

**TO: THE EXECUTIVE  
22 JANUARY 2008**

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**YOUR HOMES – TRANSFER OF HOUSING STOCK  
(Chief Executive and Director of Corporate Services)**

**1 PURPOSE OF DECISION**

- 1.1 Following the successful ballot of tenants and leaseholders in April 2007, considerable work has been carried out in order to set up a new housing association and successfully complete the transfer of the Borough's housing stock to the Registered Social Landlord, Bracknell Forest Homes. This transfer is scheduled to take place on February 11 2008. The purpose of this report is to provide Members with a summary of the key tasks that have been completed to facilitate the transfer and to seek the agreement of Members to the key decisions required in undertaking such a transfer to Bracknell Forest Homes.

**2 RECOMMENDATIONS**

- 2.1 That the key tasks which have been undertaken to achieve the transfer of housing stock outlined in this report be noted.
- 2.2 That the arrangements for the residual strategic housing function be recommended to Council.
- 2.3 That it is recommended to Council that the list of properties detailed in Annex B be agreed for retention within the General Fund.
- 2.4 That the proposed approach to the environmental assessment be recommended to Council.
- 2.5 That the impact of the transfer on the local authority's budget for 2008/9 be noted.
- 2.6 That the financial arrangements of the transfer in Annex C be recommended to Council.
- 2.7 That it is recommended to Council that the Chief Executive be authorised to agree, in consultation with the Leader of the Council, any further loan, should it be required by Bracknell Forest Homes, and subsequently apply to the Communities and Local Government (CLG) Department for approval under Section 25 of the Local Government Act 1988.
- 2.8 That the Transfer Contract detailed in Annex D be recommended to Council.
- 2.9 That it is recommended to Council that the Chief Executive be authorised to apply to the Communities and Local Government (CLG) Department for approval of the transfer under Section 32-34 and 43 of the Housing Act 1985.
- 2.10 That it is recommended to Council that delegated authority be granted to the Chief Executive to approve minor amendments to the transfer arrangements in consultation with the Corporate Housing Steering Group.

### **3 REASONS FOR RECOMMENDATIONS**

- 3.1 Following the outcome of the “Your Homes” ballot in April 2007 the Council has now completed all elements of the Transfer process and Bracknell Forest Homes is established and prepared for the transfer of the housing stock and landlord function in February 2008. This needs to be agreed by The Council before submission to CLG for approval.
- 3.2 Bracknell Forest Homes currently has no monies of its own and therefore any costs it incurs can only be funded by a loan from the Council. For set-up and transaction costs the Council will assist Bracknell Forest Homes to repay the loan by abating the purchase price for the housing stock by an amount equal to the loan repayment. Following transfer BFH will raise loans to provide finance for its operations. The Executive on 26 June and the following Council have already agreed an amount of £2.6 m for BFH set up and pre transfer costs.
- 3.3 The Government guidance set out in the Housing Transfer Manual issued by the Communities and Local Government Department states that where a new landlord is being established specifically for the purpose of the transfer, the authority may apply to the Secretary of State under section 25 of the Local Government Act 1988 for consent to provide a loan to the prospective new landlord to cover its setting up and pre-transfer costs.

### **4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Given the decision to transfer the housing stock there are no alternative options available to those recommended above.

### **5 SUPPORTING INFORMATION**

#### Background

- 5.1 The financial appraisal carried out in 2006 indicated that if the Council did not transfer its housing stock to a Registered Social Landlord (RSL), given the available resources, it would not be able to meet the Decent Homes Standard by 2010 and that furthermore, the Housing Revenue Account would move into deficit in 2008/09 and will use up all its reserves by 2013/14.
- 5.2 On 12 July 2006, the Council decided that a transfer of the Council's housing stock to a new local housing association would be in the best interests of tenants, leaseholders and the wider community. On 17 January 2007, the Executive approved the Offer Document as the basis for the formal consultation with tenants and this decision was endorsed by Council at its meeting later that evening. On 25 April 2007, the Council received confirmation of the outcome of the ballot which showed that 75.7% of the valid vote was in favour of the Council's proposal to transfer its housing to a new housing association, Bracknell Forest Homes. The Council also agreed to second a small team of officers to BFH to assist with its set-up.
- 5.3 The Offer Document to tenants demonstrated that if transfer goes ahead, tenants would receive significantly greater investment in the physical fabric of their homes and enhanced levels of service. The document also made important commitments that will benefit both tenants and the wider community, specifically:

- £61m investment in major repairs and improvements in the first five years, compared to only £18m with the Council. This will include around 3,300 new kitchens, 3,500 new bathrooms and 3,600 heating installations.
- Enhanced neighbourhood services through the establishment of a Neighbourhood Estate Action Team (NEAT) and investment of local estate improvements of £200,000 each year for the first ten years.
- Improved services for older and vulnerable tenants through the introduction of a new decorating assistance scheme, garden maintenance service and handyman maintenance scheme.
- £7m for disabled adaptations for tenants over the next 30 years. This includes £400,000 per annum in the first five years to help clear the backlog of applications.
- More resources to tackle anti-social behaviour through the appointment of a specialist Anti-Social Behaviour Officer plus the Council's commitment to introduce CCTV at neighbourhood centres where appropriate.
- £1m investment by the Council to provide new and improve existing facilities for young people in areas affected by the transfer.
- Investment of 75% of the available capital receipt in providing new affordable homes in the Borough over the first five years. This could provide around 250 new homes that would not otherwise be provided.

#### Governance and project monitoring arrangements

5.4 In order to progress the transfer of the housing stock and establish the new RSL the Council established clear governance arrangements at the outset:

- a) Full Council to agree the final transfer agreement for submission to CLG.
- b) The Executive to have a monitoring role and receive reports at key project milestones.
- c) The Corporate Housing Steering Group to comprise:  
Cllr Birch Executive Member for Social Services & Housing  
Cllr Iain McCracken Executive Member for Corporate Services  
Key officers as required.

The Corporate Housing Steering group, chaired by the Chief Executive, has determined all key issues relating to the transfer negotiation and led the preparation of the transfer agreement under delegated powers from the Executive.

- d) The Your Homes Corporate Project team comprised officers leading key work streams and supporting consultants, chaired by the Director of Corporate Services.
- e) The Joint Coordinating Board has been a regular meeting of the Council's officer team and the Bracknell Forest Homes officer team and the representative of the Housing Corporation to share information and track progress of the project plan. This group identified key areas for more detailed negotiation and decision to refer to their respective decision making bodies.

The Council's project teams have been advised by consultants experienced in housing transfers: Philip Heath (Cobbetts) and Malcolm Temple and Andy Chapman (Enterprise BWNL)

For Bracknell Forest Homes, their project team reports to their Shadow Board which is monitored closely by the Housing Corporation.

#### Establishment of Bracknell Forest Homes (BFH)

- 5.5 In the post ballot period there has been considerable activity specific to the establishment of the new registered social landlord (Bracknell Forest Homes). This includes the development of a business plan, the raising of a private finance facility, the production and agreement of policies and procedures, registration with the Housing Corporation and preparations to be operational from the date of the transfer.
- 5.6 In order to fulfil The Housing Corporation's registration requirements, Bracknell Forest Homes has undertaken a considerable amount of work on governance policies and the Shadow Board members have received a significant amount of training. Trowers and Hamlins have advised the Board on the legal structures to be put in place: the new association will be an Industrial and Provident Society with charitable rules. New tenancy agreements have been approved by the board, supported by a wide range of housing management and corporate policies. Indeed, feedback from the Housing Corporation has been that the development of these policies, in consultation with the residents, is regarded as an exemplar of best practice. The Executive Management Team is now in place, with the exception of the Asset and Business Development Director post, which is being recruited currently. Caroline Titley started as Chief Executive on 3 December 2007. An Interim Head of HR also started in December 2007 and consultations were held with transferring staff during that month. The recruitment and selection process is now proceeding a pace. Operational staff are now being involved in the detail of the transfer action plans to ensure that the hand over of the service to Bracknell Forest Homes is as smooth as possible. Residents have been kept informed throughout the process in line with the agreed Communications Strategy.
- 5.7 Work to achieve these tasks has required the cooperation of the Council and the agreement of both parties. This close working will need to continue over the next few months to ensure a seamless transition.

#### Strategic Housing Service

- 5.8 Bracknell Forest Homes, as the new RSL, will perform the housing management function previously performed by the local authority. Following transfer, the local authority retains an important strategic and enabling role and retains all statutory obligations in relation to homelessness, the allocation of housing and private sector housing. Many of these services are required by statute and the Secretary of State will not grant consent to the transfer if the authority cannot demonstrate convincingly that it will provide it satisfactorily in the future.
- 5.9 The strategic housing function is not just about quantifying housing need and arguing for more affordable housing but is also concerned with finding solutions for people in the current housing market. This means strategic housing must play a key role in ensuring that existing housing is used to its maximum potential and that innovative solutions are found to difficult problems.

5.10 The Corporate Housing Steering Group has agreed that the following services are to be retained;

- Private Sector Housing
- Strategic & Enabling Role (Housing & Related Strategies)
- Homelessness Statutory Decision Making
- Housing Benefit
- Supporting People Administration

The following functions can in law be transferred or retained but the view of the Corporate Housing Steering Group is that in this authority they should be retained:

- Housing Advice (Housing Options)
- Homelessness Assessment
- Allocations / Housing Register / Choice Based Lettings
- Housing Market / Housing Market Assessment
- Community Alarms (Forestcare)
- Temporary Accommodation

All other housing landlord services will transfer including Bracknell Forest Services and the relevant elements of the grounds maintenance/landscape service.

A new post of Chief Housing Officer has been created in the current restructuring of the Council proposed by the Chief Executive to lead these functions. Recruitment to this important new post is now underway.

5.11 The Council will wish to put arrangements in place to monitor BFH's performance to ensure that the commitments made in the consultation document and in any other agreements are met. This monitoring function will also be carried out by the Strategic Housing Service.

#### Assets to transfer and to be retained

5.12 The transfer involves the majority of the Council's housing stock held at the date of transfer. This amounts to approximately 5640 properties (depending on conclusion of Right to buy applications) and of these approximately 5290 have now been registered with HM Land Registry, with the remaining to be registered before transfer. The benefit of registration is that the conveyancing process is much simpler with ownership being proved by registration under a Title Number, which also shows interests affecting the land.

5.13 The overarching principle to be applied to the transfer of land and property is that assets which only relate to a particular council housing area and which can be more efficiently managed by the RSL should be transferred. Land and buildings outside council housing areas will not be transferred. The legal agreement will include a clawback agreement to be negotiated to cover any future development.

5.14 The detailed principles adopted for the purposes of the transfer of land and property are attached at Annex A. These have been agreed by the Corporate Housing Steering Group.

5.15 Some properties, limited to a maximum of 50, and including the properties currently leased by the Council, may not be transferred. The Corporate Housing Steering Group has agreed that the properties listed in Annex B be retained by the Council. The Council has previously agreed that Enid Would House would be retained. The

Council will need to apply to the Secretary of State for permission to retain those properties which are currently in the Housing Revenue Account (HRA). The main reason for retaining these properties is that they have a service use by another Council department; they have development potential or they are used for homeless families on a short term basis.

- 5.16 In order to establish Bracknell Forest Homes it may require certain assets to be sold or transferred to it such as;
- Some computer equipment and limited office equipment, office furniture and the like, currently used by the transferring staff.
  - Vans, plant and equipment used by the Bracknell Forest Services and Landscape Services. As regards the vehicles, BFBC holds them under leases from Finance Houses. Those leases will be sub-let to Bracknell Forest Homes rather than being assigned as BFH has no credit history.
  - Assignment of ongoing contracts. There are two main contracts being novated - that with Anite for the Housing Management IT and the stores facility with Travis Perkins. They are being novated because BFBC has no need for those services post transfer. As regards those contracts for services which will be required both by BFBC and BFH post transfer, a reimbursement arrangement i.e. contracts being retained by BFBC but BF Homes being recharged for services to the extent that they use them is the most appropriate mechanism.

#### Environmental Assessment

- 5.17 WSP Environmental, on behalf of the Council, undertook a desk based environmental assessment of the potential risks for transferring the assets of housing stock and open land through identifying potentially contaminative land uses, current and historic, located on land within influencing distance of the transferring assets, as well as a liability assessment in relation to Asbestos Containing Materials (ACMs) in the transferring properties. The results of this and the approach recommended by the Corporate Housing Steering Group are attached at Annex E.

#### Staff/posts to transfer

- 5.18 Existing staff are protected by the Transfer of Undertakings Protection of Employment (TUPE) legislation. In simple terms, staff working on clearly identified housing functions have the right to transfer to BFH. For the vast majority of the staff this is clear as they spend most, if not all of their time on housing management or maintenance duties. 151 staff will transfer to BFH on this basis.
- 5.19 There is also a group of support staff for the housing function who work in both Social Services and Housing and other departments. For these staff a detailed and careful analysis has been carried out to assess the proportion of their work affected by the transfer. As the result of this the Council has agreed with BFH, affected staff and the Trade Unions that 24 staff will transfer under this category. These cover those who are currently performing Landscape, Customer Service, Finance, Human Resources and other similar duties.

The staff working for Forest Care fall under the category of those who do not spend 100% of their time on transferring services and it has been agreed that, due to the complexity of this operation, the Council will retain this function and provide this service to Bracknell Forest Homes on a Service Level Agreement basis.

- 5.20 Throughout the process the agreed transfer and recruitment procedure and protocol has been adhered to.

#### Financial Impact of the transfer on the Council

- 5.21 It is clear that the transfer of functions and staff to the RSL has a considerable effect on the remaining Council, particularly in the area of support services which are not able to effect a reduction in size as easily and quickly.
- 5.22 Aside from the staff who are directly transferring, the Housing Revenue Account (HRA) supports a number of areas across the Council which are to the benefit of the housing function, e.g. customer receptions and cashiers, financial and HR support etc. It is not possible to transfer all those staff carrying out these support roles for housing as there may be only fractions of their time engaged in this work. However, the Council will lose the element of funding for these services from the HRA on transfer.
- 5.23 It is usual following housing transfers that the Council supplies some support services to the RSL for a period after transfer (usually for one year) paid for by the RSL.
- 5.24 With BFH's agreement, the main areas to be covered by Service Level Agreements (SLAs), in addition to Forest Care, are legal and property services to support Right to Buy, Payroll and some IT support, cashiers office service, some short and longer term accommodation including reception and some environmental services. Income from these SLAs provides some support in the short and medium term to the Council's financial position.
- 5.25 In addition, some of the support service costs are passed to the RSL to pay direct, e.g. insurance.
- 5.26 However, it is recognised in every transfer that there will be some residual costs which can not be transferred. This initial figure of £1.8m has been reduced by proposed SLAs of almost £400,000 and savings of over £100,00 to a total of £1.3m. However there still remains a further £50,000 of expenditure which will have to be reduced in 2008/9 in order to balance the budget. It is anticipated that this will be a mixture of staffing and non-staffing savings across the Corporate Services, Social Services and Housing departments. This has been included in the Councils' Revenue Budget proposals for 2008/9 which are currently subject to consultation.

#### Financial Elements of the transfer

- 5.27 The main financial element of the transfer is the valuation. The housing stock is valued using the Net Present Value (NPV) of the future Cash Flow of BFH as required by the CLG. The income and expenditure is projected forward for 30 years and the surplus or deficit generated each year is discounted back to a present value.
- 5.28 The valuation is dependent on the number of dwellings, the current rents of these dwellings (known), the target rents of the dwellings (calculated in accordance with CLG guidance), the repair and investment needs of the stock (taken from the independent stock condition survey) and the reasonable costs of managing the stock and providing the service (largely based on the Council's current costs).
- 5.29 Details of the Financial Agreement that has been reached are attached at Annex C. It is recommended that Members agree this.

### Use of the Capital receipt

- 5.30 The transfer of the housing stock provides the council with a significant capital receipt. A provisional valuation has been agreed between the two parties, however the final sum will need to be finalised to reflect the change in property numbers between the date of ballot and the actual transfer date (as a result of Right-to-Buy sales in the intervening period).

Certain costs must be offset against the receipt, notably the Transfer Levy (set down in regulation) payable to the Government and the set-up costs incurred by both the Council and Bracknell Forest Homes. The final amount to be offset against the gross receipt will therefore depend on the actual final costs of BFH in addition to the costs of the Council (incurred pre-ballot and post-ballot) and the final valuation figure.

The remaining net receipt becomes available to the Council to spend as outlined in the offer document. As noted above the Council will face significant residual costs following transfer of the stock and a proportion of the receipts will be retained to alleviate this financial pressure. However the Offer Document commits the Council to spend 75% of the available receipt on affordable housing over a 5-year period. The exact amount represented by this will be known following final agreement on the valuation.

- 5.31 In accordance with financial regulations the HRA will be technically closed on the 1<sup>st</sup> April 2008 and any outstanding reserves will be transferred to the General Fund at the end of 2008/09 financial year.
- 5.32 A VAT Shelter Scheme is currently being negotiated on behalf of the Council and BFH subject to agreement with HM Revenues and Customs. It is proposed that the share of any proceeds be split 50:50 between the Council and BFH. This could potentially generate up to a further £10.5m in recoverable VAT over a ten-year period for the Council. This will be treated as a capital receipt and can be used at the discretion of the Council.

### Set up Costs of Bracknell Forest Homes (BFH)

- 5.33 The Board of BFH has previously considered a report on set up costs pre-transfer. The Council and the Secretary of State subsequently approved their formal application.
- 5.34 These costs total £2.6m and are summarised in the table below. A significant element of this cost (£1.06m) is the Funders' Arrangement Fees on the initial borrowing that BFH will enter into to fund its long-term investment programme. Start-up costs will cover the establishment of the organisation before transfer including accommodation and the secondment of staff. A further £745,000 is estimated for support and advice, including Lead and Legal consultants along with specialist support for communications, HR advice, VAT advisors and IT consultants. An estimate of £215,000 has been made for the non-recoverable VAT associated with set-up costs and an allowance for a contingency.

Funders' Arrangement Fees	£1.06m
Set-up Cost	£0.58m
Advice and Support	£0.75m
Contingency/VAT	£0.21m
<b>Total</b>	<b>£2.6m</b>

We now know that the loan arrangement fee cost more than originally anticipated. However, we would expect BFH to find compensating savings in other budget headings to offset this, just as the Council would. Should this not prove to be possible, then the Council will have to loan a further amount towards the set up costs. Any increase would of course be subject to close scrutiny by both the Council and CLG. Given the very tight timetable, need to make provision for such an eventuality, even though anticipate that we may well not need it. It is preferable that, rather than call Special meeting, for the Council to delegate authority to the Chief Executive, in consultation with the Leader, to authorise any additional loan to meet unavoidable set up costs. This would then have to be approved by CLG.

- 5.35 Arrangements have been agreed between the parties as to the monitoring of actual expenditure against each budget heading. Any virement between budgets will conform with the Council's financial regulations. Bracknell Forest Homes will operate and procure services under its own set of financial and contract regulations that are broadly compatible with the Council's own financial regulations.
- 5.36 There have been further requests for support from BFH relating to capital costs that need to be incurred in order to ensure that BFH can be fully operational from day one. Typically this covers such items and IT systems and hardware and other equipment/furniture. This is not a permitted set up cost as it relates to ongoing business support. The financial assistance in this case has been in the form of a loan for £360,000 that will be repayable to the Council on the day of transfer.
- 5.37 The Executive have previously considered the setup costs of the Council in relation to the stock transfer. Pre-ballot costs amounted to £922,000 and an estimate for costs in the period between the ballot and transfer has been approved at £530,000. These costs can be abated off the capital receipt received by the Council and reduce the amount of levy payable to the Government. Furthermore a significant proportion of the post-ballot costs relate to officers time that can be capitalised, thus enabling the maintenance of higher revenue balances than would otherwise be the case.

#### The legal agreements (the Transfer Contract)

- 5.38 The legal agreements cover the obligations of both the parties relating to the transfer itself, the conveyancing of the dwellings and other property assets and describe the contracts and agreements that have been reached between the parties.
- 5.39 The Transfer Contract at Annex D covers matters such as:-
- Details of the transferring housing and allied property;
  - A deed granting the Council nomination rights to the transferring stock;
  - Agreement relating to the provision of temporary accommodation for the homeless;
  - Details of on-going contracts to be assigned;
  - Staffing issues including disclosures and warranties;
  - Covenants granted by both parties;
  - Warranties given by the Council;
  - Details of outstanding insurance claims;
  - Details of leased property where the freehold is transferring;
  - Details of the services to be provided by the Council to BFH;
  - Deed of assignment for the rent arrears outstanding at the point of transfer;

- Agreement for sharing future right to buy receipts;
- Agreement for sharing the proceeds from any future sale of land included in the transfer;
- List of office furniture and equipment included in the transfer;
- List of outstanding right to buy applications;
- Details of the VAT shelter
- Details of the services to be provided by BFH to the Council.

It is recommended that members agree the Transfer Contract.

#### Next steps for the Council and Bracknell Forest Homes

5.40 The key milestones remaining for the Council are as follows:

- Agree transfer documents Mid January
- Full submission for approval to CLG End January 2008
- Complete transfer 11 February

5.41 The key milestones remaining for BFH are as follows:

- Agree transfer documents Mid January
- Housing Corporation consent End January
- Complete transfer 11 February

5.42 Following the transfer, the Council will need to maintain and nurture a close working relationship with Bracknell Forest Homes in order to deliver the benefits outlined in the consultation document for the tenants and leaseholders in the Borough.

## **6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

6.1 Nothing to add to the report.

### Borough Treasurer

6.2 In effect the transfer of housing represents the sale of over 5,000 properties and other associated assets. The costs identified in this report cover both the costs of the buyer and seller of these properties. With an estimated budget of £4m this equates to just under £800 per property. This is less than would be spent on legal, valuation and financing charges by both parties in a private sale of property. Therefore, on this basis, these costs represent good value for money bearing in mind the complexities of transferring over 5,000 tenanted properties.

### Impact Assessment

6.3 The proposals are intended to ensure that there is no impact to the services received by housing tenants of the Borough Council.

6.4 Equalities implications will need to be incorporated into the policies and procedures adopted by Bracknell Forest Homes.

## Strategic Risk Management Issues

- 6.5 The guidelines set down in the Housing Transfer manual recommend a deadline of transfer 12 months after the ballot. Furthermore if transfer is not achieved in the current financial year, the Housing Revenue Account cannot be closed until 2009/10 and as such any delay will have a considerable impact on the medium term financial position of the authority in addition to delaying the benefits to tenants.
- 6.6 Any delay in agreeing the BFH Set-Up costs and establishing the loan and necessary consents will introduce a further element of uncertainty in this complex project. This could be further complicated by the BFH Funders seeking to reopen negotiations on the valuation. A full risk log has been developed for the project.

## **7 CONSULTATION**

- 7.1 Considerable consultation was undertaken with tenants and residents in respect of the "Your Homes" project over the last two years, the results of which culminated in the comprehensive ballot of all tenants and leaseholders in April 2007.
- 7.2 Throughout the transfer project, full consultation has taken place with all staff directly and indirectly concerned. Appropriate information has been available to staff through briefing by senior managers, regular news letters and meetings.
- 7.3 Tenants and leaseholders have been kept up to date through their normal consultation channels of newsletters and meetings.

### Background Papers

Agendas and Minutes of Corporate Housing Steering group meetings

### Contact for further information

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### Doc. Ref

Your homes Transfer process Jan 2008.doc

## **Annex A**

### **Principles for transfer of Land and Property**

The overriding principle is that assets which only relate to a particular council housing area and which can be more efficiently managed by the RSL should be transferred.

Land and buildings outside council housing areas will not be transferred.

The legal agreement will include a clawback agreement to be negotiated to cover any future development.

The following principles relate to land and buildings within or on the edge of council housing areas.

- There is a presumption in favour of transferring amenity space, footpaths and cycle ways which relate solely to the housing area concerned.
- Areas of open space which have value to the wider community or form part of the street scene of a main road are to be retained.
- Areas of open space along cycle routes and major footpaths through housing areas are to be retained.
- Areas of open space with development potential will be considered on an individual basis.
- Garage blocks including garage courts will be transferred.
- Shops, business units, and community buildings with associated service areas, garages and parking areas will be retained.
- Flats above shops will transfer on long leases.
- Blocks of flats including sold properties will be transferred with service charge areas.
- Residential properties let with shops or let on service tenancies to be retained.
- Play areas will be retained.
- Covenants relating to sold properties will generally transfer, unless for example there is a block of sold properties with very few or no council housing
- Shared ownership properties and houses and flats on long leases will be transferred. These properties will appear as shaded red on the transfer plans.
- Amenity space, roads and footpaths relating solely to sold properties may be retained, subject to negotiation.
- Residential properties currently managed by social services will be considered on an individual basis. Where properties are proposed to transfer, SLAs and leasing arrangements will be agreed as necessary.

**Annex B**  
**Properties to be Retained by the Council**

<b>Residential properties in general fund to be retained</b>	
<b>Property</b>	<b>Description</b>
10a Portman Close, Priestwood, Bracknell RG42 1NE	6 bedroom accommodation Learning disabilities project. Top floor of Larchwood
150 Holbeck	House used for adults with learning difficulties
151 Holbeck	House used for adults with learning difficulties
16-21 Banbury	This is a block of 6 flats used for short term accommodation.
9 Portman Close, Priestwood, Bracknell RG42 1NE	5 bedroom house Learning disabilities project
Easthampstead Travellers Site	A site providing 13 pitches and facilities for travellers
<b>Residential properties in HRA to be appropriated and retained</b>	
<b>Property</b>	<b>Description</b>
6 Ramslade Cottages, Broad Lane, Bracknell RG12 9DE	Empty property in very poor condition.
Brackworth, Broad Lane, Bracknell RG12 9BY	A former council house currently used for housing homeless families
Empty Winkfield Manor House and adjacent land	A disused manor house adjacent to the sheltered housing scheme and associated grounds
Santa Catalina	Miscellaneous 3 bed detached house in Bullbrook
Snaprails Lodge	Detached house in a non estate location to the edge of Snaprails Park let to a member of staff in leisure services
The Gate House, Lily Hill House	Detached house in a non estate location on the edge of Lily Hill Park let to a member of staff in leisure services
The Lodge Point Royal	2 bedroom bungalow used as temporary accommodation.
16 Priestwood Square	Flat let with commercial premises.
80 Winscombe	House let with commercial premises
11 Leaves Green	House let with commercial premises.
40 Ashbourne	House let with commercial premises

1a Warren Row	Flat let with commercial premises.
2a Warren Row	Flat let with commercial premises.
16 Wildridings	Flat let with commercial premises.
11 Priestwood Square	Flat let with commercial premises.
18 The Square Harmanswater	Flat let with commercial premises.
1 Redvers Road Easthampstead	House let with commercial premises
6a Warren Row	Flat let with commercial premises.
27 Calfridus Way	House let with commercial premises
90 Moordale Avenue	House let with commercial premises
3A Warren Row	Flat let with commercial premises.
15 Rectory Row	Flat let with commercial premises.
26 The Square Harmanswater	Flat let with commercial premises.
23 The Square Harmanswater	Flat let with commercial premises.
5A Warren Row	Flat let with commercial premises.

**VALUATION AND FINANCIAL ADJUSTMENTS**

The valuation of a Council's housing stock for transfer purposes is based upon a Government formula and takes into account the investment needs of the stock over a 30 year period and the fact that the property is required to be maintained in perpetuity as affordable social rented housing.

A base valuation has been agreed as £34.5million or £6,180 per property for an assumed 5,582 properties to transfer. If the actual number of properties transferring differs then there will be an appropriate adjustment to the price. This compares to Pre Ballot indications of £27.9million or £4,919 per property for 5,672 properties; a per property increase of 25%. This gross receipt will be subject to reduction in respect of the RSL set up costs and Government Levy of 20%. At this stage the projected net receipt is £25.6million

At present the Council benefits from retention of 25% of any capital receipts from the Right to Buy (RTB) of Council homes with the remaining 75% of the receipt being returned to the Government for redistribution nationally.

Eligible tenants transferring to Bracknell Forest Homes will have a preserved Right to Buy and a sharing agreement will be entered into between Bracknell Forest Homes and the Council in relation to future capital receipts as transferred tenants exercise their preserved Right to Buy.

The RTB sharing agreement is based upon a formula that takes account of rent loss to the Registered Social Landlord and savings of variable costs foregone together with an administrative charge in processing the RTB. The proposed RTB sharing agreement sets out a schedule of rent loss figures for the range of property types for the coming 30 years. It is estimated that under the RTB sharing agreement the Council will benefit on average by receiving over 60% of the capital receipt from each RTB sale. The Council will be able to use 100% of these receipts.

A VAT Scheme will also be completed with the agreement of HM Revenue & Customs that enables the VAT on Bracknell Forest Homes' improvement programme to become recoverable through the Council for a 10 year period.

It is estimated that the planned improvement programme will generate £21 million of recoverable VAT. It is proposed that the VAT shelter receipts are split between the council and Bracknell Forest Homes 50/50. Thus the Council's share over the ten year period is estimated at £10.5 million

Rent arrears in respect of current tenants will transfer to Bracknell Forest Homes for a payment based upon the amount and age of the arrears. It is proposed to use the standard CIPFA formula to calculate the price.

As the transfer date of 11 February 2008 nears, there will likely be some minor variations to the proposals outlined, for example a lesser number of properties transferring through the exercise of Right to Buy prior to transfer. It is therefore appropriate to grant delegated authority to the Chief Executive in consultation with the Councils advisers, and the Member's Steering Group to deal with these minor variations without the need to return the Council.

**Author**

Andy Chapman –Enterprise BWNL

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**REPORT ON THE TRANSFER CONTRACT  
FOR THE TRANSFER OF HOUSING STOCK BY  
BRACKNELL FOREST BOROUGH COUNCIL TO  
BRACKNELL FOREST HOMES LIMITED**

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## 1 INTRODUCTION

This Report summarises the terms of the current draft of the contract (the “**Transfer Contract**”) between Bracknell Forest Borough Council (the “**Council**”) and Bracknell Forest Homes Limited (the “**Company**”) relating to the transfer of the Council’s properties to the Company. The Transfer Contract will be subject to further changes arising from the ongoing negotiations and the review of the documentation by the funders solicitors. This report reflects the position as at 7 January 2007.

1.1 The Transfer Contract has been drafted by Cobbetts LLP the solicitors acting for the Council, and has been the subject of considerable negotiation with Trowers & Hamlins Solicitors acting on the Company’s behalf.

1.2 The Transfer Contract currently consists of 33 Clauses, 17 Schedules and 10 Annexures, many of which are sub-divided. The document runs to some 400 pages without some of the final information being included.

## 2 PRELIMINARIES AND THE LAND TRANSACTION

These are standard clauses in all transfer contracts.

2.1 Clause 1 of the Transfer Contract sets out the definition of the words and expressions used in the document. These are linked to the relevant Clauses, Schedules and Annexures in the Contract.

2.2 Clauses 2, 3, 4 and 5 recite the Contract to sell the Property defined in the Transfer Contract. The “**Property**” is defined in detail in Clause 3(i) and the First Schedule and includes all of the housing stock, (garages), common area, electricity sub-stations, freehold reversions to RTB properties and wayleaves. These clauses confirm that the Property is sold subject to incumbrances (including, of course the tenancies of the current occupiers) and deal with completion arrangements, payment and the capacity in which the Council sells.

2.3 Clause 6 contains standard contractual conditions applicable to any sale of land.

2.4 Clause 9 deals with the transfer of arrears of rent and service charges and, by implication, the benefit of any possession proceedings and orders obtained by the Council. The Company will effectively “stand in the shoes” of the Council in such proceedings and need to pursue them in accordance with their arrears policies.

2.5 The Contract allows for payment by the Company for the arrears, payment being in two equal instalments, the first three months after completion of the Deed of Assignment of Rent Arrears, the second six months after its completion.

2.6 The Contract spells out in Clause 11 how an apportionment of outstanding work to the Property would be dealt with. The arrangement is that the Council is responsible

for all works undertaken up to and including the day before the day of completion and the Company is responsible thereafter.

### **3 NOMINATION RIGHTS**

Clause 8 deals with nominations under the Transfer Contract. The Second Schedule will contain the Nominations Rights Agreement which is essential to allow the Council to fulfil its statutory duties to house the homeless.

### **4 WARRANTIES AND COVENANTS**

4.1 Clause 7 and the Fifth Schedule cover the warranties and covenants which the Council will be giving.

4.2 The Fifth Schedule contains the warranties, including at Part I the collateral warranty to be given to the Company's funders. The warranties are in standard form, however, the disclosures have yet to be finalised by the Council (they are due to be available shortly). The length of the warranties to be given to the Company contained in Part II of the Fifth Schedule is 20 years. The funder's solicitors require warranties which cover the period of their loan to the Company (30 years).

4.3 The covenants in Part III of the Fifth Schedule cover such matters as the Council's enabling role, open space and amenity land, land registry requisitions, housing benefit, enforcements of rights and general assistances to the Company after transfer.

### **5 OTHER SUBSTANTIAL MATTERS**

5.1 Clause 10 contains an obligation on the Company to issue the new form of assured tenancy to all eligible (qualifying) transferring tenants and to act in accordance with the principles of good housing management practice in its treatment of tenants who are not for the time being qualifying tenants.

5.2 Clause 12 deals with the contracts affecting the transferring housing stock and covers firstly, those being assigned to the Company, secondly those being retained by the Council and thirdly, any contracts still in their retention period which will remain with the Council.

5.3 Clause 13 deals with insurance of the transferring housing stock.

5.4 Clause 14, this clause covers transferring staff and the effects of TUPE, it contains all of the warranties and indemnities the Council is giving in respect of staff transferring to the Company. The Clause also covers admission to the Local Government Pension Scheme.

5.5 Clause 15 covers the termination of Service Level Agreements and the position of staff employed by the Council when the agreements come to an end (deferred

TUPE), again the Council will be providing warranties and indemnities in respect of these staff.

- 5.6 Clause 16 contains a number of obligations on the Council to deliver up all information and records relevant to the transfer, furniture and equipment to the Company and undertake the qualifying works to the Property in order to comply with the provisions of the VAT Development Agreement and the VAT saving scheme.
- 5.7 Clause 17 sets out the Company's obligation to comply with the Fourth Schedule which is the Deed of Covenant to be entered into by the Company.
- 5.8 This Deed contains a schedule setting out all of the covenants which include various requirements on the Company to honour the promises made to tenants in the Consultation Document issued by the Council prior to ballot. The deed permits the Council to intervene if the Company breaches any of these commitments. In addition there is an obligation on the Company to attend (on a six monthly basis) formal liaison meetings with the Council, initially for five years, together with an obligation to report annually to the Council for five years on how it is complying with the promises to tenants. The Deed of Covenant also contains obligations in respect of the provision of information to the council, merger, housing benefit and disabled adaptations.

## **6 INCIDENTAL MATTERS**

- 6.1 Clause 18 sets out obligations on the parties to enter into the RTB Sharing Agreement, the Disposal Clawback Agreement and the VAT Sharing Agreement.
- 6.2 Clause 19 details the further agreements being entered into including the Service Level Agreements in the Tenth Schedule, the Housing Benefit Protocol and the Civil Emergency Agreement.
- 6.3 The remaining clauses in the Transfer Contract cover:
  - 6.3.1 Interest (Clause 20);
  - 6.3.2 Complete Agreement Clause (Clause 21);
  - 6.3.3 Dispute resolution (Clause 22);
  - 6.3.4 Notices (Clause 23);
  - 6.3.5 Non-Merger (Clause 24);
  - 6.3.6 VAT (Clause 25);
  - 6.3.7 Data Protection (Clause 26);
  - 6.3.8 Confidentiality (Clause 27);
  - 6.3.9 Law (Clause 28)

- 6.3.10 Waiver (Clause 29);
- 6.3.11 Contracts (Rights of Third Parties) (Clause 30);
- 6.3.12 Severance (Clause 31);
- 6.3.13 Assignment (Clause 32);
- 6.3.14 Mortgagee Exclusion (Clause 33).

## **7 SCHEDULES AND ANNEXURES**

- 7.1 As indicated above, there are some 17 Schedules and 10 Annexures, many of which are referred to above. Other Schedules and Annexures include a copy of the proposed new Assured Tenancy Agreement to be offered to Qualifying Tenants, copies of the plans of the property to be transferred, a full rent roll and garage list.

## **8 VAT**

- 8.1 The Transfer Contract contains in the Sixteenth Schedule the VAT Development Agreement which deals with the saving of VAT. The Development Agreement sets out the cost of the works to be undertaken to the properties together with the VAT saving and contains a Schedule giving a detailed breakdown of the works included in the Agreement. The parties have been advised by PWC on the VAT arrangements.
- 8.2 The Seventeenth Schedule contains Deeds of Variation allow for a partial or total collapse of the scheme should the law relating to VAT saving change in the future.

Signed Philip Heath  
Cobbetts LLP

**Environmental Assessment**

To follow