

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	1 <sup>st</sup> July 2014
<b>Report of:</b>	Strategic Housing and Intelligence Manager
<b>Subject/Title:</b>	Strategic Housing – Delivering Affordable Housing Provision (Ref CE 13/14-91)
<b>Portfolio Holder:</b>	Councillor D Stockton, Housing and Jobs

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### 1. Report Summary

- 1.1 The Local Plan creates a vision for the future which is to deliver jobs-led growth and sustainable vibrant communities. Affordable housing in Cheshire East plays a fundamental role in realising this ambition. Affordable housing creates balanced, sustainable communities whilst driving superior health and well-being for modest-income households. Moreover, it provides the vital impetus for economic activity and aspiration. The provision of affordable housing can stimulate spending and governmental yields, and crucially equips an area with the long-term capacity for labour and economic fluidity that will attract and develop business.
- 1.2 As such, Cheshire East has a robust strategy to appropriately grow our provision of affordable housing, underpinned by a number of innovative policies. This will ensure that the housing composition in Cheshire East has the diversity to cater for every element of society and engage the entire community in a mutual drive for greater prosperity.
- 1.3 Across Cheshire East affordability is an issue, residents are struggling to access the housing market. In Cheshire East the average lower quartile house price, which is the usual access point for first time buyers, is £122,500. Average lower quartile incomes are £18,559 which represents 6.6 times income levels in order to purchase a property. Even with deposits many of our first time buyers will be excluded from the market and the recent Mortgage Market Review changes will make it increasingly harder to access mortgages at above 3.5 times income levels. We therefore need to provide innovative solutions to enable first time buyers to access appropriate housing products, which are accessible and affordable.
- 1.4 Affordable housing can take the form of both rental and intermediate housing. Our priority is to support those residents who have the financial ability and who aspire to become home owners. We also have to recognise that due to the economic climate and the ability of those on low income to access a mortgage, affordable rental units also forms a fundamental part of our housing supply. Following the completion of the Vulnerable Persons Housing Strategy we now have the opportunity to develop specialist accommodation to meet the needs of some of our most vulnerable residents.

- 1.5 The level of affordable homes developed since 2009 has decreased significantly, which is due to a number of factors including the reduction in the level of subsidy provided by the Homes and Communities agency, which has placed a reliance on Registered Providers to secure funding through commercial channels and increase rents to affordable rental levels and the reduction of affordable housing on new developments as a result of viability issues.
- 1.6 Cheshire East's clear proactive action in these times of austerity has delivered a strong financial position for the Authority. The pooling of capital resources is good practice and ensures both flexibility and investment alignment with our Corporate priorities. The enabling of appropriate housing provision is a key priority for the authority. This is evidenced by the commitment to invest in the provision of affordable and specialist homes to a value in line with the level of right to buy receipts received. This commitment will enable the authority to influence the development of the right type and tenure of homes in the right locations to provide housing solutions to meet increasing need.
- 1.7 This report brings forward two policies which will help to stimulate and accelerate the development of affordable homes. These initiatives will help us to not only to provide new provision, exploring the use of modular construction, but there is also the opportunity to explore new innovative ways to bring empty homes back into use or contribute towards the regeneration of some of our most deprived areas.

## **2.0 Recommendations**

### **2.1 Cabinet is recommended to**

1. approve the policy and the process outlined in Appendix 1 for the allocation of commuted sums for the provision of affordable housing;
2. approve a supplementary capital estimate for an annual sum of £500,000 for the provision of affordable housing initiatives and the process for allocation as outlined in Appendix 2; and
3. delegate authority to the Director of Economic Growth and Prosperity in consultation with the Portfolio Holder for Housing and Jobs to make the award of funding in line with the agreed criteria.

## **3.0 Reasons for Recommendations**

- 3.1 Housing is a vital element of developing the 'place', assisting in the creation of sustainable communities and our ambition for economic growth. It is a fundamental part of everyone's life and is essential to our health, children's educational achievement, economic wellbeing and to social inclusion.

- 3.2 Cheshire East need to facilitate the development of a range of housing types and tenures in order to meet the needs of our diverse community and ensure that residents have access to affordable, decent accommodation.
- 3.3 Through the development of our Vulnerable Persons Housing Strategy we now have the evidence which will influence commissioning decisions and the ability to shape the development of appropriate accommodation to meet the sometimes complex needs of our most vulnerable residents. This will give residents the ability to either retain their independence, reducing early entrance into residential care or to provide the skills to enable independence.

#### **4.0 Wards Affected**

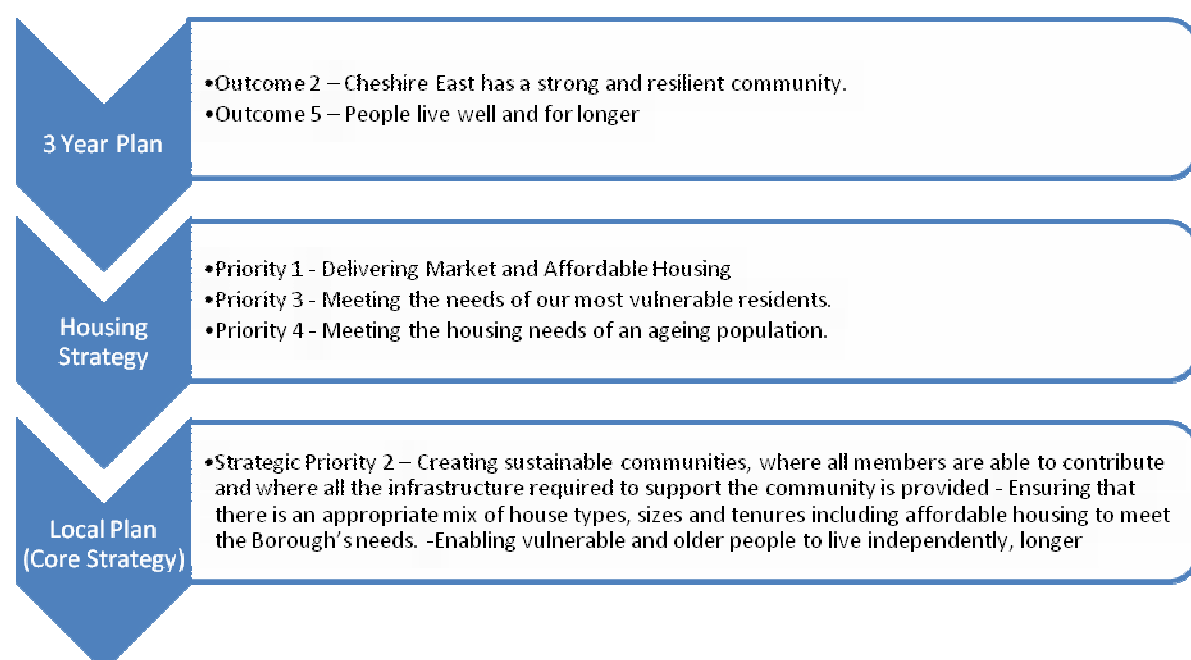
- 4.1 All Wards

#### **5.0 Local Ward Members**

- 5.1 All Wards

#### **6.0 Policy Implications**

- 6.1 Housing is fundamental to the well being and prosperity of the Borough. There are direct connections between the quality of the housing stock and health, educational attainment, carbon reduction and care for older people. Providing sufficient housing of good quality is essential to maintain economic growth and vitality.
- 6.2 Housing is intrinsically connected to a range of strategic priorities emanating from national directives and Cheshire East's strategic and service initiatives as outlined below:



## **7.0 Financial Implications**

### **7.1 The financial implications for each initiative are outlined below.**

- 7.2 Commuted Sums** - S106 receipts are held within the Council's balances as either a Creditor (time limited) or as a Useable Reserve (no time limit) until such time when the receipts are required to fund either revenue or capital expenditure.

In the case of capital projects to be funded by the S106 monies, approval to spend is required through the Council's Approval Processes and will subsequently be added to the capital programme to be monitored. The tables below outline the sums of money currently held by the Council and the agreements where money has not been yet been paid to the Council

### **7.3 Sums of Money currently held by the Council**

<b>Address</b>	<b>Commuted sum</b>
	£
195/199 Wilmslow Rd. Handforth	361,035
Smallwood Storage Smallwood	239,400
Land at Eden Park, Macclesfield Rd, Alderley Edge	87,929
Holly Lodge Hotel, London Road, Holmes Chapel.	237,564
Land off Congleton Road & Davenport Arclid	3,913
Land at Walgherton Garage, London Road, Walgherton (stage 2)	11,900
Various s106 payments from Macclesfield Borough Council	82,604
<b>Total</b>	<b>1,024,345</b>

### **7.3 Sums of Money included in legal agreements but not yet paid to the Council**

<b>Address</b>	<b>Commuted sum</b>
	£
33 to 45 Mill Green, Congleton	153,091
Beech Lawn, Alderley Edge	280, 047
County Hotel, Alderley Edge	277,014
Land at Walgherton Garage, London Road, Walgherton (stage 2)	11, 900
<b>Total</b>	<b>722,052</b>

#### 7.4 **Capital allocation for the provision of affordable/specialist accommodation.**

Permission is being sought for an annual capital allocation of £500,000 to be approved for the provision of affordable housing initiatives. This would be reviewed on an annual basis and funding will be required from the Council's capital resources.

- 7.2 Income from Right to Buy (RTB) receipts are pooled centrally in the capital reserve. The level of RTB receipts received by Cheshire East from the three Registered Social Landlords (RSL's) – Peaks & Plains, Dane Housing and Wulvern Housing since April 2009 are outlined below:

Financial year	Receipts received
2009/10	£496,478
2010/11	£223,980
2011/12	£247,192
2012/13	£442,368
2013/14	£476,450

- 7.3 The RTB receipts are shared in accordance with the original transfer agreement and take account of net income foregone, i.e., the amount of money the RSL's will lose due to the loss of rent from the property.
- 7.4 Under the Council's Capital Receipts Policy, all receipts are pooled centrally in the capital reserve and are fully allocated in line with corporate priorities as part of the overall development of the capital programme.

#### 8.0 **Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 **Commuted Sums** – s106 agreements are legally binding agreements between the Council and the Developer. In some cases these agreements do contain clear obligations on the Council to follow a set of criteria when deciding how to allocate the commuted sums. They can also require the Council to use the money within a set time period (following which if the money has not been dissipated it may need to be returned to the developer) and within an agreed area. In all cases they require the Council to account to the developer for its use of its sums in accordance with the criteria set out in the agreement.

In those cases where the wording of the agreements is so clear as to be unequivocal as to how the commuted sum is to be allocated then the Council will not have discretion in how to use those commuted sums. These sums can be distributed in accordance with the legal agreement.

However, in a number of cases application of the criteria in the legal agreement does involve the Council exercising some discretion (such as identifying suitable off-site projects, choosing between two identical projects or

defining affordable housing). There may be discretion for the Council to implement its own schemes.

A policy setting out the criteria that the Council uses when considering spending commuted sums will provide a consistent means by which available funds can be applied to affordable housing projects.

The terms of the legally binding agreements with third parties must be adhered to and implemented in precedence to the Council exercising any discretion under the policy.

In all cases the Council must account to the developer who provided the commuted sum for its use of the money and so must be able to evidence that it has been used in accordance with the terms of the particular s106 agreement. Accordingly, the recipient will be required under the terms of the policy to present to the Council invoices evidencing that works have been carried out and the Council will approve payment which will evidence the Council's compliance with its obligations under the s106 agreements.

- 8.2 **Capital allocation** – There are no legal implications for the allocation of a capital sum for the provision of affordable housing, however legal consideration must be given when allocating to specific projects if they are to be delivered externally.

When awarding grants the Council must satisfy its public law duties. In essence this means that in making the decision the Council must have taken into account only relevant considerations, followed procedural requirements, acted for proper motives and not acted unreasonably. A grant policy is a clear statement of the criteria that the Council is applying and is essential if the Council is to defend any challenge to its decision making process.

The proposed policy for the allocation of capital receipts for affordable (specialist) housing provision deal with the allocation of grants which are competitively awarded to Registered Providers and Developers following an open application process and against a set criteria. Conditions can be imposed requiring that the recipient report back to the Council upon expenditure of the grant. The decision making process is delegated to the Portfolio Holder in order to ensure that decisions can be made expeditiously and at the appropriate level. Grant funding following a competitive applications process and based on the application of the Council's grant policy satisfies the Council's public law duties and reduces the risk of challenge.

State Aid may apply if grant funding is awarded over the State Aid threshold and other than at market comparable rates.

If State aid is not granted legally, it may lead to investigation and condemnation by the European Commission. This in turn can lead to a project being terminated or the Council being required to recover any illegal aid from a beneficiary at a later stage, plus interest.

If, there is an element of State Aid, this must be managed. Either the project is restructured to avoid containing aid, or else the aid must be made legal. State aid may only become legal if authorised by the European Commission, for which there are two routes that can be followed. Either:

The aid package must be notified to the European Commission for individual prior approval; or

It may receive deemed approval without notification on the basis that it fits within an already notified and approved aid scheme in the Member State concerned (approved as a framework scheme), or a so-called "block exemption" Regulation (in which the Commission has outlined the conditions under which a State aid can be granted lawfully). A State aid qualifying for approval via a block exemption or prior-approved national framework scheme may be implemented immediately on the basis that the benefit of the grant or loan funding will be used by the Registered Providers for the purposes of fulfilling their statutory duty, namely the delivery of social housing, it is believed that the aid is automatically legitimate without any need for prior notification on the basis of Article 2.1(b) of the European Commission's 2005 "block exemption" decision in respect of services of general economic interest (SGEI).

Any implementation outside these boundaries results in the aid being illegal unless and until such time as individual European Commission approval is given.

An illegal aid is subject to interest recovery (for the period of illegality) even if subsequently approved by the European Commission.

Advice should be sought from legal services at the earliest opportunity to ensure that any aid can be granted legitimately and in time to meet our timescales.

## **9.0 Risk Management**

9.1 The economic climate has impacted significantly on the housing market and the ability to bring forward the required level of housing development to meet our ambition for growth and also enable those who can access the market. The authority can chose not to intervene and leave it to market forces, however exploring new approaches and initiatives to bring forward new housing supply could stimulate the market. In stimulating the market it will help us to maximise the New Homes Bonus.

9.2 **Commuted Sums** - Some of the commuted sum payments currently immediately available to be allocated are time limited so there is a risk if they are not allocated over the next few years they will have to be returned to the developer. By agreeing a policy for the distribution of the commuted sums the Council will be mitigating against this happening

- 9.3 **Capital allocation** - The Registered Providers have seen a significant reduction in the subsidy which available to them and this has impacted on the level of development they can achieve. By approving an annual allocation available to both Registered Providers and developers we can stimulate growth but also tackle some of the issues of poor design on some of our most deprived estates, as well as bringing empty homes back into use.
- 9.4 Some areas have seen a high level of sales through the right to buy initiative. To ensure that provision is re-provided within these areas, additional priority will be awarded through the bidding process.

## **10.0 Background and Options**

### **10.1 The following initiatives have been put forward for approval:**

#### **a) The utilisation of commuted sums for the provision of affordable housing:**

Through the development of the Supplementary Planning Document for affordable housing, there is a requirement for the provision of 30 per cent affordable housing to be delivered on all allocated sites. As a rule, the Council would prefer to see affordable housing provided on-site. However, there may be physical or other circumstances where an on-site provision would not be practical or desirable. In such exceptional cases and entirely at the Council's discretion, developers may, in lieu of such provision, provide off-site affordable housing, or offer financial or other contributions towards the provision of affordable housing on an alternative site. This provides the opportunity for the funds to contribute towards a scheme for affordable housing that meets the Council's priorities. This is specified within the Local Plan which was approved by Full Council in February 2014 – Policy SC5

Section 106 agreements are legally binding agreements between the Council and the landowner and/or developer. In some cases these agreements do contain clear obligations on the Council to follow a set of criteria when deciding how to allocate the commuted sums. They can also require the Council to use the money within a set time period (following which if the money has not been dissipated it may need to be returned to the developer). In all cases they require the Council to account to the developer for its use of its sums in accordance with the criteria set out in the agreement.

In those cases where the wording of the agreements is so clear as to be unequivocal as to how the commuted sum is to be allocated then the Council will not have discretion in how to use those commuted sums. These sums can be distributed in accordance with the legal agreement.

However, in a number of cases application of the criteria in the legal agreement does involve the Council exercising some discretion (such as identifying suitable off-site projects, choosing between two identical projects or defining affordable housing).

In these cases there is some discretion for the Council to implement its own schemes.



Appendix 1 outlines a suggested policy to enable us to determine the allocation of such sums which clearly sets out our priorities and the way in which funding can be allocated to bring forward the provision of affordable homes and which is in line with the policy set out within the Local Plan.

**b) Capital investment to fund an annual bidding round.**

The ability to bring forward housing development opportunities are sometimes hampered by financial constraints. The level of subsidy which is available through the Homes and Communities Agency has decreased significantly over the last three years and this makes some schemes or initiatives unviable for Registered Providers. There are also opportunities which the Strategic Housing service would like to progress (listed below), however they require an element of funding.

An accessible allocation of funding for the provision of housing would enable us to provide match funding, take forward initiatives or stimulate new ideas and products with either Registered Providers or Developers.

There are a number of initiatives which would benefit from a financial injection to ensure that they achieve their aims. These include:

**New Provision:** In 2011 the Coalition Government announced their intention to reinvigorate the Right to Buy initiative, which would support social housing tenants who aspire to own their own home. In 2012, the Right to Buy discount limit across England was raised to £75,000. In addition to helping social tenants to buy their homes, the Government set out their commitment that, for every additional home brought under Right to Buy, a new affordable home would be built. The expectation is that receipts received would be reinvested into the development of new provision.

In 2013/14 we lost approximately 25 properties through the Right to Buy initiative, a significant increase on 2012/13. A capital allocation would enable us to work with Registered Providers to replace properties lost through the Right to Buy scheme. Through the bid evaluation criteria, we can give priority to schemes in those areas where there has been a significant loss of properties through Right to Buy and where there is a demonstrated high level of housing need.

**Empty homes (Affordable or Private rented):** Funding has had to be returned to the Homes and Communities Agency for the provision of bringing empty homes back into use, due to the high values of properties across the authority and the costs to bring them up to a decent standard. The level of subsidy available did not make it viable.

Funding could be used to match fund or top up allocations to ensure that the scheme is delivered. This would also assist with the In Town Living project whose aim is to bring empty residential or commercial units into use within the town centre which will increase the provision of housing but hopefully stimulate the evening economy as well. Funding would be made available to both Registered Providers or developers.

**Social Housing Regeneration Schemes:** Registered Providers require a significant amount of investment in order to carry out regeneration projects on some of their

estates. For example the Sherborne Estate in Crewe was a rundown, low demand estate, however following significant investment from Wulvern they have turned the estate around, with selective demolition of properties and the introduction of new housing and improvement works. They are now on phase three of the project but require a contribution towards the scheme.

There are other regeneration projects which could turn some of our estates around and provide a mix of tenures and types.

Members could agree to the allocation of a capital sum of £500k per annum to invest into the provision of affordable housing, either social or specialist, which could be funded partly or completely through right to buy receipts.

In the same way as the Commuted Sums would be allocated, a bidding process would be initiated on an annual basis and then evolution would be carried out using a scoring process. Appendix 2 outlines the process including scoring matrix.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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