

| MAYOR AND CABINET | | | |
|--------------------------|--|----------------|--|
| Title | Phoenix Community Housing | | |
| Key decision | Yes | Item no | |
| Wards | Bellingham, Downham, Whitefoot | | |
| Contributors | Executive Director for Customer Services, Executive Director for Resources and Regeneration, Head of Law | | |
| Class | Part 1 | 13 July 2016 | |

1 Summary

- 1.1 In December 2007, Lewisham Council's properties in Bellingham, Downham and Whitefoot were transferred to a new organisation, Phoenix Community Housing. This formed a part of the Council's strategy to ensure that its homes received the investment they needed to be brought up to the Decent Homes standard. In addition, the council enabled a new kind of housing provider – a community gateway organisation designed to provide residents with stronger influence over the way their homes are managed.
- 1.2 As part of the negotiations around the transfer, the Council and Phoenix entered into a number of agreements governing the properties which were transferred. One of these means that where a Phoenix tenant completes a Right to Buy, the majority of the money they pay is returned to the Council.
- 1.3 Since 2008, the housing policy landscape has changed significantly. Due to changes in the level of discount offered to tenants who wish to exercise their right to buy, the number of completions has increased substantially from 4 in 2010/11 to 38 in 2014/15. As Phoenix does not receive the whole sales receipt, it is not able to build a sufficient number of new homes to replace those lost under the Right to Buy.
- 1.4 More recently, the government has announced further policy changes which have had a significant impact on housing providers. For example, the Right to Buy is being extended to tenants of housing associations. Under the current Right to Buy, only Phoenix tenants who had previously been Lewisham Council tenants were eligible to buy their home. Under the new scheme, all Phoenix tenants would in principle be eligible to exercise a Right to Buy. This means that over the next few years, Phoenix is likely to sell more homes under the Right to Buy.
- 1.5 Additionally, the Welfare Reform and Work Act mandated that all housing providers reduce rents by one per cent rent from April 2016. This reduces

Phoenix's rental income by over £9 million over the next four years and, like all providers, Phoenix will need to adjust its business plan to manage the impact.

- 1.6 These changes are taking place in the wider context of an urgent need to increase the supply of affordable housing in the borough. There are currently over 1,700 homeless Lewisham households in temporary accommodation, and over 9,000 households on the waiting list for social housing.
- 1.7 In response to this challenge, officers have been working in partnership with Phoenix to develop proposals which will support Phoenix to develop new homes. The Mayor has already approved two schemes of this kind. Mayor and Cabinet approved funding to enable Hazelhurst Court. More recently, on 23 March 2016 Mayor and Cabinet approved that the Council contributes £1.32m from section 106 funds to support the development at Forster House which will provide 22 new homes for affordable rent.
- 1.8 On 23 March Mayor and Cabinet also agreed that officers should review options for the longer term funding of housing development by Phoenix Community Housing and report these back to Mayor and Cabinet. This report outlines recommendations from officers based on that review.
- 1.9 This report proposes that the Council waives its right to payments under the transfer agreement and allows Phoenix to retain this money and uses it to provide new housing in the borough. This will not only allow Phoenix to replace homes sold under the Right to Buy, but will also allow it to work-up long-term proposals to develop new homes. As the main provider of affordable housing in the south of the borough, this also means that by working together the Council and Phoenix can bring forward potential sites in these wards. The Council will have nomination rights over the new Phoenix homes built for affordable rent.
- 1.10 Furthermore, new homes developed by Phoenix will assist the Council in meeting its targets for developing new affordable homes, and meeting the housing needs of residents in the south of the borough. Officers believe that providing new homes for people in the area who wish to down-size could free up larger homes for families in housing need.
- 1.11 The rest of this report sets out the background to the issue and provides more detail about the proposals to support the recommendations.

2 Recommendations

- 2.1 The Mayor is recommended to:
- 2.2 Note the rationale for allowing Phoenix Community Housing to retain Right to Buy receipts for sales in its stock in light of the changing housing context and to enable it to develop new affordable homes.
- 2.3 Note that this will increase the number of new homes in the borough, and especially in the Bellingham, Downham and Whitefoot wards, and that the Council will have the right to nominate tenants to the new properties.

- 2.4 Agree that the Council waives its right to any payments of Right to Buy receipts due to it under the Transfer Contract between the Council and Phoenix Community Housing from 1 April 2016, subject to any conditions agreed by the Council and Phoenix Community Housing.
- 2.5 Delegate authority to the Executive Director for Resources and Regeneration on the advice of the Head of Law to finalise the terms of the waiver.

3 Policy Context

3.1 The contents of this report are consistent with the Council's policy framework. It supports the achievements of the Sustainable Community Strategy policy objectives:

- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
- Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
- Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.

3.2 The proposed recommendations are also in line with the Council policy priorities:

- Decent homes for all – investment in social and affordable housing, improve housing conditions and tackle homelessness
- Strengthening the local economy – gaining resources to regenerate key localities, strengthen employment skills and promote public transport.

3.3 Lewisham's Housing Strategy was approved at Full Council in May 2015. This strategy sets out the Council's ambition to address the challenges in the borough through the following objectives:

- Helping residents at times of severe and urgent housing need
- Building the homes our residents need
- Greater security and quality for private renters
- Promoting greater quality in the social and private rented sectors

3.4 Lewisham's Core Strategy has the objective to make provision for the completion of an additional 18,165 net new dwellings from all sources between 2009/10 and 2025/26, to meet local housing need and accommodate the borough's share of London's housing needs. This aims to exceed the London Plan target for the borough. The Core Strategy also has the objective to make provision to meet the housing needs of Lewisham's new and existing population, which will include:

- Provision of affordable housing
- A mix of dwelling sizes and types, including family housing
- Lifetime homes, and specific accommodation to meet the needs of an ageing population and those with special housing needs
- Bringing vacant dwellings back into use

4 Phoenix Community Housing

4.1 Previous government policy required Local Authorities to undertake a stock options appraisal to develop a strategy by which all their stock could meet the Decent Homes Standard. In order to bring in the investment needed to achieve this objective, the government provided three main ways to support local authorities who need additional funding to make their homes decent. These were:

- Setting up an Arms-Length Management Organisation (ALMO)
- Entering into a Private Finance Initiative (PFI) contract
- Transferring properties to a Registered Provider of social housing

4.2 The approach taken by Lewisham's Decent Homes Strategy was to pursue a mix of these options, with the council's retained stock being managed by Lewisham Homes as an ALMO and the Brockley PFI, whilst some stock was transferred to Housing Associations such as L&Q and Affinity Sutton following tenant ballots.

4.3 As part of this stock transfer process, residents in the Bellingham and Downham wards showed an interest in becoming more involved in controlling the future management of their homes. Residents approached the Council in late 2004 to explore a stock transfer to a community-led Registered Provider as a means of achieving Decent Homes on their estate.

4.4 On 6 September 2006 Mayor and Cabinet agreed the principles behind a proposed stock transfer to a newly created community led registered social landlord, Phoenix Community Housing. There was a subsequent ballot of tenants in the affected area; 68.7% of tenants were in favour of the transfer and 31.3% were against. Approval for the stock transfer was granted by the Secretary of State on 29 November 2007 and the stock transfer took place in December 2007.

4.5 Phoenix was established as a Community gateway organisation. This approach is designed to provide residents with stronger and clearer ways to influence the way their homes are managed than they would normally have.

4.6 Phoenix now manages approximately 5,400 tenanted and 840 leasehold properties. The area is dominated by 'cottage style' estates – mainly houses, low rise flats and maisonettes built between 1919 and 1945 – with a relatively small number of medium rise flats. At the time of the transfer, the properties were identified as having a high investment need and high level of non-decency compared to the rest of the borough.

- 4.7 Since the transfer, Phoenix has invested over £148m in the community bringing homes up to decent homes standards, achieved high levels of tenant satisfaction with services and delivered their transfer promises. Overall tenant satisfaction is currently at upper quartile compared to peers at 82% increasing 11% since 2009 and satisfaction with the 'quality of your home' has increased by 14%, since 2009 to 76% in 2015.
- 4.8 As the major landlord in the south of the borough, Phoenix is an important strategic partner in meeting the Council's aim to provide the homes our residents need. It is, for instance, developing a new state of the art extra care housing scheme at Hazelhurst Court in Bellingham, which is supported by both the Council and the GLA. Hazelhurst Court is currently on site and will complete in mid-2017.
- 4.9 On 23rd March 2016, Mayor and Cabinet agreed that the Council should provide financial support to Phoenix to help enable the development of Forster House, a new development which will provide 22 new homes, made up of nine 1-bed flats and 13 2-bed flats, of which two flats will be especially configured to be wheelchair accessible. The development is intended to be 100% affordable, with all of the homes available for rent. Mayor and Cabinet agreed to provide subsidy of £1.32m funded through S106 monies held by the Council. It is anticipated that Forster House will start on site later this year.

5 The impact of Right to Buy on Phoenix

- 5.1 Lewisham Council tenants who transferred to Phoenix Community Housing in 2007 will usually have preserved Right to Buy.
- 5.2 When the transfer agreement between the Council and Phoenix was signed on 3rd December 2007, the amount of discount available to tenants who wished to exercise their Right to Buy was much less than it is today. Consequently, the number of Right to Buys which completed were also much fewer.
- 5.3 Since April 2012, the maximum Right to Buy discount in London has increased from £16,000 to £103,900. Since the discounts were increased, the number of Right to Buys undertaken by Phoenix tenants has increased

| | 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/15 | 2015/16 |
|--|----------|----------|----------|------------|------------|------------|
| Number of tenants who exercised the Right to Buy | 4 | 3 | 9 | 36 | 38* | 19* |
| Receipt received by LBL | £467,626 | £377,728 | £595,676 | £1,803,109 | £2,220,698 | £1,661,065 |

* Figures includes Right To Acquire transactions (3 in 2015-16 and 1 in 2014-15) – Right to Acquire is a scheme open to some Housing Association tenants where the property was funded using government subsidy. The level of discount for Right to Acquire is still limited to a maximum of £16,000.

6 Further national policy change

- 6.1 Since the general election in May 2015, the Conservative government has announced a large number of changes in housing policy which have significant implications for all providers of social housing.
- 6.2 For example, the government has legislated in the Welfare Reform and Work Act for social rents to reduce by one per cent each year for four years from April 2016. For the Council, this will reduce rental income by £25m in this period. For Phoenix, rental income will reduce by over £9 million during this period.
- 6.3 The government also announced that it wished to extend the Right to Buy to Housing Association tenants. In October 2015, the National Housing Federation, which represents Housing Associations, announced that it had agreed to work with the Government to extend the Right to Buy to Housing Association tenants by way of voluntary agreement instead of legislation.
- 6.4 Under the voluntary agreement, Housing Associations will have the discretion not to sell a property, but where it does so it will commit to offer the tenant a suitable alternative property either from within their own stock or by working with another association to offer a property from their stock.

7 Transfer Contract and Right to Buy Sales

- 7.1 The terms of the stock transfer are set out in the Transfer Contract dated 3 December 2007 between Lewisham Council and Phoenix Community Housing. Under the terms of the agreement, the proceeds of any Right to Buy sales in the Phoenix stock are subject to a sharing agreement where the Council receives the majority of the sale receipt, less an amount for the loss to Phoenix's business plan.
- 7.2 The transfer contract also contains a provision where any future voluntary disposals would also be subject to this sharing agreement, which may include properties sold under the voluntary Right to Buy.
- 7.3 Therefore the mechanism of the transfer agreement along with the extension of the Right to Buy means that Phoenix are exposed to a continuing risk around Right to Buy sales, and are unable to use the receipts from sales to fund the building of replacement properties.
- 7.4 The transfer contract contains provision for the Council to waive its right to payments where Phoenix agrees to invest the Council's share of the proceeds of any disposal in the provision of social housing in the borough. The Council will also retain the right to nominate households to new Phoenix properties. Following discussions with Phoenix, officers recommend that the Council now waives its right to the payments to enable the development of new affordable housing in the south of the borough where Phoenix is the main social landlord.

8 Overview of early PCH Programme

- 8.1 The supply of new, affordable homes in the Lewisham area is a priority for the Council and for Phoenix Community Housing. In addition to the 82 units under development or proposed at Hazelhurst Court and Forster House over the next four years Phoenix proposes to increase its housing stock through the development of over 200 new build homes. Most of these new homes will be built on sites already within Phoenix ownership, but Phoenix will also seek to purchase sites for development.
- 8.2 As Phoenix's capacity to develop new homes has been limited by the nature of the transfer contract, Phoenix will begin to draw up a more detailed pipeline of developments to bring forward over the coming years subject to Mayor and Cabinet approving the recommendations in the report.

9 Legal Implications

- 9.1 The Council has a wide general power of competence under Section 1 of the Localism Act 2011 to do anything that individuals generally may do. The existence of the general power is not limited by the existence of any other power of the Council which (to any extent) overlaps the general power. The Council can therefore rely on this power to carry out housing development, to act in an "enabling" manner with other housing partners and to provide financial assistance to housing partners for the provision of new affordable housing. Accordingly the Council can agree to waive payments of right to buy receipts due to it under the transfer contract on the basis that they are then used by Phoenix to fund the provision of new affordable housing in the borough. In accordance with the transfer contract, the existing nomination rights that the Council has to Phoenix properties will automatically apply to any new properties provided in this way.
- 9.2 This report recommends that authority is delegated to the Executive Director for Resources and Regeneration, in consultation with the Head of Law, to finalise the terms of the waiver. This will be on the basis that there will need to be continuing reporting and monitoring arrangements so that the Council can ascertain the amount of payments that would otherwise have been due and satisfy itself that they are being used for the provision of new affordable housing in the borough.
- 9.3 The waiver of payments due from Phoenix under the transfer contract in connection with the development of new housing would fall within the European Commission definition of state aid. However, grants or funding allocated to services of general economic interest (SGEI) are not state aid. The European Court (EC) has determined that social housing is an SGEI. The EC's Decision is such that SGEI grants do not require prior notification to the EC, and it is up to member states to decide what is and what not a SGEI. Social housing is not defined in the EC decision. However, in this case, the payments are to be used for the provision of new affordable housing. In order to comply with the relevant conditions, the relevant grant-assisted part of a housing project needs to be quantified to demonstrate that there will be no "overcompensation" (excess

payment). If it transpires that there has been overcompensation, then there should be a claw back mechanism in place to recoup overpayments. This will be satisfied by the reporting and monitoring arrangements set out above and provision for any payments not used as agreed to be repaid by Phoenix.

- 9.4 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: gender, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.5 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 9.6 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 9.7 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value.

The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

- 9.8 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
 2. Meeting the equality duty in policy and decision-making
 3. Engagement and the equality duty
 4. Equality objectives and the equality duty
 5. Equality information and the equality duty

- 9.9 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

10 Financial implications

- 10.1 The table in paragraph 5.3 shows that the Council have received £7.1m income from Right to Buy sales in respect of properties transferred to Phoenix Community Housing between 2010/11 and 2015/16. Income received by Lewisham had been used to finance capital works within the Council's Housing Revenue Account (HRA).
- 10.2 The irregular nature of the income means that, going forward, the Council's HRA 30 year plan contains no assumptions in respect of future receipts so would be unaffected by agreeing to recommendation 2.4, as it currently stands. The loss of income does, however, reduce the capacity to deal with future risks arising from policies relating to "pay to stay" and the sale of high value voids.
- 10.3 The Council's nomination rights to the new properties will assist in containing pressures on the General Fund in respect of temporary accommodation.

11 Crime and disorder implications

- 11.1 There are no crime and disorder implications arising from this report.

12 Equalities implications

- 12.1 There are no equalities implications arising from this report.

13 Environmental implications

- 13.1 There are no environmental implications arising from this report.

14 Background Documents and Report Originator

- 14.1 There are no background documents to this report.
- 14.2 If you have any queries relating to this report please contact Jeff Endean on 020 8314 6213.