

**AGENDA ITEM**

**REPORT TO CABINET**

**18 NOVEMBER 2010**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

**CABINET DECISIONS/KEY DECISIONS/COUNCIL DECISION**

**Housing and Community Safety – Lead Cabinet Member – Councillor Nelson**

**HOUSING FUTURES: TRANSFER OF HOUSING STOCK TO TRISTAR HOMES (Final report)**

1. Summary

To provide Cabinet with an overview of progress regarding the proposed transfer of the council owned housing stock (and associated assets) to Tristar Homes Limited, (to be established as a new, not-for-profit, provider of social housing registered with the Tenant Services Authority, the current regulator of social housing).

To advise Members of the next key steps and seek formal endorsement (subject to Secretary of State approval) to 'complete' the transfer.

2. Recommendations

1. Council approves the submission of an application to the Secretary of State for consent to the transfer on the basis outlined in the report.
2. Subject to such consent being obtained, Cabinet agrees to the completion of the transfer.
3. Delegated authority is 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. Cabinet approves the transfer of 'non housing' assets to Tristar Homes (as detailed in the body of the report at paragraphs 10, 11 and 16).
5. Subject to Secretary of State approval, Cabinet 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. Cabinet 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. Cabinet are asked to 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. Cabinet 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. Cabinet 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. Cabinet authorises (subject to Councils agreement) the Head of Legal Services to sign and deliver the Legal Opinion.
11. Cabinet 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. Cabinet 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. Cabinet notes that post transfer, updates will be provided via a Council Member Policy Update Session (17.1.11) and Township Drop-In/Information sessions that will be facilitated by Tristar early 2011, to enable them to provide updates on the investment programme (tenant 'promises').

### 3. Reasons for the Recommendations/Decision(s)

To secure long-term funding in order to ensure the provision of quality, appropriate and affordable social housing in sustainable communities. Accommodation that will meet the housing needs and aspirations of current council tenants and future generations of the Borough.

### 4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the

Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

**Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.**

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**RECOMMENDATIONS**

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7. Cabinet are asked to 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.

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

## **DETAIL**

1. Members will recall that two previous reports have been presented to Cabinet with regard to the proposed housing transfer. In September 2009 Cabinet formally endorsed 'stock transfer' as the Authorities 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).
2. A second report was presented in January 2010. At this time 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. As there were a number of unresolved issues at this time, Cabinet requested a further report be brought back to clarify the position regarding 'other' assets to be included in the transfer, the financial implications of the stock transfer on the General Fund, the means of financial mitigation available to the Council's and the outcome of the tenants' ballot.
3. The purpose of this report is to update Members on the above issues, outline critical next steps and seek Cabinet endorsement to *complete* the transfer. Cabinet are asked to note that the decision to approve the submission of an application for consent to the transfer is a Council decision and a 'minute' of the Council meeting (to be held on the 24.11.10) is required by the Communities and Local Government Department (CLG) as part of the 'sign-off' by the Secretary of State.

4. All parties, the Council, Tristar Homes and the CLG are actively working to achieve a proposed transfer date of the **13<sup>th</sup> December 2010**.

#### **The outcome of the tenants' ballot**

5. 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.
6. Following the ballot result the Council commenced the process of negotiating the transfer (and associated assets) to Tristar Homes Limited. All parties have been working to ensure that the promises made to tenants (via the Offer Document) can be delivered as quickly as possible following transfer.

#### **Achieving the transfer – work undertaken by Tristar Homes (and the new Housing Group)**

7. Tristar Homes (in partnership with the new Group) have been working to ensure that they are formally established as the new landlord, have access to funding and are in a position to commence the investment programme as soon as is practical from the date of transfer. Key progress has included: -
- The establishment of appropriate governance structures for both Boards - the new Tristar Homes (RSL) and the new Housing Group (recently named 'Vela Homes').
  - Appointment to the new Housing Group management structure.
  - The development of a detailed registered social landlord business plan.
  - Detailed discussions with 'funders'.
  - Contractor procurement to deliver the 5-year investment programme promised to tenants.
  - Registration of the 'new' Tristar Homes as a registered provider of social housing (a prerequisite of the Tenant Services Authority).

#### **Achieving the transfer – Work undertaken by the Council**

8. Like Tristar, the Housing Service (in partnership with other council service teams) has made significant progress in ensuring the December 2010 transfer date can be achieved. This has included: -

##### **(a) Identifying 'non' housing assets to be included in the transfer (and those to be retained by the Council)**

##### The Housing Stock:

9. 10,283 dwellings across the Borough and the responsibility for 291 leaseholders will transfer to Tristar Homes. In addition to these properties Members are asked to approve the inclusion of 'other' assets in the transfer (as detailed below):

##### Estate shops:

10. As detailed in the January 2009 Cabinet 'flats' above estate shops that are occupied by a 'secure or introductory' tenants will transfer. Due to the potential complexities of differing ownership and maintenance responsibilities it is proposed that if a shop unit has a flat that will

transfer then so will the parade below. **Appendix A** provides a summary of the shop units which will transfer and those which will be retained by the Authority.

Land:

11. Officers within the Council have undertaken a comprehensive survey of all housing owned land (including amenity and public open space) to identify which is 'sensible' to transfer to Tristar Homes and land which should remain with the Council. To ensure consistency in this approach the following principles were adopted: -
  - I. Land owned by Housing but adopted (either open space or highways) to be retained by SBC.
  - II. Pathways providing access only to serve properties which are **not** adopted to be recommended for transfer.
  - III. Any grassed/landscaped area or verge (with **no** development potential and/or value) that *is not* part of a public open space to be recommended for transfer.
12. As members will appreciate this has been a very complex and lengthy process (and has been the subject of various internal meetings plus formal negotiations with Tristar), however it is anticipated that it will be complete in the very near future. Immediately this exercise is concluded it is 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 will be updated to ensure that all Members have ongoing access to this information.
13. The land audit has 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 is proposed that a 'clean-up' be undertaken post transfer to ensure land sits within the appropriate service area.
14. As land will be included in the transfer the Council is 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 will advertise (via a local newspaper) its proposals to transfer the ownership of public open spaces.
15. To enable this course of action (pre the December transfer date) Members are 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':

16. There are currently five 'communal rooms' proposed for inclusion in the transfer (as detailed in **Appendix A**). It should be noted that all five properties are currently 'funded' in terms of utility charges etc by the Housing Revenue Account (HRA). A review of these properties has confirmed that the retained Housing Service has no requirement for their use post transfer and as such Members are asked to endorse their inclusion in the transfer to Tristar Homes.

Properties the Council will retain:

17. Cabinet have previously endorsed the retention of park and cemetery lodges (10 properties). A further 18 properties are also proposed for retention (subject to appropriate consents being granted by the Secretary of State). **Appendix A** details each property address and the rationale for their retention/post transfer use. Approval is sought to retain these dwellings

(within the General Fund) and appropriate them post transfer to other council service areas. Retention will have a neutral effect on the General Fund.

**(b) Service Level Agreements (SLAs)**

18. Currently the Council provides a number of services to Tristar (including payroll, cashiering services etc). Work has been ongoing with Tristar to identify which services will be required post transfer and for these services SLAs are currently being drafted in consultation with Heads of Service. Members are asked to note that the Council cannot insist on SLA's with Tristar post transfer and the Tenant Services Authority requires that such arrangements are subject to regular market testing.
19. As part of the SLA process the Council is required to identify potential 'staffing' implications. For example should Tristar Homes decide to deliver a service themselves in the future then Council employees currently involved in the delivering of this service may then have statutory employment rights to transfer to Tristar Homes (or alternative service providers). Therefore a provisional 'deferred TUPE list' of potential posts affected is currently being drafted and will be agreed before the transfer date.

**(c) Developing an approach to regeneration post transfer**

20. Members may recall the 'Offer' document to tenants detailed an ongoing commitment to regeneration in the Borough (specifically on the Mandale, Swainby and Victoria estates – areas of 'non sustainable housing stock'). As part of the financial agreement made with Tristar, Tristar have a key role in achieving this i.e. they have both the practical and financial responsibility to decant tenants from these estates and pay all associated tenant costs (i.e. homeless payments, property demolition etc.). Once cleared the sites will then return (at nil value) to the Council who will then lead on estate regeneration.
21. As in all regeneration areas, the Council is 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 are asked to support Tristar retaining ownership of 20% of the cleared sites. This will enable Tristar to be an active regeneration partner with the Council and use the monies they have available to fund the required percentage of new social housing. The formal arrangements for this 'partnership' will be appropriately documented in the Transfer Agreement.

**(d) Primary TUPE implications**

22. Members are asked to note that a small number of employees will transfer (TUPE) from the Council to Tristar on the day of transfer (although still to be finalised it is estimated at approx. 6 employees). TUPE will apply as these employees deliver functions (for example Right to Buy) which will be undertaken directly by Tristar from the date of the transfer.

**(e) Financial considerations and mitigating the 'corporate' impact costs of transfer**

23. Earlier Cabinet reports have highlighted potential budget implications as a result of the transfer (following closure of the Housing Revenue Account) and highlighted the need to mitigate against potential financial pressures to the General Fund. Clearly this situation has been heightened as a result of the current financial situation all local authorities face at this time.
24. In summary the following potential financial issues were identified: -

External debt:

25. The proposed transfer would involve writing off the Council's remaining housing debt (referred to as "overhanging debt"). Members are asked to note that this issue has been **resolved** and



the HCA have confirmed that the level of debt to be written off will be 'notional debt'. As the 'notional' is higher than the 'actual' debt this will result in a saving to the General Fund.

#### Pension Deficit:

26. As Tristar Homes (ALMO) is currently not separately admitted into the Teesside Pension Fund, it will need to be admitted on transfer to reserve the pension rights of current Tristar staff and transferring employees. It is 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 is 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

27. The residual costs to the Council associated with no longer operating the HRA can be mitigated through using the aforementioned benefit of repaying "overhang debt" and therefore there are no pressures anticipated on the General Fund from the transfer. In addition an agreement has been reached with Tristar that will ensure that in the future the Council will 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 are not ring-fenced to fund social housing/address housing need. This would contribute to the Council's Capital Resources.
28. A full financial appraisal has been undertaken and current indications are these resources will mitigate the potential financial pressures identified as a direct result of the transfer.
29. A 'VAT shelter' arrangement is being put together to take advantage of the Council's VAT exemption and will 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 is 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 is 'common' to stock transfer.
30. It has been agreed (in consultation with Tristar) that the 'first call' on the VAT recovered by Tristar will be to cover pension deficit costs and bond guarantee which must be addressed for the transfer to complete.
31. Thereafter a sharing agreement has been reached for the remaining capital; Council - 65%, Tristar - 35%. Assuming no change in VAT legislation, HMRC approvals and a maximum recovery rate, it is estimated the Council could secure cc. £19m from the VAT sharing arrangement over a 15 year period.
32. Members are asked to agree that any residual VAT capital made available through the sharing agreement is 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 is consistent with the original objectives of the option appraisal (in terms of addressing non sustainable housing and as detailed in the transfer submission). It is also important to note that the use of the VAT shelter needs to be supported by HCA/DCLG, and this proposal is completely in line with the strategic partnership working with the HCA in these priority locations, and is fully supported by these organisations.
33. 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

34. A number of critical steps have been identified if the Council is to successfully complete the transfer. They include:

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

35. Currently the Housing Service is 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 is required throughout November and early December.

#### Drafting the 'Transfer Agreement'

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

37. The Agreement will be subject to review by the Tristar Homes 'funders' lawyers, the CLG/HCA and the TSA. The 'funders' will need to ensure that the transfer is fundable, the CLG/HCA want to ensure that transfer guidelines have been adhered to and the TSA that it contains nothing that will prejudice Tristar Homes registration with them as an independent, not-for-profit registered provider.

38. Cabinet 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 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

39. Colleagues in Legal Services are currently working to ensure that all the appropriate land and property conveyancing work will be complete prior the date of the transfer and to ensure the smooth transfer of assets.

#### Warranties

40. The Council is required to provide warranties to Tristar Homes and its funders as part of the housing stock transfer process. These warranties (environmental and asbestos), along with the Council's residual legal liabilities as former owner and landlord of the property will result in the Council retaining essentially the same environmental and legal liabilities for the transferring properties that it currently has, even though it no longer has ownership. This continuing liability will 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 is likely to be significant and the warranty to the funder (is again likely) to be unlimited.

41. To assist the Council evaluate all potential environmental risks the Housing Service has 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:

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

42. Following advice received from our appointed risk management advisor (with regard to risk management and financial protection options), Cabinet are 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 Monitoring Arrangements**

43. Post transfer the Council will 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 will detail monitoring arrangements which Tristar Homes will be required to comply and a process that will allow Members to continue to raise concerns on behalf of residents within their wards.
44. Tristar Homes/new Housing Group are also committed to ongoing communication with Members. On this basis a Member Policy Update Seminar will be undertaken on the 17.1.11 and in the early new year Tristar will hold a number of township based information sessions to update members and tenants on the delivery of the investment programme ('tenant promises').

### **FINANCIAL IMPLICATIONS**

45. The residual costs of transfer have been mitigated through overhang debt. The potential VAT shelter will be utilised on Housing and Regeneration activity.

### **LEGAL IMPLICATIONS**

46. Council approval is required to submit an application for consent to the Secretary of State to complete the proposed transfer of council owned homes to Tristar Homes.
47. To ensure that the Council is appropriately advised throughout this process a senior Legal Officer sits on the Housing Futures Project Team and specialist external legal advice has been procured to ensure that the Council's interests are protected.

### **RISK ASSESSMENT**

48. Stock transfer has been classified as a high-risk project. A risk assessment plan has been drafted and appropriate management systems are in place to control and reduce ongoing risk.

### **SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS**

49. The option appraisal and proposed next steps contribute to the following key policy platforms within the Sustainable Community Strategy:
  - Economic Regeneration and Transport: supports wider economic and social regeneration.
  - Environment and Housing: property investment, 'place shaping', addressing housing need.
  - Safer communities: investment in the environment to improve the quality of place.
  - Health and wellbeing: improving the quality of accommodation and provision of services to housing and vulnerable households.
  - Stronger communities: by contributing to the wider sustainable communities agenda.

### **EQUALITIES IMPACT ASSESSMENT**

50. This report is not subject to an Equality Impact Assessment. The proposals which underpin the Councils rationale for progressing stock transfer to Tristar Homes are set out in the tenant 'Offer Document'. The Offer document contains commitments to ensure a 'consistent' property standard for all tenants as well as specialist promises for elderly and vulnerable tenants.

### **CONSULTATION INCLUDING WARD/COUNCILLORS**

### Tenants and leaseholders

51. Communication has been maintained with tenants via a variety of publications (distribution to each council property) these have included a series of 'Your Home, Your Say' tenants newsletter and the formal "Offer" to tenants.

### Employees

52. Consultation has taken place with both employees and Trade Unions on all matters related to both primary and 'deferred' TUPE.

### Ward members

53. Members have been consulted (and had the opportunity to comment) at all key stages of the project from the inception of the option appraisal and evaluation of options, the landlord choice process and more recently the development of the Offer to tenants.

This has included for example: a Member seminar was held in September 2007 at the inception of the exercise and further members briefs held before the November 2008 Cabinet. In addition the Joint Reference Group (which undertook the Landlord Choice process) included nine councillors, representative of the various political parties. Following the conclusion of the Landlord Choice further Member Drop-In sessions were held in August/early September 2009; all ward members were invited to attend. An Offer Document briefing was also held for all members early January 2010. All Members also receive copies of the 'Your Home, Your Say' newsletters before distribution to tenants and received a copy of the formal tenant Offer Document. A Joint Member Briefing was also held between the Council, Tristar Homes and Housing Hartlepool to discuss post transfer member communication.

To ensure all Members are kept up to date as the transfer approaches a fortnightly update note will be issued (Edition 1 was circulated wk com 1.11.10).

Other key stakeholders: a progress report has also been tabled at the Renaissance partnership and the Housing and Neighbourhood Partnership.

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### Background Papers

Housing Futures Report to Cabinet 2<sup>nd</sup> August 2007  
Housing Futures Report to Cabinet 14. September 2009  
Housing Futures Report to Cabinet 14 January 2010  
CLG consultation paper Reform of Council House Finance July 2009

### Education related

No

### Ward(s) and Ward Councillors:

All

### Property

As detailed in the report the stock transfer will result in the transfer of ownership of the councils housing stock and associated assets to Tristar Homes Limited.