

## Report to Cabinet

23<sup>rd</sup> March 2023

By the Cabinet Member for Finance and Assets

**DECISION REQUIRED**



Not Exempt

Exempt Appendix A – Shareholders Agreement

### Local Authority Housing Fund 2022-2023 and 2023-2024

#### Executive Summary

On the 26<sup>th</sup> January 2023 Cabinet approved a recommendation to Council to take up a proposal by the Department of Levelling up, Housing and Communities for grant funding for the purchase of property for Ukrainian and Afghan households. Full details of this initiative are set out in the Cabinet paper.

In accordance with the recommendation, full Council approved (i) the grant allocation, (ii) the capital spend of up to £6.326m in the 2023/24 capital programme, and, (iii) that the relevant cabinet member, with Director of Resources, may pursue whichever means deemed necessary to give effect to this initiative.

To facilitate the speedy acquisition and efficient management of the properties, three further recommendations are proposed for approval as set out below.

It is proposed that the properties will be (i) acquired by Horsham District Council, and, (ii) let to and managed by the Council's Housing Company, Horsham District Homes (Holdings) Limited ("HDHHL"). Accordingly, minor variations are required to the HDHHL's shareholder's agreement to facilitate that process.

#### Recommendations

That Cabinet is recommended to:

- i) approve the acquisition by Horsham District Council of up to 16 properties using the funds earmarked for this initiative and to give effect to the same provided that any such acquisitions are undertaken in consultation with the Cabinet Member for Housing and Communities.
- ii) recommend to Council the variation of the Shareholders Agreement for Horsham District Homes (Holdings) Limited as follows:

Clause 3. Insert the words "and/or *to lease residential property from the Council or other third parties both*" following the words ".."and other developers" and before the words "for onward rental through"

So that the business of the company reads as follows “ The business of the Company (Business) shall be to purchase developed properties from Holdco and other developers and/or to lease residential property from the Council or other third parties both for onward rental through ASTs in accordance with any business plan then in force or as otherwise determined by the Council from time to time”.

Reserved Matters clause 17 insert the words ...*“For the avoidance of doubt (i) material assets shall be assets of a value in excess of £250,000, and, (ii) lease arrangements between the Company and the Council/other third parties to facilitate the provision of housing shall not constitute a reserved matter”*.

So that the reserved matter reads as follows “Agreeing to enter into or entering into any acquisition or disposal of any material assets by the company. For the avoidance of doubt, (i) material assets shall be assets of a value in excess of £250,000, and, (ii) lease arrangements between the Company and the Council/other third parties to facilitate the provision of housing shall not constitute a reserved matter”.

## Reasons for Recommendations

- i) To ensure that suitable homes are acquired by Horsham District Council in an efficient and timely manner to give effect to this initiative.
- ii) To avoid the requirement to seek Cabinet’s approval for the purchase by Horsham District Council of each individual property that would otherwise be required to give effect to this initiative.
- iii) To ensure that Horsham District Homes (Holdings) Limited has the power to take a lease from Horsham District Council to be able to facilitate the provision of housing through Assured Shorthold Tenancies/Licences.

## Background Papers

<https://delta.communities.gov.uk/document-repository/public/download?uri=/document-repository/Local-Authority-Housing-Fund-Prospectus-Final.pdf>.

Cabinet paper dated 26<sup>th</sup> January 2023

### Appendix A - Exempt

Horsham District Homes (Holdings) Limited Shareholders Agreement

**Wards affected:** All

**Contact:** Dominic Bradley, Director of Resources 01403 215300

## Background Information

### 1 Introduction and Background

- 1.1 Cabinet recommended to Council on the 26<sup>th</sup> January that Council proceed with the application and receipt of grant funding for the Council to facilitate the provision of 14 standard properties and 2 larger homes under a scheme announced by the Department of Levelling Up, Housing and Communities, known as the £500m Local Authority Housing Fund. This Recommendation was approved by Council on the 22<sup>nd</sup> February 2023.
- 1.2 The purpose of this report is to deal with a number of Governance issues to enable the smooth and efficient acquisition and management of the homes.

### 2 Relevant Council policy

- 2.1 A great place to live – creating well balanced communities that meet residents' needs.

### 3 Details

- 3.1 Acquiring 16 properties in a six-month period is a challenging exercise. To ensure that this process is completed quickly and efficiently it is proposed that the Cabinet approves the acquisition of all properties by Horsham District Council (in consultation with the Cabinet Member for Housing and Communities) to give effect to this initiative.
- 3.2 The intention is to grant Assured Shorthold Tenancies on these properties. However the Council, as a Local Authority, is listed as an exempted body under the Housing Act 1988 which means that it is unable, by law, to grant such a tenancy. This arises from time to time and the solution adopted by the Council in the past is to grant an overriding lease to an external charitable organisation who have granted an Assured Shorthold Tenancy to the tenant. For the properties to be acquired, it is proposed that Horsham District Council (i) acquires the properties, and, (ii) subsequently grants a lease on the properties to HDHHL, a company owned by the Council for the ownership and management of housing accommodation.
- 3.3 The Shareholders Agreement dated 20 October 2020, which (i) encapsulates the business of HDHHL, and, (ii) controls the powers of the directors of HDHHL is drafted in a narrow manner and does not allow HDHHL nor give its Directors the power to make the decisions required to give effect to initiatives such as these. The two relevant clauses are:

**Clause 3.1**, 'The business of the company shall be to purchase developed properties from Holdco [Horsham District Homes Limited] and other developers for onward rental through ASTs in accordance with any business plan then in force or as otherwise determined by the Council from time to time'. This does not include the taking of a short term lease to facilitate the provision of housing or management of property.

**Number 17** of the Reserved Matters which says shareholder consent is required to 'Agreeing to enter into or entering into any acquisition or disposal of any material assets by the company'.

3.4 It is proposed to amend these Clauses as detailed in the second recommendation above-noted.

3.5 These alterations will provide HDHHL with the powers and flexibility required to facilitate the provision of housing and enable the project to proceed quickly with appropriate governance.

## **4 Next Steps**

4.1 Cabinet to approve the recommendations contained within this report in order that the Council can acquire the required properties and let them to HDHHL.

4.2 Cabinet to recommend to full Council the approval of the alterations to the HDHHL's Shareholder Agreement in order that it can take leases of the properties to facilitate the provision of housing.

## **5 Views of the Policy Development Advisory Group and outcome of consultations**

5.1 This is an accelerated decision and therefore only the Chairmen of the (i) Housing and Communities Policy Development Advisory Group, and, (ii) Finance and Assets Policy Development Advisory Group have been consulted, who have raised no objections.

5.2 The Monitoring Officers comments are incorporated in the report.

## **6 Other courses of action considered but rejected**

6.1 None.

## **7 Resource consequences**

7.1 These are set out in the Cabinet Report dated 26<sup>th</sup> January 2023. There are no resource consequences to the recommendations in this report.

## **8 Legal considerations and implications**

8.1 As contained in the Cabinet Report dated 26<sup>th</sup> January 2023.

8.2 In addition, section 1(1) of the Localism Act 2011 provides that a local authority has power to do anything that individuals generally may do. The Council has the power, therefore, to acquire properties and let the same.

## **9 Risk assessment**

9.1 As set out in the 26<sup>th</sup> January 2023 Cabinet report.

## **10 Procurement implications**

10.1 As set out in the 26<sup>th</sup> January 2023 Cabinet report.

## **11. Equalities and Human Rights implications / Public Sector Equality Duty**

11.1 As set out in the 26<sup>th</sup> January 2023 Cabinet Report.

## **12 Environmental implications**

12.1 As set out in the 26<sup>th</sup> January 2023 Cabinet Report.

## **13 Other considerations**

13.1 There are no GDPR/Data Protection or Crime & Disorder implications from this report.