

Report to the Cabinet

Report reference: C/051/2007-8.
Date of meeting: 8 October 2007.



Portfolio: Housing.

Subject: Review of the Scheme of RSL Partnering and Joint Commissioning.

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Recommendations/Decisions Required:

- (1) That the Council's Scheme of RSL Partnering and Joint Commissioning be discontinued and replaced with the Preferred RSL Partnering Scheme, as attached at Appendix 1.**
- (2) That in exceptional circumstances, the Head of Housing Services, through consultation with the Housing Portfolio Holder, be authorised to work with other RSL's that are not in the Council's Scheme of RSL Partnering and Joint Commissioning for specific schemes only, subject to them meeting the same evaluation criteria as those RSL's that are on the Council's Scheme of RSL Partnering and Joint Commissioning.**

Introduction:

1. In March 2005, the Cabinet agreed to introduce a Scheme of Preferred RSL Partnering and Joint Commissioning for all future affordable housing developments in the District by Registered Social Landlords (RSLs – housing associations) in the District. This decision followed a recommendation from the Housing Services Best Value Review, which was endorsed by the former Overview and Scrutiny Committee (1).

2. The purpose of introducing the Joint Commissioning Scheme was:

- (a) to enable the introduction of one RSL at an early stage in the planning and development of affordable housing sites, sometimes even before a developer has purchased a site; and
- (b) to attempt to reduce the value of the bids submitted by RSLs to the Housing Corporation for funding, thereby enabling RSLs to provide better value for money and increase their likelihood of receiving funding in the competitive process operated by the Housing Corporation.

3. In accordance with the selection process set out in the Scheme, the following Preferred RSL Partners were selected by the Council:

- Home Group;
- Moat;
- London & Quadrant Housing Trust;
- East Thames Group; and
- Hastoe Housing (Rural Specialists).

4. Together with the Council, they form a group known as the Epping Forest Strategic Housing Partnership.

5. The way the joint commissioning element of the scheme operates is that when a site is identified, normally through a Section 106 Agreement, the Council nominates one of the Preferred RSL Partners to deliver the affordable housing on that site, in accordance with the criteria set out in the scheme. Once the nomination has been agreed by all RSL Partners, all the other RSLs agree not to seek to undertake the affordable housing on the development.

6. In accordance with the Scheme, once the RSL has been nominated, the Council will only support a bid to the Housing Corporation for funding the development from that RSL. This means that if developers refuse to work with the Council's nominated Preferred RSL Partner, but provide the affordable housing through another RSL, it is unlikely that the scheme will receive funding. This therefore encourages developers to work with the Council's nominated Preferred RSL Partner, which enables the Scheme's objectives to be met.

7. Prior to the introduction of the Joint Commissioning Scheme, many RSLs would often bid against each other for the affordable housing provision on Section 106 sites, which resulted in developers being able to lead the process, the costs of the affordable housing being increased and RSLs spending time on abortive bids. In a number of cases, the resultant bid to the Housing Corporation for grant funding requirement was higher than bids submitted by RSLs for developments in other parts of the Region, which meant that some schemes in Epping Forest were not funded.

Review of the Scheme:

8. Generally, the Scheme has worked well and its objectives have been met. The Council has successfully nominated RSLs for Section 106 sites and their resultant bids to the Housing Corporation have, usually, been successful. Of particular benefit have been the introduction of Preferred RSL Partners and the formation of the Strategic Housing Partnership, which has led to a very close working relationship being established between the RSL Partners and Council officers. The RSLs have a much better understanding of the District's housing needs and the Council's expectations; they have provided very useful advice and guidance to the Council on affordable housing issues and policy; due to their early involvement in schemes, they have been able to influence and improve the affordable housing provision and its design; they have provided a ready-made "select list" of RSLs for the Council in respect of Council-owned sites (e.g. the proposed development of Leader Lodge, North Weald and the affordable housing provision on the Church Hill, Loughton site, which is currently subject to disposal); they have not had to spend abortive time submitting unsuccessful competitive offers to developers for schemes; and their bids to the Housing Corporation have been competitive.

9. However, the adoption of a joint commissioning approach has also led to an increasing number of difficulties, including:

(a) developers complaining that the Council's approach is uncompetitive, since they are tied to negotiating with just one RSL, which reduces their ability to negotiate a better price for the affordable housing (which of course is one of the Scheme's objectives);

(b) developers being unable to work with Preferred RSL Partners with whom they already have a strategic alliance, if the nominated RSL is not one;

(c) problems arising where developers insist that they want to work with an RSL other than the Council's nominated RSL;

(d) as a result, Council housing and planning officers having to spend much time defending the Scheme with developers and becoming involved in site negotiations;

(e) the potential for a challenge to the inclusion of the Scheme's approach within Section 106 Agreements; and

(f) the possibility that the Council could also be open to challenge for, arguably, operating a cartel (which would not be accepted by the Council).

10. Normally, members have been largely unaware of the Scheme's difficulties, since officers have usually overcome them. However, the Cabinet will be aware of one scheme where some of the above difficulties arose – the Epping Forest College site - which was considered at the July meeting of the Cabinet.

11. As a result of the difficulties with the Scheme, which appear to have increased more recently, it is suggested that the joint commissioning element of the Scheme be discontinued with immediate effect and that the Council encourages developers to work with any of its Preferred RSL Partners, not just one, and supports suitable and appropriate funding bids from any of them to the Housing Corporation. The only exception to this is for rural schemes, for which it is suggested that the Council continues to encourage developers to work with Hastoe Housing Association, in view of its proven experience and skills in this specialist area, which involves the need for the RSL to complete robust village housing surveys and undertake close liaison with parish councils.

12. However, it is suggested that the Council should still have Preferred RSL Partners and retain the Strategic Housing Partnership, since it will enable the Council to continue to have a good working relationship with a relatively small number of RSLs, and to continue to benefit from the Strategic Housing Partnership, in the ways referred to earlier in the report. It will also ensure that developers only work with RSLs in the District that are strategic partners of the Housing Corporation (and therefore eligible for grant funding) and that have four "green lights" for their latest Housing Corporation Assessment. All RSLs have an independent annual assessment undertaken by the Housing Corporation (the body that regulates and funds RSLs), that considers in detail whether or not the RSL:

- (a) is viable, with a strong or acceptable financial position;
- (b) is properly governed, with a governing body that is supported by appropriate governance arrangements that maintains satisfactory control of the RSL;
- (c) is properly managed, demonstrating either a strong commitment to effective delivery of services, or generally meeting the standard expected; and
- (d) has a good track record of developing affordable housing, meeting all or most of its development targets.

13. The approach will also enable the Preferred RSL Partners to continue to increase and consolidate their housing stock within the District, thereby assisting them to reduce their unit management and maintenance costs and to achieve value for money. In a small way, this approach will assist the Council with its own annual Use of Resources Assessment by the Audit Commission.

14. In view of the good working relationship the Council has with its existing Preferred RSL Partners, it is suggested that they be retained. The Council already has signed standard District-wide nomination agreements with each of them, which includes a requirement that the Council will receive 100% nomination rights on initial letting and 75% nomination rights for subsequent re-lets.

15. A draft revised Preferred RSL Partnering Scheme is attached at Appendix 1, fundamentally based on the elements within the current Scheme of RSL Partnering and Joint Commissioning.

16. In exceptional cases, it may be necessary to work with RSL's that are not one of the Council's Preferred RSL Partners. In order to safeguard the Council's position, it is therefore recommended that in exceptional circumstances, the Head of Housing Services, through consultation with the Housing Portfolio Holder, be authorised to work with other RSL's that are not in the Council's Scheme of RSL Partnering and Joint Commissioning for specific schemes

only, subject to them meeting the same evaluation criteria as those RSL's that are on the Council's Scheme of RSL Partnering and Joint Commissioning.

Statement in Support of Recommended Action:

17. Although the existing scheme has resulted in a number of benefits, there have been an increasing and emerging number of difficulties with the joint commissioning elements of the scheme. The proposed introduction of a replacement Preferred RSL Partnering Scheme should continue to secure a number of the existing benefits of the scheme, whilst overcoming the difficulties.

Other Options for Action:

18. The main alternative options are:

- (a) Retain the existing Scheme of RSL Partnering and Joint Commissioning;
- (b) Retain the joint commissioning elements of the scheme in a different form;
- (c) Cease the selection of Preferred RSL Partners; or
- (d) Select different Preferred RSL Partners.

Consultation Undertaken:

19. The Council's Preferred RSL Partners have been consulted on the proposals within this report. They have said that, although they agree that the joint commissioning element of the scheme has been beneficial to date, they understand the need to change the approach for the reasons set out in the report. They welcome the proposed retention of a Scheme of Preferred RSL Partnering, since they feel it enables Preferred RSL Partners to have a better understanding of the District's housing needs and the Council's priorities and that it also gives the Preferred RSL Partners the confidence that it is worth their while to invest time and resources seeking to develop in the District. Furthermore, they agree that it assists Preferred RSL Partners to build up their housing management base within the District, which assists their tenants.

Resource Implications:

Budget Provision: Nil.

Personnel: Nil.

Land: Nil.

Council Plan 2006-10/BVPP Reference: Meeting Housing Need.

Relevant Statutory Powers: Section 106 of the Town and Country Planning Act 1990.

Background Papers: None.

Environmental/Human Rights Act/Crime and Disorder Act Implications: None.

Key Decision Reference (if required): Not a key decision.

Epping Forest District Council
HOUSING SERVICES

PROPOSED PREFERRED RSL PARTNERING SCHEME

1. Background

1.1 The Council has previously selected, in a transparent and open way, four main “Preferred RSL Partners” and one Rural Preferred RSL Partner, that are well-governed, viable, and who have a proven track record of successfully developing affordable housing in the District and of providing a good housing service to tenants.

1.2 Together with the Council, the six organisations form the Epping Forest Strategic Housing Partnership. This enables the Council to have a good working relationship with a relatively small number of RSLs, and leads to a number of benefits. The Preferred RSL Partners;

- Are strategic partners of the Housing Corporation (and therefore eligible for grant funding) and all have four “green lights” for their latest Housing Corporation Assessment.

(All RSLs have an independent annual assessment undertaken by the Housing Corporation (the body that regulates and funds RSLs), that considers in detail whether or not the RSL:

- *is **viable**, with a strong or acceptable financial position;*
- *is **properly governed**, with a governing body that is supported by appropriate governance arrangements that maintains satisfactory control of the RSL;*
- *is **properly managed**, demonstrating either a strong commitment to effective delivery of services, or generally meeting the standard expected; and*
- *has a **good track record of developing** affordable housing, meeting all or most of its development targets);*
- Have a much better understanding of the District’s housing needs and the Council’s expectations than other RSLs;
- Provide very useful advice, guidance and feedback to the Council on affordable housing issues and policies;
- Are able to influence and improve the affordable housing provision on developments as well as its design, due to their early involvement in schemes;
- Provided a ready-made “select list” of RSLs for the Council to work with in respect of Council-owned sites available for residential development;
- Are able to continue to increase and consolidate their housing stock within the District, thereby assisting them to reduce their unit management and maintenance costs and to achieve value for money; and
- Have already signed district-wide nomination agreements, agreeing to provide the Council with 100% nomination rights initially and 75% for subsequent re-lets, and have agreed to increase the level of nomination rights for subsequent re-lets to 100%.

1.3 The Council and its Preferred RSL Partners work together in partnership to discuss potential RSL developments that arise in the District (usually on large development sites where Section 106 Agreements require affordable housing).

1.4 The Council will continue to work in partnership with RSLs that are not selected as Preferred RSL Partners, on developments that were already in progress at the time the Preferred RSL Partners were selected.

2. Selection of Preferred RSL Partners

2.1 At any one time, the Council will have between 2 and 4 Main Preferred RSL Partners, plus one Rural Preferred RSL Partner. One of the Main Preferred RSL Partners may also be selected as the Rural Preferred RSL Partner.

2.2 The current Preferred RSL Partners were selected following an invitation to submit expressions of interest. In the first instance, all the RSLs who were members of the former Epping Forest Housing Association Liaison Group were invited to apply, if they met the required criteria. The Preferred RSL Partners were selected from those RSLs who had previously developed affordable housing in the District, having regard to:

- The number of properties they owned/managed in the District
- The success and size of recent development activity in the District
- The size of their overall housing development programme
- Their ability to undertake specialist supported housing schemes
- How well they had worked in partnership with the Council in the past

2.3 The current list of Preferred RSL Partners is:

- Home Group
- Moat
- London & Quadrant Housing Trust
- East Thames Group
- Hastoe Housing (Rural Specialists)

3. Selection of New RSLs as Preferred RSL Partners

3.1 If, for some reason, one or more RSLs are de-selected as a Preferred RSL Partner, other RSLs will be invited to apply to take their place. On receipt of an application, the criteria in Section 2 of this Scheme will be adopted and a decision on the most appropriate RSL to be selected will be made by the Council's Housing Portfolio Holder, on the recommendation of the Director of Housing.

4. Preferred RSL Partner Liaison Contact

4.1 Each Preferred RSL Partner will nominate a senior representative to be the principal liaison contact with the Council.

5. Preferred RSL Partner Meetings

5.1 Scheduled meetings will be held quarterly between the Council's Director of Housing (or nominee) and all the Preferred RSL Partners. The purpose of the meetings will be to consider the Council's affordable housing policies, and to discuss the operation of the Scheme, current affordable housing opportunities, the identification of potential future developments and to provide a general forum for good liaison.

5.2 In addition, the Council's Director of Housing (or nominee) will meet formally with each Partner RSL Liaison Contact individually, as part of the Annual Review of Performance process (see Section 8 below).

6. Nomination of Preferred RSL Partners for Affordable Housing Developments

6.1 For all sites that include an element of affordable housing from 1st November 2007, the Council will seek to include a requirement within Section 106 Agreements that, following a competitive process if considered appropriate, developers and landowners should only work with one of the Council's five Preferred RSL Partners to provide the affordable housing (either directly or through the purchase of completed properties from the developer).

6.2 In order for the Council to obtain the stated benefits of this Scheme, and to support its Preferred RSL Partners, generally, the Council will only support a bid to the Housing Corporation for funding from one of its Preferred RSL Partners. This means that if developers refuse to work with one of the Council's Preferred RSL Partners, but provide the affordable housing through another RSL, it is unlikely that the scheme will receive funding.

7. Applicant Nomination Arrangements

7.1 The current Preferred RSL Partners have entered into district-wide nomination agreements with the Council, agreeing to provide 100% nomination rights initially and 75% for subsequent re-lets, and have further agreed to increase the level of nomination rights for subsequent re-lets to 100% in the near future.

8. Annual Review of Performance

8.1 Each year, the Council's Director of Housing (or nominee) will undertake an Annual Review of Performance of each Preferred RSL Partner. The Annual Review will take account of, but not exclusively, the following:

- How well the RSL has performed with the delivery of developments they have undertaken
- The value for money offered by the RSL in bids to the Housing Corporation, compared to other RSLs in the Region and Sub Region
- How well the RSL has worked in partnership with the Council over the previous year
- Any concerns relating to the RSL's management and maintenance of its housing stock within the District
- Any significant concerns about the RSL generally
- The RSLs Strategic Partnering status with the Housing Corporation
- Any changes to the RSL's Housing Corporation Assessment (HCA), and in particular the presence of any amber or red lights within the HCA

8.2 At the conclusion of the Annual Review of Performance, the Director of Housing (or nominee) will produce a draft written report on the performance of each Preferred RSL Partner, together with any proposed actions. The Preferred RSL Partners will be given 28 days to provide their comments on the draft report, following which the Director of Housing (or nominee) will produce a final written report.

8.3 The Annual Review will result in the Director of Housing reaching one of the following four conclusions:

- a) That performance has been satisfactory, and the RSL should continue to be a Preferred RSL Partner for a further year;
- b) That the Council has concerns over the RSL's performance (which will be stated) and a further review will be undertaken within a specified period;
- c) That, due to concerns over the RSL's performance (which will be stated), the RSL will be suspended as a Preferred RSL Partner for a specified period, after which a further review will be undertaken. This will mean that although the RSL will continue to progress developments for which they have already been selected by developers, the RSL will not

be put forward for any new developments under the Scheme until the suspension has been lifted; or

- d) That, due to the perceived poor performance of the RSL, a recommendation will be made to the Housing Portfolio Holder that the RSL should no longer be a Preferred RSL Partner.

9. Suspension from, and Withdrawal of, Preferred RSL Partner Status on Other Occasions

9.1 Separately from the Annual Review of Performance, there may be other times when it becomes necessary to suspend or withdraw the Preferred RSL Partner status.

9.2 An RSL will be suspended as a Preferred RSL Partner if:

- a) its status as a Strategic Partner of the Housing Corporation is withdrawn; or
- b) the RSL receives a red light for any element of its Housing Corporation Assessment; or
- c) the Director of Housing has serious concerns about the RSL's performance.

9.3 The period of suspension will last until:

- a) the RSL's Strategic Partner status has been re-instated;
- b) the RSL receives four green lights for its Housing Corporation Assessment; and/or
- c) the RSL's performance has improved.

9.4 A suspended RSL will continue with any developments in progress, but the RSL will not be nominated for any new developments under the Scheme until the suspension has been lifted.

9.5 If the concerns about the RSL's performance are significantly serious, or if the withdrawal of Housing Corporation Strategic Partnering status or the presence of red lights in its HCA continues for a lengthy period, the Preferred RSL Status may be withdrawn totally.

10. Appeals against Suspension and Decisions on Withdrawal of Preferred RSL Partner Status

10.1 Where the Director of Housing is of the view that the RSL should no longer be a Preferred RSL Partner, he will make a recommendation accordingly to the Council's Housing Portfolio Holder. The decision on whether or not to withdraw the Preferred RSL Partner status will be made by the Housing Portfolio Holder.

10.2 Where a Preferred RSL Partner is suspended, the RSL may appeal against the decision to the Council's Housing Portfolio Holder in the form of a written representation. The Housing Portfolio Holder will decide whether or not to uphold the suspension.