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## EXCELLENT HOMES FOR ALL – KENT HOUSING PRIVATE FINANCE INITIATIVE (PFI)

To: **Cabinet – 21<sup>st</sup> January 2014**

Portfolio Area: **Housing & Planning Services**

By: **Lauren Hemsley, Strategic Housing Manager**

Classification: **Unrestricted**

Ward: **Newington**

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**Summary:** **To approve the continuation of the project and authorise the Corporate and Regulatory Services Manager to enter into the Back to Back Agreement on behalf of Thanet District Council.**

### For Decision

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#### 1.0 Introduction and Background

1.1 Members may recall from the original report considered by the then Cabinet on 4<sup>th</sup> December 2008 that the "Excellent Homes for All" (EHFA) project is the County's second Housing PFI project. The project is being procured by KCC in partnership with five District and Borough Councils. All the land to be included in the PFI belongs to Kent County Council with the exception of a site belonging to Ashford Borough Council. The project will deliver new affordable housing in Ashford, Dartford, Dover, Thanet and Tunbridge Wells. The project is for the design, build and operation of at least 220 units of new affordable housing across Kent. Specifically it will deliver:

- five extra care schemes each containing approximately 40 new apartments and community facilities;
- one block of 11 apartments for vulnerable homeless people in Ashford;
- one block of 9 apartments for people with mental health problems in Thanet.

1.2 The Cabinet approved the following recommendations:

#### CD33 Private Finance Initiative Round 5: Affordable Homes

- That Cabinet approve the recommendation to progress with the procurement of the project, including a proportion of the cost of developing the project paid using commuted sums.
- The delegated authority for the Head of Community Services to sign a development agreement with KCC and other District Councils to undertake the procurement in partnership.
- A further report be put to Cabinet once the affordability position and the benefits of the project are known.

1.3 Thanet District Council will benefit from 49 units of extra care for older people and 9 units for people with mental health problems. The original project anticipated a slightly lower number of units but additions have been proposed through the planning process.

- 1.4 The two sites are in the Newington ward at the former Library site on Chichester Road and the former Newington Infant School site on Melbourne Avenue.
- 1.5 The local authority partners will receive 100% nomination rights to the accommodation on both sites for the duration of the 25 year contract period, and then 80% nomination rights for a further ten years. This represents a slight reduction in the rights originally discussed in 2008 but is a result of enforced savings demanded by the Department for Communities & Local Government (DCLG) and affects all partners.
- 1.6 The Outline Business Case for the project was approved by HM Treasury, the DCLG and the Homes and Communities Agency (HCA) in July 2009. This initial approval allocated £75 million PFI credits to the project, an amount which has since been reduced to £66.8 million as a result of two separate HCA and DCLG value for money reviews conducted across the whole housing PFI sector.
- 1.7 The project was advertised in the Official Journal of the European Union in 2009 and the procurement is being conducted in accordance with the Competitive Dialogue process. Six initial bids from consortia were initially shortlisted with two bidders invited to produce final tenders.
- 1.8 In the summer of 2013 a further central government review indicated the project would be given final approval but only if a further £3m of savings were identified, bringing the PFI credit total down to £63.8 million. Negotiations took place with bidders to achieve the necessary savings, including also a further reduction in certain aspects of the specification for the extra care facilities. Thanet Council officers have been closely involved in those discussions and are satisfied the reduction of certain facilities will not unduly impact on the success of the project. These specification reductions will principally affect certain aspects of the fitting out of the schemes (e.g. fewer adapted bathrooms; no conservatory, lower level of gym equipment) and so should not significantly affect the overall design of the buildings themselves.

## **2.0 The Current Situation**

- 2.1 The Preferred Bidder letter has now been signed by the successful bidder Galliford Try in conjunction with West Kent Housing Association. This commits the bidder to progress the planning applications for the sites and allows the project to reach financial close. The HCA have agreed to extend the financial close deadline by a month to April 2014 to allow the planning applications to be considered.
- 2.2 KCC will be making the decision on the planning applications for all of the sites, which was agreed at the start of the project. TDC will be a consultee for the two Thanet sites.
- 2.3 The delivery of the extra care facilities, as well as meeting Thanet District Council objectives, will greatly support the work of KCC as it seeks to reduce its residential and nursing care costs by enabling people to live in accommodation that is designed to support their independence. With the additional site-based care facilities (restaurant, gym, communal lounge) as well as care staff, the development will achieve significant savings when compared to nursing or residential care costs; and it will promote prevention, healthy living and choice, all of which are key issues in terms of health and well-being.
- 2.4 We anticipate a number of significant benefits to the Newington community as part of the projects as the communal facilities at the extra care scheme will be open to non-residents, such as the restaurant, enabling people to join in communal activities, enjoy healthy meals and overcome issues around isolation. The scheme will offer accommodation to local older people, many of whom may well be existing tenants of the council. This will in turn free up their present homes, some of which are likely to be family units too. Depending on the

value of their present home, it is also possible that current owner-occupiers could be eligible to move in to the new facility.

- 2.5 People are living longer, particularly those over 65 with recent statistics demonstrating a 40% increase between 2011 and 2021 and overall an 84% increase between 2011 and 2031 (KCC Research and Intelligence Strategy Forecasts November 2012).

### **3.0 Options**

- 3.1 Despite the protracted procurement issues that have arisen, Thanet Council remains committed to this project because of the benefits our residents will receive from the provision of this accommodation.

- 3.2 It would still be possible to step away from the project, although this in itself could still leave us with some significant financial liability. Due to the partnership nature of the project, the whole project would almost certainly become unviable. If the council took this decision unilaterally, and the project were to come to an end we could face a significant liability, not only for the bidders costs incurred to date, but also the 'opportunity loss' costs of the other partners which could be significant. Whilst it is almost impossible to assess at this stage the full potential financial implications of such a decision, as an indication, we believe the remaining bidders have each spent in excess of one million pounds on the project bidding process (engaging architects, consultants etc.) and the feeling is they could look to recover their costs in such circumstances. There would undoubtedly be a negative reputational impact for TDC, with our project partners and in the press.

### **4.0 Next Steps**

- 4.1 The planning applications will be submitted shortly for all of the sites and TDC will be a consultee through the planning process. The final business case must be completed and approved by central government by the extended deadline of 30<sup>th</sup> April 2014. The planning applications must have been decided by this time. Each Local Authority must also have commitment to enter into the Back to Back agreement by that date in order for the project to progress to the construction of the schemes.

- 4.2 At this stage members are asked to note the progress of the project and the below financial and legal considerations. Members are also asked to approve delegated authority to Corporate and Regulatory Services Manager in consultation with the Portfolio Holder for Housing to sign the Back to Back Agreement to share the benefits and risks of the project with Kent County Council and our other district and borough councils partners. The Back to Back Agreement is not attached to this report because it is a very lengthy document, if members wish to see the document itself please contact the Strategic Housing Manager or Corporate and Regulatory Services Manager.

### **5.0 Corporate Implications**

#### **5.1 Financial and VAT**

- 5.1.1 In PFI projects the public sector specifies the outputs that it requires from new facilities and sources a private sector contractor who secures bank funding to design, build and operate assets to an agreed standard. The public sector partner then pays a regular monthly payment (Unitary Charge) to the Special Purpose Vehicle (SPV) to cover those costs and has an agreement to use the assets and the services provided. The agreement includes the ability for the public sector to make payment deductions if service levels are not achieved or if any of the facilities are unavailable. The risk of maintaining the assets and ensuring service performance is retained by the private sector.

- 5.1.2 The contract for Excellent Homes for All covers the construction of the housing as well as facilities management, maintenance and the provision of housing management services (including running communal areas such as the restaurant in the extra care schemes). It does not cover care provision which will be tendered for and contracted separately.

- 5.1.3 The majority of the Unitary Charge which KCC has to pay on behalf of the partnership for EHFA is covered by PFI credits – a grant which KCC will receive from central government.
- 5.1.4 The PFI credit will be paid to KCC in the form of a Revenue Support Grant. It will be paid quarterly in arrears following services commencement. PFI credits are intended to cover the costs of building the facilities and the associated funding costs. The majority of running costs, such as energy, communal cleaning and catering are recovered by the contractor through the rents and service charges to the tenants. An equalisation reserve will be set up to address the timing differences in making the unitary charge payments and receiving the revenue support grant. This fund will be held and managed by KCC on behalf of all partners. This arrangement is outlined in the Back to Back Agreement and the management of the equalisation reserve is governed by a Project Board on which all District and Borough Council partners are represented.
- 5.1.5 The reviews resulted in the scope of the project being amended and the PFI credit being cut initially by 11% to £66.83 million. It was also made clear that KCC would also be expected to make an annual £175,000 contribution to the Unitary Charge for the duration of the 25 year contract period to cover the ‘gap’ as the result of this reduction in PFI credits. A clause will be inserted into the Back to Back Agreement between the local authority partners to the effect that should there be any surplus in the Project Account (‘equalisation reserve’) in future, owing to payment deductions for contractor’s poor performance, from re-financing gains or any other reason, then this should first be used to cover the £175,000 authority contribution and, if sufficient, to reimburse KCC.
- 5.1.6 In signing the contract the private sector partner will have agreed to a set of standards to which they must perform. A payment mechanism will be in place to ensure deductions are made to the unitary charge if the performance falls below the acceptable standard set out in a detailed output specification, or if the units or some of the communal areas are unavailable for use. These deductions will increase if the performance continues to fail.
- 5.1.7 Following the contract period, the contractor retains the assets and the sites for the purpose of delivering affordable housing. Allowing the contractor to do this enables the contractor to give the Authorities a lower unitary charge for the project than if we took the assets and land back at the end of the contract period. Restrictions on land use in the leases will help ensure continued provision of much needed affordable housing.
- 5.1.8 Through the PFI Project Agreement the cost of risks that may occur in future on the project are shared between the public and private sector. The risks of this have been explored so that they are well understood, and control mechanisms are in place for managing and monitoring them. However, over the life of the contract no absolute guarantee can be given that no difficulties will arise. Annex 3 attached deals with the Project Agreement and the key public sector risks in more detail. To date none of the risk share has been activated for the existing PFI Better Homes Active Lives.
- 5.1.9 This project demonstrates excellent value for money for Thanet District Council. We have contributed £146,000 of commuted sums to enable the procurement of the project and will benefit from nomination rights to 49 extra care units and 9 mental health units.
- 5.1.10 This is a key decision because of the risk share the council will be responsible for if the risk share is activated. This could carry a financial cost to the authority.

## 5.2 **Legal**

- 5.2.1 KCC is procuring the contract on behalf of itself and the five District Councils. KCC will therefore enter into the Project Agreement with the SPV for the provision of services over the next 25 years.
- 5.2.2 The Back to Back Agreement will be signed with the five District Councils prior to KCC signing the Project Agreement and will tie the District Councils as though they had been signatories to the main PFI contract. The relationship has been carefully negotiated to

provide an agreed risk sharing arrangement and it reflects the risk sharing on Kent's previous partnership PFI project which ten District Councils and KCC were party to. Trowers and Hamlins the external legal advisors to the project, have advised the partners with regard to the Project Agreement and the Back to Back Agreement. The risk share is divided between the authorities as follows (for further information, please see Annex 3).

	<b>No of units</b>	<b>Share</b>
		<b>%</b>
KCC	-	25.0
Ashford	52	17.7
Dartford	40	13.6
Dover	40	13.6
<b>Thanet</b>	49*	16.6
Tunbridge Wells	40	13.6
	221	100.0

\*Please note that TDC will gain 9 extra units of extra care through the planning process, so the total number of units will be 58, but the agreed risk share reflects the original number of units.

5.2.3 The Back to Back Agreement covers project governance, nomination rights, risk sharing and contract management requirements for the project. It operates on a number of key principles:

- If a risk occurs under the contract as a consequence of the actions of one party, that party should be responsible for the cost;
- If a risk occurs under the contract which is the result of a choice made by all of the partners or is the fault of no partner then a mechanism should be applied to share those costs. KCC would take 25% of the cost with the remainder being shared between the five District and Borough Councils primarily on the basis of the number of apartments gained from the project;
- Any decisions under the Back to Back Agreement which may result in an increase of risk or cost to any of the partners must be taken as unanimous decisions between all the partners through the Project Board (which will have one representative per partner).

5.2.4 A report outlining the key risks in the Project Agreement and their proposed treatment under the Back to Back Agreement is included at Annex 3.

5.2.5 During the contract period the Project will be governed by a Project Board, on which partner authorities will have equal representation. Any decisions which could result in an increase in costs or risk to any of the partners must be made unanimously by the Project Board.

### 5.3 Corporate

5.3.1 In policy terms the project accords with the Housing Strategy 2012-2016, most notably the strategic priority of 'Enabling vulnerable people access to good quality housing and to live independently.' The PFI project is specifically referenced in the Action Plan for the Objective 3.2 to 'Enable new supported housing provision that will meet the identified needs of vulnerable groups'.

5.3.2 The project adheres to Priority 2 of the Corporate Plan by tackling disadvantage, Priority 4 with residents feeling safer in a stable and secure environment and Priority 7 with an increase in properties provided by a Housing Association which are affordable for local people.

5.3.3 The project is also in line with a number of government policies:

**Laying the Foundations: A Housing Strategy for England** which affirms the government's commitment to "encouraging local authorities to make provision for a wide range of housing types across all tenures, including sheltered and extra care housing for older people with support and care needs".

**The Living Well At Home Report** produced in 2011 by the All Party Parliamentary Group on Housing and Care finds that providing suitable places to live for older people can mean independence for far longer; prevent the need for residential care; and mean fewer accidents and hospital admissions.

**Lifetime Homes, Lifetime Neighbourhoods** the 2009 joint Department of Health (DOH) and DCLG report, emphasises the importance of choice and inclusive design in good quality accommodation for older people.

**The HAPPI and HAPPI 2 Reports – 2009 and 2012 - HCA** Guidance on accommodation for older people set out guidelines for specialist accommodation, and identify the need for a national effort to build better homes that meet older people's needs and aspirations. (The first report in particular has informed this council's own plans to refurbish eight of our sheltered housing schemes in the coming years.)

#### 5.4 Equity and Equalities

5.4.1 The PFI scheme will enhance equity and equality within Thanet as it provides decent quality affordable accommodation and support for vulnerable, hard to reach groups. The scheme will be delivered by a highly regulated registered social landlord and comply with equalities related legislation.

#### 6.0 Recommendations

6.1 To continue to participate in partnership with Kent County Council and the district and borough partners in the Excellent Homes for All Private Finance Initiative Project;

6.2 To approve delegated authority to Corporate and Regulatory Services Manager in consultation with the Cabinet Portfolio Holder for Housing and to sign the Back to Back Agreement to share the benefits and risks of the project with Kent County Council and our District Council partners.

#### 7.0 Decision Making Process

7.1.1 This is a key decision to go to Cabinet.

7.1.2 The report has been to the Overview and Scrutiny Panel for consideration. (Recommendations from the Overview & Scrutiny Panel will be presented at the Cabinet meeting).

Contact Officer:	Lauren Hemsley, Strategic Housing Manager
Reporting to:	Madeline Homer, Director of Community Services

#### Annex List

Annex 1	Distribution of proposed provision across the County
Annex 2	Timetable to Financial Close
Annex 3	Principles of Risk Share

## Background Papers

Title	Details of where to access copy
Back to Back Legal Agreement	Contact Lauren Hemsley – Strategic Housing Manager or Harvey Patterson – Corporate & Regulatory Services Manager

## Corporate Consultation Undertaken

Finance	Sarah Martin, Financial Services Manager
Legal	Harvey Patterson, Corporate & Regulatory Services Manager
Communications	Hannah Thorpe – PR & Publicity Manager

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