CABINET
26 March 2019

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: CHANGE TO THE STOCK TRANSFER AGREEMENT WITH SETTLE (NORTH HERTFORDSHIRE HOMES)

REPORT OF : SERVICE DIRECTOR – COMMERCIAL & SERVICE DIRECTOR - RESOURCES

EXECUTIVE MEMBER FOR FINANCE AND IT

COUNCIL PRIORITY : RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

1.1 Settle (North Hertfordshire Homes) have approached the Council to seek a variation to the stock transfer agreement (of 2003) to allow for further borrowing against the transferred properties. The request would allow settle to move from a valuation of the housing stock based on Existing Use Value (EUV) to a valuation based on Market Value subject to Tenancies (MV-STT). This would improve settle's ability to raise funds which settle suggest is likely to lead to an increase in the number of properties developed in North Hertfordshire.

2. RECOMMENDATIONS

2.1 That Cabinet agree to a variation to the mortgagee in possession provisions in the stock transfer agreement as proposed by settle (North Hertfordshire Homes).

3. REASONS FOR RECOMMENDATIONS

3.1 To amend the stock transfer agreement to allow settle to raise funding to increase the housing that it can build, with the expectation that a proportion of this would be in North Hertfordshire.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 To not agree to the proposed change, which would limit the new housing that settle could develop, but would not have any risk in relation to the existing housing stock.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 The Executive Member for Finance and IT has been consulted and supports the suggested approach.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

7.1 The Council's housing stock was transferred to North Herts Homes (now settle) on 31 March 2003 subject to the terms of the stock transfer agreement. Clause 5 of the transfer contains 'overage' provisions which require settle to make a further payment to NHDC if prior to 2033 any of the housing stock is used in a transaction "to facilitate pedestrian and/or vehicle access to any land adjoining or adjacent to the Property". These provisions were included to ensure that if any of the former housing stock had value as a 'ransom strip', then the Council would be able to share in that value.

7.2 Clause 5.2(i) of the stock transfer agreement is a 'mortgagee in possession' clause. This clause was included so that if NHH defaulted on a loan and their lender took possession of the housing stock, then the overage provisions would not apply to that lender.

7.3 Settle has approached NHDC with a request to vary the terms of the mortgagee in possession clause as it wishes to use the housing stock as security for further borrowing. The properties are currently used as security for borrowing on an Existing Use Value (EUV) basis i.e. Social Housing.

7.4 Following changes made by the Housing and Planning Act 2016, settle have the opportunity to use the housing stock as security for additional borrowing. However settle have advised that their lender requires an amendment to the mortgagee in possession clause in the stock transfer agreement as a condition of the further borrowing, this is set out in Appendix A.

8. RELEVANT CONSIDERATIONS

8.1 Although the proposed variation to the stock transfer agreement is technical, officers are aware that the implication of the change will be to increase the value of the housing that is owned by settle for borrowing purposes. The reason for this is due to what can happen in the very unlikely event that settle were to default on the debt. Under the EUV definition, the lender would have to maintain the property as social housing in perpetuity. Under the MV-STT definition, the lender would have to honour the existing tenancy but would then be free to dispose of the property on the open market. Given the impact of agreeing to the variation, combined with the fact that the proposal is to vary such a significant document, officers are of the view that Cabinet is best placed to consider the matter.

8.2 There are two advantages to settle of an increase in the valuation:

- It increases the total amount that can be borrowed, which allows greater investment in new housing.
- If they are not borrowing up to the maximum, they would be borrowing a lower proportion of the total that they could borrow. This would then be seen as lower risk by the lender and would therefore be at a lower rate. This would improve the cost effectiveness of investments in new housing.

8.3 Settle has indicated that it would only borrow money for the purpose of investing in new housing. Whilst they can not guarantee how much of this housing would be within North Hertfordshire, they have stated that they are committed to developments within the North Hertfordshire area wherever they can identify a scheme that meets their viability criteria. Individual schemes can not be guaranteed until the land has been acquired and planning permission granted, although some indicative schemes are provided in the part 2 report. Overall settle's current strategic objective is to build 480 properties over a 3 year period to March 2020 and they state that they are on track to deliver this. However they have an ambition and ability to develop more, and the change in valuation helps maximise that ambition which could be at least 300 units a year (almost double the current ambition).

8.4 The risk of the change is what would happen if settle were to default on their borrowing. In theory the properties used as security could be repossessed by the lender. Once the current tenancy had expired, the lender would then be free to sell or let the property at market rates. This would then reduce the social housing supply that is available within North Hertfordshire. The mitigations against this are based on the controls put in place by settle, combined with how the housing sector has treated failure by individual registered providers. These mitigations are:

- In 2018, settle had an in-depth Assessment from the Regulator of Social Housing and received a G1 V1 rating for Governance and Viability, the highest possible scores.
- Settle's treasury management policy has 'golden rules' in place around asset cover, gearing and liquidity that mitigate risks. It is reported regularly to their Board.
- Settle's 30-year business plan is regularly updated and stress-tested to understand the limits at which their finance model would break. Risk mitigations are in place and regularly reviewed so that there are plans in place to respond.
- Settle are not planning to borrow up to the limit that this change would allow, so the main advantage would be access to better value financing.
- The social housing sector has been a 'no default' sector. In the rare occasion any housing association has found itself in financial difficulties, the Social Housing Regulator has stepped in, and ensured that the properties remain within the social housing sector.

8.5 As the change to the legislation is relatively recent, there are a number of registered providers that are progressing with a change to MV-STT valuation, but settle are not aware of any that have completed this yet. They have been in correspondence with a number of lenders and their treasury advisors, who are supporting a number of other registered providers with these changes.

8.6 It is considered that the up-side of highly likely building of new housing within North Hertfordshire is worth it for the very low chance of the down-side risk happening.

9. LEGAL IMPLICATIONS

9.1 In essence this is a small change to a property related agreement and therefore falls under the delegation of the Service Director: Commercial as "settling the terms of …minor land matters" (14.6.7 (b)(i)(B) of the constitution). However the decision is being referred to Cabinet in accordance with section 14.6 (e) of the constitution which allows an officer to refer a decision to Cabinet rather than make the decision. .

9.2 If Cabinet agree to the proposed variation then a formal Deed of Variation will be entered into between the parties. The Deed will be on terms approved by the Service Director: Commercial under existing delegated authority.

10. FINANCIAL IMPLICATIONS

10.1 There are no direct financial implications for the Council arising from this report. Increases in the supply of social housing could help reduce homelessness and the need to use temporary accommodation and nightly paid units, such as hotel rooms. This could therefore have a positive long-term financial impact.

11. RISK IMPLICATIONS

11.1 The risks and opportunities of this proposal are highlighted in section 8. As detailed in section 8.6, it is felt that the up-side opportunity outweighs the down-side risk.

12. EQUALITIES IMPLICATIONS

12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2 There are no specific equalities implications arising from this report.

13. SOCIAL VALUE IMPLICATIONS

13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

14.1 There are no direct human resources implications for this report.

15. APPENDICES

15.1 Appendix A – Existing and proposed wording of clause 5.2 of the Stock Transfer agreement dated 31 March 2003

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18. BACKGROUND PAPERS

None