</sup> 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<sup>st</sup> March 2017.
- 2) 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 decides whether or not to spend them on Phases 4-6 of the Council Housebuilding Programme.

## **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 provided as an Appendix to the original report in the main agenda continues to apply to this Supplementary Report.