

MUNICIPAL YEAR 2018/2019 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:

Executive Director Place
in consultation with the
Director Finance

Agenda – Part:1

KD Num: 4848

Subject:

Entering into agreement with Christian
Action Housing Association to provide 24
affordable rented homes.

Ward: Edmonton Green

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1. EXECUTIVE SUMMARY

- 1.1 The Council has set aside some right to buy receipts, to be utilised by RP's by March 2020.
- 1.2 Report KD 4573 recommended any future decisions to authorise funding and entry into legal agreements, be delegated to the Executive Director – Place, Regeneration and Environment in consultation with Director Finance respectively.
- 1.3 This report recommends the Council awards grant funding to Christian Action Housing Association Ltd and enters into an agreement with them on the terms of its use and on the respective roles and responsibilities of each party.

2. RECOMMENDATIONS

It is recommended that the Executive Director Place in consultation with the Director Finance approve the award of RTB funding to Christian Action Housing Association Ltd (CAHA) to part fund development of twenty four dwellings for affordable rent and enter into a grant funding agreement.

3. BACKGROUND

- 3.1 In October 2017, report KD 4573, reported on the outcome of grant awards approved as part of round one submission. The report also recommended and authorised changes to the grant submission process to maximise future grant expenditure under round two.
- 3.2 In addition, the decision to make future awards of funding and enter into grant funding agreements with recipients has been delegated to the Executive Director Place and the Director Finance respectively.
- 3.3 Following approval of the above report the Council wrote to all the registered providers who own and manage stock in the borough. This was to advise a second round of grant funding had been launched and that changes had been introduced to make the grant more attractive to registered providers and to speed up the decision-making process. In addition, under round two, grant funding would be made available on a continuous market engagement basis, thereby giving providers' flexibility to submit claims as and when they are ready for consideration.

3.5 Entering Grant Agreement

- 3.5.1 Grant awards are provisional and payment is subject to entering agreement with prospective recipients on the terms of its use and our respective roles and responsibilities.
- 3.5.2 Officers have now finalised negotiations with CAHA and recommend the Council enters agreement with them to enable defraying of expenditure and facilitate delivery of new affordable housing as outlined in their bid. It has been agreed that 50% of the grant will be payable to CAHA on signing the agreement and 50% on completion of the units.
- 3.5.3 CAHA will be required to enter into a binding grant funding agreement with the Council prior to the release of the grant, obliging them to repay in full, (in case of delay in repayment, interest will accrue), the total amount of the funding as initially transferred under the agreement.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could choose to do nothing. If this course of action was adopted the Council would not be able to fulfil its duty to provide affordable housing for rent and utilise this expenditure as agreed.
- 4.2 It will not only have to return the receipts to Central Government but also pay interest, currently 4% above the base rate compounded, from the time the receipt was generated.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The Council's Housing Strategy requires 798 new homes be built each year.
- 5.2 If approved the funding will;
- Increase the portfolio of affordable rented accommodation in the borough and available to the Council
 - Assist the Council to discharge its statutory duties to households on the housing waiting list and those living in temporary accommodation
 - Ensure the Council retains 100% nomination rights to a mix of 24 affordable rent dwellings
 - Make this scheme potentially more attractive to prospective RP's and encourage them to submit bids for grant funding
 - Achieve the Council's objectives not to return receipts to the Department of Culture and Local Government

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 The bid total is £1,967,250 which will be funded from RTB receipts and paid to Christian in two tranches, 50% upon signing the grant agreement in 18-19 and 50% in 19-20 upon project completion.
- 6.1.2 The granting of these sums to RP's means that they are required to match fund the grant sums with a 70% contribution from their own resources. This means that the Council does not have to find the 70% match funding from within its HRA.
- 6.1.3 The grants will be made from the Council's General Fund Capital Programme (Scheme C380143), with the corresponding capital receipts transferred to fund them.

6.2 Legal Implications

- 6.2.1 Local Government Act 1972 ("LGA") gives a local authority power to do anything which is calculated to facilitate, or is conducive or incidental to the discharge of any of its functions.
- 6.2.2 S.112 LGA permits the appointment of such officers that the Council deems necessary for the discharge of its functions. The proposals set out in this report are consistent with this power.
- 6.2.3 Under s.8 Housing Act 1985 ("HA") the Council as local housing authority has a duty to keep under review the provision of housing in its area, and has power under s.9 HA to provide housing accommodation through erecting or acquiring houses. Local authorities also have a general

fiduciary duty to Council Tax payers and must therefore take whatever is the overall most reasonable and cost effective course of action in order to deliver best value from land owned by them.

6.2.4 S.1 Localism Act 2011 permits the Council to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. Creating stronger communities and addressing current housing needs are key priorities for the Council.

6.2.5 As mentioned in KD4573, provided that the:

- (a) evaluation criteria used to award the grant allocations to the organisations have been consistently and fairly applied and the;
- (b) competition process utilised was in accordance with the principles of the Council's Contract Procedure Rules ("CPRs") and the overarching EU Treaty Principles

then, despite the grant allocations being arguably able to be deemed public contracts (under the Public Contracts Regulations 2015 ("PCRs") and having values above the applicable EU threshold £164,176 (whereby an OJEU notice would be appropriate unless an exemption applies), the award of the grant allocations should present a low level of risk to the Council going forward, given that the awardees themselves are representative of the very organisations who could constitute possible challengers (were they not awardees in this instance).

6.2.6 With reference to any challenge to the awards, based on the PCRs: if challenged, as long as the Council in this instance, can point to a transparent, and fair (if limited) competition process, there should be a low level of risk of any successful challenge being brought under the PCRs.

6.2.7 Not having gone out to OJEU in these circumstances, it must be borne in mind that there is always the possibility of any registered provider who feels they may have been unfairly excluded from the selection of RP's who were chosen to be invited to express an interest, bringing a challenge to the awards - though that risk is low, given that the current awardees themselves represent the possible range of challengers that could be expected to come forward).

6.2.8 All risks associated with the amount and time of payment of the grant have been mitigated by the robust 'claw back' clauses contained within the grant funding agreement, which is to be signed between the RP and the Council.

6.2.9 This report constitutes a Key Decision and the Council's Key Decision process must be followed.

- 6.2.10 Any resultant legal agreements, including the grant funding agreement, must be approved by Legal Services on behalf of the Director of Law and Governance.

6.3 Property Implications

There are no direct property implications arising from the issuing of grant to CAHA however, an appropriate mechanism should be put in place to ensure that the grant funding is secured against the registered title upon which the 24 housing units are to be constructed.

7. KEY RISKS

- 7.1 If the Council does not do this there is a risk that it could fail to meet its statutory obligations to households on the housing register.
- 7.2 There is a possibility of the RTB receipts not being spent within the specified timeframe. If this were to happen the Council would not only have to repay any unspent amounts but also pay interest of 4% above the base rate compounded, from the time the receipt was generated.
- 7.3 To mitigate this risk, the Council will enter a grant funding agreement with successful grant recipients which would enable a swift draw down of grant.
- 7.4 This arrangement will allow grant to be drawn down within new prescribed deadlines thereby reducing the possibility of returning unspent amounts with interest to the DCLG.
- 7.5 The grant agreement will include a rigorous and robust claw back arrangement to ensure repayment of grant in the event of default.

8. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

8.1 Good homes in well-connected neighbourhoods

Supporting development of new housing will enable the Council to increase the portfolio and quality of stock it has to discharge its statutory housing responsibility to households that live in the Borough.

8.2 Sustain strong and healthy communities

Any increase in the provision of housing within the Borough is likely to make a positive contribution to strengthening communities.

8.3 Build our local economy to create a thriving place

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

9. EQUALITIES IMPACT IMPLICATIONS

- 9.1 The Council recognises that providing good quality, affordable housing within the Borough helps those most in need of a home and least able to afford property on the open market.
- 9.2 An Equalities Impact Assessment (see Background Documents), shows that the allocation of funding to CAHA does not discriminate against any group sharing a protected characteristic. The EQIA highlights benefits to clients in protected groups such as those with disabilities, ethnic minorities, elderly persons and single pregnant women.
- 9.3 The Council will retain 100% of the initial nomination rights and properties will be allocated in accordance with the Councils current procedure. CAHA has a Equality, Diversity and Inclusion Strategy.

10. PERFORMANCE AND DATA IMPLICATIONS

- 10.1 The Council recognises that providing good quality, affordable housing within the Borough helps those most in need of a home and least able to afford property on the open market.
- 10.2 A scoping Equalities Impact Assessment, (see Background Documents) has been completed. This highlights benefits to clients in protected groups such as those with disabilities, ethnic minorities, elderly persons and single pregnant women.
- 10.3 No specific negative impact has been identified.

11. PUBLIC HEALTH IMPLICATIONS

Housing is a basic human right without which it is extremely difficult to adopt or maintain a healthy lifestyle. The life-expectancy of the homeless is approximately half that of the general population. Funding further housing in the borough therefore will be instrumental in improving health.

Background Papers

EQIA

MUNICIPAL YEAR 2018/2019 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:
Executive Director – Place

Agenda – Part: 1	KD Num: KD 4842
Subject: Highmead Development Agreement - repayment of part of overage	
Wards: Upper Edmonton	

Contact officer and telephone number:

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1. EXECUTIVE SUMMARY

- 1.1. This is a historic development known as "Highmead", Silver Point, now known as Prowse Court and Lord Graham Mews, within Upper Edmonton Ward. The Council sold, under a development agreement, its freehold of the site to a Developer in 2015. The Developer decided the doubling of ground rent and leaseholder terms and sold on the freehold to a Ground Rent Investor to maximise income as per the development agreement. The Council benefited from this by way of the profit sharing (overage) arrangement at the time.
- 1.2. This report seeks to rectify the situation by seeking approval for repayment of part of the profit sharing payment received by the Council from the Developer, Countryside Plc. The repayment would be in good faith to ultimately help the leaseholder residents rectify their onerous leases.
- 1.3. The Council are also working with this Development Partner on other strategic housing renewal sites, known as New Avenue and Alma Estate. The Council have retained the freehold at New Avenue, and have first refusal of the freehold at Alma, so the situation at Highmead should not arise.

2. RECOMMENDATIONS

Agree to repay the amount stated in the Part 2 Report of the overage received back to the Developer, Countryside Properties (UK) Ltd.

3. BACKGROUND

- 3.1 The Council carried out the Development known as Highmead, Silver Point, now known as Prowse Court and Lord Graham Mews, Fore Street, Upper Edmonton N18, as a mixed use (residential and commercial) development with the Developer under a Development Agreement dated 30th March 2012. The Council selected Countryside Properties, working with Newlon Housing Trust, as developer for the 0.6 hectare development site.
- 3.2 The development provided 118 new residential properties, 22 houses for affordable rent, 25 flats for intermediate rent and 71 flats for private sale to leaseholders. In addition, 4 shops, a GP health centre and community building were developed.
- 3.3 The affordable housing is developed and managed by Newlon Housing Trust.
- 3.4 This historic development was completed in 2015, and the Council agreed to transfer the freehold to the Developer under the development agreement on practical completion. The Developer then sold on the new residential units by way of long leases, which the Developer decided the terms of, and the Developer sold on the freehold of the development to a Ground Rent Investor. The Council did not retain any control over the freehold of the residential or commercial development, except the car park.
- 3.5 Since purchasing the leases, leaseholders of the privately owned properties have had difficulties with raising finance and selling their flats due to the onerous doubling ground rent terms contained in the leases they entered into. They have been lobbying the Government, the Council and Countryside to find a solution.
- 3.6 Under the Development Agreement with Countryside, the overage arrangements were structured such that the Developer was entitled to a fixed percentage of sales income (from the sale of plots and ground rents), above which surplus income was to be shared with the Council by way of an overage payment. Therefore, the Council profited from the situation.
- 3.7 See part 2
- 3.8 Since that time, due to adverse media coverage on the subject of leaseholders suffering from unfair ground rents (such as the doubling of ground rents) the Government has tabled proposals for new legislation on Leasehold Reform to provide better protection to leaseholders.
- 3.9 See part 2.

3.10 See Part 2.

3.11 Since this case, Countryside have changed their policy on the sale of freeholds to Ground Rent Investors. They now say they offer the freehold to residents', and only sell onto a Ground Rent Investor if they are unable transfer to the residents' management company. Also, Countryside say they have also changed their policy on the terms of leases they offer to purchasers, so they are fairer to leaseholders and are compliant with the Government's best practise guidelines on leases set out in the proposed Leasehold Reform legislation.

3.12 Highmead is a historic, one off case for the Council. In the case of New Avenue and Alma Schemes, where Countryside are a development partner, the Council has retained full control (or the ability to have full control) over any new lease terms. In the case of New Avenue the Council are retaining the freehold and proposed leases terms comply with best practise. In the case of Alma the Council has first opportunity to purchase the freehold, before Countryside go to the market. In both these cases, the Development Agreements have allowed for lease terms to be best practise by complying with proposed Leasehold Reform legislation being introduced by the Government and to comply with the Council of Mortgage Lender's recommendations. Any new developments will also need to follow these best practise guidelines. Therefore, the situation at Highmead should not arise.

3.13 By way of background, the current legal interests in the development are set out below:

3.14 **Ownerships**

3.15 **Ownership of Trafalgar Place Car Park**

3.16 This car park is on land nearby to Highmead and the freehold is owned by the Council. It provides parking facilities in connection with the flats at Highmead. On practical completion of the development in December 2014 the Council granted a Lease to the Developer for 125 years at a peppercorn rent. The Council still owns the freehold, subject to that lease.

3.17 Clause 7.38 of the Lease states that the Council (as freeholder/Landlord of the Car Park only) cannot unreasonably withhold or delay consent to vary the Lease or the Underleases of the residential blocks, and a consequence of this clause the Council agreed that the onerous Leases should be varied.

3.18 Countryside transferred their interest in 2015 to the Ground Rent Investor known Long Harbour who own the Lease via their company Adriatic Land 4 Ltd (Tenant)

3.19 Ownership of remainder of site.

3.20 On practical completion of the residential and commercial units, the rest of the Highmead land, which includes the tower block known as Silverpoint, was disposed of freehold by the Council on 10th April 2015 to Countryside. Countryside then transferred their freehold interest to the Ground Rent Investor known Long Harbour who own the Lease via their company Adriatic Land 4 Ltd (Tenant). Their solicitors are known as "HomeGround".

3.21 The Council does not now own this part of the site and has no interest in the flats or commercial units, and therefore its involvement is limited apart from statutory enforcement matters.

3.22 Ground Rent variation from doubling ground rents to RPI

3.23 See Part 2.

3.24 See Part 2.

3.25 See Part 2.

3.26 See Part 2.

3.27 See Part 2.

3.28 See Part 2.

3.29 See Part 2.

3.30 Overage Repayment.

3.31 See Part 2.

3.32 See Part 2.

3.33 Countryside have been advised that any payment is subject to internal Council approvals.

3.34 Partnership working

3.35 The Council and Countryside have been working in partnership on a number of projects in the Borough. A few of the key achievements that have made as partners which demonstrates the strong working partnership are outlined below. These items demonstrate Countryside's commitment to the Borough and go beyond the contractual obligations.

New Avenue

3.36 Increasing density to future phases and optimising land value, this in turn will generate additional affordable homes as well.

3.37 Looking at options to transfer private homes to the Council for use as affordable housing

3.38 Connection to the LVHN network and upgrading the network on site to be compatible post bid

- 3.39 Working at risk by investing in significant design and construction costs ahead of drawing down any land interest

Highmead

- 3.40 Delivered ahead of programme

Alma

- 3.41 Free Commercial lettings advice, including facilitating finding prospective tenants on behalf of the Council
- 3.42 Acceleration of Council rented units ahead of proposed programme
- 3.43 Minimum land value commitment that was not part of the original contracted deal
- 3.44 Assistance and participation in the Public Inquiry which resulted in confirmation of the Compulsory Purchase Order made by the Council
- 3.45 Negotiation of deals for acquisition of land associated with the CPO (Silver Birch Court)

4. ALTERNATIVE OPTIONS CONSIDERED

A. Not to repay part of the overage payment.

B. To offset the repayment against another Council project liability with Countryside. This has not been possible as there is no other liability to offset the cost against.

5. REASONS FOR RECOMMENDATIONS

To act in the spirit of the partnership, where the Developer has gone beyond their contractual obligations as shown in the examples in this report, and shown their commitment to the Borough.

Acting in fairness in returning part of the monies received for overage from the Developer.

This decision will help to maintain reasonable partnership working with the Developer, as both parties are working on other key strategic housing renewal sites.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

See Part 2

6.2 Legal Implications

- 6.2.1 The terms of the Development Agreement entitled the Council to an additional payment, known as overage, based on the financial return ultimately achieved by Countryside on the completed development. Such payment was duly received.
- 6.2.2 Ground rents which are now, or capable of being in future above a nominal level are not acceptable to mortgage lenders. As a consequence, leaseholders are effectively prevented from selling their flats due to the inability of buyers to obtain mortgage finance.
- 6.2.3 Parliament has now committed to enacting legislation to restrict the amount of ground rent which can be charged on new leases. Although at the moment it is not certain exactly how this will affect existing leases it is likely (for reasons of public policy and to avoid stagnation in the housing market) that Parliament will restrict the mechanism by which ground rents in existing leases can be increased.
- 6.2.4 Although the Development Agreement did not envisage a scenario where part of the overage payment would need to be repaid it is nevertheless equitable and lawful for the amount received by the Council to be retrospectively adjusted and a partial refund to be made to Countryside in order to reflect the end position in financial terms.

7. Property Implications

The property implications are effectively embedded in the report already. This report refers to a historic Development Agreement and mixed use development that has been completed in 2015, and where the Developer is seeking a repayment of part of an overage payment. External Valuers GVA have been advising the Council on the repayment amount that the report is recommending.

8. KEY RISKS

- The financial risk is low, as the money is budgeted for as outlined in the financial implications sections of this report.
- In addition, there is no risk of any comeback for further funds from the Council by the Developer. This will be tied up contractually when the payment is made.
- The legal implications of making the payment are outlined in the report.
- The repayment figure has been assessed by External Valuers GVA, who are specialists in this advising on matters such as this.

9. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

9.1 Good homes in well-connected neighbourhoods

The residents on the estate have complained that the original leasehold terms are unfair. The offer made by the Developer to address the terms will help to contribute to financial stability for the residents.

9.2 Sustain strong and healthy communities

The development contributes to this aim by tackling inequality and access to social housing by providing affordable homes.

9.3 Build our local economy to create a thriving place

Growth and sustainability are central to the scheme. The development has boosted growth in terms of increasing the supply of quality residential housing and retail space in the area. Furthermore, the development prioritises environmental sustainability, including improving the energy efficiency of the residential buildings and promoting recycling and sustainable transport.

10. EQUALITIES IMPACT IMPLICATIONS

Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report to agree the repayment of part of overage

11. PERFORMANCE AND DATA IMPLICATIONS

This report does not recommend a change of service or implementation of new practices and therefore performance and data implications are not applicable.

12. HEALTH AND SAFETY IMPLICATIONS

There are no health and safety implications to consider.

13. HR IMPLICATIONS

None

14. PUBLIC HEALTH IMPLICATIONS

None

Background Papers

None

