

Subject: Completion of Housing Stock
Transfer

Status: For Publication

Report to: The Cabinet
The Council

Date: 7th June 2006
20th July 2006

Report of: Executive Director of Resources

Portfolio

Holder: Leader of the Council

Key Decision:

NO (Matter for Council Decision)

Forward Plan
Relevant Box

General Exception

Special Urgency

"X" In

1. PURPOSE OF REPORT

- 1.1 To update members on the final terms of the Stock Transfer process and to seek approval for the utilisation of the final resources flowing to the Council as a result of the process in line with the Medium Term Financial Strategy.

2. CORPORATE PRIORITIES

- 2.1 The matters discussed in this report are linked to and support the following corporate priorities:

- *Financial Management – The proposals in this report detail a proposed utilization of the resources flowing from the Stock Transfer process which will address future liabilities and direct resources to priorities, in particular the supply of affordable housing.*
- *Housing Stock Transfer – While this is not a priority for the coming year this report presents an account for members of the results to be delivered as a result of the achievement of the specific priority of completing the transfer process itself.*

3. RISK ASSESSMENT IMPLICATIONS

3.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

- As reported to Council on 23rd February 2006 a range of changes to the final contract for transfer were inevitable. These changes were made following an assessment of the risks arising from the changes, with particular reference to specialist survey work and environmental assessments undertaken for the Council.
- As indicated in the body of this report proportion of the total sum which may be due to the Council under the VAT Share agreement should be regarded as “at risk”. For this reason no specific proposals are made for utilisation of this sum thus ensuring that the Council’s overall financial strategy is not undermined by this risk.

4. BACKGROUND AND OPTIONS

4.1 The transfer of the Council’s housing stock to Green Vale Homes was completed, as scheduled, on 27th March 2006. When Full Council agreed the proposals for the Stock Transfer at its meeting on 23rd February 2006 authority to agree final terms was delegated to the Chief Executive in consultation with the Leader of the Council. The Leader of the Council has asked that a further report be made to the Full Council to set out where this delegated authority has had to be exercised in order to ensure that members are fully informed of the final agreement.

4.2 In addition various sums of money will flow to the Council as part of the transfer process and this report makes recommendations for the use of these funds in line with the assumptions set out in the Medium Term Financial Strategy previously approved by the Council.

The Transfer Agreement

4.3 As explained to members at the Council meeting on 23rd February the Transfer Agreement is an extremely complex legal contract. Following agreement by the Council the bankers providing finance to Green Vale Homes and their lawyers became involved in the negotiating process and reviewed the contract to ensure that their risk exposure was minimised. Without the agreement of these funders the transfer would not have been able to proceed. In many transfers the issues raised by funders are still being dealt with at the point of transfer or they result in transfer being delayed. This was not the case in Rossendale and the funders raised very few issues with the Council. The specific changes made following the Full Council meeting, with the reasons for doing so are set out below.

- 4.4 An additional warranty was provided in relation to the rent increase effective from the beginning of the new financial year. This is normal where transfers occur around the turn of the financial year. There were no implications arising from this as a contingency plan had been agreed with Green Vale Homes to remove any risk in this area.
- 4.5 A warranty and appropriate disclosures were provided in relation to subsidence. In light of survey work undertaken by the Council it was considered that risk in this area was low. Funders requested this warranty following an unfortunate experience elsewhere, and in light of the other forms of warranty given it seems a not unreasonable thing to seek some assurance on.
- 4.6 Clauses were, added in relation to the timing of payments due to the Council at the point of transfer. Separate side letters were also prepared, although ultimately not used, which would have allowed Green Vale Homes to defer payment subject to the addition of interest at market rates depending upon when funders made cash available to them.
- 4.7 The term of the Agency Agreement for Homelessness Services was finally set at 5 years rather than 3. This was for operational reasons to allow some stability for the staff and to allow a sufficient period of steady state running before the Council needs to enter into a procurement or option appraisal process.
- 4.8 The circumstances where the Council can take action to enforce the various covenants made by Green Vale Homes, essentially their undertaking to deliver the promises in the offer document, have been limited in cases where such action would result in a financial default by Green Vale Homes. This is a common position in such agreements and the changes extend an existing provision to cover all of the promises in the offer document rather than just those relating to physical improvement works. The funders require such provisions to protect their financial interests and allow them where default is a real possibility to take action to instigate recovery of the business without their discretion being unduly fettered. Given the regulatory role of the Housing Corporation in such circumstances there is likely to be sufficient protection to delivery of the programme of works.
- 4.9 Changes were agreed to the provisions relating to the provision of information to the Council in the event of a claim under one of the warranties. These changes aim to protect the interests of Green Vale Homes and the funders against unreasonably onerous requirements for information provision by the Council. As the Council is, in any case, under an obligation to act reasonably there is no substantive change in the position as a result of this. It is also to be hoped that the good communication which has existed through the transfer process will continue and that claims on the warranties will not come as a surprise which is the nature of events envisaged in this clause.

- 4.10 Clauses have been added which clarify the fact that ground contamination by asbestos is covered by the environmental warranty rather than the asbestos warranty. This was agreed to in light of the evidence available to the Council with regard to the risk of claims occurring.
- 4.11 Amendments were made to the clauses concerning claims under warranties in respect of contingent (as opposed to actual liabilities). These are changes insisted upon by funders to ensure that Green Vale Homes has access to sufficient cash to meet liabilities in the event of a claim. The Council agreed to these change sin light of an assessment of the risk of claims and the other mechanisms within the agreement which give some protections in relation to this including the changes outlined in para 3.9.
- 4.12 The report to Council indicated a degree of uncertainty around the cap on the environmental warranties the Council has to give to Green Vale Homes. The agreed position is that the warranty is capped at Green Vale's peak debt of £19.1m for 20 years. This is at the higher end of the range reported, but is in the view of the Council's advisers below the market expectation in these circumstances and certainly below the starting point of the funders' lawyers.

Resources Coming to the Council

- 4.13 As indicated in the report to Council a range of sums will pass to the Council under the terms of the transfer agreement, details of the sums and the proposals for their use are given in appendices 1 and 2. Some of these are earmarked for specific purposes, either under the terms of the agreement or through the Medium Term Financial Strategy which was separately approved by Council on 23rd February. Other sums do represent choices for the Council however; there are a range of liabilities which the Council also faces which these resources allow it to meet. Additionally, the transfer of these sums to the Council will generate strong cash flow which will be reflected in the interest receipts budget in future financial forecasts. It should also be remembered that the benefits of these sums are in addition to the benefits secured through the repayment of the Council's long term borrowing at the point of transfer.
- 4.14 The Council received a total sum of £1.5m at the point of transfer in respect of the sale of various assets, including the Bacup Neighbourhood Office, and accounting items such as stock stores and rent arrears which have to be written out of the accounts. In addition to the items which need to be written out of the accounts there are £1.1m of the Council's set up costs which have to be financed from this source. The final level of set up costs will not be known until completion of the negotiations over insurance related to the environmental warranties. However provision has been made at the top end of the range of likely costs. As any surplus within this sum will be in the form of a capital receipt it is recommended that if there is an eventual surplus that it is made available as further support for the Council's capital programme. Any additional use of resources in this way will positively impact on the revenue account by further postponing the need for new long term borrowing.

- 4.15 The second element of the financial resources passing to the Council is the agreement around the sharing of capital receipts realised through the preserved right to buy over the five years immediately post transfer. The first £4.5m of these is available for the Council to support its capital programme and effectively create a “soft landing” for the programme as this income stream declines. These resources have been factored into the Medium Term Financial Strategy and the capital programme proposals already considered by members. The second element (i.e. any amount over £4.5m) is under the terms of the agreement to be allocated to projects to increase the supply of affordable housing agreed between the Council and Green Vale Homes. Based on the estimate of capital receipts provided by Savill’s this generates roughly £2.7m over the period. Depending on the availability of sites etc this could generate between 30 and 50 further affordable housing units. It should also be pointed out that in the context of the previous rate of right to buy sales Savill’s figures look prudent and that the eventual sum might be greater.
- 4.16 The third element of cash passing to the Council arises from the VAT Shelter, where just over 49% of the total sum is passed to the Council. While the potential total available through this route is over £6m this assumes that all expenditure related to the improvement works is VAT’able. This is unlikely to be the case and planning is therefore based upon 70% of expenditure being VAT’able generating a receipt of £4.3m. As indicated in the report to Council on 23rd February it is proposed to use this to address a number of issues. Firstly the transfer of such a large body of staff has an effect on the deficit within the Council’s Pension Fund which if not addressed will adversely impact on the revenue account. It is therefore proposed to allocate £2.8m to address this issue. This figure is based upon an actuarial assessment of the effect on the Council’s fund of the loss of contributions and liabilities relating to housing staff.
- 4.17 Other areas where these funds might be used are more discretionary however, the recommendations below are framed to allow the Council to support continued pursuit of its wider policy objectives while minimising impact on the revenue account or core capital programme. The first element relates to “buying out” that part of the IT contract related to the provision of hardware at the start of the contract. This generates a £50k saving taken into account in the revenue budget. However, the terms offered by the contractor make it more favourable to continue to pay the contract value, but to finance the £50k saving from this source. In effect the Council will be earning interest on the cash while holding it rather than the contractor, positively impacting on the revenue budget. Secondly the Council is going to be faced with a need to renew key elements of its ICT infrastructure on an ongoing basis, in particular central servers and associated software. In order to avoid these unavoidable costs impacting on either the remainder of the capital programme or the revenue budget it is proposed to use this source to finance them. The final figures will be subject to review in the context of the IT Strategy which will come before members later in the year and at the point at which the IT contract is re-tendered. It is suggested that any funds released through these review processes are made available to support the ongoing capital programme, again reducing pressure on the revenue budget.

- 4.18 The balance of the funds available is recommended for use in two ways, firstly £465k for affordable housing projects towards the end of the ten year period. This shows the Council's commitment to address the key issues arising in this policy area and will ensure that the positive impact of the transfer process on housing in the Valley is maximised. The second area is an allocation of £250k towards a project at Bacup Leisure Hall. The intention here is to work with partners including Green Vale Homes to create a range of facilities "wrapped around" the Leisure Hall which will improve the offer from the facility and allow the Leisure Trust to share its fixed costs with other partners, again with potential benefits to the revenue account. This idea is very much at a conceptual stage and is based upon similar schemes which have emerged from other stock transfers. The idea will be fed into the current leisure review prior to any discussions with partners. Again if a project of this nature is not viable it is suggested that the resources released are used to finance ongoing capital expenditure reducing pressure on the revenue budget by postponing the need for new long term borrowing,
- 4.19 It is suggested that any funds over the 70% VAT share flowing to the Council are examined separately on a project by project basis in the context of ensuring the delivery of the spirit of the partnership between the Council and Green Vale Homes and securing the Council's policy objectives going forward.
- 4.20 As indicated in appendix 1 over the next 10 years some £13m will flow to the Council under the terms of the Stock Transfer Agreement. Given that the housing stock had significant negative equity when it was transferred and that the transfer was "gap funded" this represents a very good result for the Council allowing plans to be made for sustained long term investment in key priorities. These benefits also need to be seen in addition to the very substantial benefits flowing from the repayment of all the Council's long term borrowing.

Transitional Services Provided to Green Vale Homes

- 4.21 Given the timescale for creating Green Vale Homes' new organisation it was always likely that, in common with most stock transfers, the Council would need to continue to provide a range of services to the new Company for a transitional period. The services involved are IT where it will take Green Vale up to six months to put in place the infrastructure elements which they need to run separately from the Council such as central servers. It should be emphasised that the investment already made in the network and phone system actually makes this process easier. The other area is Grounds Maintenance where the Council will manage the delivery of the service for the first six months to allow Green Vale to establish specifications and resource levels for their new service, taking into account their work with tenants and experience over the growing season. The Council will receive £20,670 per month for these services, a maximum of £124,020, which will ensure any costs incurred are at least covered.

5. COMMENTS OF THE HEAD OF FINANCIAL SERVICES

- 5.1 The specific financial issues arising from the Stock Transfer process are dealt with in the body of this report. The Council has been able to achieve a “gap funded” transfer while securing resources to both meet future liabilities and to further the achievement of the policy objectives set out in the Community Strategy, Corporate Improvement Plan and Medium Term Financial Strategy.

6. COMMENTS OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES

- 6.1 The specific legal issues arising from this report are dealt with in the body of the report.

7. COMMENTS OF THE HEAD OF HUMAN RESOURCES

- 7.1 There are no immediate implications arising from this report

8. CONCLUSION

- 8.1 Overall the Stock Transfer process allows the Council the opportunity to significantly strengthen its balance sheet, to address future liabilities and invest in addressing the affordable housing issues identified in the Housing Strategy as a key issue for the future. This has been achieved while at the same time ensuring that Green Vale Homes has a sustainable business plan and access to the resources which will allow it to deliver the promises to tenants.

9. RECOMMENDATION(S)

- 9.1 The Cabinet are recommended to:
- a) Note the final terms of the Transfer Agreement with Green Vale Homes and the actions taken by the Chief Executive under the delegated powers granted to her at the meeting of Full Council on 23rd February 2006.
 - b) To recommend to the Council the utilisation of the resources flowing from the Transfer Agreement as set out in Appendix 2.
 - c) To note the transitional services being provided to Green Vale Homes by the Council.

10. CONSULTATION CARRIED OUT

- 10.1 Chief Executive, Leader of the Council, Portfolio Holder for Finance and Risk Management, Head of Financial Services.

Contact Officer	
Name	George Graham
Position	Executive Director of Resources
Service / Team	Executive Team
Telephone	01706 252429
Email address	georgegraham@rossendalebc.gov.uk

Background Papers	
Document	Place of Inspection
Stock Transfer Agreement	Futures Park Offices, on application to the Executive Director of Resources