

Cheltenham Borough Council
Social and Community Overview and Scrutiny Committee –
14th January 2009
Cabinet - 20th January 2009
Cheltenham Borough Homes
- Renewal of Management Agreement Update Report
Report of the Cabinet Member Community Development and
Housing

1. Executive Summary and recommendation

1.1 The issue

1.1.1 At its meeting on 15th April 2008 Cabinet agreed to the drafting of a new management agreement with Cheltenham Borough Homes and agreed that this arrangement should cover a ten year period between 2010 – 2020 to allow for business stability and forward planning. Cabinet also agreed to the commissioning of Trowers and Hamlin LLP, the authors of the original management agreement, to draft an updated agreement for approval and authorised the AD Community Services together with Legal Services to enter into an appropriate agreement to this end. This report carries an update of progress to date.

1.2 I therefore recommend that Social and Community Overview and Scrutiny and Cabinet notes the content of this report.

1.3 Summary of implications.

1.3.1 Financial

In reviewing the management agreement the Council will need to reflect the development of the role undertaken by Cheltenham Borough Homes in the mechanism for determining the management fee, including the potential role of 'enabler' in the development of new build homes.

Any proposal to build new homes would have to be approved by Council, particularly if it were to involve the reallocation of existing resources or prudential borrowing. A decision to use CBH as an enabler would need to be considered against the alternative delivery option of using a Registered Social Landlord (RSL). The development of new build properties would provide the first significant assets on CBH balance sheet.

Should any future new build proposal involve the disposal of land this would be subject to Cabinet approval. Any land disposals to CBH would be subject to the same conditions, which apply to those imposed on RSL's.

Although no specific schemes have been worked up, it is likely that a funding package may include grant from the HCA, free land, plus cross subsidy from sales proceeds and potentially prudential borrowing. The prudential borrowing costs would need to be covered by rental streams from the new homes.

Issues which would need to be resolved include stamp duty, VAT and corporation tax.

ALMO new build properties would be outside the HRA subsidy system and, as such, properties would not be subject to the Right to Buy (RTB). However, they would be subject to Right to Acquire (RTA) in line with Housing Association properties, limiting the discount available to tenants from a maximum £30,000 under RTB to £9,000 under RTA.

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1.3.2 Legal

If CBH were to submit a direct bid for Social Housing grant from the Homes and Communities Agency, then under current policy it will need a performance guarantee from the Council. At pre-qualification stage the Council will need to give formal notice of its intention to enter into such a guarantee.

Consent to the current management arrangements was given by the Secretary of State under s27 of the Housing Act 1985; we do not currently envisage that that consent will need to be amended or revised as a result of the changes proposed.

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1.4 Implications on corporate and community plan priorities

Ambition 5B	We will have improved our housing stock through coordinated programme of investment and maximised the freedoms and flexibilities available to our arms length management organisation (ALMO).
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Ambition 5D	We will have implemented the successful and sustainable regeneration of the St Paul's estate in housing, social and environmental terms.
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1.5 Statement on Risk

1.5.1 When considering developing a management agreement to cover one of this council's major functions, for a ten year period, it is important to get it right. The risk is mitigated in having a delivery partner which is independently rated as a three star

organisation in the field. Whilst housing management is its primary focus there are new opportunities opening up, because of its status, that need incorporating into the new agreement. There are also a number of support services provided to the ALMO from the council; this element of work is an integral part of those support services' business plans.

2. Introduction

2.1 Cheltenham Borough Homes is a not-for-profit arms length management company that manages and maintains Cheltenham Borough Council's homes. The Council retains the ownership and rent setting of all its homes. The Company works in partnership with the Council to improve the quality of life for tenants and leaseholders.

2.2 In November 2003, Cheltenham Borough Homes was inspected by the Audit Commission to assess the quality of service to its customers. The final report, published in February 2004, praised CBH for exceptional progress within a short timescale and assessed the company as providing two star (good) services with promising prospects for improvement. This gave the Council access to decent homes funding of £31.44 million. CBH were re-inspected in January 2007 and were awarded the coveted three star status (excellent services with excellent prospects for improvement). Kieran Colgan, the Audit Commission's lead housing inspector for the South West said:

"Since its creation in 2003, CBH has transformed itself. It has worked closely with its customers to set a clear direction and identify key priorities. It has communicated these well to staff and partners and has put in place systems to ensure it stays focused on them. CBH is now achieving impact well beyond that of a traditional housing provider. It is contributing effectively to making Cheltenham a better place to live for everyone. Many organisations could learn from this approach".

2.3 Whilst its primary focus remains that of housing service provider CBH are applying to access Housing Corporation (now part of the HCA) Grant to enable the development of new homes, mainly on garage and infill sites, and the new agreement will reflect this ability.

3. Approach and Progress

3.1 After a slight delay due to availability of Trowers and Hamlin LLP staff Rob Bailey has now been commissioned by CBC Legal Services. Initial meetings have also been held between key staff at CBC and CBH, these are on-going.

3.2 It has been agreed by both CBC and CBH that the original Management Agreement was a robust document and had worked well over the formative period of operation. It was felt that the most effective and efficient way to progress would be to update and amend this document to make it fit for purpose for the period 2010 – 2020.

3.3 Revision will take the form:

- a) Minor amendments to update the document with regard to references to government department, agencies and relevant legislation.

- b) New inclusion clauses covering (draft text attached as appendix A):
- Cheltenham Borough Homes' abilities and aspirations beyond its core function of housing management enabled by their three star status, in particular their ability to access funding and enable development of new build homes.
 - To acknowledge the process to be followed should CBC wish CBH to undertake new or additional business.
 - Cheltenham Borough Homes' role in the management of HRA assets and shop portfolio.
 - The agreement's ability to adapt to changes in law, legislation and regulation.
- c) Updating of schedules covering:
- Delegated functions
 - Service Level Agreements
 - Monitoring and benchmarking
 - Accommodation
- d) Development of a plain English executive summary of the agreement. The Management Agreement is, by its nature, a complex legal document but it is agreed that a jargon free overview would be useful to most readers.

3.4 The draft document will go for consultation to tenant and stakeholder representatives.

3.5 It is anticipated that a final draft will be available for both the Cabinet and CBH Board by June 2009 with sign up and implementation by 1st April 2010.

4. Consultation

4.1 Consultation on the content of this report has taken place with:

- Cheltenham Borough Homes Officers and Stakeholders
- CBC Officers and Stakeholders

Background Papers	Cabinet Report 'Cheltenham Borough Homes - Renewal of Management Agreement' 15 th April 2008
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Accountability	Cllr John Webster
Scrutiny Function	Social and Community

Appendix A

Proposed New Inclusion Clauses – subject to consultation

1 Clause 23 (Ability of CBH to trade etc.)

The Organisation shall not

- (i) carry out work for or provide services to third parties (other than in accordance with this Agreement), or
- (ii) establish a subsidiary

without the Council's prior written consent (which shall not be unreasonably withheld or delayed) provided that the Council's consent under this Clause [] shall not be required where:

- (i) the Organisation is reasonably satisfied that the work or services to third parties or establishment of a subsidiary will not prevent the Organisation from complying with its obligations under this Agreement, and
- (ii) (the contracts under which such work or services are provided do not exceed in value £[] in each case and £[] in aggregate (or such other amounts as may be agreed between the parties from time to time) (or in the case of a subsidiary the annual turnover of the subsidiary shall not exceed £[]), and
- (iii) the Organisation has informed the Council of its intention to carry out such work or service or establish the subsidiary.

2 Process where CBH undertake general fund functions

[As part of the settlement of the Delivery Plan pursuant to Clause 6] the Organisation shall be entitled to propose suggested measures that might be taken by the Organisation or the Council to improve the provision of [housing related] services in the Borough of Cheltenham and which may include a proposal to delegate further [housing related] functions from the Council to the Organisation (a **Proposal**).

The Council shall give due and reasonable consideration to each such Proposal and as part of the settlement of the Delivery Plan notify the Organisation as to whether such Proposals are agreed. If not agreed, then the Council shall explain the reasons why such Proposals are not agreed and the amendments (if any) which would render the Proposal potentially acceptable to the Council (in which case the Parties shall work in good faith to implement such Proposal).

3 Assistance to CBH New Build programme

The Council undertakes to assist the Organisation

- i by giving formal and reasonable consideration to the use of its statutory powers to assist the Organisation in the fulfilment of its objectives in the Borough of Cheltenham.

- ii (not extending to any financial commitment or to fetter its discretion as planning authority) in the procurement and/or assembly of suitable sites for the purpose of building new Social Housing (as defined in the Housing and Regeneration Act 2008)

4 **Adverse regulatory inspections and remedial clause concept**

In the event of the occurrence of one or more of the circumstances described in Clause [65.2] or in the event of the publication of a materially adverse inspection report by a Competent Authority (draft to include Audit Commission/TSA etc.) (“the **Event**”) the Council shall (prior to exercise of its powers under Clause 65.3 (termination etc.)) require the Organisation to produce a remedial plan (“the Remedial Plan”) within 20 Working Days or such other shorter period as the Council may reasonably require of the occurrence of the Event.

The Remedial Plan shall:

- (i) contain an analysis by the Organisation of the reasons why the Event occurred;
- (ii) set out what steps the Organisation proposes to take to deal with the Event and/or establish appropriate improvement targets and timeframes;
- (iii) set out what steps the Organisation proposes to take to avoid a recurrence of the Event;
- (iv) in relation to the circumstances in Clause [] identify what action the Organisation proposes to take to demonstrate that the Organisation is providing or will provide best value;
- (v) in relation to the circumstances in Clause [] identify what action the Organisation proposes to take to provide the Services in accordance with the requirements of Clause [].

The Council shall notify the Organisation within 20 Working Days of receipt of the Remedial Plan whether it is agreed or rejected.

If the Council rejects a Remedial Plan proposed by the Organisation the Council shall give reasons. In these circumstances the Organisation shall within a further 10 Working Days propose a revised Remedial Plan taking account of the Council’s reason for rejection and any amendments proposed by the Council. The Council will then decide whether to accept or reject the revised Remedial Plan and in the absence of agreement between the parties the matter shall be determined in accordance with Clause 67.

If (i) the Event leading to the production of the Remedial Plan recurs within 3 months of the implementation of the Remedial Plan or (ii) the Services do not improve in accordance with any agreed improvement target confirmed in the Remedial Plan or (iii) the Council has rejected a Remedial Plan in accordance with Clause [] and no suitable Remedial Plan is subsequently submitted and approved by the Council then the Council will be entitled to exercise the rights described in Clause [].

Footnote: *During redrafting the Management Agreement clause and paragraph numbering will inevitably be subject to alteration.*