



**Executive**  
9<sup>th</sup> October 2006

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

For Action

Wards Affected:  
Stonebridge

**Stonebridge Housing Action Trust – Tenants’ Choice of  
Successor Landlord**

Forward Plan Ref: H&CC 06/07-04  
H&CC 06/07-12

**1.0 Summary**

- 1.1 This report concerns the right of Stonebridge tenants to choose between the council and Hillside Housing Trust as their future landlord, when Stonebridge HAT is wound up in 2007; and seeks members’ agreement to the terms of the council’s offer to Stonebridge tenants.

**2.0 Recommendations**

- 2.1 That members note the statutory right of Stonebridge Housing Action Trust (HAT) tenants to choose between the council and Hillside Housing Trust (Hillside) or the council and Willow Housing and Care (Willow) in the case of Newcroft House, as their successor landlord when the HAT is wound up in 2007; that there will be a form of ballot in November for the tenants of Newcroft and for the bulk of Stonebridge tenants in January/February 2007 to enable tenants to make that choice; and that there is a need for the council to inform the tenants in writing (the ‘offer’) of the terms under which they would return to the council.
- 2.2 That members note that the council has entered into a ‘PFI style’ management contract for Hillside to manage any properties which may return to the council; that this impacts on the terms of the offer the council may make; and that tenants should be informed of this fact.
- 2.3 That members agree that the terms and conditions under which Stonebridge tenants may choose to return to the council are, as far as possible, the same

as for all other council tenants in the borough; and that, if for legal reasons it proves necessary, immediately on succession the council will begin the processes required to move tenants from the form of tenancy terms and conditions inherited from the HAT to the council's current terms and conditions.

- 2.4 That members agree that tenants returning to the council will pay the target rent for their new homes as soon as possible; that members instruct officers to review the financial impact of any tenants transferring to the council subject to the HAT's rent phasing scheme, where this brings the rent charged below the management fee due to Hillside, with a view to minimising any possible deficit; that members instruct officers to take all possible steps including setting up advice surgeries to give information to affected tenants on available benefits; and that tenants be made aware of these matters in the offer document.
- 2.5 That, as an exception to the approach at 2.4 above, if tenants of Newcroft return to the council they will be offered rent phasing, as this can be financed from the projected surplus arising in the event of these tenants transferring to the council.
- 2.6 That members agree that the council's normal policy with respect to tenancy terms and conditions, including succession and assignment rights will apply to Stonebridge tenants.
- 2.7 That members note the position in relation to Hillside's intended windfall payment and agree that the council will not make a similar offer.
- 2.8 That members note the position in relation to Hillside's intended 'Homebuy' incentive and agree that the council will not make a similar offer.
- 2.9 That members note the position in respect of building defects in some new properties and the agreement by Hyde to honour the principle that the council transferred this risk with the PFI style contract and that therefore no costs will fall to the council.
- 2.10 That, at this time, members agree not to offer to Hillside the 'trickle transfer' of council properties at Stonebridge, as they become vacant.
- 2.11 That members note the position in relation to Newcroft House and agree that Willow Housing and Care will be the council's agent and provide management, maintenance and care services to elderly tenants, in the event that a majority of HAT secure tenants at Newcroft choose the council as their landlord.
- 2.12 That members delegate to the Director of Housing and Community Care the authority to agree the form of tenancy agreement to be offered to the tenants of Newcroft House, on condition that the agreement be substantially the same as that of other council tenants in the borough.
- 2.13 That members delegate to the Director of Housing and Community Care the authority to agree, on legal advice, the basis on which Willow will manage any

Newcroft properties transferring to the council, if it does not simply novate on transfer of those properties.

- 2.14 That members delegate to the Director of Housing and Community Care the authority to finalise and issue an offer document which commends Willow as a landlord to the tenants, but gives adequate information and a welcoming message to tenants who may wish to transfer to the council.
- 2.15 That members agree in relation to Newcroft to 'trickle transfer' council properties to Willow, as tenancies terminate and the properties are vacated, as this is in line with the earlier transfer of council sheltered stock to Willow; and that members delegate to the Director of Housing and Community Care the authority to agree, on legal advice, the terms and conditions of those transfers.

### **3.0 Detail**

- 3.1 As members are aware, Stonebridge Housing Action Trust (HAT) was established in July 1994 as the regeneration vehicle for Stonebridge estate, which at the time comprised 1775 council dwellings. Only six HATs were set up across the country, Stonebridge being the last. HATs are public bodies set up for a limited period to bring about sustainable and long lasting improvement to living conditions in areas of run down local authority housing.
- 3.2 They have four statutory objectives: to repair and improve their housing; to manage the housing effectively; to encourage diversity of tenure; and to improve the social, environmental and living conditions of their area. In the case of Stonebridge, this entails redeveloping all the system-built housing, with only one non-system block being retained and refurbished.
- 3.3 Phases 1 and 2 of the new build (793 units) have been completed and phase 3 (352 units) is under construction and will be completed in 2007. These developments total 1145 units which the HAT believe should be sufficient to rehouse tenants remaining in the old blocks, allowing for some natural turnover and some off-site rehousing. The HAT also retains an option to have built 50 family size rented homes for existing tenants, if still required, within subsequent developments at Stonebridge by Hyde (see below).
- 3.4 As a time-limited body (and already having had an extension of two years) Stonebridge HAT must be wound up in 2007, transferring all its assets to successor bodies. The HAT is required to offer tenants a choice of landlord, the choice being between the council and an alternative successor landlord. English Partnerships is the residuary body with responsibility to ensure that any outstanding work is completed in accordance with agreed programmes and resources.
- 3.5 The HAT has received considerable government grant funding but, in common with all other HATs, this soon proved insufficient to achieve the full regeneration of Stonebridge, in accordance with the development objectives and agreed master plan. Furthermore, the maximum grant available was a fixed cash sum and building-cost inflation and other unavoidable cost

increases widened the financial gap over time. The HAT, in consultation with the council and the responsible government department, has considered the options available and developed a financial strategy which will maximise income into the scheme.

- 3.6 The council has been fully consulted on and has agreed to the financial strategy because it enables the redevelopment of Stonebridge estate to be completed and also delivers the wider regeneration objectives, to the benefit of the residents and indeed to the council. This strategy centres on an RSL (registered social landlord) partner being brought in to lever in private finance, in order to augment the government funding. Hyde Housing Association was selected as preferred bidder and the Executive approved this on 7<sup>th</sup> April 2003. Hyde has provided £30m of funding to build the third phase of new housing development as referred to in paragraph 3.3 above.
- 3.7 The main asset from which more income may be generated is the residual land after completing the three phases of social housing for existing Stonebridge tenants. As preferred bidder, Hyde is asked to complete the development obligations of the HAT, in return for the residual or 'spare' land at an agreed valuation. Hyde then bears the risk of any shortfall and there is an agreed mechanism for dealing with any surplus which might arise, most of which would be ploughed back into Stonebridge. One of the HAT's statutory objectives is to diversify tenure and much of the spare land will be developed as housing for sale or for shared ownership.
- 3.8 Hyde has also set up a community based housing association specifically for Stonebridge, to act as the successor landlord offered to tenants as an alternative to the council. This is Hillside Housing Trust which is managed by a board of 15 people, of whom nine are residents, one is a Brent councillor, one a Hyde nominee and four are independent members selected by the rest of the board for their particular experience and expertise. Hillside already manages the HAT's housing stock and is operationally responsible for development work and economic and social regeneration activities.
- 3.9 The value of the spare land alone was not sufficient to meet the financial requirements of the HAT's business plan and a secondary but essential element of the financial strategy is to capture the finance which can be raised against the continuing rental income stream from the newly built homes. The HAT will transfer the new homes for nil consideration to the successor landlord(s) and so, allowing for ongoing management and maintenance costs, rents can be used to service borrowing. However, the tenants' statutory right to choose their landlord poses a large risk for the incoming RSL, which could not guarantee future rental income in a situation where tenants may choose the council.
- 3.10 To overcome this risk and give some financial certainty to the HAT's business plan, a contract option was proposed whereby the RSL (Hillside as it has become) will manage and maintain all of the homes, including those of tenants who choose to return to the council. In their business plan Hillside has assumed that at least 80% of HAT properties will transfer to them, with up to 20% going to the council. The approach was supported by the former

Department of Transport, Local Government and the Regions (subsequently ODPM and now DCLG). It was discussed and developed jointly between the HAT and the council. The first report was to the Housing Committee of 24<sup>th</sup> March 1999, which agreed the principle of the contract option. On 7<sup>th</sup> April 2003, the Executive approved the appointment of Hyde as preferred bidder for the contract option and agreed to the Director of Housing negotiating with both the HAT and Hyde on the details of this arrangement. Finally on 14<sup>th</sup> September 2004, the Executive agreed to enter into a thirty year contract initially with Hyde (now with Hillside through novation of the contract) on the succession date (when the HAT hands over its property holding) for the provision of housing management services in respect of properties where the tenants have chosen the council as their successor landlord.

- 3.11 It is worth repeating that the council agreed to this is in order to help maximise financial resources available for social housing and to assure completion of the Stonebridge project in accordance with the expectations of residents and to the overall benefit of the borough. The arrangement is outside the Housing Revenue Account (HRA) to avoid a potential negative housing subsidy impact and was set up to have neutral effect on the council's finances. Allowances have been made to meet the council's costs in managing the contract and there are penalty provisions in place for poor performance and the ability in extreme circumstances to terminate the contract. There is also a 'de minimis' condition whereby a minimum of 50 properties must transfer to the council for the contract to commence. The council does however have the discretion to enter into the agreement, even in the event of receiving fewer than 50 units.

### **Ballot Date**

- 3.12 It is intended that the HAT be finally wound up at the end of September 2007, handing over any outstanding issues to English Partnerships. The HAT will effectively cease operations on 1<sup>st</sup> July (first dissolution date) after which it cannot enter into any contracts and will merely tidy up its affairs prior to final dissolution. The HAT needs three months between the date of the transfer of properties and the first dissolution date and also calculates that a minimum of six weeks will be required after the ballot result to execute the property transfer. This means that the ballot will be held in January/February 2007 and the succession date (the date of transfer of the HAT's assets) will be 2<sup>nd</sup> April 2007.
- 3.13 Some tenants will not have moved into their new homes by the time of the ballot or even have been allocated new homes. And there are other scenarios for which it is unclear whether it would be appropriate to ballot the tenants concerned. The issues are more complicated where tenants are allocated to blocks of flats where the choice is based on the wishes of the majority in the block. The HAT is currently seeking further legal advice on these issues, but members should note the possibility of a subsequent ballot or ballots to 'mop up' a small number of tenants.
- 3.14 The HAT is responsible for setting up the 'ballot' process and for presenting information to the tenants in a clear and fair manner, on which they can base their choice. Both Hillside and the council will prepare written information

which sets out the 'offer' each is making to the Stonebridge tenants. An independent tenants' adviser (First Call) has been appointed to assist tenants in interpreting the information.

- 3.15 In legal terms, the HAT must give notice to secure tenants that it proposes to dispose of their properties to Hillside Housing Trust unless the tenant makes representations that they wish to become tenants of the council. The choice for tenants living in houses is an individual one but for tenants in blocks of flats, it is a majority decision on a block by block basis. For fairness and clarity, this will be in the form of a ballot conducted by the Electoral Reform Society. Only secure tenants can 'vote' on the basis of one vote per household and joint tenancies have only one vote between them. Leaseholders, and tenants who have lost security of tenure but remain in occupation, do not have the right to choose and the HAT will ask the Secretary of State to consent to their transfer to Hillside. The HAT will also seek consent to transfer to Hillside any vacant properties or those where the tenant has failed to vote.

### **The Offer to Tenants**

- 3.16 Hillside naturally wants to make an attractive offer to tenants as their business plan is predicated on gaining at least 80% of the properties. They intend to offer a number of incentives to encourage tenants to choose Hillside as their landlord. The question therefore arises as to what will be the corresponding offer from the council.
- 3.17 The council has actively co-operated with initiatives designed to secure the finance required to see the regeneration of Stonebridge completed successfully. This includes the approval of Hyde as preferred bidder and agreement to the 'PFI' contract, which has been to three previous council decision making meetings. The council has agreed that tenants choosing the council as their future landlord would have their properties managed by Hillside Housing Trust for a period of thirty years in return for an agreed management fee (the Unitary Payment).
- 3.18 The information provided by Hillside and the council must make clear to tenants what are the likely consequences of their choosing either one as their landlord. This will cover tenancy rights, rents and service charges, standards of housing management and repairs service, transfers, governance and residents' involvement. Because the 'PFI' contract was designed around having a common set of standards whoever was landlord, much of the comparative information will be the same in either case.
- 3.19 There are however some specific issues in relation to discretionary aspects of the two offers to be made, on which a council decision will be required. In considering these members will have to be mindful of the agreement already made with Hillside and the possible financial impact of any decisions. These issues are set out in more detail below.

## Rents

- 3.20 The 'PFI' contract allows the council to set its own rents. Under current policy council target rents would follow the government formula aimed at converging local authority and RSL rents within any given region. Council officers have agreed the HAT's valuations as the starting point for its rent calculations (the HAT has used Savills, the same valuation firm used by the council). In these circumstances it is envisaged that, using the same government formula, council and Hillside rents for Stonebridge will be the same.
- 3.21 However, the council should not fetter its future discretion on rent setting and cannot guarantee future rents, therefore statements to tenants will need to be qualified to allow for this. The council will pay a fee to Hillside for managing any properties transferring to the council, in accordance with the 'PFI' agreement. The council could not afford to charge less than the level of rent set out in that agreement, unless it was prepared to subsidise Stonebridge tenants at the expense of council tax payers. In relation to target rents, this would only be a problem in practice if the government chose to completely change its rent policy (but see below on rent phasing).
- 3.22 Tenants of both Hillside and the council will start with the rent set by the HAT at April 2007. The table below sets out the rents it is estimated the council would charge up to 2012/13, on the basis of following current government policy with an assumed inflation rate of 2.5% per year. It is recommended that these rents be published to inform tenants in making their choice of landlord, as the best estimates that can be made, but pointing out that actual rents may differ with variations in the retail price index or changes in government policy .

### Indicative Rent Levels 2006/07 to 2012/13

	2006/07 £	2007/08 £	2008/09 £	2009/10 £	2010/11 £	2011/12 £	2012/13 £
1 bed flat	72.60	75.78	79.29	82.50	84.97	87.52	90.15
2 bed flat	81.23	84.88	88.70	92.69	96.87	101.22	106.72
2 bed hse	92.34	96.49	100.84	105.37	109.26	112.54	115.92
3 bed hse	100.09	104.59	109.30	114.22	119.36	123.35	127.05
4 bed hse	110.47	115.36	118.82	122.39	126.06	129.84	133.74

### Rent phasing

- 3.23 As rents are now related to the capital value of the property, the target rent of new properties is generally significantly higher than the rent of the old Stonebridge properties (on average about £47 p.w. more). So that tenants were not faced with a sudden sharp rent increase, since the first tenants moved in 1999, the HAT has been phasing in target rents over three years. This amounts to a discount of approximately £31 in year one, £15 in year two, moving onto the full rent for the new home in year three. Hillside intends to offer to continue the HAT's rent phasing policy and the question will arise as to whether the council will offer the same to any tenants returning to the council.

- 3.24 The PFI agreement sets out a formula for calculating the fee to be paid to Hillside for housing management services in relation to the council's properties. This is based on a projection of target rents as they were expected to be in 2003/04. If the council sets rents below the amount to be paid to Hillside, it will have to meet the shortfall from elsewhere. As these properties are outside the HRA, this means subsidising Stonebridge tenants from the General Fund.
- 3.25 It is very difficult to estimate the range of the possible financial impact on the council. The HAT has estimated that 313 tenants moving in the final phase will be subject to rent phasing as at April 2007, with 93 in the first year and 220 in the second. Assuming that say 20% of the 313 tenants subject to rent phasing chose the council (in line with Hillside's business plan) and they were proportionately spread over the three phases, this would suggest a total rent discount of about £66,000 in the first year and £15,000 in the second. This would mean the council would be short of this amount to pay Hillside under the management agreement. The figures could be higher or lower depending on the numbers transferring to the council.
- 3.26 Given that the council agreed the 'PFI style' contract with Hillside on the basis of a low financial risk, it is recommended that the rent phasing is not offered to tenants choosing the council as landlord.
- 3.27 Both the council and Hillside will inherit the rent as fixed by the HAT for April 2007, including the discounted rent where this applies. If members agree not to offer rent phasing, the council may still have the rents for some tenants fixed at a level below that of the unitary payment due to Hillside. This will leave the council in a deficit position which is extremely difficult to estimate. Officers will review this position immediately on knowing the detailed ballot results at the beginning of March 2007. It may be that the council will have to consider increasing the rent in mid year to minimise any financial deficit which would have to be born by the General Fund. It is recommended that tenants be warned of this possibility in the information sent to them as part of the council's offer.

### **Rent arrears**

- 3.28 Hillside will be responsible for recovering any arrears of rent or service charges, including arrears due before the succession date. Stonebridge tenants are currently secure tenants and would remain secure tenants. There is no break in the tenancy (although the terms and conditions of it may change) and so any rent arrears remain current arrears.
- 3.29 There is no requirement on the council to negotiate ownership of arrears arising before the succession date and these would be pursued by Hillside in the normal way. Past debts would not impact on the council's ability to pay future fees to Hillside.



## **Tenants' service charges**

- 3.30 The position on service charges for tenants will be similar to rents as the service standards for both sets of tenants will be the same i.e. no difference in charges. In the PFI contract service charges are to be based on the actual cost of providing the services. The contract requires Hillside to report on actual costs at the end of each year and to project future costs. Annual adjustments may need to be made to account for actual costs varying from projected.

## **Succession and assignment rights**

- 3.31 It is understood that Hillside is likely to offer tenants two successions to their tenancies. Council policy is that there is generally only one right of succession, other than in exceptional circumstances. For any tenants voting to return to the council, their secure tenancy continues with no break and therefore there are no new succession rights arising. Offering a second right to succeed would give Stonebridge tenants a right which other council tenants do not have. It is recommended that normal council policy on succession and assignment is applied.

## **Terms and conditions of tenancy**

- 3.32 The PFI style agreement with Hillside assumes that the form of tenancy agreement between the council and any tenants returning to it will be the same as that currently applicable to other council tenants, namely the one that was varied with effect from March 2004. Although substantially the same as the terms and conditions of the standard Stonebridge tenancy, there are some material differences that reflect for example the council's approach to handling nuisance, harassment or disrepair. The council's current tenancy agreement was the result of considerable consultation with tenants, as well as a members' task group and received the Plain English Campaign's 'Crystal Mark'. Because Hillside cannot offer secure tenancies there will be differences in how the two types of tenancy will need to be managed anyway and retaining the Stonebridge agreement will not eliminate that difference.
- 3.33 For these reasons officers recommend that those tenants who opt to return to the council receive the council's current tenancy agreement and that a copy of this is sent to tenants with the council's offer document. Members should note, however, that if for legal reasons the council's current tenancy cannot be imposed on tenants as they transfer, it will be necessary to follow a statutory procedure which involves a consultation process. If this proves necessary and members agree, the process will be started immediately following the transfer in April 2007.

## **Windfall payment**

- 3.34 Hillside is considering, subject to the consent of their board, offering a £1,000 windfall payment to tenants who choose them as their landlord. This is lawful and has been used before in HAT succession ballots. In a letter to officers, Hillside has justified making this offer on the basis that in encouraging

residents to opt for Hillside, it is protecting the original £30m investment which its parent body, Hyde HA, is putting into Stonebridge. Further reasons set out in their letter, are as follows:

- a high vote for Hillside will mean that Hillside/Hyde can renegotiate its loans at a more favourable rate and it is believed that residents who make this possible should share the benefit
- that the windfall payment would itself have a regenerative effect within the area and
- the payment is recognition of the disturbance that residents have endured over the years.

3.35 The council does not have any budget for making a similar payment and does not gain financially from recruiting more tenants at Stonebridge. The payment would have to be paid for out of the General Fund. It is questionable whether the council has the power to make such a payment in any event. Officers do not recommend the council matches the windfall payment offered by Hillside.

### **'Homebuy' incentive**

3.36 Hillside intends to offer a 'Homebuy' option to their tenants, similar to the government promoted Homebuy scheme being taken up by some RSLs, but with some differences. Hillside tenants will be able to purchase a share of their existing home, typically 50%, with the option of 'staircasing' in 25% tranches up to 100%. It would differ from standard shared ownership arrangements in that no rent would be payable on the remaining share retained by Hillside (although there would be service charges). There is no discount on the purchase price.

3.37 The precise way in which the finances work for Hillside is not known but clearly they subsidise the retained share of the unit (in charging no rent) but they gain a capital receipt and potentially benefit from further receipts and enhanced values as further shares are purchased and the property ultimately resold. Hillside have said in a letter to officers that they will recycle 80% of capital receipts within Stonebridge and will also replace any nomination rights lost to the council through 'Homebuy' disposals. Tenants wishing to resell within three years will be liable to repay the rent subsidy on the proportion of equity retained by Hillside and Hillside will also have first refusal to repurchase any properties being resold.

3.38 It is not recommended that the council offers this option to any tenants choosing the council as landlord. This would be to treat Stonebridge tenants differently from all other council tenants. If members were minded to offer this option, officers would need to report further on the legal and financial issues before it could be confirmed.

### **Building Defects**

3.39 It is reported that there are a number of defects in phases 1 and 2 new build and that the contractors concerned cannot be made to correct these. These are still the subject of further investigation but are described by Hillside as follows:

- latent defects on patio doors/threshold details
- metal framed windows suffering excessive condensation
- gas boilers
- hot water cylinders
- subsidence on a limited number of properties for which an NHBD claim has been lodged.

3.40 The council has no budget set aside to remedy defects in the homes of tenants transferring to the council. It also does not have the benefit of any income from the rent, as this is effectively all paid to Hillside for managing and maintaining the properties. Officers wrote to the HAT rejecting the proposition that defective properties could be transferred to the council and stating that it is the HAT's responsibility to ensure that all properties, whichever way they transfer, should be remedied. The HAT has met with Hyde and Hillside to discuss an arrangement whereby Hyde/Hillside would take on the liability of repairing all the defective homes, whoever becomes the successor landlord. The negotiations between Hyde and the HAT have still to be completed, but Hyde has written to council officers via email accepting the principle that at the time it entered into the PFI style agreement, the council transferred the risk of maintaining its properties to Hyde and the council will not therefore incur any of the cost of rectifying the defects. This means that in its offer document the council will be able to say that any tenant affected by these defects who chooses to return to the council, will have those defects remedied by Hillside as the agent responsible for maintaining the council's property.

### **Economic and Social Regeneration Programmes**

3.41 Hillside currently delivers a considerable number of economic and social programmes such as employment, training, education and youth projects. There has been a particular emphasis on projects supporting young people such as the Stonebridge Youth Forum, After School Support Programme, Bears Youth Challenge Hard-2-Reach programme, Life FM community radio and sporting activities. Hillside will continue to deliver these programmes to Stonebridge residents so that its role is more than simply housing management. Hillside will also own and manage The Pavilion – the sports centre at Stonebridge Recreation Ground with its new 'Astroturf' pitch and other games areas, as well as Hillside Hub – the community centre, providing café, community hall, meeting rooms and IT training room. A strong presence by Hillside will help to ensure that the regeneration of Stonebridge continues beyond the completion of the new buildings and that the gains made are sustained over the longer term. Hillside will be featuring this extended part of its services in its promotional literature.

### **Trickle Transfers**

3.42 The term of the management contract with Hillside is 30 years, provided it is not terminated early through default of either party. In most respects the council's role with any properties transferring to the council will be minimal during that period. The HAT has asked that the council considers transferring the ownership of any council properties to Hillside, as they fall vacant (known as 'trickle transfers'). This would be in line with the supportive stance the

council has taken towards the HAT's succession strategy (as with the 'PFI' contract). It would meet the obligation to offer existing secure tenants at Stonebridge the right to return to the council as trickle transfers will only be triggered on termination of that tenancy. If members are in agreement with the principle of trickle transfers, officers would recommend making it conditional on the council having 100% nomination rights to these units (as opposed to 75% of other Hillside properties) and on Hillside meeting any council costs arising from the transfers.

- 3.43 On the other hand, there is no pressing need to decide this now. Members may consider it more appropriate to know how many tenants choose the council and also to see how Hillside performs under the 'PFI' style contract, before making this decision. Officers recommend that members do not agree to 'trickle transfers' at this time.

### **Newcroft Sheltered Housing Scheme**

- 3.44 The position of Newcroft is a special case within the Stonebridge succession arrangements. Newcroft is a new sheltered housing scheme of 39 units built by Willow Housing and Care (Willow) on the site of the former council scheme called Viant House, just outside but immediately adjacent to Stonebridge estate. It was developed as part of the agreement between the council and Willow whereby they took transfer of all the council's sheltered housing stock. There was also a sheltered scheme within Stonebridge estate called Stonecroft, which was to be demolished. By itself, the HAT did not have sufficient demand for sheltered housing to develop a viable replacement scheme, so an agreement was reached for the HAT to part fund the Newcroft development.
- 3.45 In return for the funding, the HAT gained 27 units on 999 year leases within the Newcroft scheme, thus allowing them to guarantee the availability of sheltered housing provision for their own elderly tenants. A condition of the lease is that Willow provides management, maintenance and care services for the HAT tenants.
- 3.46 The 27 HAT tenants within Newcroft are secure tenants and have the same right to choose their future landlord. Willow owns the building and there are 12 Willow tenants alongside the HAT tenants. The management of the building cannot be split between two operators and Willow is a specialist provider of housing and care services to older people. Given these facts, the HAT has decided that Willow will be offered as alternative successor landlord for HAT tenants in Newcroft, rather than Hillside. Hillside will be granted nomination rights, so that they can always offer access to sheltered housing for their elderly residents who require it.
- 3.47 The HAT and Willow wish to hold a separate and earlier 'ballot' for the Newcroft tenants, so as avoid confusion with the different choice being offered to other tenants. The ballot will be held in November/December 2006. Members should note that this will involve only the 27 HAT tenants within Newcroft and the result will be based on a majority vote. If the majority choose the council, then the council would receive all 27 properties on a long

lease. Willow was created to receive the transfer of all the council's sheltered housing stock and is the borough's specialist sheltered housing operator. On the same reasoning as the HAT, it is recommended that any Newcroft tenants transferring back to the council are managed by Willow and this is made clear in any consultation material given to the tenants. Should the transfer to the council happen, the council will takeover the current lease arrangement, which has an associated service agreement with Willow. The existing service contract will either need to be novated to the council or a fresh contract with Willow negotiated and it is recommended that authority is delegated to the Director of Housing and Community Care to finalise and agree the form of management agreement with Willow.

- 3.48 The council promoted the setting up of Willow to receive the council's sheltered housing stock and campaigned to persuade sheltered tenants to vote to transfer to Willow as the borough's specialist provider of housing and care services for elderly people. Officers continue to work in partnership with Willow to maintain and enhance its role. In light of this and as the council no longer has any sheltered provision of its own, officers recommend that the council commends Willow Housing to Newcroft tenants as their future landlord and that this message is conveyed in the offer document.
- 3.49 If the majority of the sheltered tenants nevertheless vote to return to the council, it is recommended that this choice is honoured for the life of the tenancy but that voids are 'trickle-transferred' to Willow as they subsequently arise.
- 3.50 It is still important that Newcroft tenants are provided with a proper opportunity to make a choice and are given adequate information in the offer document. The document will still be welcoming to tenants who wish to transfer to the council and officers will attend meetings at the sheltered scheme to explain the council's positions and answer questions. The offer to be made to Newcroft residents is somewhat simpler than the main offer but members should be aware of the following considerations.
- 3.51 The occupational rent is fixed in the same way as other rents so that council and Willow rents are expected to be the same. Similarly, service charges are levied on the basis of actual costs incurred. In the current year, the HAT collects a total annual income (assuming all 27 units are occupied) of £151,083 and pays a management fee to Willow of £90,000. Thus there is an annual surplus of £61,000. It is understood that only one tenant is currently affected by the rent phasing discount (although this can change as new tenants move in). Given the surplus, it would be possible for the council to continue the HAT's rent phasing discount for Newcroft tenants and this is recommended. Although the specific case of Newcroft was not discussed with government officials alongside the 'PFI' contract, officers believe that in the event of these leases transferring to the council, there would be no difficulty in getting ministerial consent to hold these outside the HRA with the other Stonebridge properties. Members will note therefore, that there is the possibility of a surplus being generated at Newcroft which could be held to offset the risk of other expenditure on Stonebridge properties, but there is currently no certainty of these leases or this surplus coming to the council.

3.52 Other issues with the offer from Hillside such as the windfall payment, homebuy and building defects do not arise here. As secure tenants, any council tenant at Newcroft has the same rights as other Stonebridge secure tenants although the right to buy is not exercisable in sheltered housing. The right to succession is available for spouses or other qualifying members of the family, where applicable. The HAT's service agreement with Willow is based on a common service standard within the Newcroft scheme and the council would replicate this in any agreement with Willow, including the additional services and social activities which Willow provides, so that tenants would receive an identical service whoever is their landlord. It is recommended that the Executive agrees to delegate authority to the Director of Housing and Community Care to prepare a simple offer document for Newcroft tenants, reflecting the position set out in paragraphs 3.44 to 3.52 above.

#### **4.0 Financial Implications**

- 4.1 The previously agreed 'PFI' contract arrangement with Hillside was designed to have a neutral financial effect on the council, in the event of properties returning to the council as a result of the choice which tenants may make. Hillside will be responsible for managing and maintaining such properties on behalf of the council and the full cost of the services will be met out of the 'Unitary Payment' the council makes to Hillside. Any properties returning to the council would be held outside the HRA and there are provisions in the contract to retain a sum to cover the cost of monitoring the contract. The recommendations made by officers in this report are designed in part to minimise any risk of financial consequences arising from the transfer of HAT tenants back to the council. Members should be aware of the possible financial implications should their decisions vary from those recommendations.
- 4.2 The main consideration is that future rents set by the council for Stonebridge should cover the obligation to make the Unitary Payment to Hillside. This also encompasses the possibility of receiving tenants who have discounted rents, in line with the HAT's rent phasing policy or any potential decision to continue the rent phasing policy for those tenants. It is difficult to predict the financial impact as it depends on the number of tenants transferring and whether they are on discounts and at which part of the phasing cycle. Members are alerted to the possibility of needing to consider increasing the rents of tenants who are subject to the HAT's rent phasing scheme and who transfer to the council. If this is not done, equivalent savings will need to be identified to cover the difference between rent received and the Unitary Payment due to Hillside.
- 4.3 The HAT's lease with Willow for 27 units in Newcroft sheltered scheme appears to operate at a surplus from the HAT's perspective. Should the majority of Newcroft tenants choose to return to the council, the council would inherit this surplus and it could be used to offset any deficits arising from the transfer of other Stonebridge properties. However, there is no certainty that these tenants will choose the council and so members should not rely in their decision making on this surplus being available.

- 4.4 There was a potential financial risk to the council in receiving transfer of properties with building defects. The legal liability for these defects seemed uncertain. However, the agreement reached with Hyde appears to have dealt with this issue so that there is now no identified financial risk from these building defects, no matter how many or which tenants choose to transfer back to the council.
- 4.5 The council would gain a capital receipt from any properties sold to tenants under the right to buy. As it is outside the HRA, all of the receipt would be fully usable without need for a contribution to the governments pooling arrangements, to pay off local authority housing debt.
- 4.6 A budget of £10,000 is available to meet the cost of printing the 'offer' documents and this is expected to be sufficient. Other minor costs arising will be covered by existing budgets and any further publicity and communications activity will be limited to staff time attending public meetings.

## **5.0 Legal Implications**

- 5.1 Housing Action Trusts are governed by the Housing Act 1988. Stonebridge HAT was established by statutory instrument in 1994 (SI1994/1987).
- 5.2 The 'offer document' mentioned in the body of the report is the means by which the council will satisfy the requirements of section 84(3) of the Housing Act 1988 whereby, on receipt of a notice from Stonebridge HAT, the council will be required to explain the consequences of transfer to the council for the Stonebridge tenants. Legally the responsibility for informing the tenants of the transfer (to either landlord) falls to Stonebridge HAT.
- 5.3 Unless the secure tenant of a house, or the majority of secure tenants of a block, state that they want to return to the council, their homes will transfer to Hillside Housing Trust.
- 5.4 The transfer of the properties to the council will take effect by order of the Secretary of State.
- 5.5 It is not yet clear whether the tenants of Stonebridge who opt to return to the council will automatically retain the tenancy agreement they currently have or whether the council can dictate that a different agreement apply (i.e. the council's standard terms and conditions of tenancy) from the date of transfer. The PFI style agreement for Hillside to manage the properties assumes that the agreement will be the council's standard one. If, as a matter of law, the HAT's agreement is retained, it will be possible for the council to vary the tenancy agreement at a later date, after following the statutory process. The recommendation at paragraph 2.3 is intended to allow officers to commence that variation process (the first step of which is consultation with the tenants) immediately after transfer without further decision by members, although before formal variation can take place members will need to consider the tenants feedback to the consultation. Officers will continue to explore the legalities of this issue and will, if it is possible, ensure that those Stonebridge

tenants who opt to return to the council will transfer on the council's standard terms and conditions of tenancy.

- 5.6 To the extent that any variation of rent is required, that can be effected on four weeks written notice to the tenants.
- 5.7 The defects in transferring properties may give rise to a liability to tenants if the council's contractual obligations are not met. Officers are continuing to gather information on defects and will endeavour to minimise the impact of those.
- 5.8 Officers have not yet had sight of the lease and management agreement pertaining to Newcroft House but have requested the same. The recommendation at paragraph 2.13 means that if the council can step into the shoes of Stonebridge HAT in respect of the leases and the management agreement, then it will do so. If not, officers will negotiate with Willow to reach an agreement so that Willow can manage the properties if the majority of tenants opt to return to the council.

## **6.0 Diversity Implications**

- 6.1 Stonebridge has a very diverse population with a very high proportion of people from black and minority ethnic backgrounds. The landlord choice provisions are statutory and apply as of right to all secure tenants. Thus all secure tenants will be able to choose between the council and Hillside Housing Trust as their landlord. The rents and services provided will be the same or virtually the same whichever landlord is chosen. Hillside is a community based housing association with a large resident representation on the board (nine out of fifteen board members are residents) who reflect the diversity of the Stonebridge neighbourhood. The proposed council offer to tenants who may wish to choose the council as their future landlord reflects existing council policies across the borough and therefore represents the same terms and conditions as all other council tenants.

## **7.0 Staffing/Accommodation Implications**

- 7.1 The staffing implications for the council will be minor. The council will have to monitor the performance of Hillside under the 'PFI' agreement and make payments. There is a specific deduction from the Hillside payment to cover the council's costs but until the number of units is known the precise implication is difficult to gauge. At most one additional post may be required but it is more likely not to require a new full time post. It is envisaged that the duties could either be absorbed by BHP's existing Procurement Team, subject to their agreement, or by the Affordable Housing Unit. The details will be arranged when the number of properties to be transferred is known, but will be kept within the budget provided for by the 'PFI' contract.



## **Background Papers**

Stonebridge Housing Action Trust Succession Strategy – Housing Committee, 24<sup>th</sup> March 1999.

Public/Private Partnership – Succession Strategy Stonebridge Housing Action Trust – Executive 7<sup>th</sup> April 2003.

Stonebridge HAT – Proposed Contracts with Hyde HA/Stonebridge HAT  
PFI Contract Stonebridge Estate.

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