

## **Cabinet**

A meeting of Cabinet was held on Thursday, 18th November, 2010.

**Present:** Cllr Ken Lupton(Chairman), Cllr Jim Beall, Cllr David Coleman, Cllr Robert Cook, Cllr Terry Laing, Cllr Mrs Ann McCoy, Cllr Steve Nelson and Cllr Mrs Mary Womphrey

**Officers:** N. Schneider (CEO); J. Danks, G. Cummings (R); P. Dobson, J. Nixon, J. Edmonds (DNS); J. Humphreys (CESC), D. Bond, J. Grant, M.Henderson (LD)

**Also in attendance:** Cllr Kevin Faulks, Cllr Mrs Suzanne Fletcher and Cllr Tina Large

**Apologies:** Cllr Mrs Jennie Beaumont

### **CAB 94/10**      **Declarations of Interest**

Councillor Tina Large declared a personal prejudicial interest in the item entitled Housing Futures - Transfer of Housing Stock to Tristar Homes (Final Report), as she was a member of the Tristar Management Board and Tristar Shadow Board. Councillor Large remained in the meeting during the presentation of the report and immediately afterwards asked a number of questions for clarification. Councillor Large then left the meeting room and was not present during consideration and voting on the matter.

### **CAB 95/10**      **Housing Futures - Transfer of Housing Stock to Tristar Homes (Final Report)**

Cabinet considered a report that provided an update relating to the proposed transfer of the Council owned housing stock to Tristar Homes limited. The report also outlined the next key steps and sought formal endorsement to complete the transfer.

Members were reminded that in September 2009 Cabinet formally endorsed 'stock transfer' as the Authority's preferred delivery option to secure future stock investment needs and appointed Tristar Homes as the proposed new landlord (to be established as part of a new Housing Group structure).

In January 2010 Cabinet agreed to commence formal consultation with tenants, support the draft 'Offer Document' and (subject to confirmation of 'overhanging debt write-off') agreed to proceed to a tenant ballot.

A formal tenant ballot was undertaken in May/June of this year. Of the 11,965 tenants eligible to vote, 7,023 exercised their votes, with an overwhelming 89.6% (of those who voted) in favour of the transfer.

Following the ballot result the Council commenced the process of negotiating the transfer (and associated assets) to Tristar Homes Limited. A proposed transfer date of 13 December 2010 had been identified. Members noted the considerable work that had been undertaken by the Council and Tristar to achieve the transfer. Work undertaken by the Council included:-

A. Identifying 'non' housing assets to be included in the transfer (and those to be retained by the Council)

## The Housing Stock:

10,283 dwellings across the Borough and the responsibility for 291 leaseholders would transfer to Tristar Homes. In addition to these properties Members were asked to consider approving the inclusion of 'other' assets in the transfer, as follows:-

### Estate shops:

As detailed in the January 2009 Cabinet, 'flats', above estate shops that are occupied by a 'secure or introductory' tenants would transfer. Due to the potential complexities of differing ownership and maintenance responsibilities it was proposed that if a shop unit had a flat that would transfer then so would the parade below. Members were provided with a summary of the shop units, which would transfer and those which would be retained by the Authority.

### Land:

Officers within the Council had undertaken a comprehensive survey of all housing owned land (including amenity and public open space) to identify which was 'sensible' to transfer to Tristar Homes and land which should remain with the Council. To ensure consistency in this approach the following principles had been adopted: -

- Land owned by Housing but adopted (either open space or highways) to be retained by SBC.
- Pathways providing access only to serve properties, which were not adopted to be recommended for transfer.
- Any grassed/landscaped area or verge (with no development potential and/or value) that was not part of a public open space to be recommended for transfer.

Members noted that this complex and lengthy process had recently been completed and it was proposed to hold a Member drop-in, thereby allowing members to view, on a ward by ward basis (via the GIS system), land to be transferred (and retained). In addition Maps@Stockton would be updated to ensure that all Members had ongoing access to this information.

The land audit had also thrown up a number of anomalies in terms of land within the Housing portfolio, which would be better aligned with other service areas, for example, 'parks and countryside'. On this basis it was proposed that a 'clean-up' be undertaken post transfer to ensure land sat within the appropriate service area.

As land would be included in the transfer the Council was required to comply with statutory procedures set out in the Open Space Act 1906 and Local Government Act 1972 (s2). To satisfy this requirement the Council would advertise (via a local newspaper) its proposals to transfer the ownership of public open spaces.

To enable this course of action (pre the December transfer date) Members were asked that authority be delegated (based on the rationale detailed above) to the

Corporate Director of Development and Neighbourhood Services and the Corporate Director of Resources in consultation with the Cabinet Members for Housing and Community Safety and Corporate Management and Finance to agree the final schedules of land to be included in the transfer.

'Miscellaneous properties':

Members were provided with details of five 'communal rooms' proposed for inclusion in the transfer. Members noted that all five properties were 'funded', in terms of utility charges etc, by the Housing Revenue Account (HRA). A review of those properties had confirmed that the retained Housing Service had no requirement for their use, post transfer, and as such Members were asked to consider their inclusion in the transfer to Tristar Homes.

Properties the Council would retain:

Cabinet had previously endorsed the retention of park and cemetery lodges (10 properties). A further 18 properties were also proposed for retention (subject to appropriate consents being granted by the Secretary of State). Members were provided with details of each property address and the rationale for their retention/post transfer use. Approval was sought to retain those dwellings (within the General Fund) and appropriate them post transfer to other council service areas. Retention would have a neutral effect on the General Fund.

B. Service Level Agreements for services that would be provided to Tristar by the Council including payroll, cashiering services etc

C. Developing an approach to regeneration post transfer

The Council was committed to the replacement of 'low demand' accommodation with quality housing including an element of social (affordable) accommodation. In the Swainby and Victoria estates Members were asked to support Tristar retaining ownership of 20% of the cleared sites. This would enable Tristar to be an active regeneration partner with the Council and use the monies they had available to fund the required percentage of new social housing. The formal arrangements for this 'partnership' would be appropriately documented in the Transfer Agreement.

D. Primary TUPE implications

Members noted that a small number of employees would transfer from the Council to Tristar on the day of transfer (approx. 6 employees).

E. Financial considerations and mitigating the 'corporate' impact costs of transfer

The following potential financial issues had been identified: -

External debt:

The proposed transfer would involve writing off the Council's remaining housing debt (referred to as "overhanging debt"). Members noted that this issue had been resolved and the Homes and Communities Agency had confirmed that the

level of debt to be written off would be 'notional debt'. As the 'notional' was higher than the 'actual' debt this would result in a saving to the General Fund.

#### Pension Deficit:

As Tristar Homes (ALMO) was currently not separately admitted into the Teesside Pension Fund, it would need to be admitted on transfer to reserve the pension rights of current Tristar staff and transferring employees. It was usual in stock transfer for the new registered providers entry into the scheme to be fully funded (as at the date of the transfer) and it was usually the responsibility of the Council to address any 'under funding' (again at the point of transfer) and also address the potential bond requirements guaranteeing Tristar's entry to the scheme.

#### The Financial Mitigation Plan

The residual costs to the Council associated with no longer operating the HRA could be mitigated through using the aforementioned benefit of repaying "overhang debt" and therefore there would be no pressures anticipated on the General Fund from the transfer. In addition an agreement had been reached with Tristar that would ensure that in the future the Council would benefit from a share of Right to Buy receipts and have the right to 'clawback' a share of any land sale receipts where the sale receipts were not ring-fenced to fund social housing/address housing need. This would contribute to the Council's Capital Resources.

A full financial appraisal had been undertaken and current indications were that these resources would mitigate the potential financial pressures identified as a direct result of the transfer.

A 'VAT shelter' arrangement was being put together to take advantage of the Council's VAT exemption and would allow Tristar to recover VAT on a large element of its capital investment/improvement programme which it would otherwise not be able to do. This was achieved by the Council entering into a development agreement with Tristar to carry out the works on the Council's behalf, and so using the Council's VAT exemptions. A VAT sharing arrangement was 'common' to stock transfer.

It had been agreed (in consultation with Tristar) that the 'first call' on the VAT recovered by Tristar would be to cover pension deficit costs and bond guarantee which must be addressed for the transfer to complete.

It was noted that thereafter a sharing agreement had been reached for the remaining capital; Council - 65%, Tristar - 35%. Assuming no change in VAT legislation, HMRC approvals and a maximum recovery rate, it was estimated the Council could secure cc. £19m from the VAT sharing arrangement over a 15 year period.

Members were asked to consider agreeing that any residual VAT capital made available through the sharing agreement be utilised by the Council to fund agreed housing regeneration programmes and complementary regeneration activity in/around the town centre (including Parkfield, Swainby, Victoria, Northshore and the Northern Gateway) with the aim of delivering sustainable

communities. This approach was consistent with the original objectives of the option appraisal (in terms of addressing non sustainable housing and as detailed in the transfer submission). It was also important to note that the use of the VAT shelter needed to be supported by HCA/Department for Communities and Local Government, and this proposal was completely in line with the strategic partnership working with the HCA in these priority locations, and was fully supported by these organisations.

Tristar plan to use their VAT shelter monies to develop new affordable homes, and contribute to a range of regeneration initiatives.

Next steps to enable the successful conclusion of the transfer

It was noted that a number of critical steps had been identified which would allow the Council to successfully complete the transfer. They include:

- Seeking final 'sign-off' by the Secretary of State and appropriate Government Departments

Currently the Housing Service was working to complete the final 'checklist' of information requirements required by the CLG/HCA. An initial submission was made on the 1.11.10 and additional information was required throughout November and early December.

- Drafting the 'Transfer Agreement'

The Transfer Agreement was the 'contract' and detailed all the practical arrangements, warranties, commitments, indemnities and conditions agreed between the Council and Tristar Homes. The terms of the Transfer Agreement were in the process of being negotiated (and agreed).

The Agreement would be subject to review by the Tristar Homes 'funders' lawyers, the CLG/HCA and the Tenants' Services Authority (TSA). The 'funders' would need to ensure that the transfer was fundable, the CLG/HCA wanted to ensure that transfer guidelines had been adhered too and the TSA that it contained nothing that would prejudice Tristar Homes registration with them as an independent, not-for-profit registered provider.

Members were asked to delegate authority to the Corporate Director of Development and Neighbourhood Services and the Head of Legal Services in consultation with the Cabinet member for Housing and Community Safety and/or Corporate Management and Finance to negotiate and agree the terms of the Transfer Agreement and other associated agreements and ancillary documentation on behalf of the Council and to do whatever else is necessary or expedient in order to complete the transfer.

- Conveyancing

It was explained that Legal Services was currently working to ensure that all the appropriate land and property conveyancing work would be complete prior the date of the transfer and to ensure the smooth transfer of assets.

- Warranties

The Council was required to provide warranties to Tristar Homes and its funders as part of the housing stock transfer process. Those warranties (environmental and asbestos), along with the Council's residual legal liabilities as former owner and landlord of the property would result in the Council retaining essentially the same environmental and legal liabilities for the transferring properties that was currently the case, even though it would no longer have ownership. This continuing liability would last for 30-years from the date of the stock transfer (the life of Tristar Homes business plan), the cap on the Council's liability to Tristar was likely to be significant and the warranty to the funder (is again likely) to be unlimited.

To assist in evaluating all potential environmental risks the Housing Service had commissioned environmental and asbestos surveys of the housing stock and land to be transferred and appointed a specialist risk management advisor to identify the options for financial protection. In summary they include:

- o The transfer of liability to Tristar Homes and/or their lenders.
- o Form a specific fund for 'insurance purposes'.
- o Take out an appropriate environmental insurance policy.
- o A combination of all/some of the above.

Following advice received from the advisor (with regard to risk management and financial protection options), Members were asked to delegate authority to the Corporate Directors of Development and Neighbourhood Services and Resources in consultation with the Cabinet member for Housing and Community Safety and/or Corporate Management and Finance to agree the most appropriate and cost effective solution to protect the Council against future liabilities within the context of the stock transfer.

Post transfer the Council would be required to carry out monitoring of Tristar Homes in particular their performance against the obligations ('promises' made to tenants) detailed in the Offer Document. The Transfer Agreement would detail monitoring arrangements, which Tristar Homes would be required to comply and a process that would allow Members to continue to raise concerns on behalf of residents within their wards.

Tristar Homes/new Housing Group were also committed to ongoing communication with Members. On that basis a Member Policy Update Seminar would be undertaken on the 17.1.11 and in the early new year Tristar would hold a number of township based information sessions to update members and tenants on the delivery of the investment programme ('tenant promises').

During discussion it was suggested that, given the large number of delegations to officers, members should be provided with a briefing note on their implementation.

#### **RECOMMENDED to Council that**

- 1. the submission of an application to the Secretary of State for consent to the transfer on the basis outlined in the report be approved**
- 2. subject to such consent being obtained the completion of the transfer**

be agreed

**3. delegated authority be given to the Corporate Directors of Development and Neighbourhood Services and Resources in consultation with the Cabinet members for Housing and Community Safety and Corporate Management and Finance to agree the final schedules of land to be included in the transfer (subject to the above consent being granted).**

**4. the transfer of 'non housing' assets to Tristar Homes (as detailed in the body of the report at paragraphs 10, 11 and 16) be approved.**

**5. subject to Secretary of State approval, it agree to the retention by the Council of a further 18 properties as detailed at paragraph 17 and in Appendix A of the report. Using powers available under Section 74 (3) (d) and Section 74 (4) of the Local Government and Housing Act 1989 and Section 19 of the Housing Act 1985.**

**6. it agrees to Tristar Homes retaining ownership of 20% of cleared regeneration sites on the Swainby Road and Victoria estates to enable them to be an active regeneration partner with the Council and facilitate the delivery of the required percentage of new social housing (on these sites).**

**7. it note the 'ring-fencing' of any residual VAT shelter monies (as detailed in the body of the report) to support priority housing regeneration programmes and complementary regeneration activity in/around the town centre in accordance with current Council and HCA priorities.**

**8. it delegates authority to the Corporate Director of Development and Neighbourhood Services and the Head of Legal Services in consultation with the Cabinet member for Housing and Community Safety and/or Corporate Management and Finance to negotiate and agree the terms of the Transfer Agreement, the Development Agreement and other associated agreements, collateral warranties and ancillary documentation on behalf of the Council and to do whatever else is necessary or expedient in order to complete the transfer.**

**9. it delegates authority to the Corporate Directors of Development and Neighbourhood Services and Resources in consultation with the Cabinet member for Housing and Community Safety and/or Corporate Management and Finance to agree the most appropriate and cost effective solution with regard to all property transfer, environmental and legal warranties and future liabilities (as detailed in paragraphs 40-42 of the report).**

**10. it authorises the Head of Legal Services to sign and deliver the Legal Opinion.**

**11. it authorises the Director of Law and Democracy to sign and seal the Transfer Agreement and all other associated agreements, warranties and ancillary documentation on behalf of the Council and to do whatever is necessary or expedient in order to complete the transfer.**

**12. it authorises the Corporate Directors of Development and Neighbourhood Services and/or Resources in consultation with the Cabinet member for Housing and Community Safety and/or the Cabinet member for Corporate Management and Finance to resolve any outstanding matters that must be addressed to ensure the successful completion of the transfer.**

**13. it notes that post transfer, updates would be provided via a Council Member Policy Update Session (17.1.11) and Township Drop-In/Information sessions that would be facilitated by Tristar early 2011, to enable it to provide updates on the investment programme (tenant 'promises').**