

CABINET

21st AUGUST 2018

**COUNCILLOR MARTIN TENNANT
MAJOR PROJECTS & PROPERTY
PORTFOLIO HOLDER**

**COUNCILLOR BARBARA HURST
PLANNING & ECONONY
PORTFOLIO HOLDER**

KEY DECISION: YES

REPORT NO. LEG1809

HYDE HOUSING ASSOCIATION STOCK DISPOSALS

SUMMARY AND RECOMMENDATIONS:

Hyde Housing Association has requested the release of legal covenants and reinvestment clauses in relation to a number of properties in their ownership in the Borough. This report sets out the background to this request and proposes a course of action, which will support Hyde to conclude their sale of remaining Rushmoor Housing stock to Southern Housing Group.

Recommendation

That Cabinet:

- (i) Authorise the Executive Director, in consultation with the Portfolio Holder, to release or substitute covenants and release reinvestment clauses related to the title covenants (only where necessary) and vary nomination agreements for the properties in paragraph 1.2 of the report.

This is subject to new nomination agreement(s) being agreed with Southern Housing Group based on the same or similar terms as the existing agreement with the intent of retaining 1a Elmsleigh Road, 3 Upper Elms Road and Oak and Birch House for general needs housing and shared ownership, and Aspen, Mulberry and Brighstone Houses as temporary accommodation.

- (ii) Approves the disposal of the Council's interest in the properties for the amount outlined in the appendix at an undervalue for the reasons of economic and social well-being of the Borough. Hyde Housing will meet the Council's reasonable legal and valuation costs.
- (iii) Approve the use of the funds on future affordable housing provision to be determined by the Chief Executive, in consultation with the Portfolio Holder for Strategic Housing.

1. BACKGROUND

- 1.1 In 1997, the Council sold its stock of temporary accommodation to Hyde Housing. The transfer contained covenants restricting the use of the properties to accommodation for the homeless and those awaiting determination of their homelessness status. A nomination agreement made in 2004 following significant funding in the properties by the Council requires Hyde to reinvest 60% of the sales proceeds on any sale of the properties to provide new social housing in the Borough. The right for Rushmoor to continue to nominate homeless households to the properties was contained in a nomination agreement.
- 1.2 The properties involved were:
- 1a Elmsleigh Road, Farnborough
 - 3 Upper Elms Road, Aldershot
 - Oak House, Almond Close, Farnborough
 - Birch House, Almond Close, Farnborough
 - Aspen House, 7A Pool Road, Aldershot
 - Mulberry House, 13 Queen Street, Aldershot
 - Brighstone House, 123 Reading Road, Farnborough
- 1.3 Between 2004 and 2007 because at that time, the demand for temporary accommodation had reduced, Hyde Housing Association and the Council agreed that the use of the properties 1a Elmsleigh Road, Farnborough; 3 Upper Elms Road, Aldershot and Oak and Birch House, Cherrywood Road, Farnborough; could be changed from temporary accommodation to general needs housing (social rented and affordable rent) and shared ownership.
- 1.4 Following refurbishment, the remaining properties, Aspen House, Mulberry House and Brighstone House continued to be used as temporary accommodation. These properties are currently managed by the Society of St James.
- 1.5 In 2017, Hyde wrote to the Council advising of their intention to withdraw from the Rushmoor local authority area and that they would be selling all of their stock in the Borough. Following their sale process, all Rushmoor based stock excluding the properties set out in para 1.2 have now been sold to Southern Housing Group - 58 units to date.
- 1.6 Southern Housing Group are wishing to purchase the remaining properties (a total of 28 units) and continue to operate Aspen, Mulberry and Brighstone Houses as temporary accommodation with the other four properties also retaining their current general needs use.

2. DETAILS OF THE PROPOSAL

- 2.1 To enable the sale of properties to proceed, Hyde are requesting the Council:

- i) to formally release title covenants and vary nomination agreements to enable the ongoing use of the properties in para 1.3 as general needs and shared ownership and retain those in paragraph 1.4 as temporary accommodation;
 - ii) waive the full reinvestment obligation and delete the reinvestment clauses in return for a one off financial consideration.
- 2.2 In relation to 2.1 i) the Council's Housing Team have confirmed that subject to a new nomination agreement being put in place with the Southern Housing Group to retain 1a Elmsleigh Road, 3 Upper Elms Road and Oak and Birch House as general needs housing and shared ownership, they can support the formal release of the covenants given that the properties have been operating as general needs since 2004/2007.
- 2.3 Similarly the Council's Housing Team have confirmed that they would wish to retain Aspen, Mulberry and Brighstone Houses as temporary accommodation and that this could also be covered through anew nominations agreement on the same terms as the previous agreements with Hyde subject to modernisation.
- 2.4 Southern Housing Group have already written to the Council confirming that they have no intention of using the properties other than for their existing uses and would be happy to enter into a new nominations agreement to reflect this, subject to demand existing and the properties deemed as remaining fit for purpose. They have also taken assignment of existing management agreement with Society of St James and subject to continued satisfactory performance would wish to continue that relationship. However, the Southern Housing Group is not currently a preferred partner and to date has not signed up to the Council's registered provider criteria. It should also be noted that under the current nomination agreements, Hyde are required to maintain the units to the Council's HMO standards. Given their recent investment in housing in Rushmoor, Officers will now work with Southern Housing Group with a view to them becoming to become a preferred partner.
- 2.5 This leaves the more complex issue of the reinvestment clause. The Council does have a choice here. Both Hyde and the Council now agree that the reinvestment clause is valid and can be exercised. However, if the Council were to require the full payment/reinvestment as it did in respect of the sale of a Hyde property at 14 Church Circle, Farnborough, it would not be economically viable for Hyde to sell the properties due to existing charges held on the properties. Negotiations have been continuing for a number of months and Hyde have now made an offer set out in the exempt appendix to this report.
- 2.6 Following extensive negotiations, the offer outlined within the appendix is considered the best currently available to the Council. By agreeing to the disposal at the level indicated, there will be no loss of housing provision and a significant sum of money will be made available for future social housing provision.

- 2.7 This level of the undervalue would need to be confirmed by the District Valuer, or another appropriate valuer, as accurate, given that this would be considered an undervalue. This is permissible as the Local Government Act 1972 states “General Disposal Consent 2003 removes the need for the Secretary of State’s consent to disposals at an undervalue where the disposal would be likely to contribute to economic, social or environmental wellbeing, provide the disposal does not exceed £2m”, but the Council will seek assurance on the figures prior to enacting the decision.

Alternative Option

- 2.8 If the Council chose not to release the covenants and clauses as set out in the report, Hyde will be unable to sell the properties and will remain with a very small land holding in the Borough. This will not form a significant part of their future interests and operations and this might not be considered to be in the best interests of tenants and the wider community, given Southern Housing Groups potential, but untested commitment to social housing in Rushmoor. That said, the position relation to tenancies will be no different than it is currently as they will be continue to be managed by the Society of St James, and Hyde are obliged to keep the properties to a certain standard of repair and maintenance. The Council could choose to take no action at this time and wait to see if Hyde’s position changes and a more favourable financial offer is forthcoming.

3. IMPLICATIONS

Risks

- 3.1 It is possible that the detail of the variations to existing agreements and new nominations agreement cannot be agreed with Hyde or Southern housing Group.
- 3.2 The Borough loses out on a significant investment into affordable housing by not agreeing to a release of the covenants for an undervalue.

Legal Implications

- 3.3 Section 123 of the Local Government Act 1972 provides that local authorities may dispose of an interest in land as they see fit, but cannot dispose of land other than by way of a short tenancy, for less than best consideration. However, the Local Government Act 1972 states “General Disposal Consent 2003 removes the need for the Secretary of State’s consent to disposals at an undervalue where the disposal would be likely to contribute to economic, social or environmental wellbeing, provide the disposal does not exceed £2m”.

Financial and Resource Implications

- 3.4 There is no cost to the Council, as Hyde will cover the cost associated with the District Valuer's report and the legal costs of the subsequent transaction. If the recommendation is agreed, the Council would receive a financial receipt as set out in the exempt appendix.
- 3.5 An original intent of the reinvestment clause requiring payment of 60% of the sale proceeds to the Council was to protect money granted for housing purposes, and therefore any money received by the Council will be ring fenced for future affordable housing purposes.

Equalities Impact Implications

- 3.6 By agreeing to this proposal, Cabinet will enable a contribution to increase the level of affordable housing provision for those in need.

4. CONCLUSIONS

- 4.1 Whether the Council chooses to release the covenants and clauses as recommended, the number of units of general needs, shared ownership and temporary accommodation will be unaffected by this decision. The request from Hyde provides an opportunity to receive a financial payment as a result of the sale.

BACKGROUND DOCUMENTS:

None

CONTACT DETAILS:

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