

**Cheltenham Borough Council**  
**Cabinet – 16<sup>th</sup> October 2012**  
**Cheltenham Borough Homes – Development Options Review**

<b>Accountable member</b>	<b>Councillor Jeffries, Cabinet Member Housing and Safety</b>
<b>Accountable officer</b>	<b>Grahame Lewis, Executive Director</b>
<b>Ward(s) affected</b>	<b>St Pauls</b>
<b>Key Decision</b>	<b>Yes</b>
<b>Executive summary</b>	In March of this year CBH were mandated by the Cabinet to review development options for Crabtree Place (24 properties), Cakebridge Place (20 properties) and four garage sites (14 properties). CBH were also requested to seek a development partner for these schemes following the completion of an appropriate competitive selection process.
<b>Recommendations</b>	<p>The above actions have now been satisfactorily completed and I would therefore make the following recommendations that:</p> <ul style="list-style-type: none"> <li><b>(i) That CBH be mandated to secure the best available deal from developers in respect of net construction cost for the three schemes.</b></li> <li><b>(ii) That CBH can continue contractual negotiations such that early planning submissions can be made in respect of Cakebridge Place and Crabtree Place.</b></li> <li><b>(iii) That CBH be mandated to act in respect of decanting tenants and securing the freeholds of privately owned properties, in full consultation with affected persons and subject to acceptance of appropriate terms and rehousing options.</b></li> <li><b>(iv) The decision with regard to ownership of the developments is delegated to Grahame Lewis, Executive Director, in consultation with the Cabinet Member Housing &amp; Safety, Section 151 Officer and CBH following receipt of legal advice. This decision is to be made prior to any contractual commitment being entered into with any developer.</b></li> <li><b>(v) If the decision at (iv) is for CBH to own the completed properties the council will, subject to all necessary consents being received from the Secretary of State, agree to transfer land as required at nil cost (on the assumption that the capital receipt from sales land values at St Pauls will be used to subsidise development costs) and provide financial support through the affordable housing reserve and provide access to PWLB borrowing.</b></li> </ul>

<b>Financial implications</b>	As outlined in sections 4 and 5 of this report.  <b>Contact officer: Mark Sheldon,</b> <b>mark.sheldon@cheltenham.gov.uk, 01242 264123</b>
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<p><b>Legal implications</b></p>	<p>Disposing of land held for housing purposes under the Housing Act 1985 requires the consent of the Secretary of State. In the 13 March 2012 cabinet report I stated that CBC could rely on a general consent issued by the Secretary of State to sell land to CBH. However, as a result of revised general consents issued in May 2012 the council must now obtain a specific consent from the Secretary of State to transfer dwellings to CBH if it is to transfer more than 5 dwellings in any financial year. This is because the new general consents prohibit the transfer of more than 5 dwellings in any financial year to registered providers in which councils own an interest.</p> <p>The council can rely on general consent A3.2 to dispose of the garage sites or any other land which does not comprise dwellings to CBH.</p> <p>A number of the options mentioned in this report will involve the council transferring housing land at nil value and giving grants or granting loans to CBH. As Cheltenham Borough Homes has gained Registered Provider status under the Housing and Regeneration Act 2008, the Council is able give it financial support to enable it to develop land for housing accommodation by relying on a general consent issued by the Secretary of State, namely “The General Consent Under Section 25 of the Local Government Act 1988 for the disposal of land to registered providers of social housing”.</p> <p>Using this consent, any housing on the land must be vacant at the time it is transferred to CBH and must then be demolished. The transfer also needs to contain a provision that the housing on the land must be completed within 3 years of the transfer. This period can be extended if necessary due to circumstances beyond CBH’s control. Any land or houses transferred under this consent cannot be sold on the open market; they must be rented by CBH under periodic tenancies or shared ownership leases. Any land or other financial assistance to be used for the development of units for sale on the open market will require a specific consent from the Secretary of State. There will need to be a resolution of full council authorising an application to be made to the Secretary of State and a resolution of Cabinet to make the application for such consent.</p> <p>Any loan or grant given to CBH should be secured on the land to be transferred by way of a legal charge in favour of the council. It is advised that the council should seek funder collateral warranties from all professionals and contractors working on the new build properties.</p> <p>CBH is bound by the same procurement requirements as CBC and will need to comply with the Public Contracts Regulations 2006 in choosing a development partner.</p> <p>Any financial support to be given to CBH will not be unlawful state aid because it is permitted pursuant to European Commission Decision 2012/21/EU.</p>
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	<p>If Cabinet is minded to approve CBH directly employing the contractors carrying out works on CBC's properties, then the council will need to either be given collateral warranties from the contractors or be named in the contract as a party that has the benefit of the contract using the Contracts (Rights of Third Parties) Act 1999. Further advice will be given to officers about which option best protects the Council.</p> <p><b>Contact officer: Donna Ruck, donna.ruck@tewkesbury.gov.uk, 01684 272696 / 01242 774929</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>No direct HR implications arising from the content of this report.</p> <p><b>Contact officer: Julie McCarthy, Julie.mccarthy@cheltenham.gov.uk, 01242 264355</b></p>
<b>Key risks</b>	As outlined in Appendix 1
<b>Corporate and community plan Implications</b>	Supports the delivery of affordable housing outcome and St Paul's Phase 2 was a key project within the corporate strategy
<b>Environmental and climate change implications</b>	The homes will comply with environmental standards as laid down in planning legislation

## 1. Background

1.1 At Cabinet on 13 March 2012, Members made the following decisions in respect of the potential development opportunities available to Cheltenham Borough Homes:

- i) That CBH be mandated to review development options for St Pauls Regeneration Phase Two (Crabtree Place), Cakebridge Place (unfit Tarran bungalows) and the four garage sites with current planning approvals.
- ii) That CBH should seek a Developer Partner for the schemes through a competitive process, subject to final approval by Cabinet.
- iii) Delegated authorities were determined in respect of a potential offer to be made in respect of the social housing element of the North Place redevelopment.
- iv) That CBH should continue to pursue any unallocated grant to provide a subsidy to the cost of developing the garage sites, which are readily available for an early commencement to redevelopment.

1.2 In respect of item iii) above, an initial offer was made however CBH was advised that no acceptable offer had been received from any bidder. As a result of concerns expressed by CBH and other bidders in respect of the overall design of the social housing this was subsequently redesigned. A second opportunity to bid subsequently occurred, however CBH was not able to meet a very tight bidding timeframe. The matter is now therefore no longer under consideration as a potential opportunity by CBH.

1.3 The remaining three approvals however were acted upon immediately and positive progress has been made in respect of identifying deliverable and viable solutions.

1.4 The procurement and construction timeframes for these schemes rely upon a number of significant constraints, namely;-

- i) The deadline of 30 March 2015 for completion of any of the schemes where grant is secured, as this is paid upon completion of the affordable housing by the date above, at the risk of losing the grant contribution if completion is after 01 April 2015.
- ii) The successful conclusion of the CPO of a single property in Crabtree Place, a process which has commenced.
- iii) The acquisition of properties currently in private ownership and others currently tenanted.

1.5 The report to Cabinet on 13 March 2012 identified a number of potential options, including:

<b>Option:</b>	<b>Principle:</b>	<b>Ownership:</b>	<b>Subsidy:</b>	<b>Long Term Finance:</b>
<b>Option 1</b>	Further CBH Development	CBH	From CBC	PWLB Through CBC
<b>Option 2</b>	CBC Development Through HRA	CBC	From CBC	PWLB Through CBC
<b>Option 3</b>	Using Developer Grant	CBH or CBC	Through Grant & S106 Gain	PWLB Through CBC
<b>Option 4</b>	Using RP Grant	CBH or CBC	Through Grant & S106 Gain from selected Developer	PWLB Through CBC

## 2.0 Option Review Actions

2.1 In order to provide a comprehensive base of data upon which scheme development costs could be founded, CBH initiated the following range of surveys and testing in respect of each of the six sites (Crabtree Place, Cakebridge Place and the 4 Garage Sites (Burma Avenue, Imjin Road, Brook Road and Malvern Street):

- i) Measured site surveys.
- ii) Site Investigations (surveys, trial pits, boreholes and materials sampling and testing.
- iii) Statutory Services searches.
- iv) Japanese Knotweed Surveys.
- v) Flood Risk Analysis at Crabtree & Cakebridge, including a more detailed investigation at the latter.

2.2 In the absence of any allocation of Affordable Housing Grant from the Homes and Community Agency's (HCA) 2011 – 2015 Affordable Homes Programme, CBH was keen to consider any potential to secure grant indirectly. At a regular meeting with CBC Officers and the HCA, the HCA representatives identified the potential for CBH to access grant allocated to a Developer but for

which no site had yet been selected. The route into this was through the HCA's Delivery Partner Panel (DPP).

- 2.3 The DPP was established on a regional basis through an EU compliant procurement process which established a shortlist of Developers and Contractors which could be used to secure a contractual relationship through a mini-tender process, a short and effective solution to delivering competitive new-build contracts.
- 2.4 Through Capita Symonds (CBH's Employers Agent) an initial enquiry was issued to the South West Regional DPP. As a result four developer/contractor expressions of interest were secured. This allowed Capita to issue an enquiry document to all four, based upon CBH requirements in general and the specific data identified at 3.1 above.

### **3.0 Tender Process Outcome**

- 3.1 During the course of the tender one of the tendering parties withdrew, however the remaining three submitted detailed scheme proposals and development costs albeit with qualifications.
- 3.2 The tender assessment process was comprehensive and consisted of the following steps:
  - i) The assessment by CBH of Written Tender Submissions in response to a set of tender questions.
  - ii) The evaluation of tender costs on a scheme by scheme basis and in varying combinations.
  - iii) The assessment of initial design proposals by CBH in conjunction with CBC Townscape Manager.
  - iv) A presentation and interview process by CBH supported by CBC Property Services officers.
- 3.3 The initial tender outcome was summarised in a report produced by Capita. As financial negotiations continue with the tenderers, at this stage the cost data remains commercially sensitive and the developers are identified as A, B and C.
- 3.4 From consideration of the assessment scoring matrixes the following positions are observed (as they currently stand):
  - The best option is not to give all three projects to the same Developer.
  - The best tender received for St. Pauls Regeneration Phase Two is clearly the tender from Developer C by some way. This is also exclusive of Developer Grant.
  - The best tender received for the Garage Sites is not so clear, but currently it is the Developer A tender.
- 3.5 The tenders received for Cakebridge Place are very close there are two options:

Option A is to combine Cakebridge Place with St. Pauls Regeneration Phase Two; or  
Option B is to combine Cakebridge Place with the Garage Sites.
- 3.6 The Option A route would lead to Developer C offering the best combined tender for St. Pauls Regeneration Phase Two and Cakebridge Place, and Developer A for the Garage Sites.

This would equate to a total cost for all three projects of £4,263,886.00, exclusive of £400,000.00 of Developer Grant.

- 3.7 The Option B route would lead to Developer A offering the best combined tender for Cakebridge Place and the Garage Sites, and Developer C for St. Pauls Regeneration Phase Two.

This would equate to a total cost for all three projects of £3,883,189.34, exclusive of £400,000.00 of Developer Grant. This option will spread the risk more efficiently with Developer C only having to concentrate on the larger, mixed tenure project that is St. Pauls Regeneration Phase Two.

- 3.8 However, as discussed above the cost sections are all subject to change over the forthcoming weeks as Capita remove the non-compliant exclusions and qualifications from all of the tenders.
- 3.9 In addition to the outstanding cost queries, the design review identified that there are some issues to be resolved with developers around site layouts, density and house types. The implications of this are that at some later post discussion stage there may be further cost adjustments. This will be factored into the final tender report assumptions.
- 3.10 With regard to the options table at 2.5, the potential preferred Options are Option 3 for St Paul's Regeneration and either Option 1 or 2 for Cakebridge Place and the Garage Sites.

#### **4.0 Financial Considerations**

- 4.1 At present the forward programme is being considered as an overall project which has constituent financial elements of net construction cost (after credit for land values at St Pauls), available grant, affordable PWLB finance based on net rents and a balancing capital subsidy from CBC or through the HRA.
- 4.2 The decision as to whether CBH is developing homes for their ownership or that of CBC is not critical at this stage until the financing requirements have been clarified. This will be initially at the conclusion of tender assessment (in the Tender Report) and more comprehensively following any further cost adjustments brought about by design changes to meet CBH/CBC requirements. This will be confirmed following the receipt of legal advice.
- 4.3 The assessment has highlighted available grant initially at the level of £400,000 from Developer C which CBH would need to secure within the next two months. As identified above, this establishes a critical timeline in respect of project completion in order to secure such grant. On that basis the decisions being sought at present will include some degree of flexibility and the potential requirement for delegated authority to approve the final solution.

#### **5.0 Forward Actions**

- 5.1 Capita has raised a number of tender qualification issues with the three developers in order to transfer the risk to the developer and will incorporate any financial implications resulting therefrom into their Tender Report in due course.
- 5.2 The impact of design changes cannot be evaluated at this stage as it is not until a firm commitment has been made that developers will fully engage with CBH and CBC Planners in a

dialogue around design optimisation. The cost basis of tenders is however such that the implications of change can be fairly and properly evaluated. CBH would reserve the right to withdraw from any contract in the event that design differences could not be settled to mutual satisfaction.

- 5.3 The recommendations herein are therefore designed to provide sufficient certainty of intent to CBH and their developer Partner(s), whilst retaining the flexibility to make further design and/or cost adjustments in order to achieve both best design and best value in terms of the proposed scheme package.

<b>Report author</b>	<b>Contact officer: Gordon Malcolm,</b> <b>gordon.malcolm@cheltborohomes.org, 01242 774978</b> <b>and</b> <b>Contact officer: Grahame Lewis,</b> <b>grahame.lewis@cheltenham.gov.uk, 01242 264312</b>
<b>Appendices</b>	1. Risk Assessment
<b>Background information</b>	

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
	If construction does not move forward within agreed timescales there is a risk that any grant available from the current affordable housing programme may be lost	Grahame Lewis	September 2012	2	3	6	R	Robust project planning and project management. Delegated decisions at key milestones	March 2015	Paul Stephenson CBH	
	If acquisition of interests to enable full site assembly is not managed effectively it will impact on the programme	Grahame Lewis	September 2012	2	3	6	R	Robust project planning and project management. Delegated decisions at key milestones	March 2015	Paul Stephenson CBH	
	Without effective contract management there is a potential risk for cost overrun.	Grahame Lewis	September 2012	2	3	6	R	clear specification contract monitoring Programme manager	March 2015	Paul Stephenson CBH	
<b>Explanatory notes</b>											
<p><b>Impact</b> – 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><b>Likelihood</b> – 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><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											

## **Guidance**

Types of risks could include the following:

- Potential reputation risks from the decision in terms of bad publicity, impact on the community or on partners;
- Financial risks associated with the decision;
- Political risks that the decision might not have cross-party support;
- Environmental risks associated with the decision;
- Potential adverse equality impacts from the decision;
- Capacity risks in terms of the ability of the organisation to ensure the effective delivery of the decision
- Legal risks arising from the decision

Remember to highlight risks which may impact on the strategy and actions which are being followed to deliver the objectives, so that members can identify the need to review objectives, options and decisions on a timely basis should these risks arise.

## **Risk ref**

If the risk is already recorded, note either the corporate risk register or TEN reference

## **Risk Description**

Please use “If xx happens then xx will be the consequence” (cause and effect). For example “If the council’s business continuity planning does not deliver effective responses to the predicted flu pandemic then council services will be significantly impacted.”

## **Risk owner**

Please identify the lead officer who has identified the risk and will be responsible for it.

## **Risk score**

Impact on a scale from 1 to 5 multiplied by likelihood on a scale from 1 to 6. Please see risk [scorecard](#) for more information on how to score a risk

## **Control**

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

## **Action**

There are usually things the council can do to reduce either the likelihood or impact of the risk. Controls may already be in place, such as budget monitoring or new controls or actions may also be needed.

## **Responsible officer**

Please identify the lead officer who will be responsible for the action to control the risk.

For further guidance, please refer to the [risk management policy](#)

## **Transferred to risk register**

Please ensure that the risk is transferred to a live risk register. This could be a team, divisional or corporate risk register depending on the nature of the risk and what level of objective it is impacting on