

Cheltenham Borough Council

Cabinet – 9th June 2020

Joint Core Strategy Affordable Housing Partnership: Review of Preferred Registered Providers

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| Accountable member | Councillor Peter Jeffries, Cabinet Member – Housing |
| Accountable officer | Martin Stacy, Lead Commissioner – Housing Services |
| Ward(s) affected | Hesters Way, Springbank, Swindon Village |
| Key Decision | Yes |
| Executive summary | <p>In preparation for the adoption of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS), Cabinet agreed (in June 2015) to set up an Affordable Housing Partnership made up of the three Local Housing Authorities across the JCS area. This Partnership, led by Cheltenham Borough Council, was formed to oversee the delivery, allocation and future management of affordable housing on the Strategic Allocations (as detailed in Part 6 of the JCS).</p> <p>Cabinet also agreed to the Partnership’s selection of Preferred Registered Providers – i.e. Registered Housing Providers who were able to demonstrate to the Partnership’s satisfaction that they could support the following outcomes:</p> <ul style="list-style-type: none">➤ To maximise the delivery of new affordable housing and to ensure the unmet affordable housing needs of Cheltenham and Gloucester are supported by the Strategic Allocations.➤ To create a framework that enables new communities to become and remain cohesive and sustainable. <p>Cabinet agreed to these Preferred Provider arrangements for an initial period of up to 5 years. We are now approaching the 5 years since these Preferred Providers were selected (November 2015). It is therefore time to review our arrangements, and to ensure that our Preferred Providers (along with any new Registered Providers that wish to join the Affordable Housing Partnership) remain aligned to these outcomes and more generally to our strategic housing priorities.</p> <p>In view of this, Cabinet are asked to note and approve the following recommendations:</p> |
| Recommendations | <p>Cabinet:</p> <ol style="list-style-type: none">1. Notes that the Affordable Housing Partnership with Gloucester City Council and Tewkesbury Borough Council, which was set up to oversee the delivery of affordable homes across the Strategic Allocation Sites within the Joint Core Strategy area, will continue for the duration of the JCS Plan Period (currently |

31st December 2031).

2. Approves the Authority's review of the current list of Preferred Providers of affordable housing, which will include inviting existing Preferred Providers and other Registered Providers to bid to become a Preferred Provider across the Strategic Allocation Sites within the Joint Core Strategy area, jointly with Gloucester City Council and Tewkesbury Borough Council.
3. Delegates authority to the Lead Commissioner, Housing Services to:
 - 3.1 evaluate and select Preferred Providers for the delivery and/or management of new affordable housing on the Strategic Allocation Sites, noting that the selection will be carried out jointly with Gloucester City and Tewkesbury Borough Councils,
 - 3.2 agree changes to the Terms of Reference of the partnership and the Memorandum of Understanding between the Councils and Preferred Providers (which shall take effect from November 2020) and to note that these documents shall be updated annually,
 - 3.3 Undertake any future reviews of the Preferred Provider arrangements within the triggers as detailed in sections 3.3 to 3.5 of this report; whilst noting that these triggers may be updated from time to time as part of the annual review of the Memorandum of Understanding.

Financial implications

None as a direct consequence of this report. The Affordable Housing Partnership is currently supported by the housing consultancy Ark, which is financed from Capacity Funding provided by Homes England. This arrangement is managed by Cheltenham Borough Council, which holds the funding on behalf of the three districts. In view of expenditure to date, it is anticipated that this funding will be more than sufficient to cover at least the next 5 years of the Preferred Provider arrangements, after which, the Local Housing Authorities may call upon the Preferred Providers to pay a membership fee to help contribute towards any ongoing running costs, or otherwise manage the partnership within existing resources.

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| <p>Legal implications</p> | <p>The establishment of a list of preferred housing providers is not a procurement that is covered by the Public Contracts Regulations 2015, but the councils may wish to consider carrying out a selection process following their respective contract procedure rules.</p> <p>The councils will enter into an agreement with the chosen registered providers that will set out the objectives and roles of the registered providers. As the registered providers are not providing a service to the council, a formal legally binding agreement will not be prepared; instead the existing memorandum of understanding between Councils and Registered Providers shall be updated. In addition to this, the current Partnership Agreement between the three local authorities will also be updated. The term of the agreement will be until 31st December 2031. It will not be a partnership in law and it will not be a legal entity in its own right.</p> <p>The council cannot insist that developers work with preferred providers to deliver their affordable housing obligations; developers are able to put forward alternative providers to the council. The model S106 agreement, similarly against which a developer may put forward alternative provisions, requires developer/Owners to use reasonable endeavours to contract with Preferred Providers.</p> <p>Contact officer: Donna Ruck, Senior Lawyer donna.ruck@tewkesbury.gov.uk, 01684 272696</p> |
| <p>HR implications (including learning and organisational development)</p> | <p>None as a direct result of this report</p> |
| <p>Key risks</p> | <p>Please refer to Appendix 1 of this report</p> |
| <p>Corporate and community plan Implications</p> | <p>A key priority within the Authority's corporate plan is to increase the supply of housing and to invest in building resilient communities. The Affordable Housing Partnership, and our approach to selecting Preferred Providers, will support this priority for the reasons provided within the body of this report.</p> |
| <p>Environmental and climate change implications</p> | <p>This review of the Preferred Provider arrangements is likely to have a neutral impact on the environment - however, it is anticipated that good Registered Providers are more likely to engage with their community to take part in activities that support the environment (e.g. arranging community litter picking events, etc.) and this is likely to be reflected in our evaluation of those Registered Providers which apply to become/remain Preferred Providers.</p> |

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| Property/Asset Implications | <p>As Cheltenham Borough Homes are contracted to deliver and manage Cheltenham Borough Council homes on the Council's behalf, if Cheltenham Borough Homes does not become a Preferred Provider, then the Council may be unable to acquire and manage new affordable homes sold by developers as part of their s.106 affordable housing obligations on the Strategic Allocations.</p> <p>Contact officer: Dominic Stead, Head of Property Services</p> <p>Dominic.Stead@cheltenham.gov.uk</p> <p>Tel 01242 263151</p> |
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1. Background

- 1.1** In November 2017 the Joint Core Strategy (the JCS) was adopted, with a plan to deliver approximately 35,000 new homes across the JCS areas of Gloucester, Cheltenham and Tewkesbury by 2031. This plan includes provision to support the otherwise unmet housing needs of Cheltenham and Gloucester. Specifically, the plan includes a number of Strategic Allocations (as detailed in Part 6 of the Joint Core Strategy) which will contribute towards meeting the housing needs (including the affordable housing needs) of the two urban authorities.
- 1.2** In preparation for the adoption of the JCS, Cabinet agreed (in June 2015) to set up an Affordable Housing Partnership made up of the three Local Housing Authorities across the JCS area. This Partnership, led by Cheltenham Borough Council, was formed to oversee the delivery, allocation and future management of affordable housing on the Strategic Allocations. The formation of such a partnership was supported by the Joint Core Strategy at paragraph 4.12.16 (p 70 of the Adopted Policy).
- 1.3** Two high-level outcomes were agreed for the Affordable Housing Partnership, as follows:
- To maximise the delivery of new affordable housing.
 - To create a framework that enables new communities to become and remain cohesive and sustainable.
- 1.4** These outcomes are captured within the Affordable Housing Partnership's Terms of Reference (please see Appendix 2), as update by the Partnership in May 2020. In addition, a third outcome is now included as follows:
- To support the Local Housing Authorities' aims in reducing homelessness

This outcome is particularly important, and relevant, in light of the increase in pressures on the three local housing authorities following the COVID-19 pandemic.

- 1.5** In June 2015, Cabinet also agreed to the Partnership's selection of Preferred Registered Providers – i.e. Registered Housing Providers who were able to demonstrate to the Partnership's satisfaction that they could support our key outcomes. Cabinet agreed to these Preferred Provider arrangements for an initial period of up to 5 years.
- 1.6** We are now approaching the 5 years since these Preferred Providers were selected (November 2015). It is therefore time to review our arrangements, and to ensure that our Preferred Providers (along with any new Registered Providers that wish to join the Affordable Housing Partnership) remain aligned to our outcomes and strategic housing priorities.

2. Proposed arrangements for the re-evaluation and selection of Preferred Providers

- 2.1** Registered Providers with an interest in providing and/or managing new affordable housing within the Strategic Allocations will, once more, be invited to bid for Preferred Provider status, and will be selected according to updated evaluation criteria, as outlined in Appendix 3 of this report. This is likely to include, but is not limited to the following:
- Their capacity to deliver new affordable housing across relevant sites;
 - Their lettings policies, and their alignment to the Authority's strategic housing functions - particularly in terms of reducing homelessness;
 - The strength of their housing management capabilities, with a focus on activities that empower tenants to succeed in their tenancies;

- Their ability to engage and involve local communities so that they can become and remain cohesive and sustainable;
- 2.2** Registered Providers selected as Preferred Providers for the Strategic Allocations will be invited to work with the Affordable Housing Partnership, and together with the Local Housing Authorities they will work towards achieving the Partnership's outcomes.

3. Reasons for recommendations

- 3.1** Affordable housing delivery is yet to commence on the Strategic Allocations. It therefore follows that the rationale for having a Partnership of Preferred Providers to deliver and manage the homes and communities within the Strategic Allocations is the same now as it was when Cabinet originally agreed to the Preferred Provider arrangements in 2015. In summary, the rationale for selecting Preferred Providers is to 'raise the bar' and prevent a 'free for all' from Registered Providers of any standard competing for the delivery of affordable housing in these areas. Capacity to deliver new affordable housing competitively is important – but equally important is the ability of Registered Providers to invest in developing and sustaining strong and resilient communities, both during and after development is complete. Those Registered Providers who are selected as having Preferred Provider status will have demonstrated to the Local Authorities' satisfaction that they can deliver and manage affordable homes and their communities to a good standard. This will in turn provide the Authorities with confidence that the Partnership's outcomes are more likely to be met.
- 3.2** Finally, given that the affordable housing landscape has changed significantly over the last 5 years, it is recommended that a full scale review of the Preferred Provider arrangements takes place. Universal Credit is now being rolled out, and the government's rent reduction policy from 2016-2020 have impacted significantly on business plans. In order to respond to these challenges, and to keep their businesses financially stable, Registered Providers have taken different approaches to managing risks. In a few cases this has led to some Registered Providers becoming less aligned to local authorities' strategic housing functions.
- 3.3** It is proposed that once this current review has been undertaken, any subsequent full scale review of the Preferred Provider arrangements will only take place in the event of significant changes to the housing landscape at a national level, and that in any event such a review will not take place within the first 5 years of the new Preferred Provider arrangements. This will provide greater stability for the Preferred Providers within the Affordable Housing Partnership, as well as increase certainty within the developer/landowner market over which Registered Providers are likely to continue to have Preferred Provider status.
- 3.4** The Local Housing Authorities will, however, expect our Preferred Providers to confirm annually their commitment to Partnership's Memorandum of Understanding, and that they continue to remain compliant with the Regulator of Social Housing's Regulatory Standards. Furthermore, if during the partnership there are material changes to a Preferred Provider's service delivery, and there is evidence to show these changes are now running contrary to outcomes previously supported by the Provider, then the Local Housing Authorities will reserve the right to conduct a re-evaluation of the Registered Provider's status as Preferred Provider in light of these changes.
- 3.5** Finally should a Registered Provider who is not currently within the Affordable Housing Partnership wish to apply for Preferred Provider status, then the Local Housing Authorities will provide them with an opportunity to join the Partnership within 12 months of the Registered Provider's request.
- 3.6** The triggers for review, as detailed in sections 3.3 to 3.5 above, will be captured in the updated Memorandum of Understanding, subject to agreement from the Preferred Providers. The Affordable Housing Partnership will review and if necessary amend the above triggers as part of its annual review of the Memorandum of Understanding.

4. Alternative options considered

4.1 To not review the Preferred Provider arrangements.

4.1.1 This is not considered to be an option in view of the fact that in June 2015, Cabinet agreed to establish a list of preferred providers of affordable housing for an initial period of up to 5 years.

4.2 Carry out a small scale review/re-evaluation of the existing Preferred Providers.

4.2.1 This option has been rejected for the reasons given in section 3.2 of this report. There have been significant changes to the affordable housing landscape in recent years, resulting in different approaches by Registered Providers in managing their risks. It is therefore appropriate for a full review/re-evaluation to take place in order to ensure that our key outcomes will be adequately supported.

4.3 Select just one Registered Provider/Consortium for the whole JCS area

4.3.1 This approach may have some advantages in that by having a smaller number of Registered Providers to work with, it would be easier for the Partnership to agree on some or all of its priorities. This would however also bring greater risks in that developers are less likely to work with the Registered Provider/Consortium if there is no other competition within the Partnership.

4.4 Disband the Preferred Provider arrangement altogether and leave the allocation of s106 affordable housing entirely to the open market

4.4.1 This option has been rejected on the basis that it would enable Housing Providers, regardless of their track record in housing management and community involvement, to make bids to developers on the Strategic Allocations. The result is that the opportunity for strategic alignment with the Local Housing Authorities could be lost.

5. How this initiative contributes to the corporate plan

5.1 A key priority within the corporate plan is to increase the supply of housing and to invest in building resilient communities. Our Affordable Housing Partnership, and our approach to selecting Preferred Providers, will support this priority for the reasons already given within this report.

6. Consultation and feedback

6.1 The initial formation of the Affordable Housing Partnership and the proposed selection of Preferred Providers was supported by the JCS Cross Boundary Programme Board, which is made up of Chief Executive Officers from the three Local Authorities. The rationale for forming the Affordable Housing Partnership and selecting Preferred Providers remains the same now as it was then.

6.2 Consultation was also undertaken with developers and their agents prior to setting up the Preferred Provider arrangements. A range of views were expressed from a feeling that the approach fettered developers discretion to contract with whomever they wished (a view not supported by the Consultants advising the Councils), to a view that a Preferred Provider approach can support the long term sustainability of an area and that this can also support the saleability of their market housing in later phases. Taking these views into account, our approach is to ensure that we maintain a competitive element within the Partnership. This will help to ensure that developers/land owners remain confident that they will continue to have genuine choice over which Registered Provider(s) to work with.

6.3 Consultation has also been undertaken with the existing Preferred Providers, and all those who have fed back are broadly supportive of our approach. There is an appetite to reduce the amount of work involved in applying to become Preferred Providers, and the Authorities will seek to accommodate this as far as possible. Going forward, we intend to eliminate the need for any unnecessary reviews by adopting the approach as detailed at sections 3.3 to 3.5 of this report.

7. Performance management –monitoring and review

7.1 The Partnership will meet on a regular basis to agree and oversee the delivery of our priorities as we await the provision of the first tranches of affordable housing on these Strategic Allocations. The Partnership will undertake an annual review of progress against its priorities. We will also carry out an annual review of the Memorandum of Understanding, which will include confirmation from the Preferred Providers that they remain aligned to our key outcomes and priorities.

7.2 For a list of our current Preferred Providers, please see Appendix 4.

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| Report author | Contact officer: Martin Stacy, Lead Commissioner – Housing Services Martin.stacy@cheltenham.gov.uk, 01242 264171 |
| Appendices | <ol style="list-style-type: none">1. Risk Assessment2. Affordable Housing Partnership’s updated Terms of Reference3. Outline of Preferred Provider Evaluation Criteria4. List of current Preferred Providers |
| Background information | |

| The risk | | | | Original risk score (impact x likelihood) | | | Managing risk | | | | |
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| Risk ref. | Risk description | Risk Owner | Date raised | Impact 1-5 | Likelihood 1-6 | Score | Control | Action | Deadline | Responsible officer | Transferred to risk register |
| | If the Local Authority evaluates and selects Preferred Providers, then one or more Registered Providers with a strong strategic interest in delivering new affordable housing on the Strategic Allocations may not be selected | Martin Stacy | 24.4.15 | 3 | 3 | 9 | Reduce | <p>The existing Preferred Providers and other RPs who own or manage housing stock within the JCS area have previously been consulted the Affordable Housing Partnership arrangements and its approach to selecting its preferred providers, and are broadly supportive of our approach.</p> <p>An external consultant appointed by Cheltenham Borough Council on behalf of the three Local Authorities continues to advise and assist in the selection of Preferred Providers and to ensure that these decisions can be defended robustly.</p> | Nov 2020 | Martin Stacy | |
| | If the Local Authority selects Preferred Providers, then developers may decide not to engage with them and instead award contracts to other | Martin Stacy | 24.4.15 | 3 | 4 | 12 | Reduce | Developers and their agents with an interest in the Strategic Allocations have previously been consulted on our | Nov 2020 | Martin Stacy | |

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| | Registered Providers | | | | | | | <p>approach to selecting preferred providers. Our proposed approach continues to take into account the priorities of the developers and seeks to find a common ground that ensures a competitive arrangement is maintained, whilst also ensuring that the key strategic outcomes of the Authority are supported.</p> <p>A requirement for developers to use reasonable endeavours to work with the preferred providers will be sought as part of the s106 affordable housing negotiations.</p> | | | |
| | If Registered Providers do not bid to become Preferred Providers then the Local Authority's ability to achieve its strategic outcomes will be compromised | Martin Stacy | 24.4.15 | 3 | 2 | 6 | Reduce | <p>The Council's approach to selecting Preferred Providers has previously been soft market tested with Registered Providers, and they are broadly supportive of our approach.</p> <p>The competitive elements that we will continue to</p> | Nov 2020 | Martin Stacy | |

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| | | | | | | | | build within our Preferred Provider arrangements mean that developers/landowners are more likely to agree to provisions within a 106 agreement that require them to work with Preferred Providers. This in turn will incentivise Registered Providers to apply. | | | |
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| <p>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</p> | | | | | | | | | | | |