



**Executive**  
15 March 2010

**Report from the Director of  
Housing and Community Care**

Wards Affected:  
Stonebridge

**Authority to proceed with Local Authority New Build  
Programme**

Financial model and Risk Plan are not for publication as this contains the following categories of exempt information as specified in the Local Government Act 1972, namely:

Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Appendices 1 and 2 of this report are not for publication

Forward Plan Ref: H&CC-15/03-10

**1.0 Summary**

- 1.1 Brent Council has received a funding allocation of £2.047 million to develop 21 new affordable homes on the St. Raphael's Estate under the Homes and Communities Agency Local Authority New Build programme. This report advises Members of steps being taken to progress the programme and specifically requests the Executive to grant delegated authority to the Director of Housing & Community Care to sign a Grant Agreement with the Homes and Community Agency and to grant delegated authority to the Director of Finance and Corporate Resources to prudentially borrow £1.689 million to be serviced by the rental income from the properties.
- 1.2 St. Raphael's Estate forms part of the wider regeneration strategy for the North Circular Road, The vision document 'A new image for the north circular' set out the Council's ambitions to improve the physical environment for communities along the North Circular Road and counter the negative impacts of the road. This project aims to address the objective to improve the physical environment for residents on the St. Raphael's Estate through access to

quality and appropriately sized family housing, and estate layout, play space, landscaping and environmental improvements.

## **2.0 Recommendations**

- 2.1 The Executive to grant delegated authority to the Director of Housing and Community Care, in consultation with the Borough Solicitor and the Director of Finance and Corporate Resources, to enter into to a Grant Agreement with the Homes and Communities Agency in respect of the aforesaid funding allocation of £2.047 million for the development of 21 new affordable homes on the St. Raphael's Estate under the Homes and Communities Agency Local Authority New Build programme.
- 2.2 The Executive to note the appointment of architects, quantity surveyor and project managers to progress the planning phase of the programme.
- 2.3 The Executive to note Officers' intention to procure building contract to develop the sites under a permissible framework agreement and to report back to the Executive seeking approval to award such contract.
- 2.4 The Executive to give approval to the Director of Housing and Community Care, in consultation with the Lead Member for Housing, to submit further bids to the Homes and Communities Agency for schemes to be developed under the Local Authority New Build programme without prior Executive approval provided that Executive approval will be required before completing each scheme and/or entering into any Grant Agreement or other agreement for any such schemes.
- 2.5 The Executive to grant delegated authority to the Director of Finance and Corporate Resources to prudentially borrow £1.689 million to be serviced by the rental income from the properties referred to in paragraph 2.1 over a 30-35 year period, with the discretion to increase this sum by 10% to cover build cost and other contingencies.

## **3.0 Local Authority New Build**

- 3.1 In the April 2009 Budget, the Chancellor announced £100 million for Local Authorities to deliver up to 900 new council homes under the Local Authority New Build programme (LANB). A further £360 million was allocated to the programme through the Housing Pledge in June 2009. The available funding provides Social Housing Grant (SHG), with Local Authorities matching the funding with a similar figure of prudential borrowing serviced by the rental income from the properties. Following Communities and Local Government consultation on the Housing Revenue Account (HRA) and in accordance with the HCA guidance on the LANB New Build programme, rental income from homes built through this programme have been automatically awarded an exclusion from the current HRA subsidy system.
- 3.2 In October 2009, the Council's Housing & Community Care Department ("Housing & Community Care") submitted a Pre-Qualification Questionnaire (PQQ) to the Homes and Communities Agency (HCA) for the Council to

become a partner eligible to bid for HCA funding under the National Affordable Housing Programme 2008-11 and the relevant sub-set: the LANB. Housing Community Care concurrently bid for £2.047 million under Round 2 of the HCA LANB, with the Council to secure a further £1.689 million through prudential borrowing against the rental income stream, to build twenty one family houses on the St. Raphael's Estate. In January 2010 the HCA announced that 73 Councils across England and Wales were successful in securing £122.6 million of SHG under LANB and that Brent Council was successful in their funding bid.

All the proposed houses will need to meet Lifetime Homes Standards and high sustainability and energy efficiency standards to Code for Sustainable Homes Level Four. 10% of the new homes will be required to meet wheelchair standards.

- 3.3 Start on site is programmed for 31<sup>st</sup> October 2010 and, with a twelve month build programme, practical completion 31<sup>st</sup> October 2011. The Council will need to enter into a Grant Agreement with the HCA in order to drawdown the first tranche (60%) of the SHG funding at start on site, with the second tranche (40%) of the SHG funding drawn down at practical completion. Housing & Community Care appointed ICE Jones and Mike Kirk Consulting to project manage the programme on 10<sup>th</sup> February 2010 and Rick Mather and Assael as architects on 15<sup>th</sup> February 2010. Cost consultants are scheduled to be appointed on 19<sup>th</sup> March 2010.
- 3.5 The Council will grant secure tenancies for the new homes at HCA target rents to support the necessary prudential borrowing and to reflect the fact that the tenants will benefit from living in new build properties built to a high standard, notwithstanding that the relatively low property values in the St Raphael's area will be reflected in the HCA target rents charged.
- 3.6 The project is to be lead by Housing & Community Care, within the context of the North Circular Road Regeneration Programme, with a cross-departmental client team incorporating representatives from the Policy & Regeneration Unit and Planning Service. The project will be overseen by a board established by the Major Projects Group for strategic decisions.

#### **4.0 Planning & Community Engagement Strategy**

- 4.1 The St. Raphael's Estate is Council-owned, located on HRA land and offers a number of opportunities for infill development. As well as providing new larger family affordable houses which will help to address overcrowding problems on the estate, this scheme can also help address the lack of a defined boundary between the estate and the public open space and will improve security and incorporate parking, environmental and landscaping improvements to the estate.
- 4.2 The development must also be viewed within the context of the wider regeneration ambitions for the North Circular Road (NCR). Specifically, the Planning Service has indicated that initiative should help to secure the benefits of the redevelopment of housing directly adjacent to the NCR that is

most affected by noise and air pollution; for example by directly or indirectly providing decant accommodation to kickstart the programme and thereby assist in responding to the poor and worsening living conditions along the NCR and improving the public realm along the road edge.

- 4.3 Community engagement with residents on the St. Raphael's estate and wider area is due to start in the summer. The Council are currently in discussions with Brent Housing Partnership regarding community engagement strategy. Options include setting up a Resident Steering Group to ensure residents views are fully taken on board. Meetings would be held through to start on site to ensure local issues are understood and residents are fully involved. Newsletters would also be produced to ensure all estate residents are aware of the progress of the proposals and have the opportunity to make their views known and feedback on the proposals.

## **5.0 Risk**

- 5.1 Failure to secure planning permission is identified as a key risk to this project with consequential delay and impacts on the Council's ability to start on site, drawdown the first tranche of the funding allocation and maintain the Council's reputation with the Homes and Communities Agency as a credible partner who is able to deliver. The key mitigation to this risk is early and continued engagement with the Planning Service, scheduling of survey work to ensure early identification of any site constraints and issues, and engagement with local residents to start in the summer.

- 5.2 Failure to properly communicate and engage with residents on the estate and the wider area in order to ensure local residents views and expectations are considered throughout planning and construction phases of the project, could generate sufficient local opposition to the scheme as to undermine political support for the proposals.

- 5.3 A fuller assessment of the risks of this project and measures to mitigate is attached [cf. Appendix 1 – Risk Plan]

## **6.1 Procurement of a Build Contract**

- 6.1 The New Build programme requires construction to start on site by 31<sup>st</sup> October 2010. Officers have considered procuring the build contract by way of a formal tender in accordance with Contract Standing Orders but have concluded that this may fail to achieve the start on site date of 31<sup>st</sup> October and that this is more likely to be achieved by calling off the build contract from a framework agreement. Not only do Officers consider that calling off from a framework agreement would result in a reduced procurement timescale, it is also considered that it would lead to a reduction in Council resources required for the procurement as well as achieving best value for the Council through a mini competition under the framework agreement.

- 6.2 Officers are currently considering calling off under an HCA Framework Agreement but are also reviewing other framework agreements to establish which is likely to offer best value to the Council. Once the most appropriate

framework agreement has been identified, approvals from relevant Officers under Contracts Standing Order 86 (d) as to its use will be obtained.

- 6.3 Following the identification of the preferred contractor under the framework agreement, Officers will report back to the Executive seeking approval to award the build contract.

## **7.0 Grant Agreement**

- 7.1 The Grant Agreement is an agreement which the HCA enters into with RSLs, ALMOs, local authorities and other housing providers when paying grants under its powers under section 27A of the Housing Act 1996. The Grant Agreement is in a standard format but there are some differences in its content depending on the scheme agreed by the HCA to provide funding pursuant to its powers under section 27A of the Housing Act 1996. The Council will be required to sign the Grant Agreement in order to drawdown the SHG funding start on site and practical completion allocation tranches.

- 7.2 The Executive has given authority to the Council and Brent Housing Partnership to enter into grant agreements relating to the National Affordable Housing Programme in respect of two housing schemes. Firstly, for the Aldbury Avenue housing scheme where the Executive gave authority in November 2008 for BHP to enter into a grant agreement with the HCA and for the Council to provide a performance guarantee with the HCA regarding the Aldbury Avenue scheme. Secondly, for the Settled Homes Initiative where the Executive gave authority in January 2010 for BHP to enter into a grant agreement with the HCA and for the Council to give a loan to BHP under its Prudential Borrowing powers to enable BHP to purchase residential properties and use them for temporary accommodation for homeless households which would later be converted to permanent accommodation.

- 7.3 The key difference between the Local Authority New Build scheme is that the Council will own the land so there will be no land disposals or acquisitions involved. There will be no Rent Charges granted to the HCA, unless the Council subsequently disposes of the new build properties. The Council does not need to give the HCA a performance guarantee. Also, the Council will be the landlord of these new properties, meaning there will in due course be additional Council properties in the Council's housing stock.

- 7.4 The legal documentation includes the Grant Agreement, the scheme details, the Conditions Precedent (i.e. the conditions required for the HCA's payment of the first tranche and second tranches of the Grant respectively), the Council's warranties, the project documents, race equality requirements, an employment and training opportunities statement and the Deed of Covenant between the HCA and the Council.

- 7.5 The Grant Agreement requires the Council to provide the HCA with a quarterly report for monitoring and reporting purposes regarding this housing scheme which include progress, significant developments, health and safety issues, reasons for and actions to mitigate any delays, any breach of any term or warranty of the Grant Agreement, matters which would entitle the HCA to

terminate the Grant Agreement in whole or in part, and changes to the Council's financial standing (i.e. the Council is given a direction by the Secretary of State under section 15 of the Local Government Act 1999 regarding the exercising of its functions) which the HCA considers to have a material and adverse affect on the Council's ability to discharge its obligations under the Grant Agreement.

7.6 In the event that the Council default on the Grant Agreement and the HCA terminates the Agreement in its entirety, the Council will have to:

7.6.1 on demand from the HCA pay all costs and expenses properly and reasonably incurred by the HCA in respect of entry into this Agreement and all actions taken by the HCA in respect of this Agreement up to the date of termination; and

7.6.2 repay to the HCA within ten (10) Business Days of the HCA's demand an amount equivalent to that of any Grant Tranche already paid together with interest at 2% above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the relevant Grant Tranche was paid to the Council's conveyancer until the date upon which the HCA receives the repayment of the relevant Grant Tranche.

7.7 The Executive is asked to delegate authority to the Director of Housing and Community Care to enter into a Grant Agreement with the Homes and Communities Agency in respect of the aforesaid funding allocation of £2.047 million for the development of 21 new affordable homes on the St. Raphael's Estate under the Homes and Communities Agency Local Authority New Build programme. The Executive is also asked to agree that the Council may, on approval from the Director of Housing and Community Care, submit further bids to the Homes and Communities Agency for schemes to be developed under the Local Authority New Build programme without prior Executive approval provided that Executive approval will be required before completing each scheme and/or entering into any Grant Agreement or other agreement for any such schemes.

7.8 A copy of the HCA Grant Agreement is not attached to this report but it can be located on the following web-link:

[http://www.homesandcommunities.co.uk/public/documents/Local\\_Authority\\_Agreement\\_Round\\_2.pdf](http://www.homesandcommunities.co.uk/public/documents/Local_Authority_Agreement_Round_2.pdf)

## **8.0 Financial Implications**

8.1 The overall scheme cost is currently estimated at £3.736 million in line with the attached Financial Model [Appendix 2 – Financial Model] submitted to the HCA with the bid. The project is to be funded by a £2.047 million SHG and £1.689 million of prudential borrowing to be serviced by rental income from the proposed properties over a 30 year period, with the discretion to increase the prudential borrowing to £1.689 million + 10% to cover build cost, legal and other contingencies by extending the capitalisation period to up to 35 years.



- 8.2 As the scheme is grant funded under the National Affordable Housing Programme, in accordance with the HCA guidance on the LANB New Build programme, the scheme has been automatically awarded an exclusion from the HRA subsidy system. This means that the full rental income for the properties will be retained by the Council. Additionally the Council will be able to retain the full capital receipt on any future sale of the properties, providing the receipts are used for affordable housing or regeneration projects.
- 8.3 Members should note that the expenditure and funding streams for this scheme have been included in the Housing General Fund Capital Programme, profiled over 2010/11 and 2011/12 as £1.868m in each year, which has been reported to Executive on 15th February 2010 within the Budget Setting Report and to Full Council on 1st March 2010.
- 8.4 With Executive approval, under Standing Orders 88 and 90, the Council will enter into a build contract to the value of approximately £3.09 million.
- 8.5 To date just over £20,000 has been spent on external resources to assist in drawing up the HCA PQQ and bid, which has been funded by the Affordable Housing Development Unit (AHDU). The necessary architectural, surveying, consultancy, legal and other fees to achieve start on site are estimated at approximately £200,000 to be funded from the Housing & Community Care budget. Once planning permission, build contract and HCA Grant Agreement milestones are achieved the first SHG tranche of £1.23 million can be drawdown and the upfront costs recovered.
- 8.6 Failure to achieve planning permission and the abortion of the project at that stage would equate to estimated abortive costs of £170,000, which would be met from the Housing & Community Care budget.

## **9.0 Legal Implications**

### **Procurement Issues**

- 9.1 As detailed at Section 6, there is an intention to procure the build contract by calling off from a framework agreement. Contract Standing Order 86(d)(ii) provides that it is permissible to call off from an existing framework agreement that was not established by the Council provided it is recommended by the relevant Chief Officer, the Borough Solicitor confirms that participation is legally permissible and that the Director of Finance and Corporate resources agrees to the participation.
- 9.2 Given the value of the build contract is estimated to be £3.1 million, it is above the Council's Standing Order threshold for High Value Works Contracts (of £1 million). The award of the build contract is thus subject to the Council's Standing Orders and Financial Regulations in respect of High Value Contracts and Executive approval is required for the award.
- 9.3 The values of the consultancy contracts referred to in paragraph 3.4 are such that they are all classed as Low Value Contracts and as such have been

procured in accordance with the Council's Standing Orders and Financial Regulations for Low Value Contracts

### **Council's Prudential Borrowing Powers**

- 9.4 Reference has been made to the council using its prudential borrowing powers as these powers will need to be exercised. The power that the Council would use if it follows this option is section 1 of the Local Government Act 2003. The 2003 Act provides that a local authority may borrow money for any purpose relevant to its functions under any enactment, or for the purposes of the prudent management of its financial affairs subject to the borrowing limit determined by the authority and the Secretary of State. The decision as to whether to go forward with prudential borrowing will need to take this into account, as well as ensuring that the HRA or the General Fund is able to repay the loan. If the Council is unable to service and pay off its borrowing, this would have a significant impact on the council and could affect not only the council's finances but BHP's ability to perform the council's housing management functions in respect of the council's housing stock.
- 9.5 It should be noted that the Council has a fiduciary duty to its council tax payers and Members must consider the borrowing arrangements comply with normal and prudent commercial practices.
- 9.6 The Council must ensure that the reasons for undertaking the Prudential Borrowing fall within the council's community strategy.

### **Grant Agreement with the HCA and Housing Issues**

- 9.7 The Council will grant secure tenancies in respect of these properties. This means that these properties will be used as permanent accommodation rather than temporary accommodation.
- 9.8 The Council will be prohibited by the HCA from increasing the rent more than once in any 12 month consecutive period, except for the first 12 months of the tenancy. Also, the Council must not increase the rent by more than RPI plus 0.5% per annum, subject to any changes in Government policy relating to affordable housing for rent. In relation to service charges, the Council must not increase the service charges more than once in any 12 month consecutive period (save for the first 12 months of the tenancy) and must not increase the service charge more than RPI plus 0.5% per annum.
- 9.9 The Council must set its rents at target rents set by the HCA and the rents must not exceed the targets set by the HCA relating to affordable housing for rent in line with the Government's rent re-structuring policy.
- 9.10 It is envisaged that Brent Housing Partnership (BHP) will manage the 21 new dwellings. These dwellings are not covered by the current BHP Management Agreement or the Secretary of State's consent under section 27 of the Housing Act 1985 which was granted in 2002 to allow the Council to set up BHP and to allow BHP to manage the Council's housing stock. When these dwellings are built, it will be necessary to apply to the Secretary of State for



Communities and Local Government pursuant to section 27 of the Housing Act 1985 for these new Council dwellings to be managed by BHP. The BHP Management Agreement expires on 30<sup>th</sup> September 2012 and the Council will need to make a decision as to whether the BHP Management Agreement will be extended after 2012. It should be stressed that the Council will own these dwellings.

- 9.11 Tenants of these 21 new dwellings will have the Right to Buy subject to the necessary qualifying criteria as set out in the Housing Act 1985. The HCA has advised that where a disposal of a new dwelling occurs pursuant to the Right to Buy, the Council can retain a proportion of the receipts but they will be required to repay the agreed grant for the dwelling to the HCA and a share in the uplift of the market value of the dwelling. The HCA has confirmed that it requires all of these new dwellings under the Local Authority New Build Scheme to be affordable rented housing.
- 9.12 As the scheme is grant funded under the National Affordable Housing Programme it has been automatically awarded an exclusion from the HRA subsidy system. This means that the full rental income for the properties will be retained by the Council. Additionally the Council will be able to retain the full capital receipt on any future sale of the properties, providing the receipts are used for affordable housing or regeneration projects. An application under section 80B of the Local Government and Housing Act 1989 is therefore not necessary in this case. It should be noted that these new build properties will be held within the Council's Housing Revenue Account for accounting purposes but will be excluded from the Housing Revenue Account Subsidy System.
- 9.13 The Council cannot dispose of these new dwellings without the consent of the HCA, which will not unreasonably withhold such consent (unless it is an excepted disposal as defined in the Grant Agreement).
- 9.14 In addition to the Grant Agreement, the Council will enter into a Deed of Covenant with the HCA. One of the covenants on the part of the Council is to ensure that if it disposes of the new dwellings with the HCA's consent, it procures that any purchaser will enter into a Rent Charge with the HCA pursuant to section 2(4) of the Rent Charges Act 1977. Unlike the other schemes involved with the HCA, the Council (or BHP) will not need to grant a Rent Charge to the HCA as part of the Grant Agreement arrangements in respect of these new dwellings.
- 9.15 Where there is a material and adverse breach of the Agreement, the HCA can serve a notice on the Council and if within 30 working days, the breaches are not remedied or the Council has not given an undertaking to the HCA to HCA's satisfaction to remedy the breaches within a reasonable period, the HCA can terminate part or whole of the Grant Agreement. There are circumstances where the HCA can terminate part or the whole of the Grant Agreement forthwith and without liability to the Council and those circumstances include the Council failing to satisfy the Conditions Precedent agreed with the HCA in required of this housing scheme, the Council disposing of the dwellings without or in breach of the consent granted by the

HCA, the Council failing to satisfy the First Tranche and Second Tranche Conditions precedent for payment of the grant monies, the HCA becoming aware of any material and adverse change in any of the information provided to it which the HCA reasonably considers to impair the Council's ability to deliver this housing scheme in accordance with the terms of the Grant Agreement, and also the HCA becoming aware of any material inaccuracy in any certificate or confirmation given by or on behalf of the Council pursuant to the Grant Agreement or legal opinion given by the Council regarding the Scheme. In the event of the termination of the Grant Agreement by the HCA, the consequences for the Council are set out in paragraph 7.6 above.

## **10.0 Diversity Implications**

- 10.1 The Council will require all the new homes be delivered to Lifetime Homes standards to maintain the future accessibility of properties.
- 10.2 The Council will require 10% of the new homes be delivered to meet wheelchair standards.

## **11.0 Staffing/Accommodation Implications (if appropriate)**

- 11.1 Most of the project plan will be delivered by external contractors. The Local Authority New Build programme will have management and administration repercussions for the Affordable Housing Development Unit, however these will form part of the unit Service Operation Plan and no extra staffing is anticipated to be required.

## **Background Papers**

- Appendix 1: Risk Plan [**below the line**]
- Appendix 2: Financial Model [**below the line**]

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