



Cabinet
27 June 2016

**Report from the Strategic Director,
Community Wellbeing**

Wards affected:
All

**Housing Right to Buy Receipts Programme – Phase 1
update and Phase 2 Procurement**

1.0 Summary

- 1.1. In August 2015 Cabinet agreed to establish and deliver a Right to Buy (RTB) receipt enabled new supply housing programme for 2015-19. Phase 1 of the programme, to purchase open market properties, is substantially underway and nine acquisitions have been completed to date. Soft market testing has been carried out of prospective external delivery partners for Phase 2, and an alternative investment approach is now proposed.
- 1.2. It is recommended that, in order to maximise Brent's opportunities to provide replacement affordable homes using RTB funding and to minimise the risk of unspent amounts being paid to government, a multi-strand investment approach should be adopted. The four key strands of this strategy are:
- To award local authority grant to external providers to provide new affordable housing, leveraging significant private investment
 - To invest RTB receipts in the direct delivery of council-owned sites to provide new affordable housing, reducing overall council borrowing
 - To continue the existing acquisition programme to provide new affordable housing, integrated with the council's wider market acquisitions programme

- To support investment in the Housing Zones, to acquire development sites in order to facilitate and accelerate development, and the provision of affordable housing.

1.3. Based on the RTB receipts accrued to the end of March 2016 (£19.3m), which can be used to fund up to 30% of the total cost of providing replacement affordable rented homes, there is total investment pot in excess of £60m. The size of this pot is further increased once projected RTB sales income is included, over the next three years.

2.0 Recommendations

Cabinet:

- 2.1 Note the progress of the Right to Buy Receipts Programme Phase 1 to April 2016 and its integration with the wider market acquisitions programme, as set out in paragraph 6.11 of this report.
- 2.2 Agree to continue this Programme to acquire existing properties until 31 March 2019, subject to financial viability including the flexibility to part-fund the cost of advance purchases within the South Kilburn regeneration area through retained Right to Buy receipts.
- 2.3 Agree to allocate retained Right to Buy receipts as local authority grant for the provision of affordable housing by external partners and to delegate authority to the Strategic Director for Resources in consultation with the Chief Legal Officer, the Chief Finance Officer and the Operational Director, Housing and Culture to approve criteria for grant funding, to approve criteria for the evaluation of bids and to approve the allocation of such grant on acceptable terms.
- 2.4 Agree to contribute retained Right to Buy receipts to support residential development of council-owned sites and for a commensurate proportion of the homes to be provided as affordable rented accommodation, subject to financial viability and to delegate authority to the Strategic Director for Resources in consultation with the Chief Legal Officer, the Chief Finance Officer and the Operational Director, Housing and Culture to approve the contribution of such receipts.

3.0 Background

- 3.1 The government's current policy on the Right to Buy (RTB) for council housing is intended to stimulate sales and generate additional receipts to fund replacement stock on a one-for-one basis. In order to keep the receipts from additional sales, local authorities were able to enter into a Retention Agreement with the Secretary of State for Communities and Local Government on condition that the retained receipts are used for the provision of affordable housing. Brent entered into a Retention Agreement in 2012.
- 3.2 In August 2015 Cabinet agreed to establish and deliver a RTB receipt enabled new supply housing programme for 2015-19. As part of this new housing supply programme Cabinet has agreed:

- In Phase 1 of the programme, to 31 September 2016, to purchase open market properties for the provision of affordable housing, expending a minimum of £2.01m of RTB receipts (30%) and £4.69m of Housing Revenue Account (HRA (70%)) capital resources.
- In Phase 2 to procure, subject to Cabinet approval, a Preferred Delivery Partner to provide new affordable housing with the support of a minimum of £11.64m RTB receipts in 2016-19, leveraging at least £27.16m of private funding provided by the external partner.

3.3 It was also agreed for the balance of the funding to be available to support investment in the two Housing Zones, subject to further Cabinet approval.

3.4 Phase 1 of the programme is substantially underway and ahead of the minimum required spending profile. Soft market testing has been carried out of prospective external delivery partners for Phase 2 and, based on the feedback received, an alternative investment approach is now proposed for the second phase.

4.0 Current RTB Receipt Reserves and Investment Deadlines

4.1 Brent has accrued a total of £19.3m retained RTB receipts to the end of March 2016, as summarised in Appendix 1. This amount will continue to grow as more tenants buy their homes under the government's Right to Buy scheme. Retained RTB receipts can be used to fund up to 30% of the total cost of providing replacement affordable rented homes, with the balance (at least 70%) coming from council borrowing or private investment from external partners. This means that the total investment pot is at least £61.6m.

4.2 Retained receipts must be spent within three years of the quarter year in which the receipts arose or any unspent amounts are required to be paid, with interest, to government. During 2015/16 a total of £2.7m of expenditure (£0.8m RTB receipts plus £1.9m council borrowing) was completed against a minimum spend requirement of £2.2m. No RTB receipts have been paid to government to date. Approximately £4.0m (£1.2m RTB receipts plus £2.8m council borrowing) is required to be invested by the end of September 2016.

5.0 Phase 1 Outputs and Future Acquisition Approach

5.1 Brent Housing Partnership (BHP) has been commissioned to buy properties, in Brent, on behalf of the council to April 2016. The preferred approach has been to target off market purchase of former council homes that have been sold previously under the RTB. Four such properties were acquired in Q4 2015/16 and a fifth property has been purchased during Q1 2016/17. These homes will be brought up to standard prior to re-letting by BHP.

5.2 This approach is advantageous because former council homes can be managed cost effectively by BHP in areas of existing stock and are more

likely to be affordable in the current housing market. Even so only a small proportion of potential purchases are financially viable at policy affordable rent levels.

- 5.3 In addition to the above the council has acquired a former residential care home, at Salmon Street in Wembley, which will be refurbished by BHP to provide six bed spaces of supported housing through the New Accommodation Independent Living (NAIL) programme.
- 5.4 Furthermore, during 2015/16, the council completed advance purchases of three properties in the South Kilburn regeneration area, which are currently being used to provide Temporary Accommodation for homeless households. These purchases have been accounted for within the RTB programme, in order to utilise the 30% retained receipts element, thus reducing overall council borrowing.
- 5.5 Phase 1 purchases to date are summarised in Appendix 2. The minimum spend requirement for 2015/16 and Q1 2016/17 has been exceeded so Brent has not been required to pay any amounts to government. However, the amounts required to be invested in each quarter year step up significantly from Q2 2016/17 and the Phase 1 programme is therefore being accelerated, as set out below.
- 5.6 In March 2016 Cabinet approved the Temporary Accommodation Reform Plan, a key element of which is for the council to acquire a significant portfolio of Private Rented Sector (PRS) homes, with initial capital investment of £10m. This programme, led by the Housing Needs team, has commenced and the council's Property Services team is recruiting a specialist team to undertake these acquisitions at scale. This team will also carry out future RTB purchases, from May 2016, in order to ensure a consistent and resource effective approach within the council.

6.0 Phase 2 Proposed Alternative Procurement Strategy

- 6.1 It was originally intended to procure a Preferred Delivery Partner, either via the Greater London Authority (GLA) London Development Panel 'mini competition' process or through a full procurement process following advert in the Official Journal of the European Union, to provide new affordable housing in Phase 2 of the programme. Soft market testing of this approach has been undertaken with prospective delivery partners and the finding from this is that there is unlikely to be sufficient market interest to support this procurement approach.
- 6.2 This is in large part because the level of capital subsidy provided by RTB receipts is not sufficient on its own to support a major programme with a single partner for the development of affordable rented homes in Brent, because of the cost of land and development. Prospective partners did, however, indicate interest in accessing RTB receipt support for selected schemes. To achieve the scale of investment and development required this would, however, require engagement with a number of partners rather than involve reliance on a single partner.

- 6.3 This feedback accords with the experience of other London authorities that have found it challenging to commit RTB receipts funding at the rate at which it accrues. An alternative, multi-strand approach is therefore proposed in order to maximise Brent's opportunities to provide replacement affordable homes using RTB funding and to minimise the risk of unspent amounts being paid to government. The four key strands are set out below.

Award of Local Authority Grant to External Housing Providers

- 6.4 The favoured approach of Registered Provider partners and one adopted by other local authorities is for the council to allocate RTB receipts as (up to 30%) grant in order to support the delivery of additional affordable rented homes, to which Brent would have nomination rights. This would leverage significant private finance (at least 70%) from external partners, as was envisaged in the August 2015 Cabinet approval.
- 6.5 It would also be possible to combine funding streams, for example GLA grant, within overall development schemes (but not individual units). Care will be required to ensure that RTB funding delivers additional affordable homes for Brent, rather than switching schemes between grant programmes or other delivery mechanisms, with no net gain of units.
- 6.6 It is therefore proposed to advertise the grant opportunity, including to Registered Provider partners, setting out criteria for grant funding and the criteria for evaluation of bids, and thereafter open dialogue with a range of prospective delivery partners in order to identify their development pipelines and the scope to provide additional rented homes with RTB funding. These homes would ideally, but not necessarily, be located in Brent provided that in all cases the council has the benefit of nomination rights.
- 6.7 Under this proposal individual investment decisions would be made on a scheme by scheme basis in order to match available RTB funding to the pipeline of new homes. Maintaining a flexible approach to the discussions with partners will help the council to secure value for money and early delivery of the highest aggregate level of replacement homes, balancing this against the risk of paying unspent RTB receipts to government. Providers would be required to enter into a grant agreement with the council, setting out the agreed delivery timetable for each scheme, as well as a nomination agreement in an agreed form.
- 6.8 Until the grant funding opportunity has been promoted to potential partners it is difficult to predict the level of market interest and the amount of RTB funding that could be taken up as grant. In August 2015 Cabinet committed £11.64m of RTB receipts to support the provision of new affordable housing by a Preferred Delivery Partner and this remains a realistic amount.

Direct Delivery of Council-Owned Sites

- 6.9 In accordance with the Strategic Property Plan 2015-18, the council is currently bringing forward residential development schemes at a number of key council-owned sites (including Church End and Knowles House, with

other schemes at London Road and Stonebridge Park subject to separate Cabinet approval). These sites are well-suited to providing sustainable, mixed tenure developments, while also supporting local area regeneration, generating revenue savings and new income.

- 6.10 It is proposed that, where practical and financially viable, RTB funding should be accounted for within these projects, in order to deliver units of Temporary Accommodation for households to which the council has a homelessness duty, NAIL accommodation and/or affordable rented homes. This would allow Brent to retain the value of its invested RTB receipts within council-owned assets and to reduce borrowing requirements accordingly. RTB receipts cannot be expended through a separate entity in which the council has a controlling interest. This precludes the use of RTB receipts to provide sub-market rent Private Rented Sector homes through a council-owned investment vehicle.

Continue the Existing Acquisition Programmes

- 6.11 As stated above Brent is establishing a property acquisitions team to acquire a significant portfolio of PRS properties and this team will also be purchasing properties for the provision of affordable housing, using RTB funding. As part of the wider approach to expending RTB receipts it is recommended that there should be flexibility to continue this RTB-funded acquisition programme beyond the original end date of 30 September 2016 until 31 March 2019, subject to financial viability. It is also recommended that the council should continue to part-fund future advance purchases at South Kilburn through the RTB programme, in order to reduce overall council borrowing.

Supporting Investment in the Housing Zones

- 6.12 The Alperton and Wembley Housing Zones are moving forward, with Wembley at a particularly key point in its development. A viable housing-led mixed use regeneration scheme is being developed for the eastern 'fringe' of Wembley town centre, where part of the council's land at the Ark Elvin Academy will be made available for development and offered as collateral to support a rolling programme of development to deliver key development sites along Wembley High Road and Wembley Hill Road. Grant funding of up to £8m from the GLA and deferred capital receipt from the council's school land will be invested to support the commencement of the programme.
- 6.13 It is envisaged that, working with a development partner, the town centre scheme will deliver 4,000 square metres of commercial floor space and 627 residential units, including 30% affordable housing. Opportunities for the council to acquire sites within the area in order to facilitate and accelerate development, and the provision of affordable housing, are being explored and could be partially supported by RTB receipts investment. Any such site acquisitions would be subject to separate Cabinet approval.

Managing Risks through the Multi-Strand Investment Approach

- 6.14 The primary risk is that the council is unable to invest sufficient RTB funding, to provide replacement affordable homes, within the three year time period for the expenditure of retained RTB receipts and that any unspent amounts are required to be paid to government, with interest. Allied to this is the risk that the council's investment does not secure additional affordable housing for Brent, rather it is used to fund homes that would have been delivered through other means.
- 6.15 The combination of approaches described above will allow for a flexible approach to assure timely expenditure of available receipts, maximisation of the number of replacement affordable homes, support council self-development and the strategic advancement of the Housing Zones. The balance of expenditure between these objectives will depend on a number of factors including the housing market, site opportunities and partner interest. The Housing Investment Board will oversee the allocation and expenditure of RTB receipts across these investment strands including the evaluation of grant submissions from external providers and monitoring scheme delivery.
- 6.16 The table below provides an indication of the expected balance of expenditure from existing and projected retained receipts over the next three years. An annual report accounting for expenditure and providing for any revisions to the approach set out will be brought to Cabinet.

Table: Indicative balance of RTB receipt income and expenditure 2016-19

Indicative receipts and expenditure	2016/17	2017/18	2018/19	Totals
Existing receipts at 31 March 2016	£18,921			
Projected new receipts arising*	£5,650	£5,650	£5,650	-
Total receipts available (cumulative)	£24,571	£30,221	£35,871	-
LA grant to external partners	£3,500	£4,000	£4,000	£11,500
Delivery of council-owned sites	-	£5,000	£5,000	£10,000
Existing acquisitions programme	£3,000	£3,000	£3,000	£9,000
Investment in Housing Zones	£1,500	£3,000	-	£4,500
Sub-total (annual)	£8,000	£15,000	£12,000	£35,000
Sub-total (cumulative)	£8,000	£23,000	£35,000	-

- 6.17 The above table includes both retained and projected RTB receipt amounts. Where investment is expected in council-led projects, separate provision will need to be made within those projects, for balancing capital resources to complement the maximum 30% RTB receipts element that can be attributed to the cost of providing affordable homes.
- 6.18 Detailed regulation and guidance is awaited on the government's requirement for the sale of higher value council homes. Once clarity is

available on the conditions for reinvestment of the retained element of sale proceeds, to provide replacement homes, there may be scope to align this with delivery of the wider RTB receipts programme.

7.0 Financial Implications

7.1 Since 26 March 2015 the following RTB discount levels apply to disposals:

- 3 to 5 years – 35% discount for a house and 50% discount for a flat
- 6 years plus – add 1% per year for houses (up to 70% or the cash maximum – whichever is lower), add 2% per year for flats (up to 70% or the cash maximum – whichever is lower)

7.2 Under the Retention Agreement entered into on 20 July 2012, the 'pool' of retained RTB receipts has reached £19.3m, as at end of 2015/16 Financial Year, with receipts being available to support the provision of new affordable homes up to a required utilisation date of 31 March 2019. Taking into account the projected level of future RTB sales and the legislative changes in March 2015 to the RTB discount rates, this pool of retained receipts will continue to accumulate until such time that the Retention Agreement is terminated.

7.3 The retained RTB receipts can be used to fund no more than 30% of development costs within a period of three years, otherwise the council is required to return, with interest at 4% above base rate, any receipts that breach these conditions. A match funding contribution of 70% of development costs is required, which can be provided by the council as a direct provider or by another provider to whom the 30% retained receipts are transferred.

7.4 To avoid any clawback in 2016/17, total remaining investment of £18.9m is required (£5.7m RTB receipts and £13.2m capital resources) by year end, as indicated in the above table.

8.0 Legal Implications

8.1 Section 17 of the Housing Act 1985 allows councils to acquire land for housing purposes and to dispose of land used for housing purposes to a person or organisation which intends to provide housing accommodation on the land or provide facilities which serve a beneficial purpose in connection with the requirements of persons for whom housing accommodation is provided. The general power of competence under section 1 of the Localism Act 2011 gives local authorities a broad range of powers "to do anything that individuals generally may do" subject to limits within other legislation and there are no adverse limits on the proposed scheme under the current legislation.

8.2 The council has powers under section 24(1) of the Local Government Act 1988 to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation,

improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation. Although this power is subject to consent from the Secretary of State for the purposes of section 25 of the Local Government Act 1988, in 2010 the Secretary issued a general consent under section 25 and that general consent allows, amongst other things, a local authority to provide any person with any financial assistance (other than the disposal of an interest in land or property) for the purposes of or in connection with the matters mentioned in section 24(1) of the 1988 Act.

8.3 Right to Buy receipts must be applied in accordance with relevant legislation and guidance and particularly the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended) and the terms of any agreement reached under section 11(6) of the Local Government Act 2003 modifying the applicability of the regulations. As part of the retention agreement, the GLA has agreed to:

- (i) allow the local authority to retain additional net Right to Buy receipts to fund the provision of replacement stock, limited to 30% of the cost of replacement homes.
- (ii) allow the local authority three years (from the commencement of the agreement) to invest those receipts before asking for the money to be returned.

In return, the council has agreed with the GLA:

- (i) that Right to Buy receipts will not make up more than 30% of total spend on replacement stock, and
- (ii) to return any used receipts to the Secretary of State with interest.

8.4 The retention agreement with the GLA does not require a local authority to complete the building of any home within three years. All that is required is that the local authority should have incurred expenditure sufficient that Right to Buy receipts form no more than 30% of it.

Award of Local Authority Grant to External Housing Providers

8.5 The general power of competence in Section 1 of the Localism Act 2011 may be utilised to give grants to external housing providers, provided there is a good reason to do so. DCLG guidance specifically comments on the option to grant fund housing providers.

8.6 The council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This is a capital programme which proposes to make use of the council resources in order to fund external housing providers in the delivery of affordable homes rather than be required to pay interest to the government on unspent receipts. It places the responsibility

for 70% of the costs of building replacement one for one homes on external housing providers, thereby protecting the borrowing margin of the council and making possible the delivery of larger programmes.

- 8.7 The council is obligated under the Treaty For the Functioning Of The European Union to deal with all bidders for funding in a fair open and transparent way. Therefore, the council must allow fair access to the funding by all potential recipients. This means that the council should advertise the availability of the funds and assess bidders and their bids on predetermined and pre-advertised criteria applicable to all in the same way.
- 8.8 As indicated in paragraph 6.7, it is intended to enter into a grant agreement with each successful external housing provider. This grant agreement will include provision for delivery of the project in line with the application and approval, including time scales having regard to the implications of failure to comply as set by central government. Robust monitoring requirements need to be in place, and contingency plans developed. Provision will be included for clawback of grant if the project is not delivered in accordance with the application and approval.
- 8.9 In order to ensure that the grant does not qualify as procurement activity the council must ensure that there is no pecuniary interest taken in the grant by the external housing provider beyond the general receipt of the funds. Therefore, the council must ensure that it is agreeing to cover actual cost to ensure that no profit element is taken by the provider.
- 8.10 It is clear that each external housing provider who receives a grant may gain an advantage in the market place generally for example, in respect of bidding for funding and work opportunities that could subsequently arise and this raises state aid issues. However, in the circumstances detailed in the body of the report it is not considered such a grant would constitute unlawful state aid. It is not considered that there would be any cross border interest as it is unlikely that the advantage gained by an external housing provider would assist it to bid for services and work in another member state.
- 8.11 Also, it is clear that the funds are available in order to create affordable housing in Brent or its surrounding area and not anywhere else within the European Union. Furthermore, the council is undertaking this route to “remedy a failure in the market place” in that it is making these grants to make good a shortfall in the building of affordable housing. Again grant aid that might otherwise be unlawful is allowable in this context.

9.0 Diversity Implications

- 9.1 An Equality Impact Assessment has been completed for the RTB Programme. No specific equality groups have been identified and/or are anticipated to be adversely affected by the proposals set out in this report. It is anticipated that all equality groups will benefit from the deployment of RTB receipts through:
- Providing more housing choice and improving access to affordable accommodation

- Providing better quality housing across the borough.

10.0 Staffing/Accommodation Implications

- 10.1 There are no immediate staffing or accommodation issues arising from this report.

Background Papers

Brent Cabinet report – Affordable Housing Supply Programme – Right to Buy Receipts 2015 – 2019 (August 2016)

Contact Officers

Chris Trowell, External Partnerships Manager

Chris.trowell@brent.gov.uk

020 98937 4527

Jon Lloyd-Owen, Operational Director, Housing and Culture

Jon.lloyd-owen@brent.gov.uk

020 8937 5199

Phil.porter@brent.gov.uk

020 8937 5937

PHIL PORTER

Strategic Director, Community Wellbeing