

LONDON BOROUGH OF BRENT

**MEETING OF THE EXECUTIVE
14 SEPTEMBER 2004**

FROM THE DIRECTOR OF HOUSING SERVICES

FORWARD PLAN REF: HSG/03-04/20

NAME OF WARD(S)
Stonebridge

REPORT TITLE: STONEBRIDGE HAT – PROPOSED CONTRACTS WITH HYDE HOUSING ASSOCIATION LIMITED/STONEBRIDGE HOUSING ACTION TRUST

Above **Below**
Confidential Line

For: Action

1.0 Summary

1.1 This report describes the outcome of the contract negotiations that have been taking place with Hyde Housing Association Ltd (“Hyde”), for the provision of managing and maintaining (over a thirty year period) those properties that will transfer to the Council upon succession.

2.0 Recommendations

2.1 That Members note the selection of Hyde Housing as the successor landlord by the Stonebridge Housing Action (the HAT) (this subject to the confirmation by the DPM in 2007) and those tenants who so elect will transfer to this landlord.

2.2 That Members agree to enter into a thirty year contract with Hyde Housing Association Limited and subsequently to the novation of the agreement to (a) Community Based Housing Association (to be formed as a subsidiary of Hyde Housing association Limited) upon the succession date, for the provision of housing management services in respect of those properties returning to the Council following the succession procedures, and (b) the Spare Land Protocol being settled with the HAT and Hyde Housing Association Limited subject to:-

2.2.1 consent being given by the Secretary of State under Section 27 of the Housing Act 1985;

2.2.2 the final terms of the contracts be settled to the satisfaction of the Director of Housing and Director of Finance (including the ‘Spare Land Protocol’).

2.3 The Director of Finance be authorised to sign the Local Government (Contracts) Act Certificate in the form set out at Appendix 1 to this report.

2.4 That Members confirm their previous decision for these properties to be accounted for outside the Housing Revenue Account (HRA).

3.0 Financial Implications

3.1 As noted in 7.1.3, in order to avoid the possibility of the Council's existing tenants paying for the transferred stock (through the financially detrimental effect of these properties in the HRA arising from the Housing Revenue Account Subsidy System), the former DTLR has indicated that the DPM will direct that the properties be accounted for in the General Fund. While this will protect the Council's HRA, officers have sought to negotiate arrangements that will also protect the General Fund from having to make any net payment in respect of the stock. The following paragraphs set out those arrangements and assess the risks to the General Fund involved.

3.2 In the following paragraphs the word "Hyde" is used as the operator of the PFI-type contract to refer to either Hyde Housing group itself or the proposed Community Based Housing Association (CBHA), to be formed as a subsidiary of the Hyde Housing Group, to which the contract is intended to be novated. The following paragraphs explain the arrangements for properties being accounted for outside the HRA.

Income accruing to the General Fund

3.3 The stock will be Council owned and the rent will accrue to the GF. The financial analysis assumes that the Council will charge rents at Government formula levels from April 2011, with rents being phased in to those levels in accordance with a pre-set pattern.

3.4 Hyde will be responsible for consulting the Council's tenants on and then providing services such as cleaning and security that are subject to a service charge. Hyde must seek the Council's approval to the service charges proposed (such approval not to be unreasonably withheld), and then will be responsible for collecting the service charges concerned with no implications for charges to the Council in respect of under-recovery etc.

3.5 Under the Capital Finance and Accounting Regulations and different to the position in respect of stock held within the HRA, all RTB receipts will be available to the Council, without there being any contribution to the National Housing Pool.

3.6 Hyde will be responsible for providing services to any leasehold properties arising from the RTB in exchange for its receiving the £10 per property ground rent charge to the leaseholder, with no charges to the General Fund.

Costs to the General Fund

3.7 The General Fund will incur costs in respect of monitoring and managing the contract.

3.8 Hyde's payment will be annual rent due for the transferred stock less the following deductions, which are retained in the General Fund:

3.8.1 2% of the annual rent due subject to a minimum of £25,000 at 2004.05 prices (and indexed at RPI+1%). This amount has been assessed as sufficient to pay for the monitoring role at paragraph 3.7.

3.8.2 0.4% of the annual rent due. This amount has been earmarked to cover the Council's rent loss from properties vacant between lettings.

- 3.8.3 An allowance, which is still being negotiated, in respect of bad debt and rent collection risk.
 - 3.8.4 Amounts in respect of the properties falling below the Availability standard.
 - 3.8.5 Amounts in respect of sub-standard performance.
- 3.9 The rent due less the first 3 items above is referred to as the Unitary Payment in respect of the contract. The following paragraphs outline how the deductions at the fourth and fifth items are made. Note that the contractual requirements contain a range of exceptions where e.g. events that would otherwise lead to deductions are beyond Hyde's control. The following descriptions should be read with this in mind.

Unavailability Deductions

- 3.10 The Availability Standard is the Government's Decent Homes Standard (as may be amended by the incoming Housing Health and Safety Standard Rating which will replace the current Fitness Standard contained in Section 604 of the Housing Act 1985 as amended by Schedule 9 of the Local Government and Housing Act 1989), with the additional requirements that:
- 3.10.1 each contract Property has a current gas safety certificate;
 - 3.10.2 each kitchen of each contract Property is no more than 20 years old;
 - 3.10.3 the bathroom of each contract Property is no more than 30 years old; and
 - 3.10.4 the average age of the kitchens and bathrooms in the contract Properties is not in excess of 6 months more than the average age of the kitchens and bathrooms in the remaining HAT-transferred social rented stock owned by the Operator.
- 3.11 The actions required to remedy a defect in respect of the Availability standard have been allocated Rectification Periods. Provided Hyde remedies the defect within the Rectification Period there is no Unavailability deduction. If the defect extends beyond the rectification Period then deductions are made from the Unitary Payment on a pro rata per property per day basis. Exceptionally, if a property is Unavailable but is not uninhabitable, half this deduction is made.
- 3.12 Hyde is responsible for re-servicing dwellings between lettings, and provided that the Council has allocated the property to an incoming tenant, any delay in re-servicing beyond 2 weeks incurs Unavailability deductions. Exceptionally, high repair costs lead to agreed time extensions.
- 3.13 In main part the Availability standard has been set to secure a good quality of housing for the Council's tenants, which exceeds the Decent Homes standard and is broadly equivalent to that which Hyde's own tenants will enjoy. Exceptionally the current gas safety certificate requirement is to protect tenants and the Council and has no Rectification period (i.e. there must always be one to avoid deductions unless the tenant persistently refuses access).

Performance Deductions

- 3.14 All repairs have a target completion time set in accordance with the Council's targets for repairs to its HRA stock. Failure to complete a pre-set proportion of repairs within these target times, e.g. 91% of Emergency repairs within 4 hours, results in deductions from the Unitary Payment.
- 3.15 Similarly the following performance areas have target times, with similar deductions for performance below standard:
- Racial Harassment
 - Communal Cleaning and Grounds Maintenance
 - Estate Inspections
 - Repair Appointments
 - Telephone Answering
 - Replying to Correspondence
 - Responding to Stage 1 Complaints
- 3.16 Finally rent collection and arrears recovery on the transferred stock is incentivised by comparing Hyde's performance with the Council's/ Brent Housing Partnership's performance. Here, providing that Housing Benefit processing times are equivalent, Hyde makes good any shortfall against the Council's performance, and keeps any excess.

The General Fund Net Position and Risks

- 3.17 Summarising the above, the General Fund's net position is:

Income	Expenditure/Income Foregone	Comment
2% of retained rent income subject to a minimum of £25,000	Monitoring costs	£25,000 represents 2% of the rent income from about 360 units. The minimum amount has been set to cover the costs of a part time Contract Management Officer. Higher volumes of stock transferring incur potentially more management time but also produce larger management budgets.
0.4% of retained rent income	Void losses of up to 2 weeks rent on routine voids and agreed targets on high-cost voids	Investigations indicate that high-cost voids are rare, and that tenancy turnover in the HRA stock is around 5% per annum. 0.2% is therefore enough to cover routine void losses, leaving the balance of a further 0.2% to cover periods over 2 weeks on high-cost voids.

Allowance for bad debts/ rent collection performance	The performance mechanism means that the Council's % loss is equivalent to that in the HRA.	The Allowance being negotiated is targeted to cover the Council's experience of bad debt write-offs with a margin to cover possible future increases.
Availability and performance deductions. Funding from Hyde of the Council's performance monitoring in cases of very poor performance.	Possible heightened management and monitoring costs	Standard performance by Hyde should involve few instances of Unavailability (perhaps around fires and burst pipes) and only modest performance deductions. Monitoring costs should be capable of being contained within the 2% budget noted above. Should Hyde's performance be significantly below par, then the deductions will fund increased management and monitoring, together with Hyde being required to pay for enhanced monitoring costs where their performance is very poor.
RTB receipts – 100% usable	Payments continue in respect of RTB stock in order to compensate Hyde for its outstanding development costs and diseconomies of scale in its on-going management operations. There will be an option to make a one-off payment set at a level to compensate Hyde as above.	Hyde's initial average debt per PFI property is estimated at some £35,000 and will decline over the contract period. Given the maximum discount under RTB is £16,000 and that the current average undiscounted sale price for say, a 2 bedroom Council property is in the region of £132,000 there will adequate resources to pay Hyde their compensation.

3.18 It will be appreciated from the above presentation of the General Fund's income and expenditure that the contract negotiations have been designed to protect the General Fund from any net loss. Officers consider and have been advised by the Council's external consultant, Graham Moody Associates (GMA) that taken together there is little risk for the Council of such losses accruing. It would be prudent to ensure that these properties are separately accounted for within the General Fund and to report the position on the account to Members on an annual basis.

3.19 Other risks for the Council revolve around Hyde's housing management performance, reflecting upon the Council as landlord, and the long-term financial viability of Hyde, and the consequent risk to tenants of disruption in services.

- 3.20 The performance standards set for Hyde have been based upon the Council's own 3-star performance, and, as described above and in section 7, there are financial penalties for sub-standard performance and contract provisions that enable the Council to step in to rectify repairs etc beyond their rectification periods at Hyde's expense.
- 3.21 The performance deduction mechanism will guard against poor performance by Hyde, but should Hyde's performance fall so low as to threaten the Council's reputation as a good landlord then the contract provides the wherewithal to remedy this at Hyde's expense.
- 3.22 In relation to Hyde's long term viability, GMA has examined their Business Plan for the PFI contract and stock transferred to them, together with other wider arrangements, such as the Risk & Reward Fund (see section 7.5), Hyde's responsibilities as parent to the CBHA and the Housing Corporation's powers as regulator of Hyde. The advice is that there is little risk of Hyde failing to meet the contract terms and conditions and of consequent disruption to tenants. GMA also notes that the stock transferred to the Council will have an expected life much longer than the 30-year contract, and that should Hyde's performance deteriorate to the extent that the Council terminated the contract, then the Council should be in a position if it so desired to use the rental stream to pay off outstanding contract sums and take on the contract itself.
- 3.23 GMA's conclusion is that, providing that the DPM does direct that the transferred stock be accounted for in the General Fund, the Council's overall financial position has been safeguarded through the payment arrangements and full use of RTB receipts.

4.0 Staffing Implications

- 4.1 None for the Council. Staff working for the HAT will transfer to Hyde under the Transfer of Undertakings (Protection of Employment) Regulations 1981

5.0 Legal Implications

- 5.1 Section 21 of the Housing Act 1985 provides that the general management, regulation and control of a local authority's houses is vested in and shall be exercised by the authority. This section provides the Council with general housing management powers. Section 27 of the Housing Act 1985 provides that a local housing authority may, with the approval of the Secretary of State, agree that another person shall exercise on behalf of the authority such as the local authority's management functions in relation to such of the authority's houses as are specified in an agreement. Subject therefore to obtaining Secretary of State's consent under Section 27 the Council has power to delegate the housing management functions as envisaged in this I contract to Hyde and subsequently by Deed of Novation to the CBHA.
- 5.2 Section 1 of the Local Government (Contracts) Act 1997 provides that every statutory provision conferring or imposing a function on a local authority confers power on the local authority to enter into a contract with another person for the provision or making available of assets or services or both (whether or not together with goods) for the purposes of, or in connection with, the discharge of the functions by the local authority.

5.3 Section 2(1) of the Act provides that where a local authority is entering into a contract, the contract shall, if it is a *certified contract*, have effect (and be deemed always to have had effect) as if the local authority had a power to enter into it (and exercise that power properly in entering into it). This is the safe harbour provision which has been introduced to remove any uncertainty over legal powers thus allowing a local authority to certify a contract under the Local Government (Contracts) Act 1997 to provide comfort to funders under private finance initiative contracts as to the vires of the local authority. The contract to be entered into by the Council will be a certified contract for the purposes of the Act.

5.4 Section 2 of the Local Government Act 2000 provides:-

“(1) every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects:

(a) the promotion or improvement of the economic well-being of the area;

(b) the promotion or improvement of the social well-being of the area;

(c) the promotion or improvement of the environmental well-being of the area.”

5.5 All HAT tenants have the statutory right to return to the Council on dissolution of the HAT. In practice, the HAT will be obliged to give tenants the option of either returning to the Council as landlord or choosing to become tenants of a new landlord. This will be a Community Based Housing Association ("CBHA") being set up by Hyde which itself will be a social landlord registered with the Housing Corporation and a subsidiary of the Hyde Housing Group. Each tenant will be entitled to inform the HAT if they wish to serve notice that they wish to return to the Council (likely to be some time in 2007). Where a majority of all tenants in a block of flats inform the HAT that they wish to return to the Council then all the tenants will become council tenants. Hyde and, when it is fully established, the CBHA will be carrying out the HAT's housing management functions through a Housing Management Agreement up to the point when the ownership of the Stonebridge Estate transfers to Hyde and/or back to the Council following the succession procedures.

6.0 Diversity Implications

The proposals in this report have been subject to screening and officers believe that there are no diversity implications arising from it. It should be noted that the anticipated contractor for the arrangements will be the CBHA which currently has board representation which reflects the diversity of the Stonebridge Estate. The Council will have a 100% nomination rights to those properties that revert to the Council as a result of the succession procedures and hence future allocations to void properties, as they arise will reflect prevailing council policies

7.0 Detail

7.1 Background

7.1.1 The Council has for some time been co-operating with the HAT in relation to the development of options to bridge the funding gap necessary for the HAT to complete its redevelopment work and disposal of the properties some time in 2007. There is an estimated funding gap of approximately £50 million and the Council have agreed to assist in bridging that gap by entering into a Private Finance Initiative-type contract ("the Contract") with the proposed alternative successor landlord who will be responsible for designing, building, financing and maintaining existing and new units within the HAT area. The succession procedures which are planned for 2007 will give the residents an opportunity to indicate a preference to return as tenants of the Council or to become tenants of the alternative successor landlord. The contract provides the alternative successor landlord will provide housing management services to all those properties that transfer back to the Council.

7.1.2 The reason for the Council agreeing to the arrangement was that in strategic housing terms maximising available financial resources that could be retained for social housing was in the overall interests of both tenants and the Council. Officers did have concerns that if the properties that transfer to the Council were accounted for in the HRA there was a distinct possibility that existing HRA tenants would be subsidising those tenants whose properties reverted to the Council. This arises through the operation of the Housing Revenue Account Subsidy System (HRAS), resulting in a position where Hyde's charge for the properties transferred to the HRA, which would include repayment of Hyde's development costs, would exceed the combined total of Major Repairs Allowance (MRA) and Management and Maintenance allowances available in the HRA in respect of them.

7.1.3 The Council obtained an in principle decision from the former DTLR that those properties that transfer to the Council will be accounted for outside the HRA. The Council's external solicitors (Lawrence Graham LLP) are satisfied that the ODPM are able to give that direction.

7.1.4 On 7th April 2003 a report on the succession strategy for the HAT was submitted to the Executive. Members:

- approved the appointment of Hyde Housing Association as the preferred bidder for a housing PFI in relation to Stonebridge HAT
- consented to the 'Director of Housing' entering into negotiations for a housing PFI style contract with both the Stonebridge Housing Action Trust and Hyde Housing Association, in respect of those properties that transfer back to the Council at the conclusion of the HAT
- noted that officers would report back in due course on the outcome of the PFI negotiations, steps towards the s.27 consent request, any specific authorisations and indemnities sought and other outstanding matters.

7.1.5 Since Hyde were selected as the preferred bidder following the joint procurement between the Council and the HAT, there have been negotiations between the parties and their lawyers about the terms of the contract to be entered into. These negotiations have involved the HAT, the Council and Hyde and where possible the Council and the HAT have taken a consistent line in negotiations as there are a number of issues of similarity between the contract to be entered into with by Council and the Housing Management and Development Agreement to be entered into between the HAT and Hyde.

7.2 **Key provisions of the Contract**

7.2.1 The Office of Government Commerce has issued guidance on the standardisation of PFI contracts. The standardisation is recommended by the Government for use in all PFI contracts. The contract proposed to be entered into between the Council and Hyde has been based on that guidance.

7.2.2 Commencement and Duration

The contract will commence on the date when, following the tenants' succession procedures, the properties (the subject of the contract) return to the Council's ownership. The contract is due to last, subject to any earlier termination, for a period of thirty years from the transfer of the properties to the Council's ownership.

7.2.3 Conditions Precedent

The contract will only commence if:

7.2.3.1 a minimum of fifty residential dwellings return to the Council's ownership following the succession procedures. The reason for this provision is that it is only considered viable to maintain a contract for the management of the HAT properties that return to the Council if a sufficient number of properties are the subject of the contract. It is anticipated that if this situation arises then officers would recommend that these properties would be accounted for within the Council's HRA.

7.2.3.2 All of the other properties which do not transfer to the Council, following the succession procedures, transfer to Hyde. If the Housing Management Agreement or Development Agreement between the HAT and Hyde are terminated such that Hyde (or the CBHA) is not the successor landlord on the succession procedures then the contract between the Council and Hyde will not commence.

7.2.4 The Council will be entering into the contract with Hyde but it is envisaged that a CBHA will take on the contract and as such the Council will be obliged to enter into a Deed of Novation to transfer the obligations in the contract from Hyde to the CBHA. The reference therefore to "Hyde" throughout the rest of this report therefore also includes CBHA when it becomes the Operator under the proposed contract.

7.3 The Services

7.3.1 The contract obliges Hyde to provide housing management services which incorporate rent and service charge collection, tenancy management, issue of tenancy agreements, breach of tenancy agreements, voids, rehousing and lettings, maintenance and repairs, customer service and complaints. They must ensure that all the requirements of the Specification are being met and that good industry practice is followed.

7.3.2 The Specification requires Hyde to comply with the Council's policies in the management of the Stonebridge Estate and the provision of the Services, subject to the following exceptions/clarifications:

(a) General

the Operator shall not be so obliged (A) where any other provision in the Agreement provides to the contrary (in which case the Operator shall notify the Council as soon as reasonably practicable after it becomes aware of any such conflict) or (B) where the Operator is otherwise relieved from its obligations under the Agreement;

(b) Rent Recovery

The Operator shall where possible act in a manner which is consistent with Brent Housing Partnership's Rent Recovery Procedure but is entitled to follow its own procedures where these are consistent with Good Industry Practice; providing such procedures have been approved in advance by the Council.

(c) Anti Social Behaviour

The Operator will refer complex/serious cases to the Anti-Social Behaviour Team to be dealt with by them in accordance with the Policy;

(d) Allocations Procedure

The operational processes will apply as if the Operator were an "other Landlord", as such term is used in the Policy;

(e) Decorations Allowances

In respect of this Policy, the Operator shall only be obliged to take into account the guidance as to when the allowances should be paid and the figures set out in the appendix to the Policy;

7.4 Payment

- 7.4.1 The contract is underpinned by a Payment and Performance Mechanism ("PPM"). Further details about the PPM are contained in this report. However, it is worth highlighting at this stage that, as with most PFI contracts, the concept of "availability" is a crucial one in relation to the payment expected to be made to a contractor. It is usual in a PFI contract for payments only to commence when the subject matter of the contract, usually the physical availability of a building, is in existence. A similar concept has been utilised in this contract so that only if the properties are "available" will Hyde be entitled to receive the full payment (subject to any performance deductions). A property will be available within the terms of this contract if it meets the standards of availability which are set out in the PPM. If the property does not meet those standards but is nonetheless able to be used then a reduced deduction will be levied from the monthly payments due to Hyde.

7.5 Surpluses

If Hyde derives any surpluses from the contract then it has to agree that those surpluses will be ring-fenced in a "Risk & Reward" Fund and used in pre-specified ways, namely:

1. To maintain the financial soundness of the CBHA.
2. Financial support to economic and social regeneration in the Stonebridge Estate. This is intended to continue the work of the HAT and support youth, training and community development activity.
3. Financial support to community assets in the Stonebridge Estate
4. Re-housing of hidden households from the Stonebridge Estate subject to a maximum support of £1 million. The use of this money in regard to hidden households will be determined by the CBHA in line with the operation of the 'Risk and Reward Fund' (including consultative arrangements with the Council). Hidden households basically refers to situations where it may be ascertained according to legislation and/or proper housing practice that there is more than one 'family unit' residing in a dwelling.
5. Expansion of CBHA geographical area of activities in the London Borough of Brent.
6. Provision of additional social and affordable housing in the London Borough of Brent and primarily to meet the housing needs of the local community.

These criteria are essentially in furtherance of the objects of the Operator for the benefit of residents and others living on the Stonebridge Estate or the Operator's other activities within the Borough of Brent. The Council has agreed a degree of control over any changes to these criteria.

7.6 Best Value

In the contract it is acknowledged by Hyde that the Council is subject to the Best Value duty and will do or refrain from doing such actions as the Council reasonably requires in order for it to comply with Best Value including the provision of an annual service report which will contain information which is required by the Specification, including how Hyde will assist the Council in discharging Best Value duty, including providing improvements to the services which do not lead to any increase in the unitary payment.

7.7 Intervening Events

The contract follows the standardisation guidance in relation to the various matters which as at the commencement of a long term contract are unable to be accurately foreseen. The contract includes provisions about how such matters which include force majeure (e.g. civil commotion, terrorism etc.) will be resolved and whether there will be a change to the unitary payment.

7.7.1 Changes In Law

The concept of a qualifying change in law is standard in a PFI contract to the extent that if something is a qualifying change in law then the Operator is entitled to seek an adjustment to the unitary payment if the change in law does legitimately result in an increase in the Operator's costs. To that extent Hyde will be entitled to seek an increase in the unitary payment if there is a change in law which applies specifically to this contract or to a PFI contract.

7.7.2 Compensation Events

Compensation events are various matters which again would entitle the Operator to seek an increase in the unitary payment or to seek relief from performing some of its obligations under the agreement. It is in this area where there has been some variation to the standardisation guidance as a result of the commercial negotiations between the parties. Hyde would be entitled to claim either relief from performing its obligations or to seek compensation (having to prove loss) if any of the following events occurs:-

- a breach by the Council of any of the Council's obligations and/or warranties under this agreement (this is standard);
- a breach by the Council of any of the Council's obligations and/or warranties contained in the Council's Policies or the Information Sharing Protocols (this is standard);
- the occurrence of a Housing Benefit Failure Event. This is defined as including the processing of claims or renewals exceeding the average time taken by local authorities to process claims by 25% or more or the Council's performance in relation to the contract Properties is below the standard received for other Council properties. (This is considered appropriate as such a failure would have a potentially significant effect on the Operator); (NB Clearly officers have taken the view as to the implications for the pricing of the contract of risks around HB performance. The above arrangements essentially envisage that the Council is prepared to take management action on HB performance where such performance appears to moving towards a level that will result in the occurrence of a 'Housing Benefit Failure Event').
- the variation of any leaseholder lease or tenancy agreement without the consent of the Operator. (Again this is considered appropriate to the extent that any change in the agreements may impact on the obligations imposed on the Operator);
- rent set by the Council for the contract Properties are more than 5% under the rents charged by the Operator for the other properties on the Stonebridge Estate;

- costs incurred by the Operator for works on services to leasehold properties are not able to be recovered by virtue of an error or omission in the Lease;
- any negligent deliberate act or omission by the Council materially affecting performance by the Operator of its obligations under the agreement;
- any failure to recover rent arrears which have transferred from the HAT tenancy as a result of the Council's failure to make specific provision in the Council tenancy that transferring arrears will become arrears with the new tenancy.

7.7.3 Relief Events and Events Of Force Majeure

Hyde will be entitled to seek relief from its obligations under the agreement or an increase in its unitary payment if a relief event occurs, e.g. fire, explosion, lightning, storm, discovery of fossils, official or unofficial strike etc. Any event of force majeure is one which causes either party to be unable to comply with all or a material part of its obligations and is as a result of, for example, war, terrorism, nuclear chemical or biological contamination.

7.8 **Performance Monitoring**

Hyde is required to provide for each contract month an availability and performance monitoring report to the Council for the previous contract month. This will generate a unitary payment to Hyde by identifying what, if any, availability and performance deduction should be made from the maximum unitary payment. The Council is provided with the contractual right to observe, inspect and satisfy itself as to the adequacy of Hyde's monitoring of performance at all reasonable times.

7.9 **Council Step In**

7.9.1 This is another area where the Council have deviated from the standardisation guidance by retaining greater capacity to step in to resolve performance failure. In accordance with the standardisation guidance the Council will be entitled to step in and carry out services itself if:

- there is a serious risk to the health and safety of persons or property; or
- to discharge a statutory duty.

7.9.2 Those two instances are the only circumstances envisaged within the standardisation guidance whereby the Council could step in itself to perform the services. However, the Council, wishing to ensure that it can deliver services despite performance deductions being made against Hyde, may step in and perform the service itself or engage someone else to do so if the Council have served a notice on Hyde advising that the performance is inadequate and Hyde have not remedied the problem within a reasonable time after receiving such notice.

7.10 Remedial Process and Recovery Plan

7.10.1 The Council and Hyde have agreed a remedial process which is anticipated to deal with performance related issues in a co-operative, but more importantly a proactive manner. If certain events occur, e.g. three or more events leading to a performance deduction or availability deduction being made in a twelve month period or performance on any performance indicator averaged over a three month period falls below that required then Hyde must undertake a remedial process which involves:-

7.10.2 monitoring and research to identify the cause of the event, preparing a recovery plan which must be agreed with the Council identifying amongst other things the reason for the service failure, what steps would be taken to avoid a recurrence and what additional resources may be necessary. Hyde is required to implement the recovery plan. Failure to implement the recovery plan will itself be an event which could lead to the termination of the contract.

7.11 Termination

The Council will be entitled to terminate the agreement if any of the following events occur:-

- Hyde is wound up;
- an administrator is appointed over Hyde;
- Hyde becomes insolvent;
- Hyde or the CBHA ceases to be a registered social landlord;
- Hyde being in fundamental breach of the obligations under the agreement;
- Hyde fail to prepare a recovery plan (see earlier);
- Hyde materially fails to provide or procure the resources required by a recovery plan within the timescale agreed in the plan or materially fails to implement the recovery plan within the timescale agreed in the plan or such longer time period as the parties may agree.
- Hyde allowing a breach specified in any warning notice to occur six times within a six month period following the date of service of a final warning notice.

7.12 Final Survey

The Council is entitled to deduct 15% of the Unitary Payment from the period 24 months before the expiry of the Contract into a retention fund to be used to carry out any rectification works identified in the final survey or with the Council's consent Hyde can provide a retention bond to the Council in an amount equal to the costs of the rectification works. The final survey can be carried out any time between 36 and 12 months before the expiry date of the contract.

7.13 Spare Land

7.13.1 The HAT's total regeneration activities will result in the demolition of 1,751 homes, the refurbishment of 24 homes and the new build of 1,121 tenanted homes. In addition, land will be released which has the ability to accommodate between 740 and 950 homes, which can be for sale or to rent, at open market or discounted prices. The HAT is reliant on a capital receipt from the Spare Land to deliver all its commitments under its business plan and accepts that the Spare Land can only be used for residential development broadly consistent with the Overall Planning Permission.

7.13.2 A protocol has been developed to ensure that all parties (the HAT, Hyde, the Council and the local community) are involved in the process of determining the use of the Spare Land (which will be signed by the HAT, Hyde and the Council. It is a complex one which requires balancing a number of key demands and variables including:

- The needs of the HAT's business plan;
- The need to re-house all HAT secure tenants;
- Issues of design and density;
- Issues of tenure;
- The current housing crisis in Brent and the need to contribute to its resolution;
- Tenants desire to see the problem of hidden households resolved;
- A desire to contribute to the national agenda on sustainable communities and the need to house key workers; and
- The need to re-establish a vibrant sales market on the Stonebridge Estate

7.13.3 The proposed mechanism for resolving these issues and tensions is as follows:

- i) The HAT will seek to agree design codes for each Spare Land site in consultation with Hyde and the Council. The design codes will include guidance on design, form, density, mix, tenure and unit sizes.
- ii) The HAT will establish how the target valuations will be achieved in terms of use, mix, density etc.
- iii) If appropriate, the HAT will prepare marketing literature (including dates for availability and site condition e.g. cleared or with existing buildings left) for the first Spare Land site to become available and seek unconditional bids from a list of developers
- iv) The HAT, Hyde and the Council will discuss the possibility of Hyde and/or Brent 'underwriting' this target income and if agreement cannot be reached the HAT will submit a business case to ODPM and English Partnerships to 'underwrite' the value.

This procedure will be reviewed by the HAT, Hyde and the Council on 1 April 2005.

8.0 Background Information

Stonebridge Housing Action Trust files
Report to Housing Committee 24 March 1999
Report to Executive 7 April 2003

Any person wishing to inspect the above papers should contact the report's author:

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