

# Brighton & Hove City Council

## Cabinet

## Agenda Item 17

**Subject:** Homes for Brighton & Hove - Sackville Trading Estate

**Date of meeting:** 27 June 2024

**Report of:** Cabinet Member for Housing & New Homes

**Contact Officer:** Name: Sam Smith, Head of Regeneration  
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**Ward(s) affected:** All Wards

**Key Decision:** Yes

**Reason(s) Key:** Expenditure which is, or the making of savings which are, significant having regard to the expenditure of the City Council's budget, namely above £1,000,000.

**For general release**

### 1. Purpose of the report and policy context

- 1.1 Homes for Brighton & Hove (HBH) is a successful joint venture limited liability partnership between Brighton & Hove City Council and Hyde Housing Association (Hyde) with the aim of delivering 1,000 affordable homes. The partnership has successfully delivered 346 affordable homes to date and the partnership is looking to identify its next sites to build on this success. This report seeks agreement to proceed with a site at Sackville Trading Estate to build 306 new affordable homes.
- 1.2 The proposals in this report align with the Council Plan 2023-2027. In particular Priority 2 *A fair and inclusive city* and Outcome 3 *Homes for everyone*. Outcome 3 sets out a commitment to *'increase the number of new affordable homes delivered by the council and other registered providers'*.

### 2. Recommendations

- 2.1 Cabinet agrees the budget of up to £30.166m to be included within the Housing Revenue Account (HRA) Capital Investment Programme from 2024/25 and to purchase 183 Social Rented Units at Sackville Trading Estate on the terms as set out in this report.
- 2.2 Cabinet agrees to the drawdown by Homes for Brighton & Hove under their current facility agreement with the Council as further set out in Part 2 of this report.
- 2.3 Cabinet agrees that the surpluses/profit generated from the project should be earmarked to replenish reserves used within the HRA and General Fund to support this project through the development phase.

- 2.4 Cabinet agrees to enter into a Delivery Partner Agreement with Homes England in respect of the grant contribution allocated to the 183 Social Rented Units to be purchased by the council.
- 2.5 Cabinet delegates authority to the Corporate Director City Services in consultation and with the Cabinet Members for Housing & New Homes and Finance & City Regeneration, to take the steps necessary to agree and complete:
- (a) An Agreement for Lease (including Golden Brick requirements) in respect of the 183 Social Rented Units at Sackville Trading Estate
  - (b) A Lease in respect of the 183 Social Rented Units
  - (c) The Homes England Delivery Partner Agreement
  - (d) The advance of the working capital funding pursuant to the 2017 loan agreement with HBH

Any other relevant ancillary legal and financial documents necessary to deliver the project to give effect to recommendations 2.1, 2.2 and 2.4 above.

### 3. Context and background information

- 3.1 The HBH partnership is an equal 50:50 partnership between Hyde and the council. Hyde provide development management services and the council corporate & financial services. The partnership shares risk and investment between the organisations and is managed by a Board with three BHCC councillors and three senior Hyde officers. Significant decisions are referred back to the partner organisations before being finalised by the HBH Board.
- 3.2 The partnership has successfully delivered two projects to date totalling 346 affordable homes, over half of which were purchased by the council to be let at Social Rents.
- 3.3 Hyde's Development Management team were approached by the seller regarding the acquisition of a site within the Sackville Trading Estate, Hove, that could provide a good opportunity for the partnership to deliver further homes. The site has been valued and checked against initial financial modelling by Hyde in their role as Development Manager for HBH. The initial design work indicates the site can deliver 306 homes which will be split between 183 Social Rented managed by the council and 123 Shared Ownership managed by Hyde. The split between the organisation is detailed on the table below.

**Table 1 – Unit split between organisations**

Shared Ownership - Hyde			Social Rent - BHCC		
Unit type	Number	%	Unit type	Number	%
1B2P	36	29%	1B2P	69	38%
2B3P	15	59%	2B3P	2	47%
2B4P	57		2B4P	85	
3B5P	15	12%	3B5P	27	15%
<b>Total</b>	<b>123</b>		<b>Total</b>	<b>183</b>	

- 3.4 The proposed acquisition of the Sackville site is slightly different to the delivery of the partnership's first two sites, insofar as Hyde (rather than the partnership) will be purchasing the site. Once Hyde has acquired the freehold to the site, it will grant a building licence to HBH (in its capacity as development manager of the partnership), so that it can procure construction of the residential units. Once the council's Social Rented units reach the Golden Brick stage of the development Hyde will grant the council a lease of the Social Rented units.
- 3.5 The purchase and development of the Sackville site will be part funded by grant provided through the Hyde Housing Association Homes England Strategic Partnership 2 Programme (HESP2), and the council will be named as a delivery partner to Hyde. The Council will need to sign a standard Delivery Partner Agreement with Homes England, committing the council to take on the grant obligations in relation to the Council's completed Social Rent units.
- 3.6 Hyde will then use this grant to fund the first tranche of development costs incurred by HBH up to the full value of the grant. Once the grant has been exhausted the council through the HRA will then, via a development agreement, provide investment funding for the social rented units net of the grant contributions, with Hyde providing for the shared ownership net of grant. The expectation will be that the build programme will be developed to deliver the Social Rented units first, and this is reflected in the assumptions about cashflow for the project. Further details are in Part 2 of this report as they are commercially sensitive.
- 3.7 The intention is to use the Homes England Grant in the first instance, however the grant is paid quarterly in arrears, and so HBH will require a level of working capital to meet its liabilities as they occur. The estimated working capital required is £9m and therefore both parties are expected to provide £4.5m upfront, this will be an interest free General Fund loan to HBH. This loan will be repaid in full during the construction phase.
- 3.8 An amended Business Plan was agreed by Policy & Resources Committee at their July 2022 meeting. The plan agreed the broad principles for investment in new schemes with the detail of future schemes coming back to the HBH Board. A report was presented to the May 2024 HBH Board meeting detailing the Sackville Scheme and differences from assumptions in the Strategic Financial Model (which includes benchmark financial assumptions for projects being delivered by the partnership).
- 3.9 It is envisaged that the lease of the Social Rented units granted to the Council will be for 999 years, with no ground rent, on an internal demise basis, covering the 'Units and the internal common parts (including any lift shafts serving those Units)'. The council will therefore be responsible for the management of its Social Rented units and any internal common parts specific to those homes. Hyde will own and manage the Shared Ownership units and their associated internal common parts. Hyde will also retain the freehold interest in the entire block, and maintain and manage the exterior, roof, structure and foundations of the building and any external common

parts, with the council paying Hyde a service charge on a proportion basis towards the costs of such maintenance and management.

#### **4. Analysis and consideration of alternative options**

- 4.1 If the council were not to pursue the purchase via Homes for Brighton & Hove an alternative would be to deliver the site directly via the New Homes for Neighbourhoods programme. This option is unlikely to be viable as the council has no experience of delivering shared ownership homes that support project viability and would not have access to Hyde's preferential grant rates. This would also mean that all of the financial and other risks would sit with the council. A partnership with another organisation would involve a protracted procurement and legal process that would not fit with Sackville Ltd's timescales.

#### **5. Community engagement and consultation**

- 5.1 Extensive community consultation was undertaken by Moda Homes in their original design development and construction of the site to date. Statutory planning consultation was undertaken as part of the planning application process for the original scheme.
- 5.2 Further community engagement will be undertaken by the Homes for Brighton & Hove development team as the project progresses.

#### **6. Financial implications**

- 6.1 The report has implications for the council's General Fund and the HRA.
- 6.2 For the General Fund this equates to the loan required in 2024/25. The council entered into a loan agreement with HBH in 2017, which stipulates the council are to provide interest free loans to HBH when required. These loans are provided by the GF and are repaid in full when HBH cash balances allow.
- 6.3 If approved the proposed HRA capital investment will be incurred over a number of years, with minimal impact in 2024/25 as outlined in the part 2 report. The budget will be included within the 2025/26 budget report to Full Council as part of the overall capital strategy for the council.
- 6.4 New projects included in the HRA capital programme have to demonstrate a break even position as a minimum to mitigate any financial risk to the HRA that could jeopardise investment in existing stock. Investments assessed on a breakeven basis are highly sensitive to cost fluctuations, therefore securing fixed costs and the grant rates outlined is imperative to ensure the financial position is protected as much as possible.
- 6.5 If approved any budget variations will be reported to Cabinet via the council's budget monitoring procedure known as Targeted Budget Monitoring (TBM).

- 6.6 Borrowing decisions for this project will be made in consultation with the council's Treasury Management team to ensure that it is undertaken in accordance with the council's borrowing strategy, authorised borrowing limits and prudential indicators.
- 6.7 Detailed financial implications are contained within Part 2 of this report as they are commercially sensitive.

Name of finance officer: Craig Garoghan      Date consulted: 12/06/2024

## **7. Legal implications**

- 7.1 This report recommends that the council proceeds with a project to fund the development and acquisition of affordable units at Sackville Estate. The council can rely on both its general powers of competence through the Localism Act 2011 and Section 12 of the Local Government Act 2003 power to invest in the HBH joint venture. In addition, the council can rely on its powers under part II of the Housing Act 1985 to purchase affordable units within the development.
- 7.2 The Council has commissioned Bevan Brittan to provide advice on this project. Further, more detailed, legal considerations are contained in appendix 1 and Part 2.

Name of lawyer: Siobhan Fry                      Date: 13/06/2024

## **8. Equalities implications**

- 8.1 An increase in housing supply will extend opportunities to provide new, well designed homes to accommodate local households on the Housing Register who are in housing need.

## **9. Sustainability implications**

- 9.1 The HBH Business Plan commits to developing homes that are both cost effective to live in and meet high standards of environmental sustainability to tackle the Climate Change and Bio-diversity Emergencies.

## **10. Health and Wellbeing Implications**

- 10.1 There are strong links between improving housing, providing new affordable homes and reducing health inequalities. Energy efficient homes which are easier and cheaper to heat are likely to have a positive influence on the health of occupants of the new homes.

## **11. Procurement implications**

- 11.1 The Homes for Brighton & Hove joint venture has been established and operates in-line with procurement regulations. The build contractors and professional team will be procured via Hyde's competitively tendered and compliant consultancy and construction frameworks.

## **12. Crime & disorder implications**

- 12.1 The project provides an opportunity to provide new, well-designed housing which has been shown to positively influence the rate of crime and disorder as well as the quality of life for future occupants.

## **13. Conclusion**

- 13.1 The Homes for Brighton & Hove joint venture is a successful partnership between the council and Hyde Housing Association with a track record of delivering affordable housing projects on time and within budget. The Sackville Trading estate provides an excellent opportunity to bring an additional site into the partnership and deliver more homes towards the 1,000 affordable homes target.

## **Appendices**

1. Legal Considerations

### **Background documents**

[Homes for Brighton & Hove Business Plan - Policy & Resources Committee report 7 July 2022](#)

## **Appendix 1 – Legal Considerations**

### *Implications for council (as a member of the partnership)*

- 1.1 As the Sackville site is being acquired by Hyde rather than HBH (which differs from the structure of the partnership's previous two projects), with HBH then only receiving a building licence of the site from Hyde following completion of its acquisition, HBH's risk is considerably reduced. Hyde will enter into the land contract with the seller and will be responsible for the payment of the deposit and land price; if the seller fails to complete, it will be Hyde that will have to seek to enforce the land contract, seek return of their deposit, etc. HBH, and consequently the Council as a member thereof, is therefore protected from the obligations and risks in the land contract, which will all rest with Hyde.
- 1.2 Since Hyde will own the freehold to the site, the partnership will only be granted a building licence to carry out the building works. If the terms of the licence are breached or it is terminated, the partnership (since it does not own the site) will not have any rights to remain on the site and complete the development, but would remain liable to costs claims from its appointed building contractor, which represents a theoretical risk to the partnership. However, given that Hyde (as freeholder) is granting the building licence, and is also an equal member of the partnership, it is in their interest that the licence remains in place and the development completed, and as such this risk might be considered very small.
- 1.3 The partnership will let a build contract to the appointed building contractor, which may be for a fixed price contract or be based upon open book pricing, with the latter exposing the partnership to any fluctuations in build costs, as well as risks around the insolvency of the building contractor. This would of course have both legal and financial implications for the partnership, and consequently the council. This risk could be mitigated if the partnership can secure a fixed price building contract, and by the fact that the partnership intends to let the build contract.
- 1.4 The Council has powers in relation to the provision of housing and land held for housing purposes under Part II of the Housing Act 1985. Under Section 8, local housing authorities are required to undertake periodic reviews of the housing conditions in their district and the needs of the district with respect to the provision of further housing accommodation. Section 9 allows a local authority to provide housing by erecting houses or converting buildings into houses on land acquired for the purposes of Part II of the Act or to acquire houses to provide housing accommodation. Land may be disposed of to others to provide housing accommodation.
- 1.5 As housing land under Part II of the Housing Act 1985, the council will be using the HRA to fund the build of its Social Rented Units. The HRA can only be used to fund expenditure in respect of the council's housing stock and as such cannot be used to fund the 'wider build' e.g. the communal areas or the Shared Ownership Units. It is anticipated that the working capital paid into HBH at the outset of the build, together with the Homes

England grant received by Hyde early in the build, will be enough to cover the initial build and infrastructure and thereafter the build programme will be structured so as to prioritise construction of the Social Rented Units. Since the council will be making monthly payments to HBH against valuations in respect of the build costs of its Social Rented Units, it will be able to ensure that the HRA is only used to fund the Social Rented Units. All costs in respect of the Shared Ownership Units (over and above the grant payment) will be met by Hyde.

- 1.6 Section 74(1) of the Local Government and Housing Act 1989 sets out the categories for which credit and debit sums must be included in the HRA. HRA funds can only be used to fund expenditure in respect of the council's housing stock and as such cannot be used to fund the 'wider build' e.g. the communal areas or the Shared Ownership Units. It is anticipated that the working capital paid into HBH at the outset of the build, together with the Homes England grant received by Hyde early in the build, will be enough to cover the initial build and infrastructure and thereafter the build programme will be structured so as to prioritise construction of the Social Rented Units. Since the council will be making monthly payments to HBH against valuations in respect of the build costs of its Social Rented Units, it will be able to ensure that the HRA is only used to fund the Social Rented Units. All costs in respect of the Shared Ownership Units (over and above the grant payment) will be met by Hyde.
- 1.7 The build programme envisages that the Social Rented Units will be built first, with the Shared Ownership Units completed thereafter. Given that the entire development comprises one building, there is a possibility that, whilst the Social Rented Units will be largely complete they may not be 'practically complete' until later into the Shared Ownership build. In addition, if the Shared Ownership Units are still under construction, this may affect the extent to which the council will be able to occupy its Social Rented Units for health and safety or safe access reasons. This will become clearer once the build programme is finalised.
- 1.8 The council and Hyde, as members of HBH will each fund HBH in the form of an interest free loan, as allowed for in the existing JV arrangements, and in particular the Loan Facility Agreements entered into by both the council and Hyde in favour of HBH dated 19 December 2017. This loan amounts to a financial investment under the prudential financial regime. The Council has the power to invest in this way pursuant to section 12 of the Local Government Act 2003 (**LGA 2003**) either for:
  - 1.8.1 any purpose relevant to its functions under any enactment, here being Part II Housing Act 1985;
  - 1.8.2 the purposes of the prudent management of its financial affairs.
- 1.9 Such loans are initially given interest free, on the basis that HBH may choose that any returns are realised (a) as additional profit share ultimately paid out of HBH or (b) in the form of a reduced purchase price payable by the council and Hyde for their Social Rented/Shared Ownership Units respectively. This approach allows the members of HBH to deal with such



returns in a commercial and flexible way. Whilst this funding model does comply with the Loan Facility Agreements entered into by the council and Hyde in 2017, further detailed advice may be required over the course of the project to consider any subsidy control implications.

*Implications for council (as end purchaser and long leaseholder of the Social Housing Units)*

- 1.10 The seller has opted to tax the site for VAT purposes, and as such Hyde will have to pay VAT on the purchase price it pays to the seller and take on the risk of recovering that VAT. Since the council will be acquiring the Social Rented Units from Hyde at Golden Brick, the units will be zero rated for VAT purposes by that stage and so the council will not have any VAT liability upon that leasehold acquisition.
- 1.11 Pursuant to its powers under Part II Housing Act 1985 the council will be taking a lease of its completed units from Hyde and as such will be required to comply with the lease terms. This will include the payment of service charge in respect of Hyde's maintenance and management of the exterior, roof, structure, foundations and external common parts of the building in which the council's Units sit, in the usual way. As the long leaseholder, the council will have limited control over Hyde's provision and costs of such services and there will be standard penalties under the lease for late or non-payment. Given that the council's Social Rented Units will not be completed until 2027/2028, no further information is available at this stage as to the predicted level of service charge. However, given that Hyde will similarly be taking a lease for the remaining Shared Ownership Units, and is the council's joint venture partner, there is no reason to believe that they will fail to provide the services required under the lease and will do their best to keep costs to a minimum.
- 1.12 The council will be taking on grant obligations in respect of its Social Rented Units and as such will need to enter into a Delivery Partner Agreement with Homes England to this effect. By entering into such an Agreement, the council will be confirming that it will comply with Homes England's grant requirements. The council similarly entered into such Agreement for the partnership's two previous projects, and as such it may well be comfortable with this risk.
- 1.13 SDLT will be payable on Hyde's acquisition of the site for which they will be claiming 'registered providers of social housing' relief. Since the partnership will not be acquiring any interest in the site they will not have any SDLT liability. The council and Hyde will each have an SDLT liability in respect of the grant of the lease of their respective units. It is hoped that both the council and Hyde can both similarly claim relief, however, this tax structure is subject to review.

