

Report for: Cabinet – 10th December 2019

Title: Amendment of a Right to Buy funding agreement with Newlon Housing Trust for the delivery of Affordable Rented Housing

Authorised by: Dan Hawthorn, Director of Housing, Regeneration & Planning

Lead Officer: Peter O'Brien, Assistant Director Area Regeneration

Ward(s) affected: Tottenham Hale

Report for Key/

Non Key Decision: Key Decision

1. Describe the issue under consideration

- 1.1 On 21st December 2017 a funding agreement was entered into with Newlon Housing Trust (Newlon) for £6.5m Right To Buy (RTB) receipts for the delivery of 54 affordable rented homes on the Monument Way site, and on the same date the Council released the £6.5m RTB funding.
- 1.2 At the time the original allocation of RTB funding to the Monument Way site was made, the Council did not have a direct delivery programme in place, and utilising RTB funding in this way therefore allowed this funding to be retained and spent within the borough, rather than returned to the Government. Newlon was to have spent the £6.5m RTB funding by 31st March 2018.
- 1.3 The delivery of the Monument Way scheme, by Newlon, has been delayed, with spend on this development not materialising as previously estimated. The Original Funding Agreement (clause 40.4; see Appendix A) allows for the funding to be spent on other schemes in the borough for the provision of affordable housing. The Council has worked in partnership with Newlon to identify other areas of spend towards the delivery of affordable housing, and to refine estimates of spend at the Monument Way site up to the end of the 2019/20 financial year. Consequently, it was identified that significant spend was incurred towards the acquisition of the Ferry Lane Garage Site, which is intended to deliver affordable housing in due course.
- 1.4 This report seeks authority to enter into a Deed of Variation based on the draft heads of terms agreed in a proposed Letter from the Council to Newlon set out in Appendix B, enabling the £6.5m RTB funding to be spent on the Ferry Lane garage site and the Monument Way site, and/or other sites in the borough

which will result in the delivery of the affordable housing, rather than be returned to Government, which would be the only alternative.

2. Cabinet Member Introduction

- 2.1 The Council's Borough Plan includes objectives to increase the supply of new affordable housing, which is also reflected in our Housing Strategy.
- 2.2 The Council has now put in place a direct delivery programme to work towards building 1,000 new Council homes at Council rents by 2022. This represents a positive use of current RTB receipts, which we would no longer choose to allocate to delivery by external partners, as was done in March 2016. However, the amendment of that Original Funding Agreement will ensure that those funds are spent within the borough of Haringey and not returned to Government.
- 2.3 In this way, the Council is demonstrating its commitment to the development of new, high-quality affordable rented homes for local people.

3. Recommendations

3.1 Cabinet agrees:

- (i) To the reallocation of the £6.5m RTB funding from use solely on the Monument Way site, to also include use on the Ferry Lane garage site and any other sites, and for the provision of 54 affordable rented homes to be provided on other sites (including Monument Way site, Ferry Lane garage site and other sites in the borough) as set out in paragraph 6.4 of this report, and for the Council to enter into a Deed of Variation based on the draft heads of terms contained in a proposed Letter from the Council to Newlon attached at Appendix B to vary the Original Funding Agreement, dated 21st December 2017, with Newlon Housing Trust, to give effect to the recommendation
- (ii) To give delegated authority to the Director of Housing, Regeneration and Planning after consultation with the Director of Finance and the Assistant Director of Corporate Governance to agree the final Heads of Terms and the final terms of the Deed of Variation, and to agree any further reallocation of any part of the £6.5m funding to best enable the delivery of 54 affordable-rented units.

4. Reasons for decision

- 4.1 Under the terms of current arrangements under the Local Government Act 2003, local authorities are required to spend retained Right to Buy receipts within three years, and for the receipts to fund no more than 30% of total development costs. Where a local authority is unable to spend receipts within

three years they have to be returned to the MHCLG, together with interest of 4% above base rate.

- 4.2 In March 2016, Cabinet decided to allocate up to £5m RTB funding to Newlon. The Council did not have a direct delivery programme in place at that time, and therefore chose to work closely with housing associations in order to ensure that RTB funds were retained within the borough. Through a further Cabinet Member decision in October 2017, and a Leader's Decision in January 2018, this was increased to £6.5m, due to an increase in units and an increase in costs, respectively.
- 4.3 On 21st December 2017, the Original Funding Agreement was entered into and £6.5m of RTB funding was released to Newlon. The Original Funding Agreement contained a milestone condition requiring Newlon to commence on site by 30th September 2018. Also on 21st December 2017, Newlon had also satisfied the conditions of the Agreement for Lease, which allowed the Council to grant the 250-year Lease of the Monument Way site to Newlon. The Lease was subject to a legal charge in favour of the Council as security for the £6.5m RTB funding provided to Newlon. The Original Funding Agreement allows the release of the legal charge over the Lease once Newlon has delivered the 54 units of affordable rent.
- 4.4 The reason for the delay is the need to deliver significant infrastructural works, including the realignment of Fairbanks Road in order to release developable land within the Chesnut Estate. It has also had to be delivered within a challenging environment, with construction logistics coordinated between a number of developments around Tottenham Hale simultaneously.
- 4.5 The Ferry Lane Garage site is owned by Newlon and is a designated site in the Tottenham Area Action Plan (AAP). It is part of the Hale Wharf site designation, but it is outside the boundary of a development which is being delivered on site currently. The AAP recommends 'appropriate development of the garage site', enabling better access to and use of The Paddock, a local underused green space. It is currently designated as Green Belt land, but the AAP notes that consideration would be given to previous developments on the site. It is therefore considered appropriate for the delivery of new housing, including affordable homes, subject to Green Belt guidance in the National Planning Policy Framework.
- 4.6 Due to delays at the Monument Way site, and in order to minimise the risk of returning the £6.5m RTB funding to MHCLG, it is recommended that the existing funding agreement is varied to allow for the £6.5m RTB funding to be reallocated and applied to multiple sites within the borough.

5. Alternative options considered

- 5.1 An alternative option is to not amend the Original Funding Agreement and for the Council to clawback the £6.5m from Newlon. However, this would mean that the Council is unable to identify sufficient qualifying spend before March 2018, and the Council would be required to repay these funds to MHCLG, with additional interest at 4% above base rate.

6. Background information

- 6.1 On 15th March 2016, Cabinet agreed to dispose of the Monument Way site to Newlon and grant a sum of a maximum of £5,000,000 from right to buy receipts to Newlon as a contribution towards the provision of a minimum of 44 affordable rented units and subject to Newlon entering into a funding agreement and 100% Nominations Rights for those homes. Newlon are a strategic Registered Provider partner and have the necessary development capacity and expertise to efficiently deliver affordable housing, as well as the financial capacity to provide the necessary 70% match funding for relevant schemes.
- 6.2 The scheme was later expected to deliver 54 units and those additional 10 units had raised the overall scheme costs. On 5th October 2017 Cabinet Member for Housing, Regeneration and Planning agreed a further allocation of £800,000 making a total RTB funding allocation of £5.8m to the scheme.
- 6.3 The final amount of RTB funding to be allocated was still then under negotiation and subject to the planning process (approving the number of rented dwellings) and finalisation of scheme costs by Newlon Housing Trust as the project progressed. The delivery of 100% affordable rented housing presents particular viability challenges even with these funding supports in place. The Council and Newlon had agreed in principle for the Council to cover 30% of scheme costs for this project in line with the rules governing the allocation of funding from RTB receipts. Due to an increase in scheme costs, the Leader therefore agreed on 19th January 2018 to allocate a further sum of £700,000 RTB receipts, making a total grant funding of up to £6.5m. The Original Funding Agreement between the Council and Newlon was for the RTB funding of £6.5m. At the same time, the Leader agreed to an allocation of up to £1.5m for the delivery of infrastructure works relating to the realignment of Fairbanks Road, required to complete the Monument Way scheme. This funding has not yet been released to Newlon.
- 6.4 The recommendations set out in this report will allow the £6.5m RTB funding, currently only allocated to be spent by Newlon on the Monument Way site, to be spent on the Ferry Lane garage site, and any other sites in the borough for the

delivery of the 54 units of affordable housing. The £6.5m funding is being allocated as indicated in the exempt version of the report.

- 6.5 If there remains an unallocated portion of the £6.5m, recommendation (ii) seeks delegated authority to approve any unallocated spend which best allows the delivery of the 54 affordable rented units.

7. **Contribution to strategic outcomes**

- 7.1 The delivery of new affordable homes contributes to the Housing Priority of the Council's Borough Plan 2019-2023:

Outcome 1: We will work together to deliver the new homes Haringey needs, especially new affordable homes

- a) Deliver as many new, good quality homes of all kinds as we can, in good quality neighbourhoods, getting as close as possible to the Mayor's emerging target for Haringey of 1,502 new homes every year
- b) Ensure that new developments provide affordable homes with the right mix of tenures to meet the wide range of needs across the borough, prioritising new social rented homes

8. **Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

Finance

- 8.1 This report recommends Cabinet approval of:
- A. The reallocation of the £6.5m RTB funding from the Monument Way site to the Ferry Land garage site and any other site in the borough for the provision of 54 affordable rented homes.
 - B. The Council entering into a Deed of Variation, to amend the original funding agreement dated 21st December 2017 with Newlon Housing Trust.
- 8.2 The £6.5m RTB receipts were meant to have been utilised by March 2018. Any RTB receipt not utilised by this date will be returned to MHCLG with interest at 4% above base rate. It is therefore vital that Newlon allocates this funding to the Ferry Lane garage site, and other sites where they have already demonstrated spend.

- 8.3 Newlon has spent considerable sums at the Ferry Lane garage site and some of the £6.5m can be allocated to this site, and other sites in the borough. In return, the Council will receive 100% nomination rights in perpetuity on 54 units.
- 8.4 The recommendation in this report is expected to minimise the risks associated with this project.
- 8.5 The Council's financial commitments (£6.5m) and expected outputs with respect to nomination rights, and the number of units (54) remains unchanged.
- 8.6 Further Finance comments are set out in the exempt part of the report.

Procurement

- 8.7 Strategic Procurement notes the contents of this report and has no objections to the recommendations made herein. Strategic Procurement confirms there are no procurement regulatory requirements that would prevent the recommendation in this report being implemented.

Legal

- 8.8 The Council released under the Original Funding Agreement dated 21st December 2017 a total of £6.5m RTB funding to Newlon in return for Newlon constructing a minimum of 54 of affordable rented units on the Monument Way site. The £6.5m RTB funding was agreed on the basis that it must be no more than 30% of the development costs (as defined in the Agreement with the Secretary of State for Communities and Local Government dated 27 June 2012 (as subsequently varied on 14 June 2013) pursuant to Section 11(6) of the Local Government Act 2003.
- 8.9 The Original Funding Agreement sets out the milestones for Newlon to meet during the development. A milestone was to commence works on the Monument Way site by the 30 September 2018. Newlon failed to meet this milestone, which meant they are in breach of the Original Funding Agreement. The Council was also required to have 'spent' the £6.5m of RTB receipts funding prior to March 2018 under the Retention Agreement dated 25 September 2012 with the Secretary of State ("The Retention Agreement"). The Retention Agreement sets out the terms by which RTB receipts are to be 'spent' by a local authority otherwise the RTB receipt is required to be paid back to MHCLG.
- 8.10 As a result of Newlon failing to meet the milestone to commence works on site, the Council would be required to repay the £6.5m to MHCLG as set in the Retention Agreement. However, clause 40.4 of the Original Funding Agreement allows for the funding to be spent on other schemes in the borough for the

provision of affordable housing. In accordance with this clause 40.4, Newlon have been able to confirm in a letter to the Council (attached at Appendix B) that all the £6.5m RTB funding was 'spent' between both Ferry Lane garage site and Monument Way site on development costs for the provision of social housing, meeting the Council's obligations under the Retention Agreement. To allow Newlon to include the Ferry Lane garage site as part of the spend of the £6.5m and to change the sites where units will be delivered, the terms of the Original Funding Agreement requires amendment by a deed of variation. Those terms have been agreed by the parties in the attached draft heads of terms of the deed of variation to the Original Funding Agreement.

- 8.11 The main terms that will form the basis of the deed of variation are as follows:
- allow Newlon to spend the £6.5m RTB funding on both the Ferry Garage site and the Monument Way site
 - allow the delivery of a minimum of 54 affordable rented units is to be across the Ferry Lane garage site, Monument Site and / or other sites in the borough. allow the release the legal charge the Council has as security for the £6.5m RTB funding currently on the Monument Way site under the Original Funding Agreement and move the legal charge to the Ferry Lane garage site or another delivery site belonging to Newlon Housing Trust providing similar security for the £6.5m RTB funding.
 - to waive any prior breaches by Newlon of its obligations under the Original Funding Agreement from the date of the deed of variation as new terms to the funding agreement will now be agreed between the parties.

Equality

8.12 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

8.13 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

8.14 The proposed decision secures Right to Buy receipts to facilitate the development of 54 affordable rented housing units by the local housing association Newlon Housing Trust. Without this additional funding, the Monument Way scheme, the Ferry Lane garage site and other developments

including affordable rented housing would be less likely to proceed. RTB receipts can only be spent on replacement affordable housing within three years, or the funds must be returned with interest to MHCLG. This would further limit the Council's ability to build additional housing available for below-market cost.

8.15 As set out in the Housing Strategy 2017-22 there is both a shortage of overall housing supply, and especially affordable housing for those on lower incomes. In Haringey households in the east of the borough are more likely to have a lower than average income, making market rents unaffordable. In addition, households from BAME communities; single parent households, the vast majority of which are headed by women; and households with a member who has a disability or long-term health condition are more likely to have a lower than average income. This decision should benefit residents on lower incomes by enabling them to access housing in the borough at below-market cost. Additionally, residents on Haringey's Housing Register, among whom BAME communities and women are over-represented, could benefit from this development going ahead by increasing the housing options available. Overall, the decision represents a step to advance equality of opportunity for groups who share protected characteristics by enabling access to affordable housing that would not otherwise be available.

9. Use of Appendices

- A. Original Funding Agreement (exempt from publishing)
- B. Letter from the Council to Newlon containing draft heads of terms of the deed of variation (exempt from publishing)

Background reports:

[Cabinet report, 15th March 2016, "Monument Way Disposal"](#)

[Cabinet member signing, 5th October 2017, "Allocation of Right to Buy Receipts over £500,000 to identified Development Projects to part-fund delivery of Affordable Rented Housing"](#)

[Leader signing, 19th January 2018, "Allocation of Right to Buy Receipts and Capital funding towards the delivery of Affordable Rented Housing and Infrastructure at Monument Way"](#)

10. Local Government (Access to Information) Act 1985

Exempt portions of the report and both appendices are NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Part of this report is not for publication as it contains information classified as exempt under Schedule 12A of the Local Government Act 1972 in that it contains

information relating to the financial or business affairs of any particular person (including the authority holding that information).