

**Subject:** Use of General Consents to Lease Properties to Brighton & Hove Seaside Community Homes

**Date of Meeting:** 17 September 2009

**Report of:** Director of Adult Social Care & Housing

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**Key Decision:** No

**Wards Affected:** All

**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 Following unanimous support from Housing Management Consultative Committee after extensive tenant consultation, and with cross party support, Cabinet in September 2008 approved the creation of a Local Delivery Vehicle (LDV) to obtain best value from empty Housing Revenue Account assets requiring reinvestment by leasing up to 499 empty properties over five years to the LDV in order to raise additional investment to improve council housing stock. Meeting the Decent Homes Standard and tenant aspirations for improvements to their homes is a key city-wide priority, reflected in Community Strategy for Brighton & Hove, as a key performance indicator in the Local Area Agreement and subject to audit as part of Comprehensive Area Assessment.
- 1.2 This paper seeks Cabinet approval for consultation with Housing Management Consultative Committee (HMCC) and Brighton & Hove Seaside Community Homes (the LDV) on exploring the potential use of an alternative means of achieving consent to lease up to 499 empty Housing Revenue Account (HRA) properties from Brighton & Hove City Council (BHCC) to Brighton & Hove Seaside Community Homes (BHSCH). The paper also seeks approval to consider the financial implications should use of this alternative general consent option be available to the Council. It is proposed that this option is explored in addition to the existing application for express consent from the Secretary of State to lease properties to BHSCH already submitted to Communities & Local Government. We do not propose to incur any additional costs exploring this potential option prior to consultation with HMCC and BHSCH.
- 1.3 To date Brighton & Hove City Council (BHCC) has proceeded solely upon the legally advised and preferred route of seeking express consent from the Secretary of State for leasing of the properties to Brighton & Hove Seaside Community Homes (BHSCH). Legal advice and financial modelling on Stage 1 and Stage 2 reports, papers to Housing Management Consultative Committee (HMCC), Cabinet and Council and recommendations agreed have reflected this advice.
- 1.4 An application to Communities & Local Government (CLG) for express consent from the Secretary of State to lease up to 499 HRA properties from BHCC to

BHSCH was made on 13 February 2009. In response to this application (letter dated 7 May 2009) CLG advised that:

‘At present, on the basis of what we have been provided so far, we would be minded to recommend to the Secretary of State that she withholds consent, but do not wish to take this next formal step in the process without giving you the opportunity to re-consider your proposal.’

- 1.5 The Director of Adult Social Care & Housing provided a comprehensive response to the points outlined in the CLG letter of 7 May on the 26 June 2009. To date, no reply has been received from CLG to this letter.
- 1.6 Given the current position regarding the Council’s application for express consent from the Secretary of State, the fact we are in active negotiation with potential funders, and the critical nature of this proposal to meeting city-wide, corporate and strategic housing priorities and tenant aspirations for investment in their homes, this paper seeks authorisation to consult on use of general consents to lease as a potential alternative route should either of the following apply:
  - Secretary of State consent for BHCC to lease HRA properties to BHSCH is refused.
  - Secretary of State consent for BHCC to lease HRA properties to BHSCH is delayed to such an extent as to be impractical in terms of project timetable and achieving project priorities.

## **2. RECOMMENDATIONS:**

- 2.1 That Cabinet agrees to consult with Housing Management Consultative Committee and Brighton & Hove Seaside Community Homes on the use of general consent A5.4.1 of the General Housing Consents 2005 to lease to Brighton and Hove Seaside Community Homes the 106 Housing Revenue Account (HRA) dwellings approved for leasing by Full Council on 9 October 2008 and such other Housing Revenue Account dwellings (up to a maximum of 499 in total, including the 106 properties) within a five year period that satisfy the criteria previously agreed by Cabinet and Council.
- 2.2 That Cabinet notes that Cabinet and Council (24 September 2008 & 9 October 2008 respectively) delegated the power to make decisions on the inclusion of individual properties to the Director of Adult Social Care and Housing after consulting with the Cabinet Member for Housing.
- 2.3 That Cabinet confirms the powers already delegated and, for the avoidance of doubt authorises the Director of Adult Social Care and Housing, after consultation with the Cabinet Member for Housing, to take all steps necessary, incidental or conducive to the achievement and implementation of the proposals in 2.1 above.
- 2.4 That Cabinet agrees that the issue regarding funding options and any decision associated with that remain delegated to the Cabinet Committee consisting of the Leader, the Cabinet Member for Housing and the Cabinet member for Finance.

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The Council intends to lease vacant properties to the Local Delivery Vehicle (LDV), Brighton and Hove Seaside Community Homes, which are presently held for housing purposes under Part II of the Housing Act 1985. Under Section 32 of the Housing Act 1985 the Council has the power to dispose of the land held for housing purposes on a leasehold (or indeed freehold) basis, but for the purposes outlined in the reports to Cabinet and Council, not without the consent of the Secretary of State. Consent may be express (i.e. granted on a specific application to the Secretary of State ) or general (i.e. automatically granted to all authorities with no need for an application.)
- 3.2 Given the nature of the proposals, including the assumed “client base” and following legal advice received, the project has proceeded on the basis of express consent from the Secretary of State being applied for and achieved.
- 3.3 Unless any of the general consents (contained in the Consent for Disposal Part II Dwelling Houses 2005) apply, the specific consent of the Secretary of State will be required for any disposal.
- 3.4 Cabinet Meeting on 24 September 2008 approved the setting up of the proposed LDV to deliver key strategic housing and corporate priorities and generate funding for investment in the HRA to improve council homes and assist the council in meeting the Decent Homes Standard. Reducing the percentage of non-decent council homes is a key element in the Improving Housing & Affordability section of the Community Strategy and one of the key performance indicators in Brighton & Hove’s Local Area Agreement. The project modelled is based upon leasing up to 499 properties from the council to the LDV over a 5 year period. A key parameter is that there should be no freehold transfer. The original model as it stands (with tenants of the LDV not restricted to people with special needs) means consent is required from the Secretary of State to lease properties to any LDV. Full Council needed to resolve to make an application to the Secretary of State for consent to lease the properties to the LDV.
- 3.5 In light of the above considerations and advice received, Cabinet agreed recommendations, including the following:
  - That Cabinet recommend to Full Council that it authorises the making of an application to the Secretary of State for consent to lease to the LDV (with vacant possession for a period of up to 125 years) the 106 Housing Revenue Account dwellings listed in the schedule in Part 2 of this agenda (exempt under paragraphs 1, 2 and 3 of schedule 12A to the Local Government Act 1972 (as amended)) under the requirements of s32 Housing Act 1985 and any additional application necessary or incidental to the granting of such leases or under any other relevant legislation.
  - That Cabinet recommend to Full Council that it authorises the making of an application to the Secretary of State for consent to lease to the LDV (with vacant possession) for a period of up to 125 years such other Housing Revenue Account dwellings, in addition to those listed in the schedule above (up to a maximum of 499 in total, including those covered under 2.7 above, within a five year period) that satisfy the criteria referred to in paragraph 3.4.9

of this report. For the avoidance of doubt Cabinet and Council delegate the power to make decisions on the inclusion of individual properties to the Director of Adult Social Care and Housing after consulting with the Cabinet Member for Housing.

- 3.6 The Director of Adult Social Care & Housing, after consultation with the Cabinet Member for Housing was authorised to implement the proposals with the issue of funding options delegated to a Cabinet Committee consisting of the Leader and the Cabinet Members for Housing and Finance. An application for express consent to lease from the Secretary of State was pursued on basis described in 3.5.
- 3.7 Following detailed discussion and information sharing with CLG and GOSE an application was made (on 13 February 2009) to CLG for consent from the Secretary of State to lease up to 499 vacant HRA properties over 5 years from the Council to BHSCH.
- 3.8 In response to this application (letter dated 7 May 2009) CLG have advised that:
- ‘At present, on the basis of what we have been provided so far, we would be minded to recommend to the Secretary of State that she withholds consent, but do not wish to take this next formal step in the process without giving you the opportunity to re-consider your proposal.’
- 3.9 CLG set out their main areas of concern and advised:
- ‘We will wait for further written evidence answering our concerns before putting your consent requests and our recommendations to the Secretary of State’.
- 3.10 The Director of Adult Social Care & Housing provided a comprehensive response and evidence addressing the concerns outlined in the CLG letter of 7 May on the 26 June 2009. To date no reply has been received from CLG to this letter.
- 3.11 In the meantime the project has continued to progress. BHSCH Board has been meeting regularly since December 2008. BHSCH has been constituted since March 2009, has elected a Chairman and is currently in the process of appointing its fourth and final independent board member to serve alongside existing independent, Council and tenant board members. BHSCH meets regularly and has set up sub groups to provide a detailed focus on legal, financial and property aspects of the project. BHSCH and the Council have been working closely on finalisation of legal agreements and have been in positive negotiations with potential funders and with the VAT Inspectors regarding the setting up of a VAT shelter. The Council have been finalising preparation of properties to lease to the Company in consultation with BHSCH property sub-group members. Tenant Area Panels have received regular feedback on progress from BHSCH tenant board members.
- 3.12 Should the current negotiations with potential funders prove successful and a funding option be agreed at Cabinet Committee, lack of consent to lease properties from the Council to BHSCH would remain a key outstanding project risk with the potential to compromise delivery of the core project objective of raising investment to help improve council tenants homes.

- 3.13 In light of this risk this report seeks authorisation to consult Housing Management Consultative Committee and consider the financial implications of exploring an alternative route of using general, in addition to the current express consent route, should either of the following apply:
- Secretary of State consent for BHCC to lease HRA properties to BHSCH is refused.
  - Secretary of State consent for BHCC to lease HRA properties to BHSCH is delayed to such an extent as to be impractical in terms of project timetable and achieving project priorities.

### **Background Information on Use of General Consents**

- 3.14 Disposal of dwelling houses by local authorities is covered by s32 of the Housing Act 1985 relates. This requires the express consent of the Secretary of State for each disposal unless any of the general consents contained in The Consent for the Disposal of Part II Dwelling Houses 2005 apply. Many of the general consents cannot apply to this project as they relate to RSLs or disposal for owner occupation or to sitting tenants.
- 3.15 However, there may be one possible applicable consent under paragraph A5.4.1 of the general consent. Under this paragraph:

‘A local authority may, subject to the provisions of this consent , dispose of a dwelling house to any person (the ‘acquirer’) for the best consideration that can be reasonably obtained, where:

“A. the acquirer intends to use the dwelling house as housing accommodation or occupation by persons who have a special need arising from disablement, past or present dependence on alcohol or drugs, past or present mental disorder, or fear of domestic violence.”

“B. the dwelling house is vacant or the subject of a lease previously granted by the authority to the acquirer.”

- 3.16 Current advice is that whether or not general consent applies will need to be considered in light of the facts for each proposed disposal.
- 3.17 The basis on which Cabinet is being asked to approve consultation on potential use of this option is that the client group the Council proposes to nominate to BHSCH for housing consists of many households owed a housing duty by the Council by virtue of a special need outlined within paragraph A5.4.1 of the general consent.
- 3.18 In relying upon consent related to occupation of properties leased to BHSCH by persons who have a ‘special need’ we will need to consider the practical demand for accommodation from these special needs groups. In addition, we will need to consult with BHSCH to consider whether BHCC reliance upon any use of this designation for consent to lease properties will limit the range of activity of BHSCH under its constitution and impact upon the business plan and the value of the company in terms of impact upon management costs from groups who may require more care and support.

- 3.19 Consideration will also need to be given to the financial implications should this general consents route be followed. In particular, consideration of: the requirement to achieve a valuation at 'best consideration that can reasonably be obtained'; implications on ability to lend under the prudential borrowing route; and ability to use leaseback leases to maximise cap and threshold rents. As outlined above, it is not proposed to incur additional costs on exploration use of this consent option prior to consultation with HMCC and BHSCH.

#### **4. OTHER MATTERS FOR CONSIDERATION**

##### **Cabinet Approval**

- 4.1 The existing authorisation from Cabinet is not sufficient to follow the general consents route as it is based on a number of legal and financial assumptions which will not apply under the general consent option. Following consultation with Housing Management Consultative Committee and BHSCH and consideration of financial implications, any decision on this would therefore need to go back to full Cabinet. Cabinet Committee as currently set up is only charged with discussion of funding options and its authority does not extend to enabling it to approve a different scheme. However, the consent of full Council will not be needed as Council has already given consent to dispose.
- 4.2 Should a decision go back to Cabinet following consultation and detailed financial consideration, it is proposed that Cabinet agrees the principle of proceeding on the basis of general consent and authorise the Director, after consulting the Cabinet Member for Housing to implement the proposals.

##### **Business Case**

- 4.3 As detailed above consideration will need to be given to whether use of general consents has any impact on business case assumptions around income, expenditure, demand. Further to this, consideration may need to be given as to whether use of the 'special needs' general consent impacts upon the client group housed by the BHSCH.

#### **5. CONSULTATION**

- 5.1 The recommendation of this report seeks permission to consult Housing Management Consultative Committee on the potential use of the general consent route. BHSCH Company Board will also be involved in consultation on and detailed consideration of financial and other potential implications of use of the of the general consent option.

#### **6. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 6.1 The financial implications are covered in the body of the report. Further resources will be required to complete the work on the LDV under either consent scenario and that Cabinet approval for this will be sought at the appropriate time.

*Finance Officer Consulted: Mark Ireland*

*Date: 07/09/09*

Legal Implications:

- 6.2 The use of general consent A5.4.1 is subject to a number of restrictions and these need to be carefully considered before any decision to proceed under that consent. The terms of the lease will need to be revised to ensure that they are consistent with the intended use for people with special needs. Council will have access to specialist external advice to ensure that all aspects are legally compliant.

*Lawyer Consulted:*

*Abraham Ghebre-Ghiorghis*

*Date: 07/08/09*

Equalities Implications:

- 6.3 The Council proposes to contract with BHSCCH to provide settled accommodation for households with particular needs including physical and learning disability. An equality impact assessment of the project is underway.

Sustainability Implications:

- 6.4 The proposal to set up a company to raise investment to improve council homes through leasing properties to BHSCCH enables access to funding to refurbish properties and meet strategic housing needs, would contribute to achieving council priorities to address sustainability as an integral part of all service delivery and contribute to the Sustainable Development Strategy.

Crime & Disorder Implications:

- 6.5 There are no implications for crime and disorder .

Risk & Opportunity Management Implications:

- 6.6 The Council has set up and maintains a risk register highlighting risks and how they might be allayed for all aspects of the project. Key risks and risk mitigation have been identified in previous reports. In setting out the risks below it should be noted there are risks in not taking forward this project, which include:

- Ability to meet the Decent Homes Standard within an acceptable time frame
- Future cost of lack of investment in the council stock
- Failure to secure a stable supply of housing for those to whom the council has a housing duty.

Corporate / Citywide Implications:

- 6.7 The proposal for the Council to lease properties to BHSCCH to raise investment in Council homes and access to funding to refurbish up to 499 properties in need of investment supports the following council corporate priorities:

- Protect the environment whilst growing the economy;
- Make better use of public money
- Reduce inequality by improving opportunities.

- 6.8 The contribution of this proposal to the objectives of the Local Area Agreement is outlined in paragraph 3.2.11 of the report to Cabinet on 24 September 2008.
- 6.9 Securing additional funding to meet Decent Homes Standard and carry out improvements to the council's stock in consultation with tenants and leaseholders is a key element to achieve a viable 30 year HRA business plan.

**7. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 7.1 The report seeks permission to consult HMCC & BHSCH on evaluation of using general consent to lease empty HRA properties to BHSCH as a potential alternative option to the pursuit of the existing preferred option of seeking express consent to lease from the Secretary of State.

**8. REASONS FOR REPORT RECOMMENDATIONS**

- 8.1 The report recommends consultation with HMCC & BHSCH and consideration of financial implications of use of general consent for the Council to lease homes to BHSCH as a potential alternative option should permission to lease sought from the Secretary of State not be forthcoming or delayed to such an extent that it is impractical in terms of achieving project timetable and the necessary investment in improving council homes.

**SUPPORTING DOCUMENTATION**

**Appendices:**

- 1. Response of the Director of Adult Social Care & Housing to CLG

**Documents in Members' Rooms**

None

**Background Documents**

None