

MUNICIPAL YEAR 2014/2015 REPORT NO. 182

MEETING TITLE AND DATE:
Cabinet, 11th March 2015

REPORT OF:
Director of Health,
Housing and Adult Social
Care and Director of
Finance, Resources and
Customer Services

Agenda – Part: 1

Item: 9

**Subject: Operation of the Government's
Right to Buy (RTB) One for One
Replacement Scheme
Wards: All
Key Decision: KD3932**

Cabinet Members consulted:
Councillor Oykenner and Councillor Stafford

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EXECUTIVE SUMMARY

- 1.1 In June 2012, Enfield signed up to participate in the Government's RTB One for One Replacement Scheme. This scheme allows Councils to keep a proportion of the capital receipts raised from RTB sales, which used to be paid back to the Government, to contribute towards replacement affordable housing. The Council is expected to match fund the Government's contribution on a 30/70 basis.
- 1.2 At the time of signing the agreement, the Council assumed that it would achieve 40 RTB sales per annum, and that the scheme was therefore affordable within the Housing Revenue Account (HRA) 30-Year Business Plan.
- 1.3 In 2012/13 and 2013/14, the Council in fact sold 156 properties. Based on these figures and activity so far this year, the 2014/15 and 2015/16 sales figures assumptions have been increased to 200 per year, dropping back to 100 in 2016/17. The scheme is now no longer affordable within the HRA 30-Year Business Plan alone.
- 1.4 The way that the scheme works and its restrictions are explained fully in this report and the appendices. However, given the significant increase in RTB sales in the past two and a half years, it is clear that the Council needs to respond quickly (to comply with timescales) and with creativity (to secure sufficient resources) to ensure that it can deliver affordable housing within the rules of the scheme and avoid repaying the "retained" RTB receipts to Government. The latest estimate is that Enfield will need to spend £104m in the five years between 2015/16 and 2019/20. £3m has been spent/committed so far to the end of 2014/15.
- 1.5 This report sets out proposals to ensure that Enfield complies with the scheme and maximises its ability to provide additional affordable homes within the Borough.

2. RECOMMENDATIONS

- 2.1 That Cabinet approves the proposed set of short to mid-term schemes described in paragraph 3.13 and Appendix C of this report. This will maximise the likelihood that expenditure of £19.771m will be achieved by the end of 2016/17 and prevent any return of receipts to Central Government.
- 2.2 That Cabinet approves in principle for officers to carry out checks as to the feasibility of the schemes identified as mid-long term described in this report for further development, noting that these are designed to achieve expenditure of £87.725m over the three years from 2017/18 to 2019/20. Cabinet is requested to note that a further report will follow with an update as regards the outcome of these checks.
- 2.3 That Cabinet notes that Housing Board endorses this approach to spending the RTB receipts.
- 2.4 That Cabinet approves a budget of a maximum £80,000 to procure legal and financial advice and procure a consultant with the expertise to advise on alternative Registered Provider (RP) models or a consortium with other Councils and set up the new delivery model quickly. This sum would be funded from the HRA business plan resources.
- 2.5 That, in order to expedite delivery of the short to mid-term schemes amounting to £19.771m, Cabinet delegates authority to the Cabinet Member for Housing and Estate Regeneration and the Cabinet Member for Finance (in consultation with the Assistant Director of Finance, Assistant Director of Housing, Assistant Director of Property Services, Assistant Director of Procurement and Assistant Director of Legal and Governance Services as appropriate) to:
- agree terms and enter into appropriate legal agreements with developers to purchase the affordable housing element of any new build developments within the borough subject to the Council's Property Procedure Rules
 - agree terms and purchase HRA properties as appropriate subject to the Council's Property Procedure Rules
 - agree the details of a scheme to grant fund RPs subject to the Council's Constitutional arrangements, Financial Regulations and Contract Procurement Rules
 - select the most suitable bidder(s) for grant funding subject to the Council's Contract Procurement Rules
 - enter into grant agreements and nomination agreements with successful RPs subject to the Council's Constitutional arrangements, Financial Regulations and Contract Procurement Rules
 - flex the amounts spent on the various strands of the scheme depending on future RTB take-up and deliverability within spending time constraints subject to the Council's Financial Regulations

3. BACKGROUND

- 3.1 On 25 June 2012, Enfield signed the Government's RTB One for One Replacement Scheme agreement. A copy of this agreement, along with the amending agreement dated 14 June 2013, is attached as Appendix A.
- 3.2 The scheme allows Councils to retain an element of the receipts raised from RTB sales to fund replacement affordable rented homes, so long as the funds are spent within a three year time period.
- 3.3 At the time of signing, the Government was in the process of consulting on its "Reinvigoration of the Right to Buy" initiative. Amongst other things, this scheme increased the RTB discount cap from £16,000 (in London) to £75,000.
- 3.4 In the following year the discount cap was increased again from £75,000 to £100,000. Between April 2012 and March 2014 this improved discount encouraged the sale of 156 (56 between April 2012 and March 2013 and 100 between April 2013 and March 2014) Council owned dwellings in Enfield. It should be noted that, in the 3 years prior to the changes i.e. 2009/2010, 2010/2011 and 2011/2012, there were only 27 sales in total.
- 3.5 The current maximum discount is £102,700. Based on these figures and activity so far this year, it is now anticipated that 200 homes will be sold per year during 2014/15 and 2015/16. Given the projected rise in interest rates and restrictions on mortgage availability, sales are expected to drop back to 100 in 2016/17.
- 3.6 Appendix B illustrates how the scheme works for Enfield based on 2012/13 and 2013/14 actual figures.
- 3.7 The Table below shows the amount of expenditure that will need to be incurred by the end of each year between 2015/16 and 2019/20 to meet the requirements of the scheme. The monies can be spent earlier but cannot exceed the three-year timescale.

Year	Spend		
	30% Retained Receipts (£000)	70% Match Funding (£000)	TOTAL (£000)
2015/16	2,217	5,173	7,390
2016/17	3,714	8,667	12,381
2017/18	10,306	24,049	34,355
2018/19	11,117	25,940	37,057
2019/20	4,894	11,419	16,313
TOTAL	32,248	75,248	107,496

- 3.8 In order to ensure that the funds are spent on providing additional homes, the Government agreement includes the following rules and restrictions:
- The receipts must be used to provide “Social Rented Housing” – this can be either by the Council or by a RP that gives the Council nomination rights, and either by building or acquiring properties
 - RTB receipts can only be spent on additionality, ie additional homes, not re-provision of existing homes, or maintaining current stock
 - They cannot be spent on a body in which the Council has a controlling interest
 - They cannot be used to appropriate properties from the General Fund
 - They cannot be spent on properties for which the Homes and Communities Agency (HCA) or Greater London Authority (GLA) has provided a grant (either in whole or in part)
 - They cannot be used to fund buybacks on current Estate Renewal schemes
 - They cannot be used to fund expenditure which will reduce a capital receipt – for example, Legal and Property costs directly attributed to a sale
 - They cannot be used in conjunction with other capital receipts – ie sales of land or other property in the HRA, since these receipts should already be used to fund regeneration
 - There is a significant interest penalty associated with keeping the cash and not using it within the three-year period, for example, £1m kept in 2012/13 and not spent by the required date in 2015/16 means that interest of £143k will have to be paid back to the Government
- 3.9 In addition to these restrictions, the Council’s HRA is constrained by a debt cap, which it will reach in 2018/19. Since plans are already in place to spend and borrow up to this cap, there is no scope to borrow further to match fund the Government’s scheme.
- 3.10 There are also issues about delivering our own new build schemes within the required three-year time period. Experience has shown that delivering a scheme from start to finish is more likely to take five years.
- 3.11 On the positive side, however, the new funding arrangements provide an opportunity for the Council to support a range of initiatives including providing grants to secure tenanted households to vacate their homes, building, purchasing from a developer and assisting RPs to provide affordable housing.

- 3.12 To this end, a proposed programme has been developed of short, medium, and long term affordable housing development and purchase initiatives that will allow the Council to respond swiftly to meet designated timescales and with creativity so that RTB one for one receipts and any additional resources can be used if available.
- 3.13 The proposed schemes, along with the funding requirements, are set out in Appendix C and summarised below. The options are placed in order of how quickly they can achieve spend within required timescales.

PROPOSED SCHEMES

3.13.1 Appendix C identifies nine initiatives that could be achieved in the short-mid term. Of these, two are already included within the current HRA 30-Year Business Plan:

- New build schemes at Small Sites 1, Dujardin Mews and New Avenue are already offering additionality and can therefore utilise retained RTB receipts. Expenditure on these three schemes will amount to £4.931m by the end of 2015/16 and a further £4.527m by the end of 2016/17
- There is already provision of £0.5m per year in the HRA for Grants to Vacate. Up until now, these have been match funded by the GLA. Enfield can provide its own match funding with effect from 1st April 2015 and so increase the scheme to £1.0m.

3.13.2 The other seven proposals are as follows:

Sell land to replenish the HRA

As part of the Small Sites Rolling Programme, two sites will be identified for sale in the early years. This will assist the HRA 30-Year Business Plan position, allowing borrowing to be diverted to match fund retained RTB receipts. No value has been put to this initiative as yet, but an initial assumption is that this could raise around £1.5m. When potential sites for disposal are identified, these will be the subject of a separate report.

Funding Future Development Schemes

In addition to Small Sites 1, Dujardin Mews and New Avenue, the Council has begun work to deliver the Small Sites Rolling Programme. Whilst work is at a very early stage, it is envisaged that this programme could provide an additional 30 homes by the end of 2016/17. A report elsewhere on this agenda already proposes an additional 18 homes. An indicative budget of £5.1m in 2016/17 is requested at this stage. The scheme will roll on into future years, continuing to use the RTB one for one resources to provide additional affordable housing.

Grants to RPs to Purchase Properties Previously Used for Temporary Accommodation.

For over 15 years the local authority has been working with RPs to support the delivery of temporary accommodation. A number of partners lease properties from private landlords letting them to the council for a management fee which provides the borough with an additional temporary accommodation resource. As a consequence of increases in the property market many landlords involved in this scheme have decided to sell their properties on the open market giving the RPs first right of refusal. The proposal will provide grant to the RP to assist with the acquisition ensuring the tenants remain in situ thereby reducing rents and discharging the Council's duty to the existing Temporary Accommodation tenants.

Benefits of this approach are that the Council would be able to secure nomination rights to the units thereby discharging its statutory housing function and that the RPs would contribute 70% of the funding. An initial allocation of £500k in 2015/16 is proposed for this scheme. Of this, the Council would contribute £150k per year and the RPs £350k.

Purchase of Properties (including s106)

When private developers in the Borough build more than 10 units on a scheme, they are required to provide affordable units as part of that scheme. The affordable units are usually sold to RPs. It is proposed that the Council should seek to purchase some of these units using the RTB One for One Replacement Scheme. £1m per year in each of 2015/16 and 2016/17 is proposed for this initiative.

This approach would enable the Council to enter into negotiations with a range of developers to provide suitable affordable housing and would:

- i. be faster than the Council developing
- ii. enable swift purchase of suitable affordable housing properties
- iii. increase the portfolio of affordable rented stock to enable the Council to discharge its statutory housing obligations
- iv. increase the possibility of spending retained RTB receipts within prescribed deadlines
- v. potentially generate economies of scale savings if more than one affordable property is available for sale at the time of purchase

Establish a Grant Fund for RPs to Support Development

The Council could establish a fund which would operate similarly to the Social Housing Grant Scheme, allowing RPs to access up to 30% of development costs. This approach would be subject to having appropriate funding and nomination agreements in place, but would;

- i. enable retained RTB receipts to be spent without the Council having to provide match funding from its own resources
- ii. enable graduated grant levels depending on the size of the dwelling to be provided
- iii. allow RTB receipts to be used alone, or potentially bundled together with Section 106 affordable housing contributions, as part of a funding package
- iv. potentially increase the percentage funding (currently between 11% and 15%) to 30% for RPs, making schemes that are currently not financially viable become so. In the 2011 – 2015 Affordable Housing Programme, allocations per unit average around 15%. It is anticipated that the proposal to offer 30% grant funding is likely to be considered favourably by RP partners
- v. Appropriate funding agreements would have to be structured to ensure compliance with State Aid rules, amongst other considerations

Purchasing Ex-Council Owned Properties Previously Sold Under the RTB (but not on current regeneration schemes)

A further proposal is to explore the viability of purchasing ex Council owned properties either close to estates earmarked for future regeneration or in areas where the Council already has a significant stock holding. Since August 2012, the average cost of buying back properties on estates earmarked for regeneration and previously sold under the RTB is £ £143k. £600k per annum in both 2015/16 and 2016/17 is therefore proposed to be allocated to this initiative, allowing four buybacks per year.

Given the recent 20% increase in property values in London over the last 12 months, it is anticipated that the cost of purchasing similar properties is likely to increase. Purchasing these units, therefore, in advance of regenerating an estate would help the Council to generate significant future savings.

A benefit of this approach is that this would obviate the need for the Council to displace a new owner and cover future additional costs associated with purchase such as surveyors fees, home-loss, (10% of sale price) and disturbance payments, (current maximum £2,800).

Purchased properties could be let on a secure tenancy basis to manage decanting of households directly affected by the Council's regeneration proposals.

The scheme would need to be undertaken alongside any purchases carried out by Housing Gateway to ensure that opportunities to work together are maximised.

Building Additional Storeys on Existing Blocks

The Council is currently undertaking major works on some properties which will be converted from flat roofs to pitched roofs. It is proposed, that, whilst undertaking this work, opportunities to build an additional storey, or additional storeys, may provide a low cost option to increase rented stock.

- 3.13.3 The implementation of the above schemes will ensure that the Council meets its target spend of £19.771m on the RTB One for One Replacement Scheme in, or prior to, 2015/16 and 2016/17, whilst ensuring that the 30-Year HRA Business Plan remains financially viable in those years. It should be noted that all figures quoted are inclusive of overheads, ie legal costs, architects, etc.
- 3.13.4 Whilst some of the above schemes will be able to carry on into future years, Appendix C includes a number of further proposals to address the high levels of spend required in or before 2017/18 (34.355m), 2018/19 (37.057m) and 2019/20 (£16.313m). In these years, the HRA will be at its most constrained and will have reached the debt cap. It is therefore essential that opportunities outside of the HRA are explored in order to ensure that RTB receipts can be retained.
- 3.13.5 Proposals cover opportunities to bring in more income to the HRA through sales and deferring items in the capital programme (ie major works and planned regeneration schemes) to make way for expenditure on additionality instead. However, these alone will not keep the HRA 30-Year Business Plan in balance across those years. The latest version of the Business Plan assumes that £14m of RTB receipts will be match funded outside of the HRA.
- 3.13.6 It is therefore proposed to explore further options, one of which is setting up the Council as a RP partner in conjunction with either a private investor, other RPs or other Councils. The other is setting up a Consortium with other Councils who may have sufficient borrowing headroom to share resources.

The Council as a RP Partner

In order to comply with the condition that retained RTB receipts cannot be spent within a company in which the Council has a controlling interest, it is proposed that the Council should seek a private sector partner, other RP partners or other Councils and become a RP partner itself. This would allow it to lever in external funding whilst opening doors to purchase or develop property for Enfield residents without having to rely on other RPs to carry out this function on its behalf. Other Councils have pursued this route with success, and, given the large demand and shortage of supply within the Borough, this is thought to be a natural step to secure the future provision of affordable homes.

Consortium with Other Local Authorities

It is possible that other Local Authorities will be interested in this initiative, since many are facing some of the same delivery issues with the RTB One for One Replacement Scheme as Enfield, but may have sufficient borrowing capacity within their HRAs to allow sharing arrangements that will enable development.

A benefit of this approach is that any property developed under these arrangements would be placed in the HRA. There is a risk, however, that it may be difficult to identify suitable partners to work with and enter into joint venture agreements to facilitate development.

- 3.13.7 In order to procure legal and financial advice and procure a consultant with the expertise to advise on alternative RP models or a consortium with other Councils and set up the new delivery model quickly, a budget of up to £80,000 is requested. This will allow faster delivery and be funded from the Council's HRA.

HOUSING BOARD

- 3.14 On 16th December 2014, Housing Board considered the proposals set out in this report and recommended that these represented the preferred approach to spending the RTB receipts within the required timelines.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could decide not to spend the retained RTB receipts already received. However, this would result in having to return the receipts to Government, with a punitive interest rate to the Council of 4% above base rate (calculated from the date of receipt). For every £1m returned the Council would be required to add a further £143k in interest payments.
- 4.2 The Council could choose to withdraw from the scheme now and return all receipts retained with effect from Quarter 4 (March) this year. However, this would mean giving up valuable resources which have been generated from the sale of Enfield's own housing to be used elsewhere in the country.
- 4.3 The Council could attempt to spend all the money on the provision of new Council homes within the HRA. However, based on the current estimate of sales over the next three years, plus the sums already received, this would create a gap of some £40m in the HRA business plan. In addition, the Council would need to have projects identified that are deliverable within the timescales required, which it does not have at present, and the application of this scheme would have to compete against demands for addressing the repairs backlog, investment in existing stock and repayment of HRA debt.
- 4.4 The list of initiatives outlined in the report is not exhaustive. Alternative options will continue to be explored for the use of retained RTB receipts to provide affordable housing within the rules of the scheme. If these are examined and shown to deliver more benefits than the proposals outlined above, then a further report will be prepared for decision.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The Council has signed up to participate in the scheme and is committed to retaining the RTB receipts in order to address the growing demand for affordable rented homes in the borough.
- 5.2 Using a basket of options to comply with the scheme allows flexibility, thereby better ensuring that steps can be taken to achieve delivery and spend within the required deadlines.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

6.1.1 The schemes described in Appendix C as short-mid term are affordable and have been included within the HRA 30-Year Business Plan. They will maximise the Council's ability to spend the required £7.390m by the end of 2015/16 and £12.381m by the end of 2016/17. The sums outlined below include an element of over programming to ensure that the required expenditure levels are met even if slippage occurs.

Scheme	2015/16 (£m)	2016/17 (£m)
Current Schemes (Small Sites 1, Dujardin Mews and New Avenue)	4.931	4.527
Grants to Vacate	1.000	1.000
Purchase of S106 Properties	1.000	1.000
Leasehold Buybacks	.600	.600
Small Sites Rolling Programme		5.100
Grants to Registered Providers to Purchase and Repair*	.500	
Grants to Registered Providers to Develop*		.600
Additional Storeys on HRA Blocks		.500
TOTAL	8.031	13.327

* Note: The amounts shown are the 100% requirement. With these schemes, the Registered Providers will incur 70% of the expenditure.

6.1.2 The schemes described in Appendix C as mid term or mid-long term are a mixture of proposals. The schemes need to be developed and it is not possible to attach sums to individual proposals as yet. However, the basket proposed is designed to achieve expenditure in 2017/18 of £34.355m, in 2018/19 of £37.057m and in 2019/20 of £16.313m as outlined in paragraph 3.7. These sums cannot be met from HRA resources alone hence the proposal that at least £14m of RTB receipts has to be match funded outside of the HRA. The HRA Business Plan includes resources to match fund the remaining RTB receipts.

6.1.3 The schemes identified in the Table above may continue beyond the 2 years, however, these costs can be contained within the 30 Year HRA Business Plan because resources have been set aside in future years but not yet allocated to specific projects.

6.1.4 These figures are based on assumptions about future RTB receipts and these will be kept under review.

6.1.5 It should be noted that the Government requires expenditure returns on a quarterly basis. For example, receipts from the first quarter of 2012/13 must be match funded and spent by the first quarter of 2015/16, etc. It is therefore essential that progress and expenditure are monitored closely throughout the operation of the RTB One for One Replacement Scheme.

6.2 Legal Implications

6.2.1 Under s.1 of the Localism Act 2011 The Council has power to do anything that individuals generally may do provided it is not prohibited by legislation and subject to public law principles.

6.2.2 The report identifies a number of ways in which the Council may take forward options to spend the RTB receipts and create additional affordable housing. The details of each scheme must be the subject of further reports authorising the individual schemes with associated legal advice. In particular any procurement exercise, or agreement for the provision of grant funding must comply with State Aid rules and the Council's Constitution in particular the Contract Procedure Rules and the acquisition or disposal of land must comply with the Property Procedure Rules.

6.2.3 There are various powers that Councils have which have a bearing on the proposals outlined in this report, including Sections 8, 9 and 32 of the Housing Act 1985 in relation to the provision of affordable housing, Sections 24 and 25 of the Local Government Act 1988 as regards providing financial assistance (subject to General Consents), Section 120 of the Local Government Act 1972 regarding acquisitions and Section 123 of the Local Government Act 1972 for disposals. Further legal advice will be provided on the development of the scheme(s).

6.3 Property Implications

6.3.1 The ability to spend the funds from the scheme on replacement affordable housing will be determined by factors outside the Council's control with punitive interest rates for failure to deliver the required level of spend. These factors include volatility in RTB sales, the potential lack of supply of suitable schemes and opportunities for investment and time-lag between identification of opportunities and delivery of the units within prescribed timescales.

6.3.2 The options for delivery should be weighted/prioritised according to deliverability, scalability and potential volumes.

6.3.3 The successful delivery of the programme will require significant levels of resource to plan, monitor, manage and implement appropriate housing schemes and realise opportunities.

- 6.3.4 A bespoke risk register should be produced at the earliest opportunity in order to manage the significant and varied risks associated with the project.
- 6.3.5 Consideration should be given to what constitutes an appropriate “property vehicle” within which these replacement units are held to avoid potentially adverse financial consequences in the future for the HRA Business Plan including the possibility of future RTB sales on “purchased” units.
- 6.3.6 Different options are likely to deliver varying levels of value for money when compared. However, this consideration must be balanced against deliverability and potential financial penalties incurred if there is a failure to achieve the required spend in accordance with the rules.

7. KEY RISKS

- 7.1 The challenges associated with each individual proposal are set out in Appendix C.
- 7.2 The programme is based on an assumed level of RTB sales between 2014/15 to 2016/17. There is a risk that assumptions may be wrong and that the number of RTB sales is either much lower or much higher than predicted. For this reason, the levels of expenditure associated with each initiative need to remain flexible.
- 7.3 Where partners or developers are providing the additional homes, the Council will need to have strong agreements in place to ensure that units are delivered and expenditure is achieved within the required timescales.
- 7.4 When developing within the HRA, there is a risk that the Council encourages further RTB sales of the new properties provided. However, there is provision within the RTB scheme for a “cost floor adjustment”, which means that the Council can take into account the cost of providing the new property before applying discount for the first 15 years.
- 7.5 The schemes will need to be adequately resourced to keep delivery on track. Whilst the sums shown include overheads, it is essential that the Council retains current suitably qualified staff to undertake this programme and/or recruits additional resource where appropriate.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The mix of schemes and methods of delivery set out in Appendix C are all designed to maximise the supply of affordable housing in the

Borough, providing more opportunities for people in Enfield to access homes they can afford.

8.2 Growth and Sustainability

Developing and sustaining a decent supply of affordable housing will enable the Council to increase the portfolio of stock it has to discharge its statutory housing responsibility to households that live in the borough.

8.3 Strong Communities

Developing good quality housing in areas where people desire to live will help to create and maintain strong sustainable communities.

9. EQUALITIES IMPACT IMPLICATIONS

All schemes proposed within this report either have been or will be subject to Equalities Impact Assessments. However, providing good quality, affordable housing within the Borough is targeted at those most in need of a home and least able to afford property on the open market.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

10.1 The proposals contained in this report will increase the portfolio of stock that is available to assist the Council to discharge its statutory housing obligations i.e. decanting of households directly affected by the Councils regeneration proposals and supporting those in need of temporary accommodation.

10.2 The delivery of housing within the schemes will be subject to strict performance management to ensure that timelines are adhered to and ability to retain RTB receipts maximised.

11. HEALTH AND SAFETY IMPLICATIONS

All properties owned and rented by Enfield are subject to rigorous health and safety checks as a matter of course.

12. PUBLIC HEALTH IMPLICATIONS

The provision of safe, clean affordable housing has a clear connection to individuals' health and wellbeing. Providing new affordable housing on the scale proposed in this report will have a positive impact on Public Health.

Background papers are attached as Appendix A to this report.