

Cheltenham Borough Council

Cabinet– 17 March 2015

Cheltenham Borough Homes – Management Agreement

Accountable member	The Leader, Councillor Steve Jordan
Accountable officer	Pat Pratley, Deputy Chief Executive
Ward(s) affected	None
Key Decision	Yes
Executive summary	<p>In June Cabinet endorsed the principle of amending the term and content of the Agreement for Housing Management and Other Services (known as the Management Agreement) between Cheltenham Borough Council (CBC) and Cheltenham Borough Homes (CBH) in order that it may better facilitate the delivery of the CBH and HRA business plans. Cabinet also endorsed a period of consultation with tenants, leaseholders and other stakeholders for a minimum of 6 weeks regarding the proposed changes to the CBH Board and the CBH Management Agreement.</p> <p>Consultation took place during July and August and invited respondents to have their say on 3 important business areas for CBH:</p> <ol style="list-style-type: none">1. A proposal to extend the CBH Management Agreement to a 30 year agreement2. A proposal to reduce the number of CBH board members and for appointments to be based on the skills necessary to meet the growth of CBH3. The development of the new CBH business plan and services for the future which CBH might provide <p>Cabinet received a report at its meeting on 16 September summarising the outcome of the consultation. At that point Cabinet recommended to authorise the leader to update the CBH Articles of Association to accommodate in particular a smaller board and also recommended that a further report on proposals for amending the CBH Management Agreement be brought back to them in December.</p> <p>Cabinet was advised in June that when CBH was set up in 2003, the Council sought and obtained the Secretary of State's consent to enter into a Management Agreement in accordance with s27 of the Housing Act 1985. Both the Council and CBH's legal advisers have agreed that such consent would be required for the changes proposed now.</p>
Recommendations	<p>Cabinet is recommended</p> <ol style="list-style-type: none">1. To endorse the proposed changes to the CBH Agreement for

Housing Management and Other Services as outlined in this report

2. To delegate to the Deputy Chief Executive, in consultation with the Leader and the Borough Solicitor, power to finalise the Management Agreement and associated documentation for implementation from 1 April 2015, subject to only minor amendments to the Management Agreement being received from the Secretary of State. Any major changes suggested by the Secretary of State will require further approval from Cabinet.

Financial implications	<p>The new Management Agreement includes updated financial arrangements, as detailed in schedule 3 to the agreement. These changes have no financial impact on the Council.</p> <p>The proposed extension of the agreement to 30 years, effective from 1st April 2015, and the proposed reduction in CBH Board members has no financial impact on the Medium Term Financial Strategy of the council for the period 2014/15 to 2018/19.</p> <p>Contact officer: Sarah Didcote, Sarah.Didcote@cheltenham.gov.uk, 01242 264125</p>
Legal implications	<p>The current proposal is that the existing Management Agreement will end and a new one granted immediately with slightly different clauses but for 30 years.</p> <p>The Contract has break clauses every 10 years, and there are termination provisions if CBH do not provide the services or breach the agreement.</p> <p>Secretary of State approval is required and an application has been made but it is not anticipated there will be any issues on this.</p> <p>The original Housing Options Agreement was drafted to automatically end when the Management Agreement ended. As the change proposed means the old Management Agreement is terminated and a new one granted the current intention is to slightly amend one of the clauses of the Housing Options Agreement to allow it to continue in conjunction with the new CBH Management Agreement. This will mean two agreements on housing related functions running side by side. This will allow more flexibility in dealing with the core housing functions and the “housing options” functions.</p> <p>Contact officer: Gary Spencer; gary.spencer@teWKesbury.gov.uk, 01684 272691</p>
HR implications (including learning and organisational development)	<p>There are no specific HR implications as a result of this report.</p> <p>Contact officer: Richard Hall; Richard.hall@cheltenham.gov.uk, 01242 774972</p>
Key risks	<p>Please see risk assessment at Appendix 1</p>
Corporate and community plan Implications	<p>The Council’s corporate plan has 5 overall strategic objectives. The role that CBH plays in the community and economy of Cheltenham is reflected in the strategic objectives of both strengthening our communities and strengthening our economy.</p>

Environmental and climate change implications	There are no environmental and climate change implications arising directly from this report; however, they are important issues for both CBC and CBH. The quality of housing has an important bearing on tackling climate change and therefore investment in existing stock and the delivery of new affordable housing will need to take account of this.
Property/Asset Implications	<p>The updated management agreement will account for the greater strategic and collaborative working currently being implemented and refined to ensure delivery of new build and redevelopment investment opportunities to the HRA portfolio.</p> <p>Contact officer: David Roberts; David.Roberts@cheltenham.gov.uk, 01242 264151</p>

1. Background

- 1.1 The Agreement for Housing Management and Other Services (known as the Management Agreement) sets out the relationship between CBC and CBH. In March 2003 CBC, under s27 of the Housing Act, and with the approval of the Secretary of State, agreed that CBH should exercise the Council's powers in relation to housing management and the Management Agreement is the contractual relationship between the two organisations.
- 1.2 Cabinet considered a report in 2008 which signalled that CBH was applying to access Homes and Communities Agency (HCA) grant to enable the development of new homes, mainly on garage and infill sites, and a new Management Agreement was necessary to facilitate this. Cabinet therefore agreed to renew the agreement in September 2009 and with an expiry date of 31 March 2020.
- 1.3 In June this year Cabinet received a report explaining that CBH was in the process of updating its 10 year vision and business plan and that the headline outcomes were that CBH is a high performing organisation and it is well positioned in terms of being able to respond to local need. Crucially, it should be noted that the 2008 revisions to the MA had enabled CBH to deliver a number of new high quality award winning new build developments and also to secure HCA funding to support new build schemes.
- 1.4 As explained in the June report the successful delivery of new build created a desire, for CBC as well as CBH, to create a pipe-line of development opportunities for the delivery of affordable/social council owned housing, ie, built through the HRA. Such a pipeline would also put the Council in a more favourable position with regard to possible future HCA funding which tends to require "shovel-ready" schemes in order to deliver within the often challenging timescales set for grant funding.
- 1.5 The above, combined with recent revenue investment in CBH core service provision, leading to innovation and enhancement of service delivery, led to CBH wishing to review the adequacy of its current Management Agreement with the Council as well as also considering its own governance framework, in particular the Board size and composition.
- 1.6 Cabinet was therefore asked in June to approve consultation with CBH tenants, leaseholders and other stakeholders on a new Management Agreement, development of new services and on proposals to change the composition of the CBH board. In that report Cabinet endorsed the following;
 - 1.6.1 The strategic direction of the CBH business plan
 - 1.6.2 The principle of amending the terms and content of the Management Agreement in order to facilitate the delivery of the CBH and HRA business plans

- 1.6.3** The principle of reducing the CBH board size from 15 to 10; and
- 1.6.4** The principle of changing the composition of the CBH board to facilitate the delivery of the CBH and HRA business plans.
- 1.7** In September Cabinet received a further report following 6 weeks of consultation in July and August. The report explained the outcome of the stakeholder consultation with regard to the 10 year vision for CBH, service prioritisation, service enhancement and proposals to change the composition and size of the CBH Board. Following consideration of the consultation feedback Cabinet authorised the Leader to make the necessary changes to the Articles of Association to facilitate in particular changes to the size and composition of the CBH board of directors.
- 1.8** Cabinet also agreed that a further report on the proposed changes to the Management Agreement be brought back to them and that is the reason this report is before Cabinet today.
- 1.9** The proposal is to enter into a new Management Agreement from 1 April 2015. In order to meet this timescale the finalised draft has been sent to the Secretary of State ahead of the Cabinet meeting. At the point of issuing this report no response has been received from the Secretary of State and consequently Cabinet is being asked to delegate to the Deputy Chief Executive the finalisation of the agreement, in consultation with the Leader and the Borough Solicitor, subject to only minor changes being required by the Secretary of State. It is hoped to be able to provide an update to Cabinet on this at the meeting.

2. Approach Taken to Updating the Management Agreement

- 2.1** Officers from CBH and CBC have worked closely with the Cabinet Member for Housing in reviewing the Management Agreement and its associated schedules. Legal advice has been provided by Trowers and Hamlin on behalf of CBH and One Legal on behalf of CBC.
- 2.2** As previously in 2008 it has been agreed by both CBC and CBH that the original agreement was a robust document and has worked well over the years of operation. Consideration was given to a number of newer style agreements but it was felt that these did not give the same level of clarity as the existing documentation. Therefore it was felt that the most efficient and effective way to progress would be to update and amend the current agreement to make it fit for purpose although the new Management Agreement will be a new Agreement..
- 2.3** The agreement has undergone revision and discussion between CBC, CBH, Cabinet Member for Housing and legal representatives with a number of drafts being produced as negotiations have progressed. The final agreement has been subject to a detailed “page-turning” meeting to ensure that it is complete and reflects all the expected and requested amendments.
- 2.4** CBC Overview and Scrutiny were provided with a detailed presentation on the proposals to change the Articles and Memorandum of Association prior to the September Cabinet meeting. They did not wish to undertake any further scrutiny of the Management Agreement prior to its consideration by Cabinet.
- 2.5** The CBH Tenants Scrutiny Improvement Panel (TSIP) has been consulted with regard to the amendments to the Articles and also the main updates to the Management Agreement.

3. Management Agreement Documentation

- 3.1** Reference is made in this report to the documentation which supports the Management Agreement, therefore these are explained below for ease of reference.
- **Schedule 1** - Format of the Business Plans and the Annual Plans
 - **Schedule 2** – Part 1 - Delegation of functions – housing management responsibilities

delegated to CBH. Part 2 – Description of those services being retained by CBC and CBH business plan key elements

- **Schedule 3** – Financial arrangements
- **Memorandum of Operations** - Outlining operational aspects of the working relationship between CBH and CBC

4. Updating the Management Agreement

4.1 Attached at Appendix 2 is a summary of the agreement following revision providing a very brief explanation of the clauses which make up the document. A number of amendments and updates have been made for changes in legislation, deletion of references to organisations which no longer exist, e.g. Audit Commission, etc.

4.2 The main areas of substantial change are described in the following sections.

4.3 Management Agreement Term

4.3.1 With regard to those consulted on extending the length of the Management Agreement term to 30 years 92% of respondents agreed with the proposal.

4.3.2 This is perhaps the single most significant change proposed to the current agreement. The June Cabinet report explained that the reasoning behind the request from CBH for a longer term was the necessity to give a greater degree of certainty to the CBH Board. In addition, as service and market development have been highlighted as areas for business growth, and these too have seen support through the consultation process, it is deemed necessary to ensure that the Management Agreement can aid CBH's delivery of its own business plan and the HRA business plan.

4.4 Management Agreement – Break Clause and Business Plan 5 Year Review

4.4.1 Whilst in principle supportive of a 30 year term the Cabinet Member was minded to require the agreement to provide for break clauses at 10 year intervals. Therefore the proposal is that the new agreement will commence on 1 April 2015 and expire on 31 March 2045 unless terminated on either on 31 March 2025 or 31 March 2035. It is also proposed that 2 years written notice of any review which could lead to termination be given and at least 12 months notice prior to written notice of termination.

4.4.2 The 2009 update to the Management Agreement introduced the requirement for an annual update of the CBH and HRA business plans together with a material review every 5 years. These requirements will be very important in the context of a 10 year break clause as it will provide an opportunity to ensure that CBH direction of travel continues to meet the Council's requirements.

4.5 Council Officer and Cabinet Member Representation

4.5.1 The Council Representative will be a Council Officer as their responsibilities under the agreement are to deal with administrative functions such as giving instructions, receiving notices, plans, reports etc

4.5.2 The Management Agreement also allows for the Leader of the Council or their nominated representative (who must be a Cabinet Member) to attend meetings of CBH's Board (as an observer and without voting rights) and to receive notices of CBH's Board and relevant board papers.

4.6 Housing Options

4.6.1 On 29 November 2013 an agreement was entered into between CBC and CBH relating to the

provision of homelessness and housing related services, also known as Housing Options. Currently the termination of the housing options agreement is the same date as the termination date of the Management Agreement with clause 2 of the Options Agreement linking that agreement to the end of the Management Agreement. Therefore it is proposed that the housing options agreement shall be varied by a minor change to refer to the new Management Agreement. This will keep the two agreements separate but linked together.

4.7 Authority to Undertake Works to High Cost Property

4.7.1 CBH will be able to undertake works on void properties up to the value of £50,000 without reference to the Council's Asset Management Working Group, unless there is a business case for delivery of an alternative scheme in the area which incorporates that property. Any works required above this amount or where the property in question is part of a development being considered for redevelopment/remodelling would require a full option appraisal to be presented to the Council's Asset Management Working Group via CBC and CBH's Joint Programme Group.

4.7.2 There is also an aspiration that strategic asset management decisions will, in the future, be informed by a more sophisticated evaluation appraisal. This will include consideration of the net present value of our existing housing stock. Where options appraisals are required following this evaluation, these will also be presented to the Council's Asset Management Working Group via the Council and CBH's Joint Programme Group. It is anticipated that reference will be made to this approach as part of the review of the Schedules to the Management Agreement at the relevant time.

4.8 Assignment and Sub-Contracting

4.8.1 The agreement has been updated so that CBH cannot amend the articles of association, nor those of a subsidiary without the CBC's prior written consent, such consent not being unreasonably withheld.

4.9 Shared Services

4.9.1 The current agreement came into force prior to the creation of a number of shared services of which CBH is a customer. Particularly relevant here is that the Management Agreement has been updated with regard to the fact that CBH is now receives its ICT from the shared service delivered by Forest of Dean District Council. Thus CBH will need a new contract with the Forest of Dean, the host authority to provide the services. CBC will also be a party to this new contract. CBH also receives some services from GO Shared Services and is also a customer of One Legal provided by Tewkesbury Borough Council. The memorandum of operations will be updated to signpost to the various service level agreements for shared service provision.

4.10 Communications Protocol

4.10.1 A protocol is currently in use which describes the various meetings that take place between CBC and CBH, their purpose and who is involved. It is proposed that the protocol be added to the memorandum of operations.

5. Early Priorities under the 30 year Management Agreement

5.1 The HRA self-financing arrangement has increased our HRA resources and given the council greater control over how these resources will be spent. In February 2012 the council approved a 30 year HRA Business Plan which highlights our spending intentions across 3 main areas:

- The delivery of new affordable housing
- Investment in our existing housing stock, and
- The provision of new services to support our tenants, particularly in light of welfare reforms.

- 5.2 The investment decisions that the council needs to take will be taken first and foremost with a robust understanding of our investment requirements for our existing homes - as this will help inform future investment decisions on the remaining 2 priority areas.
- 5.3 CIPFA (Chartered Institute of Public Finance and Accountancy) has recently undertaken a critical friend analysis of our asset management plans/strategies across the CBC and CBH. We will seek to implement any recommendations for improvement arising from this inspection for both our organisations.
- 5.4 CBH is a high performing ALMO which is valued by our tenants. We are also keen to test further the value for money our tenants receive for these services. We will therefore work closely with CBH to consider what other opportunities exist for achieving greater value for money without this negatively impacting on CBH's services to our tenants. Improved value for money might be achieved, for example, by considering opportunities for co-location through the council's Accommodation Strategy.
- 5.5 We will also consider how any value for money savings that are realised can be reflected in the future setting of the Management Fee.
- 5.6 The Council will also ensure that the use of the HRA is strictly for the benefit of our tenants. In doing this, we will continue to review the council's other services that support the HRA to ensure that any re-charging of these services to the HRA is fair and reasonable.

6. Reasons for recommendations

- 6.1 As explained in the body of the report.

7. Alternative options considered

- 7.1 As explained in the June Cabinet report the Council could consider amending the Management Agreement to reflect changes since it was re-drafted in 2008 but to not extend the term. However, it is felt that this would not secure the longer term planning which CBH may require in order to meet its business and investment needs. However, whilst accepting the necessity to enter into a longer term agreement the break clause provision does give CBC an opportunity to review the delivery of its housing management service.
- 7.2 CBC could consider allowing the current Management Agreement to run its course to 2020 with an objective of undertaking a fundamental review of housing service provision. However, Cabinet has been supportive of CBH continuing its new build programme and developing this aspect of its business to deliver further affordable housing.

8. Consultation and feedback

- 8.1 The consultation undertaken by CBH during July and August sought to gain views on amongst other things a longer term for the Management Agreement as well as appetite for CBH to diversify its service delivery. CBH sent a postal version of the questionnaire to all 4,563 CBH households. An online survey was also sent to 420 tenants via email. The online survey link was also made available via the CBC and CBH websites. The results of the consultation were extremely positive and were explained in the September Cabinet report.
- 8.2 CBH Chief Executive has kept the CBH Tenants Scrutiny and Improvement Panel (TSIP) updated on the changes that have been made to the company's governance framework. TSIP was last briefed on 8 December with regard to the proposed changes to the Management Agreement..
- 8.3 On 8 September CBC Overview and Scrutiny Committee received a Cabinet Member briefing on the progress being made with the revisions to the Articles of Association of CBH and the

proposals to update the Management Agreement. The minutes show that *“there was consensus amongst the members of the committee that there was no need and little value to undertake joint scrutiny of the new Management Agreement for CBH. Members were comfortable with the changes that were being proposed and satisfied that CBH would continue to keep members informed.”*

9. Performance management – monitoring and review

- 9.1 The Management Agreement with CBH is monitored through regular officer meetings and update meetings with the lead Cabinet Member. The CEO and Chair of CBH meet with the CEO of CBC and Leader on a regular basis to ensure that company issues as opposed to service delivery issues are dealt with in a timely manner. The lead Cabinet Member meets with relevant officers on a frequent basis to discuss CBH operational performance.
- 9.2 CBH and CBC senior leadership teams meet twice a year to consider joint strategic issues and these are supplemented with events where the Cabinet, CBC senior officers together with the CBH Board and senior officers come together to consider future planning and direction for CBH.

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Appendices	<ul style="list-style-type: none"> 1. Risk Assessment 2. Summary of Agreement for Housing Management and Other Services
Background information	<ul style="list-style-type: none"> 1. Agreement for Housing Management and Other Services between Cheltenham Borough Council and Cheltenham Borough Homes Ltd

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
1	If the Council does not enter into a 30 year Management Agreement, then CBH will be less able to acquire favourable finance terms on loans for the new build of CBH affordable homes.	Pat Pratley	18.2.15	1	6	6	Reduce	Agree to enter into a 30 year agreement, in line with recommendations of this report.	1.4.15	Martin Stacy	
<p>Explanatory notes</p> <p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											