

# **Appendix 1- Housing PFI Project Agreement Revisions**

## **Brent Non-HRA Housing PFI - Revised Project Agreement**

### **Heads of Terms**

#### **1. Purpose**

1. This document sets out the Heads of Terms for the proposed revisions to the PFI Project Agreement between Brent Council and Hyde/BCE. The purpose is to provide sufficient flexibility to the Council to reduce and potentially eliminate the financial loss projected to arise under the terms of the current Project Agreement.
2. This projected financial loss arises primarily from changes made by Government since the Project Agreement was executed in relation to Local Housing Allowance (Housing Benefit) Subsidy rates. Indicative financial modelling suggests that the Council will incur a cumulative deficit of up to £17m by the end of the contract.
3. In order to minimise and if possible eliminate this deficit it is necessary to provide greater flexibility over how the accommodation is used and the rents at which it is let and provide contingency for future changes that impact on the project's financial performance.
4. In the course of negotiations between the parties a number of approaches have been considered. It has been agreed that the preferred approach is one where the Council continues to carry the primary financial risk and is accordingly provided with primary control in order to manage and mitigate this risk by having considerable discretion over the deployment of the units in order to achieve an optimal balance between financial performance and the availability of the units to meet housing need.

## Operational Provisions

### 2. Tenure

1. There will either be no requirement to convert a minimum number of units from Temporary Accommodation to Permanent Social Rented units prior to the end of the contract; or the existing requirement will be amended to provide for conversion of 72 units to Affordable Rent equivalent by end 2015 (for a minimum period of 5 years). (Decision between these alternatives is awaited following response from DCLG)
2. Subject to 1. above the Council will have flexibility over the deployment of the units at different tenures. There will be no minima and the maxima for each tenure are set out below:
  - Social Rent – zero
  - Affordable Rent Equivalent – 158 units
  - Discounted Market Rent – 364 units
3. These tenures and the applicable rents are as follows:
  - Affordable Rent Equivalent – the let on an assured shorthold tenancy for a fixed-term of five years at rent levels that are consistent with the guidance of the Social Housing Regulator for this product (and accordingly have regard to the Council's Tenancy Strategy)
  - Discounted Market Rent – the let on an assured shorthold tenancy for a fixed-term of no less than two years at a rent of up to 80% of the market rent for the property.
  - Temporary Accommodation – the let on an assured shorthold tenancy pursuant to the Council's Part VII homelessness duties at rents equal to the housing benefit subsidy levels for temporary accommodation.
4. All these tenures may be integrated and pepper-potted within an individual scheme so long as the routes of nominating households remain consistent with the agreement between the parties.
5. The maximum number of units which can be converted under a single notice (and in one year) will be constrained to one third of the total units in management, equivalent to 122 units.
6. Assured shorthold tenancies in use across Affordable and discounted market rent tenures will include standard provisions to gain possession within the fixed term period.

### 3. Tenure Deployment

7. The Council will, within the parameters above, be able to deploy and re-deploy units at these different tenures as follows:
  - Units will be deployed at Affordable Rent Equivalent Units for a minimum period of 5 years or for a shorter period where the tenancy comes to an end through eviction or surrender;
  - Discounted Market Rent Units will be deployed for a minimum period of 2 years or for a shorter period where the tenancy comes to an end through eviction or surrender;
8. By 1 February each year the Council will issue BCE with a draft schedule of the target number of units for each tenure and the rents to be applied to these units, and the details of properties where the tenure is to be changed, for BCE to comment on. By the 1 April each year this target is to be confirmed and formally notified by Council to BCE.
9. The Council will be free to set the target mix and required conversions within the parameters above taking account of relevant considerations relating to homelessness and temporary accommodation needs and the local housing market. In addition the Council will need to provide a financial projection that, on the basis of reasonable assumptions, shows:
  - That a deficit will arise by the end of the contract if the current deployment is continued, and
  - the target mix and conversions that will reduce this deficit but that will not generate a surplus in excess of £2m by contract expiry.
10. If BCE considers that the assumptions underlying the projections are unreasonable they may set out their reasons for the Council to consider. If the Council agrees with these reasons then it will issue a revised financial projection and target mix.
11. If the Council disagrees with these reasons, then it will justify its assumptions. In the event that BCE still considers that the assumptions underlying the projections are unreasonable, then the Dispute Resolution Mechanism contained in the Project Agreement will apply.
12. Both parties will be required to assess the operational practicality of delivering the proposed change in tenures. If BCE feel that the proposed changes are not operationally possible it will set these reasons out to the council. If the council agrees with these reasons then it will issue a revised target mix.
13. BCE will issue to the council a forecast of the costs for which the council will be liable and are associated with the target conversion and the proposed timetable of activity.

Should the council consider these assumptions to be unreasonable it may set out its concerns. If BCE agrees it will alter its projections accordingly.

14. In instances where either party still considers that the assumptions underlying the operational projections are unreasonable, then the Dispute Resolution Mechanism contained in the Project Agreement will apply.

#### **4. Conversions**

15. This will operate as follows:

- Temporary Accommodation to Affordable Rent Equivalent – the Council will, where appropriate and in accordance with its published Allocation Scheme, offer the existing occupants an Affordable Rent Equivalent tenancy. Where the tenancy is accepted the Council will have discharged its duty. If the existing occupants do not accept, the Council will advise BCE that it has discharged its duty and BCE will then take the necessary steps to secure vacant possession as soon as is practicable. Where the existing occupants are not offered the Affordable Rent Equivalent tenancy the Council will make the necessary arrangements for the household to be placed in other temporary accommodation in accordance with the Council's homelessness duties.
- Temporary Accommodation to Discounted Market Rent – the Council will provide alternative accommodation in accordance with its homelessness duties except where the Council makes a qualifying offer or private rented discharge of the unit to the current occupants (and provided the new rent is affordable to them). It will be the Council's responsibility to provide alternative accommodation. The Council will use its best endeavours to identify suitable accommodation within the borough and its adjacent surrounds, which is affordable to the current occupants. In the event that the Council is unable to identify such suitable accommodation, then the Council will use its discretion to provide accommodation in accordance with its homelessness duties. Where any suitable offered accommodation is refused and the Council has discharged its duty, BCE will take the necessary steps to ensure that vacant possession is secured as soon as is practicable.
- Affordable Rent Equivalent to another form of tenure – this will only occur at the end of a five-year fixed term tenancy period (or where a void arises). Where the occupants would be entitled to a renewal of their tenancy (in accordance with the Council's published Allocation Scheme and related policy) conversion to another tenure will not be permitted.

Where not, the Council will, as appropriate in the circumstances, provide suitable alternative accommodation or provide advice and assistance and BCE will take the necessary steps to ensure that vacant possession is secured as soon as is practicable.

- Discounted Market Rent to another tenure – the Council will direct that the existing tenancy be brought to an end and will assist with housing advice. BCE will take the necessary steps to ensure that vacant possession is provided as soon as is practicable.

16. Where a void unit arises naturally and the target conversions for the year have not yet been achieved, the Council will set the tenure and rent for the unit and may deploy this unit to assist in achieving the target balance of tenures set for that year.
17. The costs associated with the conversion of units as proposed in the annual target mix will be met by the Council and will be accounted for within the financial projections for the project and any end of contract projected surplus or deficit. Rent losses arising from void periods will also be accounted for in the financial projections.

## **5. Nominations**

18. For all tenures the Council will nominate the occupants, and they will be households to whom the Council owes a homelessness duty (to provide temporary accommodation or in discharge of the rehousing duty) or are otherwise homeless or have approached the Council for housing assistance, except in respect of nomination to an Affordable Rent Equivalent tenancy which will be in accordance with the Council's published Allocation Scheme.
19. The Council will in nominating households take account of their ability to pay the rent including the impact of welfare reform and the household's wider ability to afford the property. Hyde as the housing management sub-contractor retains the right to refuse any household under the same terms as presently exist within the project agreement, i.e Nominations will be made in accordance with the Nominations Protocol and subject to Affordability Criteria.

## **6. In Tenancy Costs**

20. The suggested tenure mix within the project exposes the housing management sub-contractor to additional risk in regard to rent collection from that envisaged when the original agreement was formed. This results from the introduction of changes implemented through the Welfare Reform Act, including the overall benefit cap and the spare room subsidy.
21. Where changes in household circumstances occur mid-tenancy and the instruments of the Welfare Reform Act, including the social sector size criteria and/or the overall

benefit cap impact on the households ability to pay the rent due in full, the housing management sub contractor will not be held liable for that proportion of uncollected rent. This will be subject to the housing management sub contractor fulfilling its duties under the project agreement in relation to the management of rent arrears in relation to each case.

## **7. Residual Value and End of Contract Tenure Provisions**

22. The Project Agreement requires that a minimum of 158 units are available at the end of the contract to provide permanent social rented housing, subject to the terms of the Residual Valuation and Senior Debt repayment obligation.
23. As social rented housing is no longer supported, this will be amended to provide that a minimum of 158 units are available to provide Affordable Rent Equivalent housing, subject to the same qualification, with consequential amendments to reflect this change of tenure to the Residual Value Deed and S106 agreements.
24. In order to achieve this, the Council will, taking account of the number of existing Affordable Rent Equivalent units, specify the units to be converted to this tenure a minimum of one year in advance of the end of the contract. Such conversions will be made in accordance with the approach and parameters set out above.
25. At the end of the contract the Residual Value will be calculated, initially on the following basis:
  - Value of 158 specified units as Affordable Rent Equivalent units
  - Value of 206 remaining units at Open Market Value (OMV)
  - If the value is below £80m (the senior debt obligation) then no additional units (above the 158) will be converted to Affordable Rent and the council may not recover any deficit.
  - If the value is above £80m and if the council has a deficit at contract end this may be recovered to the limit of 50% of the additional value generated by the switch of the 158 units from Social to Affordable Rent units up to a maximum of £2m
  - The number of affordable units to be held in perpetuity will be calculated in order to arrive at a Residual value equal to the sum of the £80m senior debt obligation and the amount of the council's deficit to be recovered to a maximum of £2m.

## **8. Management**

26. A wider diversity of tenures is planned than is currently provided for but it is agreed that the requirements and cost of management of these other tenures will be the same as for Temporary Accommodation units.
27. Rates for facilities management for the additional tenures proposed will be agreed as part of the revised Project Agreement.

## **9. Rent Pool & Rent Collection**

28. In order to optimise the financial performance of the project it is essential that rent income is maximised throughout the contract period.
29. The Rent Pool as set out in the Project Agreement will be abolished and replaced with the following arrangement:
  - All rents will be collected by Hyde and will then be paid directly to the Council;
  - The Council will pay the appropriate Base Revenue figure to BCE;
  - The Council will retain any surplus between rents collected and the Base Revenue figure, as a working balance to ensure that the contract does not go into deficit and to cover ad hoc expenditure items relating to this
30. The existing balance in the rent pool will be paid to the Council at the commencement of the revised Project Agreement and be applied to the working balance referred to above.
31. Hyde will be responsible for the rent collection for all tenures.
32. The operation of the Rent Collection Underage and Overage mechanism as set out in the Project Agreement, shall be replaced with the following target rent collection rates:
  - Temporary Accommodation and Discounted Market Rent – 94% of rent collectable
  - Affordable Rent Equivalent – 96% of rent collectable
33. Above these target levels Hyde will receive or pay, each 12 months in arrears, an incentive payment equivalent to 10% or a penalty payment equivalent to 10% below these levels.
34. Where rent collection levels fall below 90%, Hyde will be liable for 25% of the shortfall below that threshold.

35. The operation of the Utility Underage and Overage mechanism as set out in the Project Agreement remains as is.
36. The operation of the Void Adjustment mechanism as set out in the Project Agreement remains as is.