

Taunton Deane Borough Council

Executive – 9 February 2012

Disposal of Land to Registered Providers Task and Finish Group

Report of the Chairman, Councillor Ian Morrell

(This matter is the responsibility of Executive Councillor Adkins)

1. Executive Summary

Taunton Deane Borough Council regularly opts to transfer the freehold of land to a Registered Provider (RP) towards the 'overall deal' in providing new affordable housing.

The land is transferred to the RP for a nominal amount -usually £1 in return for which the Council retains nomination rights - through Homefinder Somerset.

The Task and Finish Review Group was set up to consider all options for the terms of future disposals of land to a RP.

Input was received from staff, RPs, Partner agencies and Local Authorities.

The Group met on five occasions and took information from a wide variety of sources to gain an understanding of the advantages and disadvantages of transferring land on both a freehold and leasehold basis.

It is recommended that the Council moves away from gifting land to RPs for £1, to a long leasehold or sale at market value.

2. Membership of the Review

2.1 Members of the Review were:-

- Councillor Morrell (Chairman)
- Councillor Mrs Adkins (until May 2010)
- Councillor Mrs Allgrove (from May 2010)
- Councillor Bishop
- Councillor Critchard
- Councillor Farbahi
- Councillor Ms Webber
- Councillor D Wedderkopp

- 2.2 It should be noted that Councillor Mrs Adkins was originally a member of the Task and Finish Group. By the time its final meeting was held she had become a member of the Executive, holding the portfolio for Housing Services, and her place was therefore taken by Cllr Mrs Allgrove.
- 2.3 As such, Councillor Mrs Adkins was not involved in the drafting of the report, nor did she approve its wording and conclusions. As a member of the Executive she will however be involved in the decision whether to adopt the recommendations of the Task and Finish Group.

3. Background

- 3.1 The Council's approach in recent years has been to dispose of suitable land which could be developed for affordable housing for a nominal amount, usually £1. The land transfer would be completed on the basis that the land is only used for the provision of affordable housing with the Taunton Deane retaining nomination rights.
- 3.2 It was suggested that a review should be undertaken to enable the Council to realise a greater value from its publicly owned assets.

4. Terms of Reference

- 4.1 The Disposal of Land to Registered Providers (RPs) Task and Finish Review was proposed at the Corporate Scrutiny Committee. The Terms of Reference were agreed by the Group as follows:-
1. Identify the value of Taunton Deane owned land already gifted to RPs;
 2. Seek opinion from RPs, Partner agencies and Local Authorities as to the advantages and disadvantages of transferring land on both a freehold and leasehold basis; and
 3. Consider and recommend to the Executive the terms of disposal of land to RPs and whether a long leasehold approach was a valid method in supporting the development of affordable and social housing.

5. Initial Investigations

- 5.1 Clarification was given regarding freehold/leasehold status. Freehold status is when land is transferred to an RP for a minimum value and leasehold status is where land is transferred to an RP on a long lease basis and the Council retains the freehold.

6. The Financial and Asset Management Perspective

- 6.1 The Housing Accountant reported to the Group that one of her primary roles was to back up the Council's Corporate Aim to provide social and

affordable housing.

- 6.2 She reported that Housing Associations preferred to acquire land from Councils with 'clean title'. Without this option, Housing Associations could choose to target its resources in other districts where freehold title to land at nil or nominal cost is available.
- 6.3 Currently 50% of the value of land sold at a commercial rate has to be handed to the Government, unless it can be identified and used solely for the provision of affordable housing. However, it was hoped that a review of the Housing Regulations would allow Local Authorities to keep 100% of capital proceeds in the future. Freehold sales required less time to complete than leasehold. Leasehold conveyancing can often be more complicated due to complex legal documents.

7. The View from the Housing Associations

- 7.1 Representatives from Knightstone Housing Association that attended the meetings felt that land transferred to a Housing Association on a long term lease without any restrictive covenants, would not prevent development. However, obtaining freehold title was preferable because negotiating a lease often resulted in additional legal costs being incurred.
- 7.2 Borrowing from banks is easier if properties have a 'life' of at least 60 to 70 years and there were no encumbrances on the land. Housing Associations work closely with developers and will purchase affordable housing which developers are required to provide under the terms of Section 106 Agreements, on a freehold basis at less than open market value.

8. The Taunton Deane Housing Perspective

- 8.1 In past years Bristol City Council adopted an approach to dispose of freehold land at open market value to RPs. A building agreement ensured the use and timing of the development. The freehold transfer took place on completion of the development.
- 8.2 More recently however, policy changes have allowed for the straight freehold disposal of land on a conditional basis.
- 8.3 The Housing Enabling Lead felt that comparisons with Bristol City Council could not be made as Taunton Deane Borough Council had a significantly smaller proportion of land and resources available.
- 8.4 Building standards could also be in question as private developers were not required to achieve the same standards as RPs.
- 8.5 Section 106 Agreements had not produced many affordable homes and it could be considered that building on Council land was the way forward.

8.6 If the Council did not gift the land, the Council would be required to make a substantial financial contribution towards the proposed affordable housing development instead.

8.7 RPs were finding it difficult to build properties in the current economic climate, especially as grant funding has reduced which means that RPs receive approximately £25,000 for Social Rent and Affordable Rent, and £12,000 for New Build Home Buy, compared to £80-85,000 in 2009. RPs have been consulted previously and their feedback is fairly consistent. They feel that:-

- The leasehold route could hinder their applications to the Homes and Communities Agency (HCA) for grant funding (stating that the HCA prefer RPs to have outright ownership);
- Their Boards prefer to develop on the basis of outright ownership;
- Leasehold arrangements were often “messy and involved more legal costs”; and
- The minimum term would have to be 125 years with no ground rent.

8.9 The Department of Communities and Local Government paper ‘Implementing self-financing for Council Housing’ would mean a debt of approximately £87.2m for the Council. The Housing Lead felt that flexibility was needed to ensure that affordable housing could be provided and deprivation could be tackled. The Localism Bill proposed that Councils were given more freedom to dispose of their assets, but currently if land is sold 50% of the capital receipt is returned to the Government and 75% if property is sold.

8.10 Officers comments are attached at Appendix 1.

9. Summary

9.1 Selling land rather than gifting land to RPs for a nominal fee should not be discounted.

9.2 It appears that the granting of a 125 year lease with nil or ‘peppercorn’ rent is a valid method of supporting the development of affordable homes.

9.3 Although it would not be popular with RPs, it may offer the Council asset protection in certain cases, particularly if the Council can continue to secure nomination rights.

9.4 The Council could add the option of leasehold to its policies, which would offer the Council flexibility to negotiate the best route on each piece of land.

- 9.5 The disposal of land for a nominal sum is also an option to fulfil the Council's Corporate Aim to deliver affordable housing.
- 9.6 Flexibility is needed to fully achieve this Corporate Aim and it is recognised by the Task and Finish Group that to impose financial encumbrances on RPs could prevent the delivery of affordable housing in the future.

10. Corporate Scrutiny's Recommendation

- 10.1 The Corporate Scrutiny Committee, at its meeting on 15 December 2011 were concerned that only one Housing Association had taken part in the consultation process and felt that if land was given away for a nominal sum, there was no incentive for the developer to proceed promptly. The Committee recommend that the Executive do not agree recommendation (2) (iii) which allows for the Executive Member to gift the land for a nominal sum.

11. Finance Comments

- 11.1 Details are contained in the report.

12. Legal Comments

- 12.1 The legal implications have been set out in this report.

13. Links to Corporate Aims

- 13.1 There is potential to impact on the Corporate Aims: Affordable Housing; and Tackling Deprivation and Sustainable Community Development.

14. Environmental and Community Safety Implications

- 14.1 At this stage, this report has no environmental and community safety implications.

15. Equalities Impact

- 15.1 At this stage there is no direct impact on any particular group. If however, the recommendations made are likely to impede RPs from providing affordable housing, including shared ownership and social rented accommodation, there would be an equality impact on vulnerable people and an Equalities Impact Assessment would need to be undertaken.

16. Risk Management

- 16.1 The Council will conduct risk assessments for any significant policy changes.

17. Partnership Implications

17.1 Details of consultations with partners are contained in the report.

18. Recommendations

- (1) The Executive is recommended to agree that Taunton Deane Borough Council should have a flexible policy in determining the gifting of Council land/assets.
- (2) Where possible, a 'toolkit' approach should be utilised in determining how the land is disposed of in the future. This "sliding scale" should include:-
 - (i) An arrangement under a long leasehold agreement for not less than the duration of the build life;
 - (ii) If this was not possible, to sell the land for a market value, less an agreed Council social contribution; and
 - (iii) If financial due diligence determines that 1 and 2 above impede the process, then a decision to gift the land for a nominal sum be made by the Executive Member and published in the Weekly Bulletin.

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Appendix 1

Disposal of Land to Registered Providers Task and Finish Group - comments from officers

1. It is a balanced report and does address Housing Enabling concerns, but to reiterate the land maybe called 'gifted' but in real terms it is the local authorities' contribution to an affordable housing development.

This contribution is critical when demonstrating value for money and commitment by the local authority when supporting the scheme to obtain Homes and Communities Agency funding.

Without a local authority contribution, be it land or funds there will be very few 100% affordable housing sites which will be able to be brought forward.

TDBC will also lose the potential nomination rights and other affordable housing covenants a Local Authority can impose if they did not financially contribute to a development.

In a lot of cases the land enables access to the development and I would not want to see a ransom value added to any affordable housing development.

I would like more detail on the proposed 'toolkit' approach and how it will work in practice – Jo Humble, Housing Enabling Lead

2. The paper does not make a clear distinction between GF and HRA land, does it apply to GF only or both? If it applies to HRA land then it does not really address where we are with self financing - James Barra, Community Services Manager

3. The recommendations give the flexibility for us to continue to dispose at a nominal sum if that is the only way to make the schemes work – Joy Wishlade, Strategic Director

4. I am happy that the recommendations give us the flexibility to alter our approach. Some sites will have greater value and viability than others and perhaps on these we would seek more than £1 in future. I am also sharing the report with Martin Daly (I don't think he input into the report), to get his views, especially with regard to the move toward Affordable Rent by the HCA – Simon Lewis, Strategy Manager