

North Tyneside Council Delegated Decision Report to Chief Executive

Date: 15 January 2019

**Title: Purchase of
properties by North
Tyneside Trading Company
(Development) Limited for
affordable housing**

Portfolio(s): Elected Mayor

Cabinet Member(s): Norma Redfearn

Report from Service Area: Finance

Responsible Officer: Matt Calvert, Finance Manager
Richard Brook, Housing Growth Manager
Tel: (0191) 643 7025

Wards affected: All

PART 1

1.1 Executive Summary

The purpose of this report is to seek approval for the Authority to release Section 106 funds for the purchase of the properties by North Tyneside Trading Company (Development) Limited (the Development Company) in order to provide affordable housing in the Borough. This action supports the ambitions within the Affordable Housing Programme and the Our North Tyneside Plan.

At its meeting on 9 March 2015, Cabinet agreed to the creation of the Development Company, with the aim of increasing the pace and scale of affordable homes delivery. The Cabinet report outlined the use of Section 106 monies and capital receipts up to the value of £13.7m; remaining funding is included in the 2015-2018 (and future) capital investment plans.

The Development Company has to date been a success and now provides 32 affordable homes for rent. In line with the original business case, the Company is looking to increase its portfolio to 50 homes by the end of 2019/20. As such, it is recommended that a budget envelope be created for 2019/20 to allow the Development Company to purchase these additional homes. Funding will be provided by available Section 106 income held by the Authority.

This report requests approval of funding to be provided to the Development Company in order for it to acquire further properties from the monies received by the Authority, pursuant to Section 106 of the Town and Country Planning Act 1990 for affordable housing, where value for money has been demonstrated.

1.2 Recommendation

It is recommended that the Chief Executive, in consultation with the Elected Mayor and Head of Resources, authorises:

- (a) the use of the Section 106 Town and Country Planning Act 1990 commuted sums available for affordable housing as funding for the Development Company;
- (b) funding of up to £2.0m to the Development Company, via the North Tyneside Trading Company Limited, in order to acquire and refurbish properties up to a maximum of this value, subject to the Section 106 funds having being received by the Authority; and
- (c) funding to the Development Company in the form of equity funding from the North Tyneside Trading Company Limited as that being the form of funding that is most beneficial to deliver the desired objectives of the Authority as detailed in Section 1.5 of this report.

1.3 Forward Plan

Twenty eight days' notice of this report has been given and it first appeared on the Forward Plan that was published on 1 June 2018.

1.4 Council Plan and Policy Framework

This report relates to the following priorities in the 2018-2020 Our North Tyneside Plan:

Our Places will:

- Be places that people like living in and will attract others to either visit or live
- Have more quality affordable homes

1.5 Information

Purchase of the homes

The Delivering Affordable Homes Update report to Cabinet on 9 March 2015 included approval to spend up to £13.7m of either capital receipts or Section 106 funds for affordable homes to deliver 145 homes within 7 years, along with the approval to create the North Tyneside Trading Company (Development) Limited (the Development Company) as a delivery vehicle. This Company is a not-for-profit entity and as such all surpluses are re-invested rather than extracted as dividends to the shareholders.

The 2018-2020 Financial Planning and Budget Process: Elected Mayor and Cabinet Budget and Council Tax Requirement Resolution for 2018/19 to Council on 15 February 2018, included a delegation to the Chief Executive, in consultation with the Elected Mayor and Head of Resources, to authorise the purchase of properties, on the open market, providing value for money is demonstrated and the cost can be contained within existing financial resources of the Authority.

This decision was made to ensure that the programme of delivery of affordable homes is progressed in line with Cabinet's priorities. The report requested approval of funding to be provided to North Tyneside Trading Company (the holding company wholly-owned by the Authority), which would then immediately pass the funds on as equity to its affordable housing subsidiary, the North Tyneside Trading Company (Development) Limited (the Development Company) in order for it to acquire the properties from the Section 106 monies received by the Authority for affordable housing.

The Authority currently has £1.698m in uncommitted Section 106 funds ring-fenced for the sole purpose of increasing the supply of affordable homes within the Borough. A further £4.096m is expected in 2019/20 and beyond, based on current agreements in place with developers.

To date, the Authority has released £3.435m in Section 106 funds for affordable homes; this has been used by the Development Company to construct 13 homes and purchase a further 19 homes.

The Board of the Development Company has agreed, subject to the Authority releasing the required Section 106 monies, to purchase a further 18 homes to increase its asset base from the current 32 up to 50 homes before the end of 2019/20. The additional 18 homes will support the Authority's Affordable Homes Programme, which aims to increase the number of affordable homes in the Borough by 3,000 by 2024.

Noting that the Authority approved expenditure on affordable homes of up to £13.7m in 2015, a drawdown of up to £2.0m is requested before the end of 2019/20 to allow the Development Company to purchase the 18 additional homes. It is anticipated that the purchases will occur in 2019/20, with the potential for some purchases in 2018/19.

Previously, delegated decision reports have been prepared with each purchased property individually listed; this report requests a block of funding to the end of 2019/20 with the properties as yet unidentified. Purchasing an additional 18 homes before March 2020 may require the Development Company to act quickly in some cases, so for this reason, and to reduce administrative burdens, a funding block is requested, which will be drawn down as required. It should be noted that approval from the Board of Directors of the Development Company will be required for every purchase, along with a positive business case.

Value for money will be clearly demonstrated for all purchases, and the purchase (rather than construction) approach will provide new affordable homes to contribute to the Authority's Affordable Homes Programme in a faster time than it would take to complete a new-build property. The proposed homes will be in areas of high rental demand, and yields will be sufficient to cover the Development Company's running costs (including maintenance and future lifecycle costs).

In addition to the purchase price of each home, the funding will be used for other costs such as surveys, legal fees, stamp duty and refurbishment costs. It is proposed that the funding to purchase and refurbish the properties be made available to the Development Company from Section 106 Town and Country Planning Act 1990 monies that are available for use. Any funds drawn down by the Development Company but not fully spent will be retained by the Company and used on subsequent purchases.

Method of funding

The funding from the Authority can be provided either by way of a grant to the Development Company, which does not need to be repaid, or the purchase of equity in the North Tyneside Trading Company Limited by the Authority, which will in turn purchase equity in the Development Company. There are advantages and disadvantages to both methods of funding which are explored below:

Grant funding

Grant funding would be an advance of monies by the Authority to the Development Company which is only repayable in the event of certain conditions, and it is anticipated

that these conditions are unlikely to arise such that the grant could be interpreted as a form of gift. There would be restrictions placed on the expenditure of the monies in the form of grant conditions which set out the outputs to be achieved and the milestone dates these will be achieved by. If the outputs and milestones are not met, this would trigger the option to claw back the funding provided, as is usual with grant funding.

The introduction of a grant to the Development Company is likely to create taxable income within the group of companies. For any expenditure on capital assets that could be sold in the future, and therefore within the scope of capital gains tax, any expenditure that is met by a grant out of public money reduces the base cost of the assets for tax purposes (by the amount of the grant). If a grant of £2,000,000 was used to acquire the properties, the Development Company's base cost for tax purposes would be £nil. A sale of the properties in the future for £2,000,000 would be fully taxable unless the proceeds for the properties are used to repay that grant. In addition, grant income is normally outside of the scope of VAT.

Equity funding

Equity funding is provided to the North Tyneside Trading Company Limited and onwards to the Development Company.

Providing equity should give the shares in the Development Company a higher tax base cost, which is relevant for any potential future sale or part disposal of the North Tyneside Trading Company Limited. For example, if the Company acquires two million £1 shares in the Development Company, its base cost would be £2,000,000 and therefore the amount subject to tax would be significantly reduced.

Recommended method of funding

Providing funding by way of equity does not preclude a repayment of equity; this is normally undertaken by way of a capital reduction process. On this basis, the benefit of base cost via equity is deemed to be most appropriate to deliver the objectives of the Authority.

It is therefore recommended that funding is made available to the Development Company via the purchase by the Authority of equity in the North Tyneside Trading Company Limited, which will in turn purchase equity in the Development Company.

1.6 Decision options

The following decision options are available for consideration:

Option 1

To approve the recommendation at paragraph 1.2 of this report.

Option 2

Not to approve the recommendation at paragraph 1.2 of this report in which case the Development Company will be unable to support the Authority with its programme of delivery of affordable homes in line with the Cabinet's priorities.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended because it will help to meet the objective of the Authority to assist in the delivery of 3,000 affordable homes across 10 years to 2024.

1.8 Appendices:

None

1.9 Contact officers:

Matt Calvert, Finance Manager, tel. (0191) 643 7025

Richard Brook, Housing Growth Manager, tel. 07540 182 225

Roy Marston, Senior Manager, Strategy and Support Services, tel. (0191) 643 7580

Emma Simson, Manager, Legal Services, tel. (0191) 643 5456

1.10 Background information:

The following background information has been used in the compilation of this report and is available at the office of the author:

- (1) [Cabinet Report, Delivering the Affordable Homes Programme, 09 April 2018](#)
- (2) [2018-2020 Financial Planning and Budget Process: Elected Mayor and Cabinet Budget and Council Tax Requirement Resolution for 2018/19](#)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The funding to North Tyneside Trading Company (Development) Limited of up to £2,000,000 can be provided from the Section 106 Town and Country Planning Act 1990 commuted sums available for affordable housing.

It is proposed that the Company is funded via an equity purchase by North Tyneside Council in the North Tyneside Trading Company Limited which then in turn buys equity in the Development Company.

2.2 Legal

The Authority can provide funding to the Trading Company via contributions received pursuant to section 106 of the Town and Country Planning Act 1990. Such contributions are commuted for the purpose of affordable homes. The purchase of equity within the Trading Company will ensure that the funding is utilised for affordable housing.

2.3 Consultation/community engagement

Comprehensive governance arrangements have been put in place for the Affordable Homes Programme which supports internal consultation. Cabinet receives an annual update report on the Affordable Homes Programme.

Members and key officers are consulted through the Strategic Property Group comprised of the Elected Mayor, Deputy Mayor, the Cabinet Members for Housing and Finance and Resources, the Chief Executive, and the Heads of Housing, Environment and Leisure, Commissioning and Asset Management, Resources and Regeneration and Economic Development. They receive a monthly update on the Affordable Homes Programme and make recommendations for key decisions.

In addition our Investment Programme Board comprised of the Deputy Mayor, Cabinet Member for Finance and Resources, Chief Executive, and Heads of Housing,

Environment and Leisure, Commissioning and Asset Management, Regeneration and Economic Development and the Head of Resources receives financial management information on the Housing Growth agenda.

2.4 Human rights

There are no human rights implications arising from this report.

2.5 Equalities and diversity

There are no equality and diversity implications directly arising from this report.

2.6 Risk management

Risks associated with the proposal to acquire these properties have been considered. At this stage, it is felt that no specific risk needs to be added to the Corporate Risk Register

2.7 Crime and disorder

The proposal was considered for crime and disorder issues as part of the planning process.

2.8 Environment and sustainability

The properties are all of modern construction and all have Energy Performance Certificates rating the properties efficiency in terms of energy consumption. Full surveys of all properties are completed before purchase and any areas of concern identified in terms of energy efficiency are addressed as part of any improvement works required ahead of the property being let.

PART 3 - SIGN OFF

- Chief Executive ☐
- Head(s) of Service ☐
- Mayor/Cabinet Member(s) ☐
- Chief Finance Officer ☐
- Monitoring Officer ☐
- Head of Corporate Strategy and Customer Service ☐