

Report to Cabinet

Cabinet Meeting 24 November 2022

By the Cabinet Member for Housing and Public Protection

DECISION REQUIRED



**Horsham
District
Council**

Partially exempt

Appendix 1 is exempt under Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972

Approval of Business Case for Horsham District Homes for affordable homes in London Road, Horsham

Executive Summary

In March 2019, Cabinet approved the creation of two companies for the purpose of providing affordable rental housing in the District. Horsham District Homes Limited (HDH), development company, and Horsham District Homes (Holdings) Limited (HDHH) were both incorporated in 2019.

Horsham District Council is the sole shareholder of HDH. The shareholder agreement for HDH reserves certain matters for Cabinet approval, including the approval of business cases for projects and approval of any loans to be made by the Council to the companies.

The Directors of HDH have prepared this business case setting out an opportunity that they wish to pursue, which require approval of Cabinet. The opportunity consists of a development of eleven homes in London Road, Horsham. The details of the transactions are set out in the body of this report and in appendix 1. A summary of the illustrative financials is set out below:

Transfer value for the project*	£2,650,000
Net rental income	c£106,000
Yield	4.0%
Market value of the homes	£4.05m
Ratio of transfer value to market value	65%
*(affordable rent market value to be financed with s106 commuted sums)	

These figures are illustrative. The final figures will be settled when the contract sum has been agreed with the contractors. This means that there may be appropriate adjustments which may increase or decrease the land value for the site. Because the figures are illustrative, it is recommended that the s151 officer, in collaboration with the Leader, Cabinet member of Finance and Parking and the Cabinet member for Housing and Public Protection, be authorised, by way of delegated authority, to agree the final figures with the Directors of the company, subject to the rentals and the transfer value being unchanged.

Cabinet is recommended to approve the business case and agree to release the funding in accordance with the loan agreement, to enable the proposals to be financed. The interest rate payable to the Council will be 4% plus base rate pa.

Cabinet is recommended to delegate authority on the basis set out in the recommendations below:

Recommendations

That the Cabinet is recommended:

- i) To approve the business case for the construction of eleven homes for affordable rental in London Road, Horsham by Horsham District Homes Limited.
- ii) To approve the transfer of the land in London Road, Horsham from Horsham District Council to Horsham District Homes Limited for c£200,000 subject to obtaining any consent of the Secretary of State, if required and approval of the final construction costs and appraisal.
- iii) To approve a loan of up to £2,650,000 to Horsham District Homes Limited for the construction of the eleven properties at London Road, Horsham at the agreed rate of 4% plus base rate.
- iv) To (a), recommend to Council the transfer of s106 funds to Horsham District Homes (Holdings) Limited for the purchase, at affordable rent market rate, of the eleven 2 bedroomed homes in London Road, Horsham for a sum of no greater than £2,650,000 plus stamp duty land tax (if applicable given intra-group relief) and agents fees, and, (b) approve the transfer of the homes from Horsham District Homes Limited to Horsham District Homes (Holdings) Limited .
- v) To delegate to the Section 151 Officer, in consultation with the Leader and Cabinet Members for (i) Finance and Parking, and, (ii) Housing and Public Protection, authority to agree the final figures in relation to this project, including the transfer value of the land, subject to the transfer value of the project of £2.65m and rental values remaining unchanged.

Reasons for Recommendations

Approval of the recommendations will allow the details of the transactions to be completed so that the affordable rental properties can be delivered for the benefit of households on the housing list.

Appendix 1

Business case for the development of affordable homes at London Road, Horsham
(exempt)

Background Papers

None

Wards affected: Denne

Contact: Brian Elliott: Head of Property and Facilities 01403 215328

NB Brian Elliott has been appointed by the Council as a Director of HDH

Background Information

1 Introduction and Background

- 1.1 Horsham District Homes Limited (HDH) is a company owned and controlled by Horsham District Council which has been established for the purpose of delivering affordable rented accommodation in Horsham District. The objectives of the company, as detailed in the business case, are to (a) increase delivery of affordable housing (b) make the best use of s106 Commuted Sums and (c) provide a financial return to the Council to reinvest in the District.
- 1.2 The Shareholders Agreement for HDH set out a number of shareholder consents, which are used to control the activities of HDH. These consents include the approval of business cases for projects to be delivered by HDH and the approval of loans to be provided by the Council to HDH and any approval of s106 grant funding.
- 1.3 The directors of HDH are seeking Cabinet approval to undertake the project as detailed in the business cases set out in Appendix 1 and the purpose of this report is to recommend consent to these proposals.

2 Relevant Council policy

- 2.1 The 2019 to 2023 Corporate Plan sets out the Council's strategic objectives and includes creating great places for people to live and work and creating a strong safe and healthy community. Paragraph 3.2.2 of the corporate plan states the objective of using the Council's affordable housing company to build affordable homes in areas of high demand.

3 Details

- 3.1 The details of the proposals are set out in Appendix 1, which sets out an opportunity at London Road, Horsham
- 3.2 The business case for the establishment of HDH focused on direct development as the primary delivery mechanism for affordable housing on low cost/no cost land owned by the Council. The business case for HDH included financial illustrations that suggested a yield of 5% on net rental income and a transfer value of c55% of open market value, which is in line with transfer values in the registered provider sector. These were optimum targets and returns will vary between projects and over time. It is therefore to be expected that transactions may deliver higher or lower returns depending on the circumstances and it may be that 4.5% is a more realistic target. The average level of return across this project is 4.0%, which is considered to be appropriate for this development.
- 3.3 The opportunity at London Road is a direct development to be undertaken by HDH. The financial details of each project are set out below:
- 3.4 **London Road, Horsham.** This is a development of eleven 2-bedroom properties
- 3.5 The local housing allowance rate, which is the 'benefit rate', for a 2-bedroom property is £218.63 per week. The total gross annual rent is therefore £125,056 per

annum, which is reduced by a notional 15% to cover voids, repairs, and management, to provide a net figure of £106,000 pa.

- 3.6 The business case and budget figures for London Road indicate that the total development value (ie, affordable rent market value) for the scheme will be £2.65m. A transfer from HDH to HDHH at this figure will mean that HDH will achieve a yield of 4.0%. A transfer price of £2.65m will be approximately 59% of market value, which is broadly in line with business case assumptions as noted in 3.2 above.
- 3.7 Included in the budget figures is a land transfer value estimated at £200,000 to be payable by HDH to Horsham District Council. It is important to note that budget figures may be subject to change depending on the independent valuation, further site investigations and procurement of the contractor.
- 3.8 As of August 2022, the current affordable housing list for Horsham District has 748¹ households with 458 households identifying the relevant area of Horsham as an area of choice; of these 144 households are seeking 1-bedroom homes and 104 households 2-bedroom homes. Therefore, there is a clear demand for this type of property.
- 3.9 Horsham District Homes will aspire to develop these units to an Energy Performance Certificate (EPC) rating of A, depending on technical and price feasibility. If an EPC of A cannot be achieved, the minimum level acceptable to the Council is B. At a national level just 1% of new homes are EPC A and 81% of new homes achieve an EPC B rating. EPC A rated homes comprise 0.2% of housing stock (40,000 homes) and B rated homes comprise 2% of the existing housing stock at a national level. The properties will be all electric which is in keeping with future trends and will therefore be carbon neutral when generation of electricity is decarbonised.

4 Next Steps

- 4.1 Pre-planning advice will commence in December and it is expected that works will start on site in late 2023 with a 12 month build period.

5 Views of the Policy Development Advisory Group and Outcome of Consultations

- 5.1 The proposal has been considered by the Finance and Parking PDAG and the Housing and Public Protection PDAG and member's were in favour of the use of the London Road site as affordable rented units.
- 5.2 The **Director of Resources** drafted the resources consequences in this report and **the Council's Chief Finance** Officer and Monitoring Officer were consulted. None of these officers have roles within either HDH or HDHH.
- 5.3 Local members have been consulted as well as local stakeholders. No concerns have been raised.

¹ Figures correct at August 2022

6 Other Courses of Action Considered but Rejected

6.1 Not applicable

7 Resource Consequences

7.1 The Council will receive a capital receipt for the land disposal at London Road. This is currently estimated in the illustrative figures at £200,000. An independent valuation of this land will be undertaken which will help confirm the value of the capital receipt that the Council would expect to receive for this land. The capital receipt will contribute to the funding of the Council's capital programme and capital projects across the district.

7.2 The financial consequences are detailed in the business case. The Council will benefit from (i) the interest payments on the loan, and (ii) any dividend which is paid by HDHH to HDH and then to the Council. The interest could be as much as £100,000 over the build period, which should commence in 2023/24 and end in 2024/25.

7.3 The Council expects the valuation of the land for open market housing to be in the order of £580,000. The decision to progress the project as affordable housing means that this figure will not be realised. Instead, the Council will secure 11 much needed affordable homes, which will reduce the housing waiting list and will realise the value of the land for affordable housing which may be up to £200,000. Also, the Council will receive, as ultimate owners of Horsham District Homes (Holdings) Limited the revenue generated by the affordable housing development, which HDH may pay to the Council as dividends as mentioned in paragraph 7.2.

8 Legal Consequences

8.1 Horsham District Council has a statutory duty to sell land at the best price reasonably obtainable pursuant to section 123 of the Local Government Act 1972 ("LGA 1972").

8.2 However, the government recognises that there may be circumstances where a local authority considers it appropriate to dispose of land at an undervalue. The disposal from Horsham District Council to HDH comprises a transaction at undervalue. Ordinarily, specific consent to such disposals would be required.

8.3 The power for the Secretary of State to give a general consent for the purpose of land disposals by local authorities is set out in section 128(1) of the LGA 1972. This provides that specific consent is not required for the disposal of any interest in land (i) that the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area, and, (ii) where any undervalue does not exceed £2 million ("General Disposal Consent"). Horsham District Council is of the view that the transfer of the property will facilitate the provision of affordable housing thereby contributing to the social improvement in the district and the undervalue would not exceed £2 million.

- 8.4 That said, although the General Disposal Consent provides authority for an undervalue disposal, Horsham District Council would need to comply with the obligation to obtain Secretary of State consent to support privately let accommodation. This is because, section 24 of the Local Government Act 1988 (“LGA 1988”) provides local authorities with the power to provide financial assistance for privately let housing accommodation, but, section 25 of the LGA 1988 provides that Secretary of State consent is required in relation to the provision of financial assistance or with any gratuitous benefit. Therefore, Secretary of State consent is needed not only to provide financial assistance (owing to the loan) but also to dispose of property at less than market value, which is treated as a gratuitous benefit.
- 8.5 Consideration must also be given in respect of whether the transfer of land by the Council at undervalue and the provision of a loan to construct the housing accommodation will be considered a subsidy under the current UK subsidy rules. To answer the questions as to whether these two transactions can be accommodated within the current subsidy rules you need to consider a number of factors to satisfy yourself that the subsidy being provided does not distort the market and provide one economic operator with an advantage over a competitor or the public body will provide a cheaper services than economic operators with what it proposes to do.
- 8.6 The factors to be considered are;
1. What is the Council’s public policy objective?
The provision of affordable housing for people on the Council’s housing waiting list.
 2. What is the rationale for the Council’s intervention?
The Council’s waiting list contains a large number of people waiting for affordable housing. There are Registered Providers within the District that provide such accommodation and work with the Council to house the most vulnerable people, but there is increasing demand for affordable housing that is not being met by the private developers and Registered Providers. There is a reliance on private developers completing developments and either making a financial contribution towards affordable houses or building affordable housing on their developments. The current demand for affordable housing outstrips the current supply.
 3. What are the desired outcomes of the Council’s intervention?
To provide affordable accommodation for some of those families on the Council’s housing waiting list.

The provision of land at undervalue and a loan for the development is proportionate and limited to what is necessary to achieve the Council public policy objective as it is on a small scale and is a limited development to provide affordable housing on land that is surplus to requirements.

The Council could sell the land at market value to a private developer or engage them to build the affordable housing, but private developers are generally in the market to build at market value housing for sale on the open market at a profit. Therefore, the marketplace, does not currently operate in this area as the developers of affordable housing on public owned land are normally, Registered Providers, Charities and Local Authorities.

The Council therefore considers it is proportionate for it to utilize its own land that is suitable for development to provide needed affordable housing in the District due to high private sector rentals costs and high numbers of people on their housing waiting lists.

Transferring the land at undervalue to the housing company and lending the housing company the money to design and build the affordable housing units is considered to be proportionate and necessary. The development loan and transfer of the land at undervalue, will not have an impact outside the Council's administrative area.

In conclusion the Council's policy objective of providing affordable homes for some people on the Council's housing waiting list, is unlikely to be achieved as quickly via any other of the current routes and the financial support does not distort the market place as the market place is currently unable to supply the numbers of affordable housing required to meet demand and this development will have a negligible impact on the market place.

9 Risk Assessment

- 9.1 Normal risks associated with property development including budgets being exceeded and programme not being met. These will be mitigated by the employment of suitably qualified external professionals and procurement of contractors through the normal procurement processes.

10 Procurement implications

- 10.1 Appointments of consultants and the contractor for the project will be in accordance with the Companies' reserved matters and the Council's Procurement Code and applicable procurement statutory requirements.

11 Equalities and Human Rights implications / Public Sector Equality Duty

- 11.1 There are no equalities and human rights implications associated with this report.

12 Environmental Implications

- 12.1 The environmental targets are set out in paragraph 3.9 above.

13 Other Considerations

- 13.1 There are no other considerations under GDPR/Data Protection or Crime & Disorder.