

Affordable housing delivery- approval of Registered Providers and use of s106 monies(commuted sums)

Report of the Cabinet Member for Regulatory Services, Housing and Wellbeing: Councillor Doug Pullen



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Agenda Item:	5
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Key Decision?	YES
Local Ward Members	All

CABINET

1. Executive Summary

- 1.1 This report sets out how the council has worked in partnership with housing associations (Registered Providers) through a Development Partnership Agreement to deliver new affordable homes since stock transfer. The Agreement has now lapsed and we propose to replace this with a policy that includes a set of criteria to approve Registered Providers (RP's) for future s106 opportunities (developer contributions) for affordable housing¹. The report also sets out how the council intends to invite bids from Approved Registered Providers for existing and future affordable housing commuted sums to deliver new affordable homes, and the criteria to assess these bids based on their strategic housing fit, deliverability, and value for money and affordability.

2. Recommendations

- 2.1 That Cabinet recommend to Council for approval the proposed policy containing the criteria for approval of Registered Providers (RP's) at Appendix A and use of s106 monies (commuted sums) for affordable housing at Appendix B.
- 2.2 That Cabinet agree to delegate authority to the Cabinet Member for Regulatory Services, Housing and Wellbeing and the Director for Place and Community to approve RP's on an annual basis, and to approve the successful bid(s) from Approved RP's for use of the commuted sums for affordable housing through the competitive process outlined in the report.

3. Background

Approval of Registered Providers

- 3.1 In 1999 the council went through a lengthy and rigorous selection process² to select four partners to form a Development Partnership that would work together to deliver new affordable housing; whilst never a legal document the partnership was established on the principles of trust and cooperation. At this time there were several funding streams available from the government to enable delivery of affordable homes including Local Authority Social Housing Grant (LASHG),³ and the intention was that only the four partners would be eligible for this funding, in addition to any s106 opportunities or

¹ Planning obligations made under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms. S106 agreements are often referred to as 'developer contributions' along with highway contributions and the Community Infrastructure Levy. The most common use of planning obligations is to secure affordable housing. See <https://www.lichfielddc.gov.uk/Council/Planning/The-local-plan-and-planning-policy/Planning-obligations/Section-106.aspx>

² This was done in conjunction with the Housing Corporation which became the Homes and Communities Agency in 2008 and is set to become Homes England in 2018. The HCA directs government funding through to and regulates housing associations.

³ LASHG was introduced in 1974 and was available until 2003.

developer contributions for affordable housing arising from new development sites in the district. The Partnership Agreement was reviewed with revisions made in 2004, 2008 and 2011.

- 3.2 Since the selection of the four partners there have been many significant changes, both locally and nationally such as:
- the formation of group structures of many local housing associations, and in particular the merger of HomeZone and Bromford which reduced the number of partners to 3
 - the Housing Corporation became the Homes and Communities Agency(HCA) with a different emphasis on delivery
 - housing associations became known as Registered Social Landlords(RSL's) and more recently Registered Providers(RP's)
 - LASHG was abolished in 2003 and HCA funding towards the delivery of affordable housing gradually reduced, most dramatically since 2010⁴
 - the housing market is very different and the reduction in grant funding has meant that housing associations have had to look for different ways of enabling new supply without recourse to public funding such as buying and developing their own sites and not being so reliant on s106 opportunities
- 3.3 Since mid-2000 the council has occasionally received criticism from housebuilders and their agents that the Development Partnership was precluding competition from other housing associations. Due to this, several years ago it was decided to change the wording of s106 agreements to stipulate that a housing association had to be 'approved'⁵ by the council as opposed to 'preferred', meaning that other housing associations not just those in the Development Partnership could bid for s106 opportunities. In addition to the original partners, the council has 'approved' another four RP's, one as they acquired s106 units that none of the partners would purchase, and another three as they brought forward significant affordable housing opportunities of their own. The additional RP's were approved as they could demonstrate that they were committed to delivering good quality, well designed, sustainable, adaptable, affordable homes in the District, could meet our strategic housing aims and had excellent housing management and maintenance standards⁶.
- 3.4 In 2017 the council received approaches from two new RP's that have entered into arrangements with national housebuilders and have sought to become approved for the purposes of the s106 agreement. Both of these are 'for profit' RP's meaning that rather than surpluses being reinvested in the stock and communities they pay dividends to shareholders. Of the 1,746 RPs registered with the HCA, only 39 or 2% are 'for profit' with the majority being non-profit and predominantly charitable housing associations like those currently operating in the district.
- 3.5 The Partnership Agreement, that was last reviewed and signed in 2011 for a period of 4 years, has now lapsed. This along with the changes and approaches outlined above mean that rather than look to revise such an agreement, we propose to adopt a policy on the council's criteria to approve new RP's. All Approved RP's would then be monitored and reviewed on an annual basis to ensure that they continue to meet the criteria; they would be invited to regular meetings to discuss development opportunities and their performance on managing their homes and enabling new supply.
- 3.6 A set of proposed criteria for approving Registered Providers is attached at Appendix A.

Use of s106 monies (commuted sums) received

- 3.7 Where constraints preclude the delivery of affordable housing on site it is possible to negotiate a commuted sum⁷ in lieu of the affordable homes normally required. The council currently has £400,000

⁴ RP's can bid for funding for new affordable housing to the HCA through the National Affordable Homes Programme (NAHP).

⁵ S106 agreements state that an RP has to be approved by the council but that approval will not be unreasonably upheld.

⁶ Source: Developer Contributions SPD 2016

⁷ Developer Contributions SPD 2016 states that any alternatives to on-site provision will only be considered in exceptional circumstances and where off-site alternatives are considered to be the best way to achieve the delivery of affordable housing- see <https://www.lichfielddc.gov.uk/Council/Planning/The-local-plan-and-planning-policy/Supplementary-planning-documents/Downloads/Developer-Contributions-SPD/Developer-Contributions-SPD.pdf>

of commuted sums in reserves that we are now seeking to use towards delivery of affordable housing. Other smaller sums have been negotiated⁸ that once received, we propose to keep in reserves to allocate once an amount c£200k has been collected.

- 3.8 It is proposed to allow the RP's that have been approved by the Council to bid for this money and a recommended set of criteria to be used to assess bids is attached at Appendix B. It is proposed to evaluate the bids on their strategic housing fit and how well they meet housing needs, their deliverability, value for money and affordability.
- 3.9 We plan to invite bids from the approved RP's and will allow 6 weeks to receive submissions. The bids will be assessed by a panel of officers and the Cabinet Member for Housing and Health⁹.
- 3.10 The proposals have considered the Council's developing property investment strategy, which may present further options for the development of affordable homes in the future.

Alternative Options	<p><u>Approval of RP's:</u></p> <ol style="list-style-type: none"> 1. To do nothing and not approve more RP's/have a criteria 2. To adopt different criteria for approving RP's and/or assessing bids 3. To not have an approved list and relax s106 agreements to enable all future s106 negotiated new-build affordable housing to be allocated to any organisation of the developer's choice. 4. To develop a new Partnership Agreement with existing partners. 5. To develop a new Partnership Agreement, re-advertise for new development partners and have a full selection process of interviews and presentations. <p><u>Use of s106 monies:</u></p> <ol style="list-style-type: none"> 1. To adopt different criteria for allocating s106 monies 2. To not open up the funds to all Approved RP's and only allocate to the stock transfer RP Bromford, however this would reduce the competition element from the process.
Consultation	<p>We have consulted the original 3 development partners and the other 4 approved RP's on our proposals and criteria for approval. All have welcomed our approach and feel that the council has acted reasonably in its approval of RP's to date and that having a policy with criteria for approving current and future RP's is a very good way forward. One RP said that "We feel that the approach is fair, open and transparent. We completely agree that having a management presence in the area is vital to ensure that estates are managed well and tenants are supported". All approved RP's have also welcomed the opportunity to be able to bid for s106 monies to deliver more affordable homes.</p> <p>The report was considered at Overview and Scrutiny on 11th January 2018 where the proposed approach received full support from Members and was recommended for approval.</p>

⁸ Other commuted sums totalling £654,100 have been agreed but they will not be due until the schemes start on site

⁹ This is a separate arrangement to the adopted CIL Governance Structure and Administrative arrangements for the allocation of other Section 106 monies which are for infrastructure projects outlined in the report that was agreed by Cabinet on 5.12.17.

Financial Implications	The first bidding round will use £400k of s106 monies that is currently held in reserves. Other commuted sums negotiated will be added to reserves once they are received and other invitations to bid will be conducted once sums circa £200k are collected.
Contribution to the Delivery of the Strategic Plan	The Strategic Plan 2016-2020 sets out what we want to achieve in four main themes. The development of new affordable homes will contribute towards the theme of 'clean, green and welcoming places to live' and by helping to reduce homelessness it will contribute towards the theme of 'healthy and safe communities'.
Equality, Diversity and Human Rights Implications	The new homes will have a positive impact on the availability of affordable homes for those in need, particularly vulnerable, low income households.
Crime & Safety Issues	New affordable homes may help to improve an area previously subject to anti-social behaviour which will impact positively on our duty to prevent crime and disorder within the district (Section 17 of the Crime and Disorder Act, 1998).

	Risk Description	How We Manage It	Severity of Risk (RYG)
A	No RP's come forward to bid for the s106 monies or inadequate bids are received.	Promotion amongst all RP's and sufficient lead in time given to develop bids.	G
B	Legal challenge from RP's that we do not approve that seek to pursue s106 opportunities with developers.	Discussion with major housebuilders with sites in the district and promotion of the approved list to ensure that they contact these RP's to invite bids.	Y

Background documents

<p>Relevant web links:</p> <p>Lichfield District Housing Strategy 2013-2017 - https://www.lichfielddc.gov.uk/Residents/Housing/Housing-strategy/Download-our-housing-strategies</p> <p>Lichfield District Council Strategic Plan 2016-2020 - https://www.lichfielddc.gov.uk/Council/Performance-efficiency/Strategic-plan-2016-2020.aspx</p> <p>Local Plan Strategy 2008-2029- https://www.lichfielddc.gov.uk/Council/Planning/The-local-plan-and-planning-policy/Local-plan/Local-Plan-Strategy.aspx</p> <p>Tenancy Strategy 2012- https://www.lichfielddc.gov.uk/Residents/Housing/Housing-strategy/Download-our-housing-strategies</p>

Criteria for becoming an Approved Registered Provider

To become included on the 'Approved list of Registered Providers', organisations must demonstrate that they:

1. Are registered with the Homes and Communities Agency (HCA) and are judged by them as compliant for governance and viability requirements¹⁰
2. Manage stock in the local¹¹ area and/or have an established local management arrangement
3. Have a sustainable and long¹² track record in the management of affordable homes and have a plan in place to reinvest any surpluses for the benefit of local communities

They must also agree to:

1. Have in place or agree to develop a nomination agreement¹³ with the council and allocate homes in accordance with the council's allocation policy through the choice based lettings system¹⁴
2. Commit to the principles enshrined within the council's Tenancy Strategy
3. Agree to develop a complaints protocol by negotiation with the council
4. Attend and actively contribute to the council's Strategic Housing Partnership and other Development related meetings
5. Consult and liaise with council officers about potential new development opportunities

Note: This criteria will be reviewed to ensure compliance on an annual basis.

¹⁰ The HCA publishes regulatory judgements on RP's for compliance with the governance and viability requirements of the Governance and Financial Viability Standard. G1 and V1 are the preferred ratings.

¹¹ Local = to own or manage stock in Lichfield District or a neighbouring authority

¹² Long term is 5 years plus

¹³ The nomination agreement is for purposes of allocation of housing (nomination, acceptance and refusal of nomination) and successful partnership working between the RP and LDC.

¹⁴ The current choice based lettings system is called Homes Direct

APPENDIX B

Evaluation Criteria	What We Would Like to See
<p>1. Strategic housing fit</p> <p>Bids will be assessed in relation to how well the proposed scheme(s) complies with the council's Strategic Housing priorities as set out in:</p> <ul style="list-style-type: none"> Strategic Plan 2016-2020 Housing Strategy 2013-17 Tenancy Strategy 2012 Local Plan Strategy 2008-2029 <p>The proposed scheme(s) will need to make a clear contribution to meeting housing need and providing healthy, sustainable communities.</p>	<p>Strategic Housing priorities:</p> <ul style="list-style-type: none"> The housing mix, type, size and tenure meets identified housing needs Increased provision of social rented or affordable rented homes. Reduced homelessness <p>Suitability and sustainability of the location:</p> <ul style="list-style-type: none"> Brownfield land brought back into use Close proximity to amenities, employment opportunities and public transport provision Conforms with the Local Plan Strategy <p>Promotes health and wellbeing:</p> <ul style="list-style-type: none"> Scheme design includes high-quality greenspace and encourages physical activity Provision of Lifetime Homes Safe and accessible scheme design
<p>2. Deliverability</p> <p>The proposed scheme(s) must be deliverable within a reasonable timescale, preferably within 6 months of approval.</p>	<p>The bid should address the following:</p> <ul style="list-style-type: none"> Evidence of site ownership Confirmation of any pre planning application advice that has been received or planning permission obtained Outline of anticipated construction schedule and how 'start on site' will be achieved by the agreed date Confirmation of payment dates and amounts
<p>3. Value for Money</p> <p>Scheme proposal should demonstrate value for money. The most competitive scheme that maximises the number of bed/person spaces will be awarded higher marks.</p>	<p>The scheme will ensure:</p> <ul style="list-style-type: none"> Delivery of affordable homes that would otherwise be undeliverable without commuted sum funding Maximisation of new affordable home bed/person spaces for the funding requested Additional New Homes Bonus and council tax received
<p>4. Affordability</p> <p>The proposed scheme should be affordable and designed to minimise running costs.</p> <p>Rents should be lower than LHA rates.</p> <p>Social rent is preferable to affordable rent.</p>	<p>Housing costs:</p> <ul style="list-style-type: none"> Confirmation of proposed rents, between 60% and 80% of the market rent and no more than Local Housing Allowance¹⁵ Explanation and breakdown of any service charges and the terms and conditions which will be applied. Where included, shared ownership homes must be affordable <p>Fuel poverty:</p> <ul style="list-style-type: none"> Confirmation of energy efficient design, including any low/zero carbon energy generation technologies

¹⁵ Local Housing Allowance was introduced in 2008 and is the maximum financial help that a tenant of a private landlord can get towards the rent. It is based on the 30th percentile of local rented accommodation in the area in which the housing benefit claim is made. These areas are called Broad Rental Market Areas, defined as 'where a person could reasonably be expected to live taking into account access to facilities and services'.