
Executive

3rd February 2009

Report of the Director of Housing and Adult Social Services

Discus Bungalows Development Update

Summary

1. The report details the progress made by the Project Steering Group, Council and Development Consortium in consultation with the Residents' Development Association to enable the re-development of the Discus Bungalows sites at St Anne's Court/ Horsman Avenue, Regent Street and Richmond / Faber Street.
2. It also provides a summary of the commercial issues, in particular the impact of the downturn in the housing market and credit crunch, that now mean a capital receipt offered for the sale of the land falls under the tolerance level previously approved by Executive and therefore seeks revised approval to accept a reduced capital receipt and continue with this important housing regeneration project for Discus residents and the wider city.

Background

3. On the 6th November 2007, Members approved the Project Board's recommendation to select the partnership of Tees Valley Housing Group (now Fabrick Group with Tees Valley Housing Limited as the Housing Association arm of Fabrick), York Housing Association Ltd and Southdale Homes Ltd (now only the contractor to Fabrick) as the provisional preferred Development Consortium to purchase and develop the three Discus sites, subject to a receipt of satisfactory planning consent, ground investigation surveys, the award of a Social Housing Grant and resolution of issues brought up as part of the evaluation, providing this did not affect the capital receipt to a point where it will affect the order of the evaluation scores.
4. In approving the Project Board's recommendation, Members accepted an offer, which met all the requirements of the tender documents as outlined in the background papers. Sensitivity analysis at that point in time suggested that where further negotiation with the development consortium may be required, there should be a tolerance on the capital receipt reduction of not more than 20%.

5. Members agreed to delegate responsibility to the Director of Housing and Adult Social Services in consultation with the Project Board (which is now the Project Steering Group with developer representation), to agree a Heads of Terms and Conditional Development Agreement with the preferred development consortium to include the Discus Housing Objectives, subject to the Project Board confirmation of the agreements and prior consultation with the Executive Member, the Corporate Landlord and the Chief Finance Officer in the event that the agreement may result in any reduction of the capital receipt. This would secure an agreement with the development consortium that achieves all the outcomes agreed through consultation with stakeholders and interested parties.

Development preparation and progress

6. All ground investigation surveys, including archeological investigations have been satisfactorily completed and now pave the way to allow development to commence on the sites.
7. On the 20th November 2008, Members of the Planning Committee approved the three planning applications received from the Development Consortium to develop the Discus Bungalow sites at St Anne's Court/ Horsman Avenue, Regent Street and Richmond / Faber Street. A Section 106 Agreement will be entered into for each site to fulfill the necessary planning obligations
8. The development will now offer a total of 196 homes of which 60 two bed bungalows for older people and a 41 unit extra care facility will replace the existing 100 Discus Bungalows, and a further 49 affordable homes and 47 market sale homes will be built across the sites
9. The impact of the credit crunch and the downturn in the housing market, in particular the ability of buyers to obtain mortgage products and ability of developers to sell properties on the open market, means careful consideration has been required to assess the suitability of the market sale element of this development and the impact that this may have on the financial viability of the development. Further to considerable negotiation between the Council, Development Consortium and the Homes and Communities Agency (HCA) to help address these issues, social grant investment has now been agreed for all 196 homes. The 47 market sale properties will attract grant to become 'Intermediate for Rent'¹ for an agreed period of time before being purchased by the tenant at market value when the housing market starts to recover. The 18 Discount for Sale (DFS) homes will draw grant and be Affordable for Rent for an agreed period of time, but will be offered as DFS in the future and this will remain in perpetuity. The implications of these revised tenures will be detailed within the Development Agreement and Section 106 agreements accordingly.

¹ Intermediate Rent (IMR) is a rent set at 80% of the open market rent level

10. A draft Heads of Terms for the Development Agreement to be agreed by the Council and Development Consortium is available at Confidential Annex 1. It is anticipated that the contractual terms for this development will be signed by mid February 2009 at the latest.
11. Property Services has evaluated the financial appraisal provided by the Development Consortium and have commissioned an independent verification of the assumptions made by the Development Consortium as to the current and projected state of the residential market in York. The results of this process has reassured officers that this development is deliverable within the agreed contractual parameters and that an agreed capital receipt for the sale of the land can be met. The reports explaining these financial evaluations are available at Confidential Annexes 2 and 3.
12. St Ann's Court/Horsman Avenue is now a vacant site and the top end of the Richmond/Faber Street site is also vacant to allow first phases of development to commence. Residents from these areas have been temporarily decanted into other previously empty Discus Bungalows, which means there are now a total of 50 residents across Regent Street and Richmond Street.

Commercial summary

13. In November 2007, Members approved the Development Consortium recommended by the Project Board to work with the Council to re-develop the Discus sites, and that where further negotiation with the development consortium may be required, there should be a tolerance on the capital receipt reduction of not more than 20%. However, the downturn in the housing market and impact of the credit crunch has meant that a capital receipt within this tolerance cannot be sustained.
14. The commercial viability of this project has therefore been affected. The Development Consortium has predicted an 11% fall in house prices during 2008 and an associated loss of sale revenue since their original financial appraisals at the point of the developer selection process in July 2007. Taking the unstable housing market into account, the Development Consortium is therefore unable to pay the Council the capital receipt originally offered in the selection process. Details of the revised capital receipt offered are available at Confidential Annex 4.
15. If the capital receipt detailed at Annex 4 was paid to the Council, it would still be the highest capital receipt offered in the developer selection process and this Development Consortium would remain the winning bidder. It would also still enable the Development Consortium to deliver an exemplar mixed tenure housing development across the three Discus sites in conjunction with the Council and Discus Residents' Association that meets the needs and expectations of existing residents and the future of housing need in York.

Proposed development timescales

16. Subject to an agreed demolition and phasing plan, it is anticipated that Southdale Homes would commence the first phase of demolition at St Ann's Court this financial year, shortly followed by phased works at Richmond/Faber Street. As Regent Street is practically a fully occupied site, it is anticipated that demolition and development will be managed as part of a slightly later phase in 2009.
17. The Council will need to ensure all Discus Bungalows are demolished by 31st December 2010 to meet Decent Homes Standard targets. This key milestone will be built into the development-phasing plan.
18. It is anticipated that the 100 re-provision homes will be built and all existing Discus residents will be allocated a new bungalow by 2010/2011.

Options

19. Members are asked to consider the following options:
20. **Option 1:** Accept the revised capital receipt offered by the Development Consortium and that subject to agreed contractual terms, the Council should continue to work with this consortium to deliver this exemplar housing regeneration project in York.
21. **Option 2:** Not to accept the revised capital receipt offered by the Development Consortium and look to re-tender to select a new developer for the project or request officers to consider other investment opportunities to re-develop the sites.

Analysis

22. In regard to the options, Members are asked to consider the following details:
23. **Option 1:** If Members approve a revised capital receipt, it is suggested that this still represents a highly competitive commercial deal for a phased sale of the Discus sites, particularly in the current economic climate. As stated earlier in the report, the revised capital receipt is still the highest when considered against the original tender submissions.
24. It is likely that given the poor current conditions in the housing market the Council would be facing similar economic issues with any developer selected. With a predicted 11% reduction in house prices during 2008 that could not have been predicted in early 2007 and given the volatility in the housing market and limitations of mortgage products available, these are serious conditions that could not be forecast at the time of tender.
25. This existing development opportunity would deliver a variety of sustainable, efficient mixed tenure housing built to Lifetime Homes standard across the three

Discuss sites and a much needed Extra Care facility, addressing the present and future needs of older residents and affordable family housing demand in the city.

26. **Option 2:** If Members decide not to accept a revised capital receipt and decide to re-tender or request officers to re-visit other investment opportunities to re-develop the Discus sites, the economic market could easily prohibit other developers providing the Council a better receipt than offered by this Development Consortium.
27. Given the length of time since the last tender selection process and change in market conditions, we are not in a position to select one of the other bidding developer/RSL partnerships to re-develop the sites.
28. The expectations of Discus residents would be a key concern here due to the length of time it would take to re-tender, particularly given their high level of engagement through the Project Steering Group to help design the new bungalows and their ongoing overall commitment to this project.
29. Further delays would create increased uncertainty and vulnerability for residents about their future, many of whom have now been decanted into other temporary Discus Bungalows in preparation for development phases based on plans of this Development Consortium and therefore continue to live in non-decent accommodation.
30. The Council's local and national reputation is also potentially at stake in delivering this project and any further delays here would also mean that Decent Homes Standard for these properties are not met by December 2010.
31. The considerable HCA investment ring-fenced to this development could also be lost at a time when there is great need for affordable family housing in the city. The investment bid made by the Development Consortium is shown at Confidential Annex 4.

Corporate Priorities

32. The re-development proposals reflect many of the council objectives and priorities, and many of the actions related to council objectives and initiatives. Specific links can be made to the following:
33. Outward facing
 - Increase the use of public and other environmentally friendly modes of transport
 - Improve the actual and perceived condition and appearance of city's streets, housing estates and publicly accessible spaces
 - Reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York

- Improve the health and lifestyles of the people who live in York, in particular among groups whose levels of health are the poorest
- Improve the life chances of the most disadvantaged and disaffected children, young people and families in the city
- Improve the quality and availability of decent affordable homes in the city

34. Improving our organisational effectiveness

- Improve our focus on the needs of customers and residents in designing and providing services
- Improve the way the Council and its partners work together to deliver better services for the people who live in York

Implications

35. The implications arising from this report are as follows:

- **Financial** – In order to complete the sale of these sites Secretary of State consent is required. If this is granted as per the CYC application the capital receipt will be classed as a qualifying disposal. As a qualifying disposal the capital receipt will be exempt from the housing pooling calculation meaning CYC can retain 100% of the receipt. Instead an adjustment will be made to our subsidy entitlement to reflect the capital receipt that will have been received. The maximum loss of subsidy should be £71k per annum. The final figure will depend on the consolidated rate of interest at the time the adjustment is made, the level of administrative costs that can be offset against the receipt and final confirmation of the proportion of receipt which will be taken into account in the adjustment. This calculation also assumes the current subsidy system remains the same. The review of the Housing Revenue Account (HRA) and subsidy system is due to report its initial findings in Spring 2009. Any changes resulting from the review will have to be assessed at that time.

The subsidy loss will have to be accommodated by the HRA unless the option is taken to use part of the Discus capital receipt or other HRA resources to repay HRA debt to an equivalent value of the adjustment made to our subsidy entitlement. The HRA currently has sufficient revenue resources to fund the loss of subsidy so the repayment of debt, at this time, is not recommended. It is therefore intended that the capital receipt, after the relevant project costs have been met, will be spent on the provision of affordable housing or funding expenditure on the Council's own stock in order to meet and maintain the decent homes standard.

- **Legal** - The Council and the Development Consortium for the sale of the Discus sites will enter into a Development Agreement as part of the sale of

the sites. A Section 106 Planning Agreement for each Discus site will deal with ancillary planning matters including nomination rights of the Council

It is intended that the Council will grant the developer a Licence to allow demolition and construction in accordance with an agreed phasing plan of the relevant site, with each phase being conveyed on practical completion of the relevant phase. Payment of the price apportioned to the relevant phase will occur on transfer of the phase.

- **Property-** The Corporate Landlord has been consulted throughout the process and property implications are detailed within this report.
- **Crime and Disorder** - There are no immediate crime and disorder implications, but it should be noted that the re-development would be built to Secure by Design standard. It should also be noted that throughout the course of the development there would be void properties across the sites. These will need to be monitored and managed, and any issues around vandalism or anti-social behaviour tackled immediately.
- **Equalities** - This development will offer better choice and access to housing particularly through the much needed extra care facility, that will not only help meet the aspirations of older people as highlighted in the Older People's Housing Strategy 2006-2009, but will help respond to affordable and other housing needs for a wide range of residents in York. A full Equality Impact Assessment for the project has also been produced and will be monitored throughout the course of the project.
- **Information Technology (IT)** - There are no IT implications
- **Human Resources** - There are no Human Resources implications

Risk Management

36. It has been a widely held belief that development agreements do not fall within the Procurement Regulations because they are not for the procurement of works, goods or services. However, recent case law, (post tender) has thrown doubt over the practice of not complying with the regulations when tendering for sale of land and development agreements. It may be argued that because the Council specified certain requirements for this development and on this basis fulfilling an economic function of the Council, the development agreement is a public works contract under these Regulations.
37. The European Commission has issued a new Public Procurement Remedies Directive, which although in force at European level, will not be applicable at a national level until it has been implemented by Member States. The UK Government must implement the Remedies Directive by 20th December 2009,

but local authorities in the UK are not required to comply with the Remedies Directive until it has been implemented.

38. Walker Morris, our legal framework partner has advised that the risks to the Council of not procuring the Project through the revised Regulations are at this stage minimal as it would be reasonable to expect that the Remedies Directive when implemented in Regulations will only apply to contracts awarded after a specified date. As such, the Council would greatly reduce its risk arising out of any claim by ensuring that it enters into any contract with the Development Consortium as early as possible prior to December 2009. It is anticipated that the Development Agreement would be signed by February 2009 and therefore this risk is minimal. The procurement of the project was advertised nationally and locally, and as such the potential for any challenge under the Remedies Directive is again small.
39. The Homes and Communities Agency (HCA) has advised that the Development Consortium needs to start work on site this financial year in order to draw down social grant for this development. Within the proposed development timescales it is anticipated that works should commence fairly imminently and therefore risk of losing this grant is fairly minimal.
40. The Council has reviewed the General Consents available under both Section 25 Local Government Act 1988 and Section 32 Housing Act 1985. Communities and Local Government (CLG) have advised that given the complexity of this scheme, a specific consent under the Secretary of State is still required. Officers have submitted an application for this specific consent to CLG for their consideration. Providing this consent can be granted to enable exchange of contracts and draw down HCA grant with start on site this financial year, it is considered that risk here is minimal. Officers have briefed CLG and Government Office in detail about the project and therefore it is anticipated that consent will be granted in good time.

Recommendations

41. The Executive are asked to:
 - i. Note the contents of this report and the progress made by the Project Steering Group, Council and Development Consortium in consultation with the Residents' Development Association to enable the re-development of the Discus Bungalows sites at St Anne's Court/ Horsman Avenue, Regent Street and Richmond / Faber Street
 - ii. Approve Option 1 to accept the revised capital receipt offered by the Development Consortium and that subject to agreed contractual terms that the Council should continue to work with this consortium to deliver this exemplar housing regeneration project in York.

Reason: This still represents a highly competitive commercial deal for a phased sale of the Discus Bungalows sites, particularly in the current economic climate. It is likely that given the poor housing market, we would be facing similar economic issues with any developer we had selected. Furthermore, this existing development opportunity would deliver a variety of sustainable, efficient mixed tenure housing built to Lifetime Homes standard across the three Discus sites and a much needed Extra Care facility, addressing the present and future needs of older residents and affordable family housing demand in the city.

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Report Approved ✓ Date 15th January 2009

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For further information please contact the authors of the report

Background Papers:

Meeting of the Executive Member for Housing and Advisory Panel March 2006-
Report on the Future of the Discus Bungalows

Meeting of the Executive, November 2007, Selection of a Preferred Discus Bungalows
Development Partner

Annexes (all exempt):

Annex 1: Heads of Terms for the Development Agreement

Annex 2: Quantity Surveyor report evaluating the Development Consortium's financial
appraisal

Annex 3: Independent valuation company report evaluating the Development
Consortium's financial appraisal

Annex 4: Details of the revised capital receipt and HCA investment bid by the
Development Consortium