

Cheltenham Borough Council
Cabinet – 8th November 2016
Council – 12th December 2016

**Housing Revenue Account New Build- Garage site redevelopments
and the use of Right to Buy Receipts**

Accountable member	Councillor Peter Jeffries, Cabinet Member Housing
Accountable officer	Martin Stacy, Lead Commissioner – Housing Services
Ward(s) affected	Hester’s Way, Battledown, Springbank (and potentially any ward should Right to Buy Receipts be also used to purchase dwellings)
Key Decision / Significant	Yes
Executive summary	<p>In March 2015 Cabinet resolved that the Authority seek bids from contractors to build new homes across Cheltenham on a number of garage sites. Following a recent procurement exercise this report seeks approval to enter into a JCT Design and Build Contract with J Harper and Sons with Total Scheme Costs not to exceed £1,772,000. The scheme will deliver up to twelve new homes on three HRA garage sites.</p> <p>Whilst the Authority’s preferred option is to build affordable homes on council-owned land, the complex nature of some of these sites means that it may not always be possible to spend Right to Buy Receipts in this way due to the government imposed time limits on the use of these Receipts. (Right to Buy Receipts must be used within 3 years; otherwise they have to be returned to the government with interest.)</p> <p>It is therefore proposed that any Right to Buy Receipts that cannot be used for building new affordable homes on council-owned land be used instead for purchasing dwellings, subject to appropriate parameters, as detailed in the recommendation below and at Section 5.4 of this report.</p> <p>To date three homes have been purchased in this way, with a further four homes in the pipeline, following Cabinet approvals in November 2015 and again in September 2016 to use Right to Buy Receipts for this purpose.</p>
Recommendations	<p>That Cabinet:-</p> <ol style="list-style-type: none"> 1. Subject to subsequent Council approval, authorise the Authority to accept the tender received from J Harper and Sons enter into a JCT Design and Build Contract for the construction of up to twelve new dwellings with Total Scheme Costs not to exceed £1,772,000. 2. Delegate authority to the Head of Property and Asset Management, in consultation with the Borough Solicitor to: <ol style="list-style-type: none"> 2.1 Conclude the JCT Design and Build contract with J Harper and Sons.

2.2 Take all necessary steps and undertake all necessary procedures, including entering into any legal agreements or other documentation as may be required to implement or facilitate the developments.

2.3 Agree the final number of dwellings that will be built, in the event that the council is unable to proceed with the development of all twelve new dwellings because of site complications (such as unresolved rights of way issues).

- 3. Delegate authority to the Head of Property and Asset Management, in consultation with the Section 151 Officer and Cabinet Member for Housing, to use the Right to Buy Receipts to purchase dwellings that are considered suitable for use as affordable housing (in accordance with the parameters set out within paragraph 5.4 of this report) PROVIDED THAT the Head of Property Services is satisfied it would not be possible to use these receipts to support the approved delivery of new affordable housing on council owned sites due to time restrictions on the use of these receipts and PROVIDED FURTHER that the expenditure remains within Council approved budgets for the use of delivering new affordable housing.**
- 4. Authorise the Borough Solicitor to negotiate and complete such documents as she deems necessary or desirable to conclude the transactions negotiated by the Head of Property and Asset Management.**
- 5. Authorise the Authority to charge Affordable Rents to all dwellings.**

Cabinet recommends that Council:

- 6. Authorise the allocation of up to £1,772,000 for the construction of up to twelve new dwellings.**
- 7. Note that the Total Scheme Costs of £1,772,000(broken down in further detail in exempt Appendix 3) will be funded by circa £531,000 of RTB receipts with the balance funded by the most appropriate combination of the other funding streams noted within the report – this decision being delegated to the Section 151 Officer in accordance with Financial Rules B7 and B8.**
- 8. Approves the Authority sourcing loan finance of up to £1,200,000 from the Public Works Loan Board to be used for the construction of twelve new dwellings.**

<p>Financial implications</p>	<p>As outlined in the report and exempt appendix.</p> <p>The development of an HRA new build programme will require an ongoing review of resource availability to ensure the most effective and timely use of each funding stream. The choice of funding streams is delegated to the Section 151 Officer.</p> <p>The use of Right to Buy Receipts for the purchase of dwellings is not the Authority's preferred option, but if utilised, these purchases would be within agreed budgets for the delivery of new affordable homes, as approved by Council.</p> <p>Contact officer: Paul Jones, Head of Finance</p> <p><i>Paul.Jones@cheltenham.gov.uk</i> / 01242 775154</p>
<p>Legal implications</p>	<p>The Authority has the power under Section 9 of the Housing Act 1985 to build new housing accommodation on land it owns for that purpose. All of these sites are held for housing purposes.</p> <p>Due to the value of the JCT contract, the Authority's constitution requires Cabinet approval to the Authority awarding the contract.</p> <p>As the Authority owns the land on which the dwellings are to be constructed, it will be the Authority entering into the contract. CBH will monitor the contract and the progress of the build on the Authority's behalf with assistance from the Employer's Agent engaged by the Authority.</p> <p>The sites at Newton Road and Kingsmead Avenue are affected by third party rights. These will need to be addressed and resolved prior to commencement of works on site.</p> <p>The Council also has the power under Section 9 of the Housing Act 1985 to acquire houses for the purpose of providing housing accommodation. The houses so acquired must then be dealt with in accordance with the provisions of the Act, and may become subject to the Right to Buy.</p> <p>Cabinet is delegating authority to the Head of Property Services to purchase properties within the parameters set out in paragraph 5.4 of this report, which includes being able to purchase properties above £250,000. The purchase of land above £250,000 is a key decision. Any key decisions made by the Head of Property Services will need to be made in accordance with the procedure contained in part 4E of the Constitution (Access to Information Rules). The procedure for acquiring a house can be time consuming, especially if the property is part of a conveyancing chain. A transaction can prove abortive if one link in the chain fails for any reason.</p> <p>Some properties have a restriction in the title that prevents them from being used for social housing. If the option to acquire properties in this way is utilised, it would be advisable for title to be obtained at the earliest opportunity to prevent wasted time and costs.</p> <p>Contact officer: Donna Ruck, Solicitor</p> <p><i>donna.ruck@teWKesbury.gov.uk</i> / 01684 272696</p>

HR implications (including learning and organisational development)	There are no direct HR implications arising from this report.
Key risks	Please see Risk Assessment at Appendix 1 of this report.
Corporate and community plan Implications	By increasing the provision of new affordable housing we will be supporting our key strategic objective of strengthening our communities.
Environmental and climate change implications	<p>The redevelopment of the sites will improve the area as they currently consist predominantly of void and poorly maintained garages.</p> <p>The quality of the proposed housing will have an impact on climate change. All of the dwellings will achieve a minimum of Code for Sustainable Homes level 3 adopting a 'fabric first' approach to energy efficiency.</p>
Property/Asset Implications	<p>The redevelopment of the sites is a positive proposal that will bring back into use current underutilised land (former garage sites) and add to the affordable housing stock, providing much needed affordable homes.</p> <p>Various 'rights of way' require formal legal amendments altering their current course to facilitate the unhindered ability to deliver the proposed schemes. Negotiations are progressing and these risks have been captured on the risk register. Works should not start on site until these 'rights of way' issues have been formally resolved. The costs of negotiating the various rights of access to include legal fees have been built into the Total Scheme Costs at £1,772,000 along with potential Party Wall Awards.</p> <p>In the event of the Authority having to purchase homes, this would ensure that Right to Buy Receipts are kept and invested locally; it not only adds to the housing stock but overcomes the possibility of having to hand monies back to central government.</p> <p>Contact officer: David Roberts, Head of Property and Asset Management</p> <p>david.roberts@cheltenham.gov.uk 01242 264151</p>

1. Background

- 1.1 In March 2015, Cabinet was provided with an update on the pipeline development programme for new build housing. Since then CBH has continued to work with Council Officers to progress suitable sites for new build development within the Housing Revenue Account (HRA). This tranche of dwellings will be owned by CBC rather than CBH to enable Right to Buy (RTB) receipts to be utilised to part fund the projects.
- 1.2 The redevelopment programme for redundant or underutilised garage sites was developed as the result of a comprehensive survey of all 80+ sites which considered garage condition and utilisation together with site redevelopment potential.
- 1.3 The Council contracted with J Harper and Sons in October 2015 to deliver 10 new homes on four former garage sites. These new homes were completed in August, 7 weeks ahead of programme.
- 1.4 The redevelopment of the redundant site at the corner of Swindon Road/Brunswick Street is due for completion by February 2017, with the properties to be prioritised for veterans.
- 1.5 Construction works commenced on 3rd October 2016 to redevelop a further redundant garage site at Rowanfield Exchange to provide three new homes. The properties are due for completion in October 2017.
- 1.6 In addition CBH continues to progress a number of other sites which includes the redevelopment of a further garage site at Hester's Way Road and the regeneration of Cakebridge Place. In total these developments will provide circa 22 new affordable dwellings.

2. Scheme Details

- 2.1 This phase of three garage sites includes the following:-
 - A garage site and parcel of infill land at Beaufort Road.
 - A cleared garage site at Kingsmead Avenue.
 - A cleared site at Newton Road.
- 2.2 The scheme will provide up to 12 homes comprising a range of house types as follows to meet local housing need: 6 x 3 bed 5 person dwellings; 2 x 2 bed 3 person flats and 4 x 1 bed 2 person flats. However, the total number of dwellings that could be built may be less should any outstanding rights of way issues remain unresolved.
- 2.3 The sites are all in CBC's ownership and there are no acquisition costs.
- 2.4 Planning permission was granted for the redevelopment of the sites on 21st July 2016.

3. The Case for Redevelopment

- 3.1 One of the 3 key aims in the approved 30 year HRA business plan is to build new affordable homes in the Cheltenham area. The development proposals are important in meeting this aim.
- 3.2 The benefits of proceeding with the developments include:
 - They align with CBC's housing strategy by helping to provide for current housing needs;
 - They ensure the redevelopment of underutilised land within the HRA;
 - They will provide up to twelve high quality homes;
 - Right to Buy Receipts can be used as part of the scheme funding; and
 - They will further strengthen the HRA through positive cash flows from Year 1 and a significant return on investment over 40 years (a present value contribution in excess of £250k assuming funding via £531k of RTB receipts, £1,150k of loan and £92k of other HRA capital resources).

It should be noted that the present value contribution may change depending on the final funding structure.

4. Alternative Uses of RTB Receipts

- 4.1 Following the re-invigoration of the RTB policy in 2012, the Government introduced complex rules on how the proceeds from sales are distributed and used. The Council has signed a retention contract (in common with most Local Authorities) which allows a significant proportion of such receipts to be kept by the Authority on the proviso they are used to finance new build expenditure (at a ratio of 30% of eligible expenditure) within 3 years of receipt.
- 4.2 RTB sales in Cheltenham since April 2012 have generated a total of £2.2m of retention receipts as at 30 June 2016. The receipts are accrued on a quarter by quarter basis and the Authority is required to use them within 3 years of the quarter in which they were realised. This would require total expenditure of £7.3m on new affordable housing by 30 June 2019 and the expenditure will also have to meet the phasing of the receipts. If the receipts are not used by the due date the Council is required to pay them over to Government with interest.
- 4.3 The receipts can only be used to fund “additional” affordable rented housing. These new homes can be new build council homes, newly acquired council homes (i.e. through the purchase of homes not already owned by a registered provider), or social housing provided through Local Authority grant to registered providers (but not one controlled by the authority i.e. not CBH). While it is the Government’s intention to encourage an increase in the supply of new housing (new build always being the favoured option) the receipts can be used to buy existing properties for conversion into affordable rent.
- 4.4 The 3 options noted in Section 4.3 above for use of RTB receipts have been considered in proposing these developments. The considerations, relating to the 3 options, are set out below:
- Option 1: Council officers have been working with CBH to identify new build schemes which will satisfy the criteria for retaining and using RTB receipts and meet current housing need. The schemes brought forward for approval in this report are of a number currently under appraisal. Building new homes, in line with this scheme, provides the greatest financial contribution to the HRA of each of the 3 options for using RTB receipts set out above.
 - Option 2: Utilising the same level of funds, and RTB receipts, properties could be purchased and made available for affordable rent. This option could also provide additional council properties in line with housing need. However, full market price would need to be paid for stock that would be of a lower standard than this scheme provides. Depending on the age, price and availability of property purchased this could also result in fewer homes being provided and the financial contribution to the HRA would be lower than option 1 above. It follows that the pursuit of this option should only be considered if Right to Buy Receipts cannot be used to support the delivery of new affordable housing on council-owned land.
 - Option 3: Granting the RTB receipts to an independent registered provider could provide new affordable rent properties in Cheltenham however there is no certainty that these will deliver additionality to existing development plans. In addition there would be no financial contribution to the HRA, which makes this the least preferred option of the three.

5. Circumstances when Option 2 (purchasing dwellings) would be utilised

- 5.1 As indicated at Section 4.2 above, Right to Buy Receipts must be spent within 3 years of the receipts becoming available. If the Authority fails to spend the receipts by then, it is required to repay the receipts to the government with interest at 4% above the base rate.
- 5.2 Although building new affordable homes on council-owned sites (i.e. Option 1) is our preferred option, delivering homes in this way is complex. There are a range of issues that can affect the pace of delivery. These include:
- Negotiating with third parties who have rights over council owned land such as rights of access .

This is a particular issue on garage sites, for instance, where finding resolutions to these issues can be long and protracted, leading to the potential for a scheme to either not go ahead or for a scheme redesign to be implemented.

- Undertaking relevant approval processes such as Planning, along with the necessary procurement processes all need to be built into the timeframe.
 - Some sites may have commercial links which can involve the need to carry out complex commercial negotiations, and these too can take time.
 - The rate at which Right to Buy Receipts are received, as well as the amount received over any given period is unpredictable. This adds to the complexity in timing their use in accordance with the projected delivery of new build. The result is additional uncertainty over whether receipts will be spent within the required timeframe.
- 5.3 It is therefore proposed that the Authority will use Right to Buy Receipts, which would otherwise have to be paid back to the government, to acquire additional homes. These homes would be converted to affordable housing, and the rents received would provide revenue for the HRA.
- 5.4 In order that we achieve value for money, if pursuing this option, the Authority would purchase homes on the following basis:
- Only 2 or 3 bedroom homes would be purchased. Flats have been discounted on the grounds that it is likely to mean acquiring single dwellings within existing blocks of private flats, and owning just one flat within a block has implications on the cost of management and maintenance of that dwelling and associated complications of taking on a lease with maintenance cost liabilities and service charges.
 - The Authority would only purchase properties that are of a standard construction and that are preferably either new build or built after 1990 in order to minimise any immediate or ongoing major repair costs. Consideration could, however, be given to using Right to Buy Receipts to purchase long term empty homes as part of our Empty Homes Strategy, although the potential timescales involved in acquiring such properties (via a Compulsory Purchase Order) in combination with strict timescales by which these receipts must be spent, means that using the receipts in this way is unlikely.
 - A preferred maximum price of £250k for a 3 bed and £190k for a 2 bed, each being £10k lower than the estimated high value property thresholds identified by the National Federation of ALMOs and the Association of Retained Council Housing as the basis of their survey on the potential impact of the Government's high value property disposal policy to support the extended right to buy for housing associations, although some flexibility will be needed to take account of changes to house prices, and any clarity coming from future government regulations on its definition of a higher value property.
 - A range of operational criteria would be met to ensure that any property purchased is fit for purpose as social/affordable housing.
 - Former social housing properties cannot be purchased with Right to Buy Receipts (unless under a Compulsory Purchase Order) and would therefore be discounted.
- 6. Other Funding Available for delivering new affordable homes**
- 6.1 In addition to RTB receipts new affordable homes can be funded from the following sources:-
- External borrowing financed by the HRA – the level of borrowing was restricted by Government as part of the self- financing settlement in 2012, the “debt cap” for Cheltenham being set at £52.862m. Current HRA debt totals £44.75m, leaving £8.112m available to finance new expenditure.

- Capital Receipts from HRA asset disposals not arising from RTB. These receipts are exempt from pooling regulations and can be used to finance any capital expenditure without time restraint or the conditions related to use of retention receipts as described above. The sum available at 31st March 2016 was £2.3m.
 - The Council can also consider funding the delivery of affordable housing through the use of commuted sums received from developers.
- 6.2 The Total Scheme Costs of £1,772k (broken down in further detail in exempt Appendix 3) will be funded by circa £531k of RTB receipts with the balance funded by the most appropriate combination of the other funding streams noted above – this decision being delegated to the Section 151 Officer.
- 7. Consultation and feedback**
- 7.1 These proposals have been developed through consultation with key stakeholders including Ward Councillors.
- 7.2 Local residents surrounding the various sites have been written to confirming the intention to redevelop to provide new affordable housing. Prior to the formal submission of the planning applications a number of information sessions were arranged at local facilities to give residents and local stakeholders the opportunity to review the proposals.
- 7.3 During the planning application process, pre-application planning advice was sought for each site and the schemes were amended to incorporate comments from the planning department. The approved schemes reflect the feedback received from the information sessions, CBC planning department and CBC and CBH staff members.
- 7.4 The garages at Beaufort Road are now void and tenants offered an alternative garage within close proximity to their home.
- 7.5 Prior to the commencement of construction works, all affected residents will be written to and a further drop in session will be arranged for each site, to include meeting the contractor to unveil the intended site traffic plan etc.
- 8. Tender Validation**
- The report on tender from the project appointed Employers Agent and Quantity Surveyor, Baily Garner, confirms that the tender from J Harper and Sons is competitive in the current market and represents value for money for the size and scope of the works proposed. Please see exempt Appendix 2.
- 9. Indicative Programme**
- **Planning achieved:** 21st July 2016
 - **Tenders returned:** 26th September
 - **Required approvals:** Cabinet (8th November) and Council (12th December)
 - **Contract start date:** Pending the outcome of Cabinet and Council approval the intention is to award the contract to J Harper and Sons in April.
 - **Start on site:** Assuming a 12 week lead in time the likely start on site date will be April 2017.
 - **Practical Completion:** Anticipated by Summer 2018.
- 10. Performance monitoring and review**
- 9.1 An Operational Group has been created consisting of key Officers from CBH and CBC to deliver day-to-day management of new build housing and to provide CBC and CBH SLT with performance monitoring and reporting data.
- 9.2 The performance of the contractor will be monitored informally each week at regular site visits and formally each month at the monthly site meetings to ensure compliance with the contractual

obligations of the JCT Design and Build contract.

- 9.3 Close financial monitoring of the scheme will continue with costs monitored on a monthly basis to ensure budgets are not exceeded. Should any issues be encountered these will be discussed with CBC to ensure appropriate action is agreed.

11. Forward Actions

Following approval of the recommendations contained herein, CBC to progress completion of the overall legal documentation and enter into the Build Contract.

12. Reasons for Recommendations

Cabinet are asked to confirm their continuing support for the proposed developments and approve the decision to enter into contract with J Harper and Sons.

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Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Report on Tender from Baily Garner (confidential)3. Financial Assessment (confidential)
Background information	Cabinet Report 17 th March 2015

Risk Assessment

Appendix 1

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 capital receipts held from RTB sales under the retention agreement with DCLG are not used within 3 years of receipt they are repayable with interest to the Government.	Tim Atkins	December 2013	3	2	6	Reduce	Council approves alternative option to spend Receipts on purchasing homes.	March 2017	Martin Stacy	
2	If the contractor and/or its sub-contractors become insolvent or otherwise cease to trade then this will adversely impact on the delivery of the programme.	Tim Atkins	Sept 2016	2	3	6	Reduce	Effective contract management; inclusion of retention monies in contract; include Liquidated and Ascertained damages within the contract in the case of delays to the programme; ongoing dialogue with the contractor to monitor labour and resources. The contractor is contractually obliged to provide a performance bond to 10% of the contract value to protect CBC in the event of insolvency. In the event of insolvency, the insurance company would either pay for the completion of the project or hire a contracting firm to complete the works.	April 2018	Martin Stacy	

3	If adverse ground conditions and site contamination is identified, then this will impact on the delivery of the programme.	Tim Atkins	Sept 2016	2	3	6	Reduce	Commission site investigations and issue detail to contractor, assume asbestos containing materials will be found in the existing garages.	Oct 2017	Martin Stacy	
4	If amendments to the Rights of way that have been identified at Newton Road and Kingsmead Avenue are not formally agreed with the relevant owners, then the Council will be unable to progress with developing on those sites.	Tim Atkins	April 2015	2	4	8	Reduce	The tender was worded to enable CBC to withdraw a site from the package in the event that the rights of way cannot be agreed with the relevant owners. The build contract will not be executed until the various rights of way issues have been concluded and/or formalised via the due legal process.	March 2017	David Roberts	
5.	If the rights of way issues aren't resolved by April 2017, the contractor will be able to claim for an increase in the build costs to reflect tender inflation.	Tim Atkins	October 2016	2	4	8	Reduce	Ensure timely conclusion of the rights of way issues affecting Kingsmead Avenue and Newton Road, with progress monitored through monthly project meetings. In the event that the rights of way aren't resolved by April 2017 leading to an increase in the contract sum, liaise with the project appointed QS to scrutinise the costs and ensure any increase in costs are acceptable and in line with legitimate construction industry inflation costs.	April 2017	David Roberts	

Explanatory notes

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)

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)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close