WILTSHIRE COUNCIL

CABINET CAPITAL ASSETS COMMITTEE

24th May 2012

Subject: **Housing PFI Phase 2 sites**

Cabinet Members: **Councillor John Thomson**

Key Decision: **Yes**

Executive Summary

The Council's final business case for the Housing Private Finance Initiative (PFI) project was approved on 15 December 2011 and contracts signed on 21 December 2011.

The overall project is to deliver 350 new rented homes with £77 million revenue support grant (RSG) from the government. The RSG for phase 1 is £53.24 million with a further allocation of £23.76 million to deliver phase 2.

The build contract for phase 1 is to deliver 242 new homes in west Wiltshire. The first units started on site on 9 January 2012.

The £23.76 million RSG for phase 2 is dependent on achieving financial close of phase 2 by 21 December 2013. This in turn is dependent on confirming phase 2 sites by 21 June 2013.

The current proposal is to target financial close of phase 2 by 29 March 2013 and to confirm phase 2 sites by 31 October 2012. To achieve these deadlines, sites need to be identified and approval given to progress these sites through planning as quickly as possible.

Proposal

The proposal;

To approve the allocation in principle of sufficient council owned sites to enable the delivery of 108 new affordable homes through the Housing PFI project phase 2, with a minimum of 48 homes delivered on council owned land as agreed in the Final Business Case, subject to planning.

To agree that all council owned sites in the project will be provided for nil consideration.

Reason for Proposal

Delivery of phase 2 of the Housing PFI project will result in the completion of around 108 new affordable homes to meet the housing needs of residents of Wiltshire and will secure up to £23.76 million revenue support grant.

James Cawley, Service Director – Strategy and Commissioning for Adult Care and Housing

WILTSHIRE COUNCIL

CABINET CAPITAL ASSETS COMMITTEE

24th May 2012

Subject: **Housing PFI Phase 2 sites**

Cabinet Members: **Councillor John Thomson**

Key Decision: **Yes**

Purpose of Report

1. The purpose of the report is to seek approval in principle to allocate sufficient council owned sites, for nil consideration, to enable the delivery of at least 108 new affordable homes through the Housing Private Finance Initiative (PFI) project phase 2, with a minimum of 48 units delivered on council owned land.

Background

2. The Council's final business case (FBC) for the Housing PFI project was approved by the Treasury on 15 December 2011. Financial close (award of contract) was achieved on 21 December 2011. The contractor is Silbury Housing Limited, part of the Aster Group.

3. The FBC secured approval for 350 new rented homes over two phases with a total of £77 million revenue support grant (RSG).

4. The first phase of the Housing PFI contract will deliver 242 new homes by June 2014 with £53.24 million RSG. Sites for this phase have already been identified and planning permissions achieved. The first units started on site on 9 January 2012.

5. Phase 1 currently produces a substantial financial surplus at the end of the contract. In the event of phase 2 not proceeding, DCLG could 'claw back' approximately £12 million RSG from phase 1. If this was to happen the project would remain affordable to the council, but the surplus would be greatly reduced.

6. The second phase will deliver around 108 additional new homes and will secure up to a further £23.76 million RSG. The remaining £23.76 million RSG for phase 2 is conditional upon achieving financial close on the second phase 2 by 21 December 2013 and confirming the phase 2 sites by 21 June 2013. However, the Council is looking to bring forward the financial close date to March 2013.

7. The FBC included an intention to provide a minimum of 48 units for phase 2 on council owned land at nil consideration. The delivery of more than 48 homes on council owned land may enable the potential to deliver more than 108 new affordable homes with the same amount of revenue funding and will enable delivery of the new homes within a shorter timescale.

8. It is intended that a further report will be brought to Cabinet Capital Assets Committee to recommend the specific sites to take forward for phase 2 and to seek a decision regarding the number of council owned sites to include within phase 2. This report is seeking approval in principle to carry out further feasibility work on the sites listed in Appendix A to enable that decision to be made.

9. The total agreed council annual revenue contribution for both phases is £237,000 at 2012/13 prices, index linked by reference to RPIx for the duration of the contract. Within the £237,000, an amount of £100,000 per annum is specifically allocated for contract management. It is anticipated that the majority of the £100,000 will be spent on Wiltshire Council internal contract management costs although this sum will also need to cover any external costs, including professional fees, in connection with managing the operational budget.

10. Set up costs for phase 2 of the project are additional to the agreed revenue contribution detailed above. A budget of £234,000 is currently allocated for set up costs for phase 2 in 2012/13. This is being reviewed in the light of the faster delivery timescales for phase 2 which are now required.

Main Considerations for the Council

Identification of sites

11. To achieve delivery of phase 2 of the Housing PFI project, council owned sites need to be identified to deliver in excess of 48 new homes. This is to allow for potential planning, technical and title issues which may emerge, preventing development of some of the sites.

12. The proposed list of sites to be considered for allocation to the Housing PFI project is set out at Appendix A. A timeline for phase 2 is attached at Appendix B. Both of these documents were considered by the Housing PFI Project Board on 24 April 2012.

13. DCLG would require any council owned sites to be provided for nil consideration. This is likely to be on a 125 year leasehold basis as per phase 1 of the project.

14. It is expected that the remaining units will be provided on sites purchased by the contractor on the open market or from Persimmon Homes.

Capital Receipt

15. All of the potential sites identified have an alternative use value. In some cases the anticipated capital receipt for these sites has already been factored into the capital programme. Further work is required to identify the impact of disposing of these sites to the contractor at nil consideration to deliver affordable homes through the Housing PFI project.

16. The total estimated capital receipt lost would be approximately £2 million. Options are being explored to identify alternative properties, not currently declared surplus, to feed into the capital programme to replace this lost capital receipt.

Planning

17. Delivery of all the potential sites will be subject to planning in addition to technical and title investigations. Further discussions with Development Services are required to identify any planning policy constraints.

Environmental Impact of the Proposal

18. Delivery of new homes will impact on the local environment. However, any new development will comply with planning policy requirements and be sensitive to the local environment.

19. It is proposed that all the new affordable homes in phase 2 will be delivered to Code for Sustainable Homes Code level 4, which provides for a very good level of energy efficiency and reduces the negative impact of new development on the environment.

Equalities Impact of the Proposal

20. The provision of new affordable homes enables those unable to meet their needs in the open market to access good quality housing.

21. The new homes will be allocated in accordance with the council's allocations policy. It is proposed that the council will receive nominations to 100% of the new homes throughout the contract period and 75% thereafter.

Risk Assessment

22. There may be an element of abortive work. To mitigate the risk of issues that might arise which may prevent successful planning applications, it is proposed that more sites, as identified in Appendix A are taken through feasibility and planning stages than are required for the delivery of 48 units. However, even if some of the sites are not required for the delivery of the project, the feasibility and pre-planning work will inform future decisions regarding the use of those sites.

23. Two of the three identified sites are not due to become vacant until early 2014 and rely on the completion of other developments in Devizes and

Warminster. These developments have planning permission and are due to start on site shortly. This should ensure completion by the end of 2013 allowing for vacation of the sites by 2014.

24. There is a predicted loss of capital receipt through using sites for affordable housing rather than sale for best consideration. However, it is a corporate priority to deliver more affordable homes in Wiltshire to meet identified needs. Enabling the delivery of affordable homes through the Housing PFI project secures revenue support grant for funding of the new homes with minimal revenue cost to the council. In addition, work will be carried out to identify opportunities to replace lost capital receipt through identification of alternative surplus assets.

25. If the council does not identify potential sites for the delivery of housing through the PFI project, there is a risk that phase 2 will not be deliverable as there is a commitment within the FBC that a minimum of 48 units should be provided on council owned land.

26. Phase 1 financial close occurred in the context of rapidly deteriorating funding conditions in the PFI market. It was previously assumed that the funder of phase 1, would also fund phase 2. However, it now seems unlikely that this will be the case and an alternative funding route will, therefore, be required. There are likely to be complexities associated with co-ordinating the phase 1 debt with a new tranche of phase 2 debt if the latter were to be provided by a different lender. Risks associated with managing phase 2 debt will have to be managed appropriately. This risk will potentially affect the delivery of the project overall including the viability and timescales for delivery. However, it does not directly relate to the decision to approve, in principle, the consideration of the use of council owned sites at nil consideration to deliver phase 2 of the Housing PFI project.

Financial Implications

27. Capital budget implications. There are predicted capital budget implications as a number of the identified sites have already had a potential capital receipt identified within the capital programme. It is anticipated that the value of the sites required for phase 2 will amount to approximately £2 million. If the value of the sites identified means that the council will no longer receive £2m as a capital receipt then the council will lose out on the ability to repay it’s debt or finance other capital expenditure. Losing £2m equates to a revenue cost of £0.2m per annum which represents the additional Principal and interest costs of borrowing £2m. The council could also lose the ability to leverage further amounts of money as capital receipts and other funding if the current planned uses for the sites are changed.

28. Revenue budget implications. As detailed in paragraph 9 above, a revenue contribution of £237,000 per annum has been agreed. This is made up of £100,000 for contract management costs and £137,000 which will be paid to the contractor. This £137,000 represents the difference

between the unitary charge payable to the contractor and the RSG. Please note that Unitary Charge payments will not be payable until the first block of homes has been certified as available for occupation by the independent certifier: such payments are currently anticipated to be payable from September 2012. Therefore the full cost in 2012-13 will be less than the agreed Council contribution of £237,000. The full amount of Council contribution (indexed) will apply from 2013-14 onwards. Within the current Housing PFI budget there are also allowances for set up costs for phase 2.

29. As mentioned above there may be scope to deliver more than 108 additional homes, subject to the affordability of phase 2. This is dependent on a number of factors including the cost (if any) of the land, the funding solution and government agreement not to 'claw back' any surplus RSG.

Legal Implications

30. By the Local Government Act 1972 the Council has the ability to dispose of sites in its ownership at less than the best consideration that can reasonably be obtained for those sites. If the disposal is at an undervalue of less than £2 million in aggregate terms then the "general consent" may be used to allow the sale. However, if the undervalue is £2 million or greater then an application to allow the sale will have to be made to the appropriate Secretary of State. In phase 1, although the value of the sites was such that they fell within the general consent to transfer at zero consideration, the banks required an application to the Secretary of State to mitigate any risk of challenge. This may also be a requirement of the funder of phase 2.

31. The transfer of land by the Council at a large undervalue to a commercial organisation is, on the face of it, contrary to state aid rules. However, two factors counter this assertion. Firstly this whole PFI project was the subject of an extensive procurement which contemplated the donation of land as part of the resulting financial arrangements. Secondly recent communications from the European Commission indicate that projects which are entirely of a social nature and operate within a very restricted geographical area will be considered to fall outside of the state aid prohibitions. The project may, therefore, fall outside of the prohibitions.

32. The PFI contract contains no obligation on any party to proceed with phase 2, that is to say the construction of these 108 homes. Delivery of phase 2 is an option within the contract that can be activated on the agreement of the parties to it. There is therefore no need for any additional procurement activity but there will be a need for additional legal (and financial) work to vary the costing and other aspects of arrangements and transfer land. There is no risk of a procurement challenge to the project as a result of activation of this option, indeed it will reduce the procurement risk on which see the paragraph immediately below.

33. The original tender and advertising notice for this contract stated that the Council's requirement was 400 new affordable homes. The later decision to phase the requirement with phase 2 being optional was referred by the Council to external counsel (Michael Bowsher QC). The advice received was that this was a variation to the advertised specification, although not a material variation and so the risk of a successful challenge on this point was low. The activation of the option will bring the number of homes to be built very much closer to the original specification and so remove any question of challenge from this part of the procurement process.

Options Considered

34. Option 1. Contractor to purchase all sites on the open market. There is a commitment within the Final Business Case to deliver a minimum of 48 units on council owned land. Therefore this may not be approved by the CLG. There are also issues with the ability to source, purchase and secure planning permission on sufficient sites to enable delivery within the target timeframe. Purchase of sites on the open market will also be more costly than the use of council owned sites and would reduce the value for money of phase 2.

35. Option 2. Use of land owned by the sub-contractor, Persimmon Homes. This remains an option if the contractor is unable to secure sufficient sites. However, as above the FBC contains a commitment to deliver a minimum of 48 of the units on council owned land. These sites would also be offered at full market value and would significantly reduce the value for money of phase 2.

36. Option 3. Do not proceed with phase 2. There is an option not to proceed with phase 2. As set out above, this presents a risk (albeit low) of challenge to the original procurement process which specified the delivery of 400 new homes through the PFI contract. In addition, the government has allocated £23.76 million RSG to the delivery of phase 2 subject to the deadlines set out in paragraph 6 above. The council will lose this investment in new affordable homes in Wiltshire, plus the potential £12 million claw back on phase 1, if it does not proceed with phase 2.

Conclusions

24. The provision of sufficient council owned sites at nil consideration to deliver at least 108 new affordable homes through Housing PFI phase 2, with a minimum of 48 delivered on council owned land, will enable delivery of these units within the proposed timescales and will make a significant contribution to meeting affordable housing needs in Wiltshire.

***Proposal**

25. To approve the allocation in principle of sufficient council owned sites to enable the delivery of 108 new affordable homes through the Housing PFI project phase 2, with a minimum of 48 homes delivered on council owned land as agreed in the Final Business Case, subject to planning.

To agree that all council owned sites in the project will be provided for nil consideration.
.

***Reason for Proposal**

26. Delivery of phase 2 of the Housing PFI project will result in the completion of around 108 new affordable homes to meet the housing needs of residents of Wiltshire and will secure up to £23.76 million revenue support grant.

James Cawley, Service Director – Strategy and Commissioning for Adult Care and Housing

---

Report Author:

Janet O'Brien
Head of New Housing

Tel. 01249 706550
Email. Janet.obrien@wiltshire.gov.uk

15 March 2012

Background Papers

Wiltshire Council Social Housing PFI Project Final Business Case, 16 November 2011

Appendices

Appendix A – proposed list of council owned sites to be considered for allocation to phase 2 of the Housing PFI project

Appendix B – phase 2 timeline
