

**JOINT OVERVIEW & SCRUTINY TRANSITION – HOUSING TASK GROUP
2ND DECEMBER 2008**

SOCIAL HOUSING – EXTRA CARE HOUSING SCHEME

Purpose of the Report

1. The task group is invited to consider this report which was written for the Implementation Executive's (IE), 26th November 2008 meeting, and to seek further clarification as required.
 2. For members further information, the IE agreed this report's proposals
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**WILTSHIRE COUNCIL - IMPLEMENTATION EXECUTIVE
26 NOVEMBER 2008 (ITEM NO. 8A)**

EXTRA CARE HOUSING SCHEME

Executive Summary

This report updates members on the successful submission of a bid to the Department of Health (D of H) for funding to construct an extra care housing development in Trowbridge.

Proposal

That the Implementation Executive:

- a) agree to enter into a Partnership Agreement with Bedford Pilgrim Housing Association (BPHA) for the progression and delivery of this scheme. All terms to be agreed by the Director, Community Services after consultation with the Solicitor to the Council and the Chief Financial Officer.
- b) agree to lease the land on which the extra care development would be situated on a peppercorn rent basis to BPHA to comply with Housing Corporation and Department of Health (D of H) requirements. All terms to be agreed by the Director, Community Services after consultation with the Solicitor to the Council and the Chief Financial Officer.

Reason for Proposal

The Department of Health require confirmation by 26th November 2008 that the Council and BPHA have agreed a Partnership Agreement to deliver the development of the 45 Extra care units at the Rutland House.

James Cawley

Service Director Commissioning

EXTRA CARE HOUSING SCHEME

Background

1. The D of H announced in February 2008 that it would be conducting a bidding process for Local Authorities to submit applications to receive funding for the period 2008-10 for the development of extra care housing accommodation. This included the publication of bid submission requirements and strict approval criteria upon which the bids would be assessed.
2. Adult Social Care had not yet completed the Older People Accommodation strategy and felt that the needs analysis was not sufficiently robust to evidence based an Extra Care Housing Bid. Discussions took place with representatives of the D of H explaining the County Council's position and an indication was given to the D of H representatives that the County Council would consider bidding for Social Housing Grant (SHG) at a later date, when there was robust evidence to support demand. The D of H representatives indicated that there were no guarantees that SHG would be made available by the D of H in future years for Extra Care Housing. Consequently it was felt the County Council should not miss this opportunity to submit a SHG bid to the D of H for Extra Care Housing.
3. The D of H criteria for successful bids was as follows:
 - **Health Impact and Demonstrable Promotion of Individual Dignity and Wellbeing (30%)**

Bids had to demonstrate how they will make a significant impact on improving the health and wellbeing of residents, such that social exclusion can be tackled. Bids had to show:

 - How the proposal would result in improved health outcomes for the target groups, especially through supporting self care initiatives, and how these individual outcomes would be measured
 - How the proposal would ensure the development of a personalised approach to delivering services, resulting in an empowering and non-institutional approach to the delivery of care and support
 - The explicit benefit to people in the wider community and in local neighbourhoods
 - Hospital admissions and re-admissions or move-on to residential care can be reduced – including estimates of numbers involved
 - **Partnerships (20%)**

Further to Putting People First, bids needed to demonstrate how effective their partnerships are, by showing the benefits of co-operation in four areas:

 - Partnerships between health (primary care, acute and mental health trusts), social care and housing at a strategic level, e.g. in their LAA
 - Partnerships in effective joint commissioning and procurement of housing with care and support services
 - Partnerships with active involvement of residents, and their carers and/or other beneficiaries of the schemes
 - Partnerships with private, social enterprise, and/or community and voluntary sectors

- **Value for Money (30%)**

All bids needed to demonstrate good value for money in five areas:

- Value for public subsidy (as assessed by the Housing Corporation's Grant Index, for schemes joint funded by them)
- Numbers of people supported, including in the wider community
- Utilisation of other funding sources
- Procurement efficiencies through evidence of effective strategic commissioning (with reference to National Housing Strategy for an Ageing Society)
- Services efficiencies through design for independence, and where applicable, through re-provision of existing resources and facilities

- **Strategic Fit (20%)**

Bids needed to demonstrate how they would assist service delivery by strategic fit with:

- Current National policy direction, Putting People First, the Housing Green Paper and the national housing strategy for an ageing society
- Regional and sub-regional strategies
- Local strategies, including Supporting People, Local Strategic Partnerships, Local Area Agreements and other local strategies and strategic needs assessment arrangements especially those related to people with disabilities and care needs, housing and care and support
- The guide, More Choice, Greater Voice: a toolkit for producing a strategy for accommodation with care for older people, published by the Housing LIN (February 2008).

4. Adult Social Care analysed the developing data of the Older People's Accommodation Strategy and having considered the key criteria from the D of H aspects considered that the Rutland House site in Trowbridge offered the best opportunity for a successful bid to the D of H for SHG for Extra Care Housing.
5. The D of H bid for Extra Care housing proposed the redevelopment of the existing Rutland House site and the re-provision of 45, 2 bedroom Extra Care Housing Units and a variety of communal facilities that could be used by residents and members of the surrounding community. These communal facilities included a restaurant, an IT room, activity room, library, shop and a treatment room.
6. The development would provide accommodation in a mixture of tenures, including 40% for social rent, 30% for shared ownership and 30% for outright sale on a discounted (retained equity) basis. By providing a mix of tenure types on the scheme, it provided a better strategic fit with the assessed needs of the residents of Wiltshire and the current tenure mix of the older population.
7. The overall cost of the development is projected to be £8,183,915. This contained Wiltshire County Council's contribution of £800,000 for the land, which would be leased to BPHA for a peppercorn rent. The bid requested £1,443,000 of funding from the Department of Health and the remaining £5,940,915 would be funded from a mixture of private finance to be obtained by BPHA and sales proceeds.
8. It is anticipated that this development would be completed in December 2010.

9. Rutland House is an existing Learning Disabilities care home that is due for closure in early 2009. During the discussions with BPHA it was felt that there was sufficient land within the Rutland House grounds to develop two Supported Living bungalows for people with Learning Disabilities. There are on going discussions with key organisations regarding securing some funding for this element of the development. This will be reported at a later date to Cabinet.
10. On 21 July 2008, the D of H announced that the County Council's Extra Care Housing bid was successful. As part of the criteria for drawing down the SHG from the D of H the following timescales had to be achieved :
 - Signed Partnership Agreement – 14 November 2008
 - Planning Permission Received – 15 March 2009
 - Commence Work on Site – 30 September 2009
 - Nomination arrangements in place, Contracts for Social Care and Supporting People grant prepared – 31 January 2010

Main Considerations for the Implementation Executive

11. There are four main considerations for the Implementation Executive:
 - The procurement process to involve BPHA
 - The granting of a lease to BPHA for 150 years in order that they can develop the new Extra Care housing
 - The loss of a forecast capital receipt for the Rutland House site
 - Agreement to sign the Partnership Agreement

Procurement Process to Involve BPHA

12. As across England, Local Authorities with responsibility for housing select Registered Social Landlords to work with them to progress a variety of schemes from converting existing accommodation to the construction of new premises. Registered Social Landlords (RSLs) are independent housing organisations that are registered with the Housing Corporation under the Housing Act 1996. They may be Industrial and Provident Societies, registered charities or companies.
13. In order to become a RSL, the body must complete a stringent assessment process undertaken by the Housing Corporation. The potential housing association will be assessed against criteria for viability, proper governance and proper management. Additionally, it must meet the statutory and policy criteria on eligible constitutions and principal business activity / objective.
14. Once registered, each RSL will be assessed by the Housing Corporation on a regular basis, and rate the organisation against the criteria using a traffic light system. Additionally, the RSL will have to comply with Housing Corporation guidelines in terms of standard lease documentation, rent levels, rent increases and build costs associated with new developments.
15. Due to this stringent assessment and monitoring process regulating RSLs, most Local Authorities do not tender for housing partners as they know that a RSL will provide value for money and tendering for the development of new

schemes would be expensive for the tenderers. This is because new schemes would require design statements, architectural drawings, and possibly site surveys to be undertaken, which would require a housing association to commit a significant amount of resources to tender, when there is no guarantee that their scheme would be selected.

16. Most Local Authorities now look to develop a preferred partner relationship with a number of RSLs to deliver affordable housing.
17. Adult Social Care is in the process of developing this preferred partner relationship for the provision of specialist housing for older people. This is the same process that Adult Social Care has developed to identify a number of preferred RSL partners for the provision of supporting housing for Learning Disability users. This process took over 4 months to complete.
18. At the time of the announced D of H funding stream for Extra Care housing, Adult Social Care had not yet completed a sufficiently robust needs analysis around older people's housing. Without this being completed, a tendering process for preferred RSL partners to develop older people housing could not begin. Any RSL interested in participating in a tendering process would want to understand this needs analysis and the potential development opportunities for them.
19. Furthermore, the timescales for submission of the D of H bid were extremely tight. Bidders only had 10 weeks to select its partner organisations, design the scheme and produce its bid response. The Council was unable to undertake a tendering exercise and comply with the timescales and specifications of the bid within this compressed timeframe.
20. The County Council considered BPHA as the most appropriate RSL to develop the Extra Care housing bid on the basis that:
 - They are one of the largest RSLs delivering specialist older people's accommodation
 - They have a track record in developing housing
 - They have a strategic partnership with the Order of St John, who have two long term care and leasehold management contracts with the Council for our care homes, and were developing similar Extra Care bids with other Local Authorities
 - Wiltshire has only 1 identified Extra Care development that currently is not structured to deliver the outcomes for the Council. This is currently being reviewed with the RSL.

The Granting of a Lease to BPHA in Order That They Can Develop the New Extra Care Housing

21. The Housing Corporation and Department of Health require Local Authorities to contribute to the schemes where grant funding is requested. This usually takes the form of the provision of the land on which the development would be situated. Land can be transferred at nil value, leased on a peppercorn rent basis, or purchased by the Local Authority in the event that the site is not currently in public ownership.

22. Wiltshire County Council's contribution to the extra care housing development bid to the Department of Health was the provision of the Rutland House site in Trowbridge. The site was valued at £800,000. In return for this contribution the Council would get nomination rights for the Extra Care housing scheme for the length of the proposed lease.
23. The Council would transfer the land to the housing provider, BPHA, on a long lease for a peppercorn rent to enable private finance for the development to be obtained.
24. Although discussions with the Cabinet member occurred regarding the submission of the bid, formal Cabinet consent is required in order to contribute the land for this development.
25. In order to protect the Council's interests for this asset, it is proposed to insert a clause into the proposed Partnership Agreement to ensure that in the event that the land was utilised for a non-social care purpose in the future, i.e. for the provision of general needs housing, the lease for the site would be terminated and the site would revert to being under the Council's control.
26. It is on this basis, that Members are requested to approve the contribution of the land to this development and its lease to BPHA for a peppercorn rent.

The Loss of a Forecast Capital Receipt for the Rutland House Site

27. The Rutland House site had been identified for disposal by the Department of Community Services and the capital receipt had been earmarked to assist with future funding for the learning disability accommodation programme. In order to address this, the Department is proposing to reimburse the learning disability modernisation programme the capital receipt from the sale of another site within the management of Adult Social Care if required. At present the forecast for capital funding for the Learning Disability modernisation programme for 2009-10 does not indicate this funding will be required in 2009-10. This will be reported to members in a subsequent report. However, it should be noted that members may not approve the allocation of another capital receipt from within Adult Social Care to support the Learning Disability Modernisation programme as it may not be considered as a Corporate priority at that time.

Partnership Agreement

28. As part of the D of H SHG condition the County Council must enter into a Partnership Agreement with BPHA. The Partnership Agreement covers the following issues:
 - Protection of public funding in general
 - Ensuring probity
 - Value for money
 - Long term availability of asset
 - Nomination rights
 - Tenancies
 - Affordability (rent levels)
 - Change of use

- Partner's covenants / undertakings
 - LA's covenants / undertakings
 - LA access to development
 - Payment of grant
 - Funding requirements
 - Rights and remedies
 - Approval and variations
 - Rights in the event of default
 - Dispute resolution
 - Accommodation schedule
 - Standards and requirements.
- 29.** Members are asked to allow the Council to enter into the Partnership Agreement with BPHA, although a formal preferred partner tendering exercise was not undertaken, for reasons as explained earlier to identify the RSL who would develop this scheme. The bid was formally evaluated by the Department of Health against stringent criteria, specifically the provision of value for money, and it was one of 26 successful Local Authorities out of approximately 80 applicants.
- 30.** The terms and conditions of the Partnership Agreement would be reviewed and approved by the Council's legal department prior to signature to ensure that the agreement adequately protected the Council's interests.
- 31.** Furthermore, if the Council does not enter into this Partnership Agreement, funding from the Department of Health will be revoked, and the future of the extra care development and over £8 million may be lost as investment into Wiltshire.

Legal Implications

- 32.** External legal advice has been sought from Eversheds regarding two key issues:

State Aid

Legal advice has been sought as to the potential for State aid issues to arise out of the transfer of a land interest by the Council to BPHA at an undervalue in relation to the Project. Advice provided indicates that as long as total consideration from public funds (i.e. the D of H grant and the amount of the Council contribution in the form of the difference between the transfer price and open market value of the interest to be transferred) for the Project does not exceed total Project costs incurred by BPHA (including a reasonable profit) less revenues from the Project achieved by BPHA (calculated in accordance with the Housing Corporation formula utilised in respect of grants for social and extra care housing) and such funds are applied by way of a grant agreement between the Council and BPHA mirrors the terms of the Housing Corporation standard grant funding agreements regarding social and extra care housing aid issues should not arise. This is on the basis that, in such circumstances, any aid present will be being applied on a basis consistent with EC requirements (on an automatic approval basis) in respect of compensation payments for the performance of services of general economic interest (which includes the provision of social and extra care housing).

Procurement

Legal advice has also been sought on the procurement issues of appointing BPHA as the Council's project partner to construct and operate the facility. Whilst a land transaction is in itself not subject to the EU procurement regime, if the disposal requires the contractor to carry out public works to the Council's requirements, this could be a Works Contract and subject to the procurement rules. Although there is a risk that this could possibly be the case, advice provided indicates that on a risk assessed basis the Council would be justified in proceeding on the basis that in any event it will be requiring BPHA to undertake a full EU tender for the construction works and managing agent services.

Risk Assessment

33. A number of key risks have been identified during the analysis of this opportunity.
34. A key risk inherent in this proposal is the effective transfer of an asset to a housing association for a nominal value, which could in theory be used for another purpose in the future. The Council intends to minimise this risk, by inserting a caveat into the lease that states that in the event that the land is no longer required for Extra Care Housing purposes, BPHA must seek approval from the Council for any change of use, and that if agreement cannot be reached regarding the potential change of use, the land would transfer back to the Council.
35. Another key risk that has been identified relates to the Council acting as the lead or accountable body for the receipt and allocation of the grant obtained from the D of H. This risk of responsibility for cost overruns or delays has been mitigated, as it is explicitly stated within the Partnership Agreement, that the Council would not be responsible for any shortfall in funding. This would be the responsibility of the Housing Association.

Financial Implications

Capital

36. The overall cost of the development is projected to be £8,183,915. Within this Wiltshire County Council's contribution is fixed at the value of the land, £800,000, which would be leased to BPHA for a peppercorn rent. The bid requested £1,443,000 of funding from the Department of Health and the remaining £5,940,915 would be funded from a mixture of private finance to be obtained by BPHA and sales proceeds from the properties that will be marketed for shared ownership and outright sale. Below is a table setting out the financial implications.

Cost of Proposal	£8,183,915
Wiltshire County Council contribution land value	800,000
Department of Health Housing Grant	1,443,000
BPHA Private Finance approximately	1,600,000
Approximate revenue from sales	4,300,000

37. Wiltshire County Council's contribution as stated above to the extra care housing development bid to the Department of Health is the provision of the Rutland House site in Trowbridge. The site was valued at £800,000. In return for this contribution the Council would get nomination rights for the Extra Care housing for the length of the proposed lease.
38. As stated previously under main considerations for the Council, the Rutland House site had been allocated for disposal by the Department of Community Services. However, the capital receipt had been earmarked to assist with future funding for the learning disability accommodation programme. The Department agreed to reimburse the learning disability programme the capital receipt from the sale of another site within the management of Adult Social Care. Due to the current state of the market it is likely the sale of the Rutland House site would have been deferred until the market improves.

The Learning Disability Modernisation programme originally included the forecast capital receipt from the Rutland House site. The forecast capital requirement for 2009/10 does not indicate this capital receipt will be required in 2009-10. Work is ongoing to update the Learning Disability Modernisation programme and the potential capital funding requirements. This will be the subject of a further report.

Revenue

39. In the Department's budget proposals for Older People and People with Physical Impairments, a £70,000 saving has been included for 2010-11 for the diversion of residential placements and a reduction in domiciliary care hours as a result of this development.
40. This assumed saving is substantiated by various literary and research papers that have been conducted nationally. In a recent survey conducted by the Institute of Public Care of a group of older people that were recently admitted to residential care, it estimated that 24 out of the 36 cases could have been moved to an extra care development instead. Likewise at a scheme in Guildford, Surrey, 29% of residents had been successfully moved to extra care housing from a residential care home.
41. Furthermore, Valley (2000) presents care data for 15 occupants in an extra care scheme, showing the number of domiciliary care hours received in their previous settings and care received with ECH six months after the move. The data demonstrates an overall reduction of 44 hours per week in the total number of hours of care delivered to occupants, which equates to an average reduction of 3.16 hours per occupant.

Background Papers: None

Appendices: None