

Committee: CABINET

Date of meeting: 16 November 2016

Subject:	Affordable Housing Opportunity with Thames Valley Housing
Lead Officers:	Head of Housing Services and Housing Strategy & Enabling Manager
Portfolio Holder:	Cllr Roy Green, Portfolio Holder for Housing
Link to Council Priorities:	H1
Exempt information:	None
Delegated status:	For recommendation to Council on 7 December 2016
Key decision:	Yes

EXECUTIVE SUMMARY:

This report sets out a proposal to provide a grant of £2.508m from the Affordable Housing Enabling Fund to help enable Thames Valley Housing (TVH), a local housing association, to acquire, develop and provide the residential element in the redevelopment of the Riverdene Business Park in Hersham, as a 100% affordable housing scheme.

RECOMMENDATION: THAT

- (A) COUNCIL APPROVES PROVISION OF A GRANT OF UP TO £2,508,000 FROM THE AFFORDABLE HOUSING ENABLING FUND TO SUPPORT THAMES VALLEY HOUSING TO ACQUIRE AND DEVELOP THE HOUSING ELEMENT OF THE PROPOSED REDEVELOPMENT OF THE RIVERDENE BUSINESS PARK IN HERSHAM, ON CONDITION THAT IT BE PROVIDED AS A 100% AFFORDABLE HOUSING SCHEME**
- (B) COUNCIL AGREES THAT THIS SUM BE ADDED TO THE EXISTING CAPITAL PROGRAMME, FUNDED FROM SECTION 106 RECEIPTS PROVIDED FOR AFFORDABLE HOUSING**
- (C) THE GRANT BE CONDITIONAL ON A FUNDING AGREEMENT BEING REACHED BETWEEN TVH AND THE COUNCIL SETTING OUT THE DELIVERY REQUIREMENTS AND PROTECTING THE COUNCIL'S INVESTMENT, AND A NOMINATIONS AGREEMENT GOVERNING THE SELECTION AND NOMINATION OF PROSPECTIVE TENANTS BY THE COUNCIL TO TVH**
- (D) COUNCIL DELEGATES AUTHORITY TO THE STRATEGIC DIRECTOR & DEPUTY CHIEF EXECUTIVE, IN CONSULTATION WITH THE PORTFOLIO HOLDERS FOR HOUSING AND RESOURCES TO CONCLUDE NOMINATIONS AND FUNDING AGREEMENTS WITH TVH, SUBJECT TO A SATISFACTORY EXTERNAL REVIEW CONFIRMING THE NEED FOR THE PROPOSED LEVEL OF COUNCIL FUNDING IN ORDER TO DELIVER THE SCHEME**

REPORT:

1. The Enabling Fund

- 1.1 The Council's Enabling Fund is a fund set aside for the purposes of delivering affordable housing to meet local need. The fund mainly comprises contributions received from private developers of housing secured through planning obligations through the Council's planning policies. The balance is made up through a portion of the Council's New Homes Bonus (NHB) allocation along with various capital receipts. The current uncommitted balance of the fund stands at approximately £5.9m.
- 1.2 Increasing the supply of affordable housing to meet local needs is one of the administration's top priorities and Registered Providers (RPs) have been encouraged to come forward with proposals to draw on the Enabling Fund to deliver additional rented, affordable homes.
- 1.3 There is a twin-track process in place concerning the approval of payments from the Enabling Fund, depending on whether the sum sought is below £75,000 or not.
- 1.4 For sums above £75,000 (as is the case with this proposal) it is ordinarily the practice that Cabinet determines recommendations for funding of affordable housing projects from the Affordable Housing Enabling Fund directly from the Portfolio Holder for Housing, in consultation with the Chairman of the Overview and Scrutiny Committee and in conjunction with the officers where the projects meets the priorities endorsed by the Affordable Housing Member Panel.

2. The Site

- 2.1 In September 2015, planning consent (ref: 2014/5061) was granted to Lidl to redevelop the Riverdene Business Park on Molesey Road in Hersham to provide a food store on the ground floor with 38 flats above. Due to financial viability considerations, only five (13%) of these dwellings were required, through planning obligations, to be provided as affordable housing (all in the form of shared-ownership), rather than the 15 (40%) which the Council's planning policy aspires to.
- 2.2 In December 2015, an application by Lidl to vary these plans was approved (ref: 2015/3474), enlarging the food store and changing the residential mix, although the overall number of homes and affordable homes remained unchanged from the earlier consent. The size and mix of the revised scheme is 10 x 1-bedroom homes; 22 x 2-bedroom homes and 6 x 3-bedroom homes.
- 2.3 It is understood that Lidl own the freehold of the site, but that Howarth Homes have an option in place to acquire it from Lidl, whereby Howarth Homes would construct both the entire development and lease the retail element back to Lidl. Furthermore, it is our understanding that Howarth

Homes' interest lies in making a return through building the scheme and that rather than then selling the homes itself, Howarth has been looking to enter into a package deal with a third party, whereby Howarth constructs the scheme, but the third party takes on ownership and management.

- 2.4 Demolition is well underway and Officers have been advised that the construction timetable is driven by Lidl's requirements in relation to the store's opening date. There is a time pressure in place on Howarth to commence with the construction phase and to enter into a contract with a prospective purchaser for the residential element.

3. The Proposal

- 3.1 TVH is one of the Council's preferred partner Registered Providers (RPs) and owns around 200 affordable homes in Elmbridge, with its most recent local development being Waterloo House on Mayfield Road in Hersham in 2015.
- 3.2 TVH have been approached about acquiring the residential element of the scheme and have been in discussions with Council officers as to whether the Council would be willing to provide financial support to TVH to take up the opportunity of acquiring a privately-owned site. In return, TVH would deliver and provide all 38 affordable homes as affordable housing, an increase of 33 over the five required through the planning consent.
- 3.3 The intention would be for TVH's charitable arm, Thames Valley Charitable Housing to acquire the freehold of the residential element of the scheme from Howarth Homes.
- 3.4 TVH are proposing that all 38 homes would be provided as affordable rent, recognising that the Council's foremost need is for rented, affordable housing as confirmed by sources such as our Housing Register and the latest Strategic Housing Market Assessment. A single-tenure scheme would also be easier to manage.
- 3.5 The residential element of the consented scheme has a gross development value and a land value reflecting the fact that it comprises 33 market dwellings and 5 shared-ownership homes and both Howarth and the current landowner would have an expectation of the values they could command, based on the consented scheme. An affordable housing scheme will deliver lower values, so in order for TVH to arrive at a value for the package which would both be competitive and acceptable; there is a need for a level of "top-up" subsidy to bridge the gap between the values produced by an affordable housing scheme relative to those generated by the consented scheme.
- 3.6 There has been extensive liaison between Officers and TVH on the financial aspects of the scheme. The level of support required from the Council depends on a range of factors, including the rent levels that TVH will charge, the value of other capital that TVH can afford (via borrowing,

grants from the Homes and Communities Agency and cross-subsidy generated from TVH's commercial enterprises) and the price it can agree with Howarth.

- 3.7 The final proposal is that the Council will provide a grant to TVH of £2.508m from the Enabling Fund in return for TVH developing the entire scheme as a 100% affordable rented scheme. This subsidy would help fund the conversion of the five shared-ownership homes to affordable rent and the switching of the 33 market homes to affordable rent. This equates to a per unit subsidy of £66,000, if spread across all 38 homes (or £76,000 per unit if confined to the additional 33) or somewhere between the two, if an allowance is made for the additional subsidy required to convert the tenure of the five flats earmarked for shared-ownership to affordable rent. These levels of per unit subsidy are broadly comparable to what the Council provided on similar projects supported by the Enabling Fund in recent years (such as the redevelopment of the former Royal British Legion club in Heathfield Road, Hersham).
- 3.8 The Council will not receive a financial return on its investment (hence it is a grant) as there is insufficient income to do this whilst allowing TVH to meet its payback requirements and those of its lenders, but the Council will receive 100% nomination rights on all the first lettings and at least 75% of subsequent relets, and these rights will be secured through a nomination agreement. This would mean that the properties would be let to households on our Housing Register. There is a pressing need for more 2-bedroom accommodation amongst applicants on our Housing Register and with 22 of the dwellings being of this size, the scheme should make a significant contribution to meeting this particular need.
- 3.9 Whilst the proposed development will not include temporary accommodation for homeless households, the provision of a significant number of homes for rent should help reduce demand for temporary accommodation and, indirectly, reduce the number of homeless households placed in bed & breakfast and / or nightly paid accommodation outside of the Borough.
- 3.10 Officers believe that the proposal provides a valuable opportunity to deliver much-needed affordable housing at a reasonable cost to the Council. The grant, by complementing TVH's own funding streams, will secure nomination rights to a far greater number of affordable homes than could be achieved were the Council to invest the same amount of money in purchasing properties on the open market.
- 3.11 Notwithstanding the above, Council officers have commissioned a desk-top review, to be undertaken by the Dixon Searle Partnership (DSP) to provide an independent assessment that the level of grant sought from the Council is necessary to deliver the 100% affordable rented scheme. DSP more usually acts for the Council in terms of reviewing viability appraisals submitted by developers seeking to justify a reduction in the level of affordable housing delivered on planning applications, but has carried out

this type of assessment for other local authorities. The revenue cost of this assessment will be approximately £2,200, which will be met through the Enabling Fund.

- 3.12 One of the key factors within this check will be to consider that the costs TVH are incurring (and which the Council would be partly meeting) are reasonable. The results are awaited and will determine whether the Council will enter into a funding agreement or not (and on what terms).
- 3.13 In anticipation of the Council approving the allocation of funding sought, TVH have made a provisional offer to Howarth Homes and this has been accepted in principle and the heads of terms for a contract of sale is being drafted. TVH have made it clear that without the Council's funding it would not be able to proceed with the agreement and that the opportunity to deliver the additional affordable homes would be lost.

4. Formalising the arrangements

- 4.1 It is critical that the scheme deliverables be formalised in a funding agreement between the Council and TVH. Such an agreement would be necessary to protect the Council's investment. This agreement would need to be finalised before any funding was released. The timing of the Council's payments will be stipulated within the funding agreement and discussions are ongoing as to how this is structured. Whilst TVH would prefer for the Council to provide its funding upfront (recognising that our contribution is required to help with the purchase of the land element of the scheme), an arrangement which incorporating staged payments (with some funding held back until the development is completed) should give the Council some protection in the event that construction was delayed.
- 4.2 One of the conditions that TVH has agreed to is that in the event that one or more dwellings switches from affordable housing to market housing (because the tenant either takes up the Right to Acquire or what the Voluntary Right to Buy) that the Council would be reimbursed its contribution, as the dwelling would no longer be affordable housing. This will be enshrined in the agreement.
- 4.3 The proposed use of a grant, rather than the Council being directly involved in the acquisition (for example, through a back-to-back sale and disposal) also removes financial risks to the Council in terms of potential liability around VAT and Stamp Duty Land Tax.
- 4.3 As the site has got detailed planning permission, one of the key risks / uncertainties around delivery has been removed. TVH has indicated that it has no intention to seek any sort of material change to the consented scheme, except for seeking a deed of variation to switch the tenure of the five affordable homes from shared-ownership to affordable rent.
- 4.4 TVH has indicated that it is not minded to enter into a planning obligation with the Council, as the local planning authority, to secure all 38 homes as affordable housing, but to confine this to the five already secured in that

manner. This is because such planning obligations would restrict its ability to use these properties as security for future loans. Therefore the Council would seek to use other means to ensure that the homes are provided and retained as affordable housing, potentially through the use of restrictions on the title which would require successors-in-title (in most cases) to enter into a covenant with the Council to retain the homes as affordable housing.

4.5 The nominations agreement, governing the selection of tenants for the scheme, would also be entered into at the same time as the funding agreement.

5. Due diligence and risk management

5.1 Whilst not being a party to the sale, the Council wants to make sure that the site is developable and deliverable, that our contribution is required and that our fiduciary duties are satisfied. Therefore prior to entering into any binding agreements, Council officers will want to satisfy themselves that the freehold that TVH intend to buy is sold with good title and that the draft contract of sale that TVH intend to enter into is a sound one. Furthermore, as outlined previously, the Council will want external validation (either through a formal valuation or a desk-top review) that the Council grant is required to make the scheme viable as a 100% affordable housing scheme.

5.2 As well as confirming what the Council will receive in return for its grant, the funding agreement will both identify risks to the delivery of the project and include remedies to mitigate these risks, so that the Council can recover its funds, should TVH breach its contractual obligations. Although officers believe that there is little prospect of the risks materialising, it will be important that safeguards be put in place. Risks identified to date include:

- Delays - either failure to start on site or to complete the development within agreed timescales (the indicative timescale for completion is Summer 2018)
- TVH becoming insolvent
- Complications arising from the mixed-use nature of the development (and ensuring a clear separation, legally and financially, between the retail and residential elements)
- The Council being of the opinion that TVH no longer has the necessary resources and funding to complete the scheme and provide it a 100% affordable housing scheme
- TVH at some point transferring the homes to a third party (and the need to put safeguards in about the long-term provision of these homes as affordable housing in such circumstances)

5.3 These, and other risks, will be addressed both through the funding agreement and via other legal / contractual means.

6. Timescales

6.1 TVH are keen to enter into contract with Howarth Homes and are mindful

that any significant delays could lead to the deal breaking down, an alternative purchaser being sought and the opportunity to deliver much-needed affordable homes being lost. Subject to the approval of Cabinet being ratified by Council on 7 December, it is hoped that the funding and nomination agreements could be formalised shortly thereafter, such that the contract between Howarth Homes and TVH could be completed in a similar timeframe.

6.2 At the present time, TVH anticipate that the homes will be ready for occupation in Summer 2018.

7. Financial issues

7.1 It is necessary, in accounting terms, for the Council's Capital Programme to be increased so that sufficient funding can be drawn down from the Enabling Fund to cover the grant of up to £2.508m. This can be funded from the developer contributions collected specifically for affordable housing. It is proposed that the Capital Programme be increased by the requisite amount at this time, from financial contributions collected via planning obligations specifically for affordable housing.

7.2 A payment of £2.508m will still leave in excess of £3.3m available in the Enabling Fund for other projects with the prospect of further monies being received through further planning obligations.

7.3 The delivery of a 100% affordable housing scheme would also provide some indirect financial benefits that would partially offset the Council's capital outlay. The uplift in the number of rented affordable homes provided should help relieve pressure on homelessness and related budgets, by helping directly or indirectly to reduce use of temporary accommodation in general, and bed & breakfast in particular. The increase in housing supply delivered on the site should also feed into the Council's allocation of funding through the New Homes Bonus Scheme in future years, including a premium to reflect the new supply comprising affordable housing.

8. Conclusions and next steps

8.1 The Affordable Housing Member Panel was consulted on an earlier iteration of this proposal at a meeting on 19 September and provided its in-principle support, subject to further consideration by officers and a report being prepared for Members as appropriate.

8.2 Officers believe this proposal presents an opportunity to make a significant contribution towards affordable housing delivery and meeting the Core Strategy's target of delivering 1,150 affordable homes between 2011 and 2026. The proposal also fits with the stated aim of the action plan devised following the LGA Peer Review, namely to accelerate the delivery of affordable housing.

Financial implications:

The approved capital programme be increased by £2,508,000 for the grant to TVH. This increase in the capital programme be funded from the receipts held in the Council's Enabling Fund which currently has a balance of £5.9m.

The revenue cost of the desktop review undertaken by DSP of approximately £2,200 will also be met through the Enabling Fund.

Environmental/Sustainability Implications:

None for the purposes of this report.

Legal implications:

The proposals in this report would give effect to the Council's powers to assist in the provision of affordable housing. The Enabling Fund comprises money lawfully obtained or applied for this purpose. If the funding is agreed, then the Council's reasonable conditions will be incorporated into an appropriate funding agreement entered into between the parties.

Equality Implications:

Increasing the supply of affordable housing should help the Council contribute to its objectives around equality and diversity.

Risk Implications:

There are financial risks to the Council, in so much as the grant will be used to support the acquisition of the residential element of the development during the construction phase (and therefore constitutes forward-funding), rather than being paid out when the homes are built and ready for occupation. The funding agreement between the Council and TVH will identify risks and seek to mitigate them, for example, by including mechanisms for repayment of all or part of the Council's contribution should TVH default on its agreed obligations.

Community Safety Implications:

None for the purposes of this report.

Principal Consultees:

Head of Legal Services; Head of Finance; Chairman of Overview & Scrutiny Committee

Background papers:

None.

Enclosures/Appendices:

None.

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