

Maidstone Housing Delivery Partnership Proposal

Final Decision-Maker	Communities, Housing and Environment Committee
Lead Head of Service/Lead Director	Director of Regeneration & Place
Lead Officer and Report Author	Director of Regeneration & Place
Classification	Public
Wards affected	All

Executive Summary

The previous Chair of the Communities, Housing and Environment Committee expressed a strong desire to return to building council homes, broadly because of the following concerns;

- An insufficient supply of new build affordable rented housing.
- The affordable rented housing that is provided is too expensive to the end-user (i.e. it isn't as affordable as social rent).

Therefore, a specialist legal firm, Trowers & Hamlins were appointed to provide advice as to possible mechanisms by which this goal could be achieved. Given that the Council no longer has a housing management capacity, it was logical to explore a Housing Delivery Partnership (HDP) with a housing association, now known as a Registered Provider (RP).

Trowers & Hamlins provided preliminary legal advice in October 2017, and this was shared with Members via a workshop which took place on 22nd November 2017. Since then, some further specialist legal advice has been commissioned, as well as some "soft" market testing undertaken with two potential partner RP's. Accordingly, this report explores whether a HDP would help to meet the Council's priority, in terms of "a home for everyone", and if so, what form would be most appropriate.

This report should be read in conjunction with legal advice provided by Trowers & Hamlins in Annex 1.

This report makes the following recommendations to this Committee: That

- 1) An Affordable Housing Supplementary Planning Guidance be produced.
- 2) The Policy and Resources Committee are recommended to agree the funding of £7.5m per annum over a five year period for the Maidstone Housing Delivery Partnership Proposal.

3) Subject to funding approval of £7.5m per annum over a five year period by the Policy and Resources Committee, the Communities, Housing and Environment Committee agrees that:

- a. Delegated authority be given to the Director of Regeneration and Place, in consultation with the Chairman of the Communities, Housing and Environment Committee, to secure co-investment between the Council and Registered Provider of £15m pa total over a 5 year period.
- b. Co-investment between the Council and a Registered Provider be targeted at achieving a 50% market share of the S106 affordable housing market in Maidstone.
- c. A programme of engagement with Parish Councils be commenced, to gauge the appetite for bringing forward rural exception sites for affordable housing.

Timetable	
<i>Meeting</i>	<i>Date</i>
Communities, Housing and Environment Committee	13 November 2018

Maidstone Housing Delivery Partnership Proposal

1. INTRODUCTION AND BACKGROUND

- 1.1 A return to building council housing, or affordable housing, as it is commonly now termed, would be a significant reversal of a previous Council decision, inasmuch, back in 2004 the Council opted to transfer its council housing stock of around 6,000 units to Golding Homes (formerly Maidstone Housing Trust). I.e. Maidstone is a Large Scale Voluntary Transfer (LSVT) local authority.
- 1.2 Consequently, the Council's Housing Revenue Account (HRA) was closed, and at present, an HRA is the only mechanism by which a Council can directly hold and fund council housing (at scale, beyond around 50 units). Despite different government announcements over the previous decade welcoming and promoting a greater role for Council's in the delivery of affordable housing, no firm financial mechanism has ever been put in place to facilitate direct council house building at scale, other than relaxations and the subsequent (Oct 2018) removal of borrowing caps in Council HRA's.
- 1.3 If a Council doesn't any longer have an HRA, like Maidstone, it could re-open one, but as it would be devoid of assets and income, there wouldn't be borrowing headroom within it for investment. That said, there is a political support growing at a national level to allow LSVT authorities to re-open HRA's with an ability to borrow.
- 1.4 Therefore, in terms of the challenge set by the previous Chair, and given that Maidstone is no longer a stock owning authority (without an HRA), a more creative and modern approach is required in terms of how the Council could take a more proactive role in the delivery of affordable housing within the borough.
- 1.5 Furthermore, despite Maidstone being an LSVT authority, housing remains a key priority for the council, and consequently it still undertakes some important housing related investment and activity, as follows;
 - **Maidstone Property Holdings Limited (MPH).** The Council has approved a further £34m of capital investment into MPH, over a five-year period to invest in market rented housing, via its housing company, MPH. This investment will increase the overall supply of housing in the borough as well as deliver a commercial return to the Council. At the end of this capital program, MPH will own around 175-200 market rented homes. Whilst the primary driver for MPH is commercial return (by letting properties at market rents), a by-product of the Council's developments is that around 1/3 of the homes developed will need to be provided for affordable housing, and so as things stand, this would be passed to an RP. Furthermore, some (circa 1/3) of the developments will also provide some homes for market sale, by way of joint ventures with the developer / contractor partners.

- **Temporary Accommodation (TA) for homeless households.** To help alleviate the difficulties and costs incurred in using private sector temporary accommodation (TA), the Council already owns circa 60 units of TA and is making good progress towards achieving its goal of having a portfolio of 75 units of TA. By way of background, there is a rising amount of homelessness applications (800 per annum) being made to the Council, and so the Council has around 130 households in TA at any one time (some of which is owned by private sector providers).
- **Affordable Housing SPD.** The Council has been instrumental in the delivery of affordable housing by introducing and applying Strategic Policy 20 (Affordable Housing) within the Local Plan. Furthermore, the outcomes from this policy could well be improved by the introduction of a robust Affordable Housing SPD to SP20. This SPD is in the early stages of production and will likely be adopted by both the SPS&T Committee early next year. Within it, it will not be possible to increase the burden on developers, but the percentage (quantum) and / or tenure split (to include rent levels) could perhaps be re-cast, if doing so was cost neutral in terms of the overall viability to developers. For example, some shared ownership units could perhaps be forgone, in exchange for lower rents on the affordable rented units. The Council committed (within our Local Plan) to produce this SPD, and to some degree, it will in time bring about benefits.

The Affordable Housing Landscape in Maidstone

- 1.6 The overall affordable stock of rented housing in Maidstone is 8,706 homes, for which the top ten stock holders are as follows:

Golding Homes Limited	6328
Hyde Housing Association Limited	660
Town and Country Housing Group	312
West Kent Housing Association	194
Clarion	164
Orbit South Housing Association Limited	149
Heart of Medway Housing Association Ltd	135
Sanctuary Housing Association	123
Senacre Housing Co-operative Limited	77
Moat Homes Limited	71

- 1.7 In terms of growing the affordable housing stock in the borough, irrespective of ownership, the primary delivery mechanism of any significance is through Section 106 agreements entered into between developers and the Council, where they are required to transfer a percentage of their new homes built to an RP, typically at around 60% of the Open Market Value (OMV), to be provided as a mixture of affordable rented homes and shared ownership homes.

- 1.8 There are also a number of non-charitable 'For Profit' registered providers entering the market, and so in terms of any potential partnerships, the Council could consider such organisations too.
- 1.9 The alternative means to deliver affordable rented housing (i.e. with the subsidy not coming through S106), are twofold as follows;
- By building homes that would otherwise be for market housing but retaining them for use as affordable rent through the application of grant funding available from Homes England. Typically the amount of grant required per home would be circa £100k, but Homes England do not offer anywhere near this level, perhaps just £30k at best. The Greater London Authority has recently raised grants rates in London because of this impasse, but similar moves seem somewhat off outside of the capital. Needless to say, this situation will be monitored in case of any favourable changes to the grant funding environment. Furthermore, the Ministry of Housing, Communities & Local Government have recently launched an "Additional Housing Revenue Account Borrowing Programme", which is tasked with increasing council housebuilding, but this is only of benefit to those authorities that already have an HRA.
 - By building homes on rural exception sites. These are small sites used for affordable housing in perpetuity where sites would not usually be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. Through this mechanism, land can be acquired at typical agricultural value, plus a very modest uplift of say 10%. So this ability to acquire land at below normal residential land values in effect provides the subsidy. Given the considerable rural nature of the borough, in theory, this could be a rich source of affordable housing land that the Council could pursue. However, such a strategy would require complete support from parish councils. Realistically, this support will be hard to gain given the rising pressure on such communities to accept housing growth.
- 1.10 The Council has set out its policy for Affordable Housing within the Local Plan (Strategic Policy 20).
- 1.11 By way of definitions, the affordability of the various tenures is as follows;
- Social Rent (sometimes known as Target Rents, but basically the old rents charged by Councils), plus any service charge payable.
 - Affordable Rent, introduced in 2011, to be set at fixed percentage of the market rent inclusive of any service charge payable. The discount is set locally, but tends to range from between 60% discount to 80% (or the Local Housing Allowance, whichever is lower). In Maidstone they tend to be at 80% whilst 60% is considered to be on a par with a Social Rent.

- Shared Ownership, whereby the purchaser purchases a percentage of the equity in their home, and pays a subsidised rent on the part that they don't own.
- 1.12 The Local Plan seeks 883 new homes each year. If 37.5% of these were affordable, there would be 332 new affordable homes delivered each year in Maidstone over the LP period. Regrettably, over the past seven years, the delivery of affordable housing units has in fact averaged just 212 per annum (just 64% of the target).
- 1.13 Assuming an average new 2-bed property in Maidstone has a market value of £250k it would be transferred at around 60% of this value to an RP, so around £150k. Therefore, assuming 200 affordable homes per annum (based on current delivery rather than the target), the total new build affordable market in Maidstone is worth around £30m per annum.
- 1.14 Therefore if Maidstone did wish to re-enter the affordable housing market, a view would need to be taken as to what market share to aim to achieve. By way of an example, a 25% market share would mean a capital investment of £7.5m per annum (50 affordable homes per annum).
- 1.15 Furthermore, legal advice has confirmed that the Council cannot fix the transfer price (from the developer) of affordable housing, nor can it compel the developer to transfer them to the Council (or any of its subsidiaries). Accordingly to acquire stock the Council / HDP would need to compete (against RP's) on price and service to acquire stock from developers.
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2. AVAILABLE OPTIONS

- 2.1 Therefore, at this juncture, it is sensible to revisit the two concerns of the previous CHE Chair, as follows:
- An insufficient supply of new build affordable rented housing.
 - The affordable rented housing that is provided is too expensive to the end-user.
- 2.2 The options that the Council has at its disposal to meet these concerns are as follows:
- 1) To produce the Affordable Housing SPD but for the Council to continue to focus its efforts purely on growing its market rented portfolio within MPH.
 - 2) To produce the Affordable Housing SPD and to commence the process of creating a Wholly Owned Company (WOC), with just the Council providing the investment, of £7.5m pa over a 5-year period (£37.5m total) with a view to achieving a 25% market share of the S106 affordable housing market, and commence a programme of engagement with Parish Councils to gauge their appetite for bringing forward rural exception sites.

- 3) To produce the Affordable Housing SPD and to commence the process of selecting a partner for an HDP, with a view to co-investment by both the Council and the partner, which both partners providing funding of £7.5m pa each (£15m pa total) over a 5-year period with a view to achieving a 50% market share of the S106 affordable housing market, and commence a programme of engagement with Parish Councils to gauge their appetite for bringing forward rural exception sites.

2.3 In terms of the evaluation of the three options, the following commentary should be read in conjunction with the advice from Trowers & Hamblins;

Option 1

- Arguably, returning to the concerns of the previous Chair, wishing to see more affordable rented housing delivered (at lower rents than is currently the case), this could be facilitated by introducing a robust Supplementary Planning Guidance document, to build upon the foundations of SP20. In theory, an HDP isn't required to achieve this goal.
- That said, with the Council taking just an "enabling" role since the transfer of its stock, arguably, developers working solely with RP's hasn't delivered the outcomes required in terms of the quantum or affordability either, with the housing waiting list and the amount of homelessness on the rise too.

Option 2

- This option should be dismissed for the following reasons;
 - A WOC couldn't be sure to shelter the properties held within it from the Right to Buy.
 - A WOC would be inefficient in terms of VAT, as it would need to pay VAT on the management service that it would need to procure from the RP partner.
 - It would be difficult to demonstrate that the WOC wasn't a HRA in all but name, and so, it could lead to this (the HRA) having to be re-opened. I.e. a WOC cannot be legally justified if it is just a means to remove the RTB.
 - If the HRA was ultimately re-opened, the funding could no longer be through the preferred prudential borrowing route, as within an HRA the funding would be much more constrained (if not almost completely curtailed).

Option 3

- To be seen to be actively involved in the ownership and delivery of affordable housing, to include co-branding with the RP partner would most likely enhance the reputation of the Council.

- The Council could use the advantageous borrowing rates available through prudential borrowing, to either make a modest margin by “on-lending” the borrowing to the HDP at a premium, or allow the HDP to pass this benefit onto the end user in the form of lower rents chargeable.
- In time, were the HDP to flourish and to gain market share, a benefit would ultimately be the consolidation of stock ownership in the borough, so potential advantages in terms of lettings and service delivery.
- It is possible that the developers would welcome the opportunity to “treat” with the Council HDP, and so it could bring about easier and swifter agreement of S106 agreements with developers.
- By being an active participant in the market, the Council could play a part in ensuring that a policy compliant affordable housing is delivered, rather than it being watered down as is sometimes the case at present.

2.4 However, the disadvantages could be as follows:

- Competing in the S106 market wouldn’t actually mean any additional delivery of affordable housing above and beyond what could reasonably be expected through the existing RP’s. To create additional supply, the Council would need to work in partnership with Parish Councils to bring forward rural exception sites too, but this approach could of course be explored further post the formation of a HDP.
- By investing say £7.5m per annum in affordable housing, this would bring about opportunity costs in the context of other investments.
- Since the Member workshop, the Council has commissioned specialist planning advice that has confirmed that it would not be possible to compel developers to transfer affordable housing to the Council or a Council entity, nor for the council to set the transfer prices of affordable housing from the developer, as they must have freedom to create a market for their product from a range of RP’s. So the HDP would be in competition to secure S106 stock with RP’s.
- The governance structure would be complex and so would require a long term commitment to partnership working from those taking seats on the Board. I.e. were the partnership to be unsuccessful and be disbanded, this would be damaging to the Council’s reputation.

3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 3.1 This is a very finely balanced judgement, but taking all matters into account, were the Council to pursue a HDP it is difficult to see that this wouldn't give better outcomes in terms of service, affordability, and profile.
- 3.2 Therefore the recommendation is:
- 3) To produce the Affordable Housing SPD and to commence the process of selecting a partner for an HDP, with a view to co-investment by both the Council and the partner, which both partners providing funding of £7.5m pa each (£15m pa total) over a 5-year period with a view to achieving a 50% market share of the S106 affordable housing market, and commence a programme of engagement with Parish Councils to gauge their appetite for bringing forward rural exception sites.

4. RISK

- 4.1 The risks of creating an HDP could be as follows;
- An increased capital program for the Council, so increased borrowing, and so the risk that the investments made (in affordable housing) do not deliver the anticipated financial returns. This could be mitigated by setting a robust suite of financial return hurdle rates for the investments, and a rigorous approval and due diligence approach as per the approach in place with MPH.
 - That the HDP might falter, if both parties aren't able to commit to the principles of long term partnership working. This could be mitigated by agreeing carefully crafted vision, values and objectives statements at the outset.
 - In terms of meeting customer expectations for service delivery, the Council would be in the hands of the partner RP, as it would be them providing the frontline services. This could be mitigated by agreeing the correct service standards at the outset, and well as undertaking the necessary due diligence on potential partners too.
 - Given that the RP partner would deliver the frontline customer services, the Council could struggle to realise the "public relations" benefit of its investment. This could be mitigated by demanding a high quality dual-branding regime for all properties acquired by the HDP, so that customers and all stakeholders fully understand the role the Council has played in co-funding the homes.
 - Over the years, the affordable housing sector has been subject to sudden and unexpected policy changes from government that have

altered, and in some cases harmed the investment environment. These include changes to rent setting and RTB policies. Matters such as this cannot necessarily be mitigated, although at the present time, the government is “making the right noises” in terms of creating the right environment to bring councils back to delivering affordable housing.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 Based on the response from Members at the briefing back in November 2017, officers concluded that there was definitely a remit to explore the merits of a HDP further. However, there were some reservations voiced as to the potential difficulties of partnership working (with an RP) and it was requested that the Council explore the merits of a structure whereby the Council is the sole investor. This has been done within this report, and is addressed in some detail within the annex too.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 If the recommendation is approved, the following would be undertaken;
- That this report, together with a positive endorsement from CHE, be referred to the Policy & Resources Committee to secure it’s in principle support for the venture, given the financial capital commitment that would likely be required and the risk profile.
 - Commission specialist lawyers to further develop the preferred HDP model and use this as a basis for soft market testing with the top ten stock owning RP’s in the borough.
 - Assuming that this demonstrates a reasonable amount of market appetite, devise a partner selection process in conjunction with the specialist lawyer and the “in-house” procurement team, and bring this back to the CHE Committee for consideration and to agree the next steps thereafter.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Accepting the recommendations will materially improve the Council’s ability to achieve a home for everyone. We set out the reasons other choices will be less effective in section 2.	Director of Regeneration & Place
Risk Management	Already covered in the risk section.	Director of Regeneration

		& Place
Financial	Accepting the recommendations will demand new spending of £37.5m to be added to the Council’s capital programme, which would need to be funded from borrowing. This would require consideration in the context of the existing capital programme, to ensure that the overall level of borrowing remains prudent.	Head of Finance
Staffing	We will need access to extra expertise to deliver the recommendations, as set out in section 3.	Director of Regeneration & Place
Legal	<p>The Council has the legal power to set up the Housing Delivery Partnership (HDP), under Section 1(1) of the Localism Act 2011, which empowers the Council to do "anything that individuals generally may do". See other enabling legal powers in Appendix 1 of Trowers and Hamlins report (the "Report").</p> <p>Detailed consideration should be given to the Report as it touches on various elements required for consideration in establishing the HDP. In particular and as set out in the report careful consideration should be given to the Council’s affordable housing policy (paragraph 4.7 of the Report). In addition to the above, the procurement implications relating to the HDP are set out in the Report. In particular paragraph 9.1 of the report states that "the establishment of a joint venture between the Council and an RP will not in and of itself be caught by the</p>	Legal Team

	<p>public procurement rules as no contract for goods, works or services is involved.”</p> <p>It is however my view that for the Council to achieve best value in setting up the HDP (including obtaining innovative solution from the industry), a full tender exercise should be undertaken to procure a Registered Provider partner for the Council. The reason for this is because the Registered Provider will be building houses (or procure the building and delivery of the houses), which equates to a works contract under the Public Contracts Regulations 2015.</p> <p>Due regard should also be had to all planning issues.</p>	
<p>Privacy and Data Protection</p>	<p>Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with the relevant provisions of the Data Protection Act 2018.</p> <p>We also recognise the recommendations may impact what information the Council holds on its residents. As such the Council’s Privacy and Data Protection policy (as the case may be) vis-à-vis the relevant provisions of the Data Protection Act 2018 will be complied with.</p>	<p>Legal Team</p>
<p>Equalities</p>	<p>The proposed change to policy is in the early stages of development. Once the proposal has been refined and agreed, an EIA will be</p>	<p>Equalities and Corporate Policy Officer</p>

	completed.	
Crime and Disorder	No implications.	Director of Regeneration & Place
Procurement	No implications.	Director of Regeneration & Place

8. REPORT APPENDICES

- Appendix 1: Legal advice from Trowers & Hamlins.

9. BACKGROUND PAPERS

None.