

TRANSFER OF THE HOUSING STOCK TO GREENFIELDS COMMUNITY HOUSING

Agenda Item 5

Contact Details:- Chris Fleetham
Designation:- Finance Director
Ext. No:- 2800
E Mail Address:- chris.fleetham@braintree.gov.uk

Background Papers:- Council Agenda & Minutes 20th June 2005, Tenants Offer Document, Cabinet Agenda & Minutes 17th July 2006, 7th February 2007
Financial Implications:- Detailed in Appendix B
Equalities Implications:- None
Legal Implications:- Covered in Appendix A
Options: To agree to the proposals as detailed in the attached report or propose amendments
Risks: Covered in the attached appendices

EXECUTIVE SUMMARY

This report seeks approval for the transfer of the Council's housing stock to Greenfields Community Housing Ltd (GCH). In summary the proposals are as follows: -

Assets

- Transferring to GCH: 8094 homes, 3456 garages, sheltered housing, sewers, sewage treatment plants, roads and small pieces of amenity land
- Transferring to Family Mosaic Housing Association; Craig House and College House
- Council retaining John Barr House, Trinity House (discussing future with NACRO), River View, Maldon Road, Dale House, small number of properties being redeveloped or for temporary homeless accommodation, large pieces of amenity land and allotments
- Shops are still subject to further negotiations

Staff

- 166 transferring under TUPE arrangements (Housing & Support Services)
- New posts currently being advertised
- Same terms and conditions (including Pensions) being proposed
- Strategic Housing remaining with the Council

Service Level Agreements (SLAs)

- SLAs agreed for Customer Services, Grounds Maintenance, Street Scene, Procurement, Payroll, Graphic Design, ICT, Cashiers
- Varying in length between 13 months – 19 months (majority to 31st March 2009)

Accommodation

- GCH are likely to remain in Causeway House and Millennium Tower until 30th June 2009 and will continue to use Cordons Farm
- Area Offices initially will continue as now but with signage for both GCH and BDC. Long term arrangements will be subject to review
- GCH is also renting accommodation in Warners Mill for 20 of their staff
- They have identified a site in Braintree for their new offices but negotiations have not yet been completed

Value

Currently the gross valuation for the Council stock is £36.9m which after deduction of costs leaves a net capital receipt of £23.1m which is: -

after allowing GCH £5.6m for improvements to Sheltered Housing, but before deduction of £11.5m for GCH to set up a Community Fund which can be used for new affordable housing, estate regeneration, community facilities and environmental improvements.

In addition VAT Shelter income of around £27m over the next five to ten years will be shared 50:50 between GCH and the Council.

Proposed transfer date: 12th November 2007

DECISION

1. That the Transfer Agreement, to be made between Greenfields Community Housing Ltd and the Council, and any other agreement, to be entered into pursuant to the Transfer Agreement be approved
2. That the transfer be approved, subject to receipt of the consent of the Secretary of State for Communities and Local Government pursuant to Sections 32-34 and 43 of the Housing Act 1985 for the disposal of the Council's housing stock to the Association
3. That the Chief Executive, in consultation with the Leader of the Council and the portfolio holder for Resources, be authorised to agree any final financial issues and take any other necessary action which must be settled before completion of the transfer

TRANSFER OF THE HOUSING STOCK TO GREENFIELDS COMMUNITY HOUSING

1.0 BACKGROUND

- 1.1 Following the positive ballot of the Council's tenants at the end of 2006, negotiations have continued to prepare for the transfer of the Council's housing stock to Greenfields Community Housing (GCH).
- 1.2 On 7th February 2007 the Cabinet agreed the terms of reference for the Housing Programme Board to represent the Council during these negotiations and Simon Martin (PricewaterhouseCoopers) and Rob Beiley (Trowers & Hamblins) were appointed as the Council's financial and legal consultants respectively.
- 1.3 The Housing Programme Board has met on several occasions and been briefed on progress with key issues.

2.0 TRANSFER AGREEMENT

- 2.1 The Transfer Agreement is a substantial document that sets out the terms under which the housing assets of the Council are to transfer and the arrangements for the Council to ensure that the promises made to tenants before the ballot are kept.
- 2.2 A report from the Council's legal consultant is attached at Appendix A. The first 6 pages set out the background and explain the clauses in the Principal Agreement. The remainder of their report then explains the schedules to the agreement and supplementary provisions.
- 2.3 As is normal in housing stock transfer, at the time of writing this report some aspects of the transfer and the transfer agreement are still being finalised (main aspects are listed on Appendix C), but a copy of the full draft agreement is available in the Members' Area.
- 2.4 In accordance with statutory requirements, public advertisements have been placed concerning the proposed transfer to Greenfields Community Housing of certain recreational land which were required under Housing Act powers. Any representations which may be received will be reported at the meeting.

3.0 TRANSFER PRICE AND ASSOCIATED FINANCIAL MATTERS

- 3.1 The report of the Council's LSVT financial consultant is attached at Appendix B.
- 3.2 The report explains the basis of the valuation of the stock being transferred, how the Council's housing debt will be dealt with and arrangements for recovery of Value Added Tax (VAT) on the major works that will be carried out to the transferred properties, with arrangements for sharing the recovered VAT between the Council and Greenfields Community Housing.

- 3.3 The report also outlines the proposed future arrangements for 'Right to Buy' receipts and highlights the intention to take out insurance to cover Environmental Warranties.
- 3.4 The financial impact of the proposed transfer on the General Fund is being dealt with as part of the Council's Business Efficiency Reviews. Progress on these has been reported to the relevant Cabinet Sub Group (ie The Performance and Efficiency Programme Board). The latest position is detailed in the Medium Term Financial Strategy.

Outstanding issues

- Finalisation of conveyancing queries between GCH lawyers and BDC
- Completion of the agreement between the Primary Care Trust and GCH re Sheltered Housing and Carecall
- Information from the Pension Fund actuaries re the size of the Pension Fund deficit
- Finalisation of a protocol for Members and MPs when dealing with tenants' complaints etc
- The number of staff working for GCH under a Service Level Agreement that will have deferred TUPE rights
- Value of Rents and Service Charge arrears

(It is anticipated that these issues will either have been finalised by the transfer date, or if not will not prevent the transfer from going ahead).



dated 1 November 2007

Braintree District Council

Report

in relation to Transfer Agreement

trowers & Hamlins
Sceptre Court
40 Tower Hill
London
EC3N 4DX

t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com



Report in relation to Transfer Agreement

1 Introduction

- 1.1 This is a report prepared for Braintree District Council on the agreement for the transfer of housing stock (the **Agreement**) between Braintree District Council (the **Council**) and Greenfields Community Housing Limited (the **Company**).
- 1.2 This report summarises the contents of the Transfer Contract, following the order of the clauses and schedules of the draft Agreement (which consists of a principal agreement and then a number of schedules containing either supplementary arrangements in connection or information about the property, staff and other aspects of the transfer).
- 1.3 Members are reminded that the contents of this report are confidential and should not be disclosed to any other party (including Greenfields Community Housing and their representatives/advisors). Please note this report may not be circulated, quoted, relied upon or otherwise used without our prior written consent.
- 1.4 Members should also note that separate advice has been received by the Council in respect of the financial arrangements concerning the transfer (including the arrangements for the calculation and subsequent settlement of the government's levy on stock transfer receipts) from PricewaterhouseCoopers. In addition, the Council have received separate advice on the establishment and subsequent operation of the VAT shelter arrangements from KPMG.

2 Clause 1 - definitions

- 2.1 This clause sets out the principal defined words and phrases used subsequently in the Agreement. The definitions include the definition of "Property" which is divided into residential property (being the Council's tenanted housing stock) and ancillary property as set out in part 2 of the first schedule. The residential property is principally defined by reference to the Council's rent roll – which is a computer listing of ordinary rented housing stock.
- 2.2 Members should be aware that certain residential property will be retained by the Council. This includes the Council's hostels which are used for temporary accommodation and which are due to be transferred to another registered social landlord, Family Mosaic.
- 2.3 The ancillary property includes certain garages, parking spaces, freehold reversions to Right to Buy leasehold flats, freehold reversions to electricity substations and other amenity areas. It should be noted that the Council's portfolio of shops will not be transferred to the Company as part of the stock transfer arrangements, but that negotiations are continuing for a possible separate transfer of estate shops to the Company.
- 2.4 The Council has produced plans which show all of the areas being purchased by the Company and the extent of the land to be transferring as shown on these plans have been agreed between officers representing the Council and the Company.

2.5 **Clause 2 – agreement to sell**

In consideration of the Company paying the price to the Council, the Council will transfer the Property to the Company. The agreed valuation of the stock will be uplifted by the value of the works to be covered by the VAT shelter arrangements. This uplifted figure will be offset against the works fee payable under the Development Agreement. Members should note that the price payable for the housing stock has been reduced as a result of the commitment of the Company to establish the community fund (see paragraph 3.4.2 below). It should be noted that the Council has received specific advice from PricewaterhouseCoopers on the effect of the establishment of the community fund on the stock transfer levy payable to government.

2.6 **Clause 3 – encumbrances**

The Property is sold subject to and with the benefit of various encumbrances (such as existing covenants which affect the legal title to the property), the tenancies (which includes the transferring Council tenants and the former Council tenants occupying flats which they have bought) and other rights of way and matters which affect or benefit the legal title to the property.

2.7 **Clause 4 – completion and payment of the price**

Completion is currently intended to take place on 12 November 2007. On the Completion Date, the Company will purchase all of the properties and will pay the purchase price.

2.8 **Clause 5 – covenants for title**

2.8.1 The Council will (except where specifically stated in the transfers of the Property) sell the Property to the Company with full title guarantee. Full title guarantee is the strongest covenant which a seller can give, though it is qualified by references to those encumbrances referred to in the Agreement at clause 3.

2.8.2 It should be noted that because the process of registration of the Property at the Land Registry is not complete, it remains a possibility that on the registration of Greenfields' title to the property at the Land Registry that the Land Registry may make a number of enquiries in relation to the Council's former ownership of that land. Under the terms of the Transfer Contract, the Council are responsible for meeting the Company's costs in meeting these enquiries.

2.9 **Clause 6 - conditions of Sale**

2.9.1 The provisions of this clause incorporate a set of standard conveyancing conditions called the "Standard Conditions of Sale (Fourth Edition)" (which are varied by this clause 6).

2.9.2 The clause also provides for general apportionment of income and outgoings. The Council receives all income from the Property and pays outgoings up to but not including the Completion Date. The Company receives income and pays outgoings on and from the Completion Date.

2.10 Clause 7 - warranties and covenants

This clause obliges the Council to provide warranties in favour of both the Company and its Lenders, and also covenants in favour of the Company. The warranties provide comfort about the Council's legal title to the Property (among other things). The provisions of these documents are referred to in more detail under the fifth schedule below.

2.11 Clause 8 – nomination arrangements and pre-accommodation arrangements

2.11.1 This clause provides that the parties will enter into the nomination arrangements on the Completion Date. The Nomination Rights Agreement allows the Council to nominate persons into vacancies occurring in the Company's housing stock. Further details about this are provided under part 1 of the second schedule.

2.11.2 The parties will also enter into temporary accommodation arrangements on the Completion Date under which the Company will provide access to its dwellings for the purposes of allowing the Council access to those homes for temporary accommodation. This is discussed in more detail under part 2 of the second schedule below.

2.12 Clause 9 – rent arrears

The Council has agreed to sell its arrears due from the transferring tenants to the Company. The precise price payable for the arrears is yet to be agreed between the Council and the Company but will broadly reflect the Council's current book value. The Council will receive payment from the Company in two equal tranches on the three and six month anniversaries of the Completion Date. The rent arrears will be formally assigned under a Deed of Assignment (the form of which is set out in part 2 of the fifteenth schedule of the Agreement). This is due to be completed after the Completion Date.

2.13 Clause 10 – provision of new Tenancy Agreement

2.13.1 This clause requires the Company to issue a Tenancy Agreement substantially in the form appearing in the formal consultation document (a copy of the Tenancy Agreement which will be set out in the eighth schedule to the Agreement) to all tenants who transfer from the Council on the Completion Date.

2.13.2 The clause also states that the Company will give all of the additional rights contained in the Tenancy Agreement to transferring tenants even if they do not sign and return their Tenancy Agreement.

2.14 Clause 11 - services costs and apportionments

Under this clause, the Council agrees to pay for all work done and services provided to the Property for the period up to but not including the Completion Date. On and from the Completion Date the Company assumes responsibility for all such matters.

2.15 Clause 12 - contracts affecting the Property

2.15.1 Broadly, contracts which relate to the Property and are ongoing on transfer are to be dealt with in one of two ways:

(A) they are to be assigned (in whole or part) to the Company, or

(B) retained by the Council and held on trust for the Company.

2.15.2 In addition, it is currently envisaged that the current arrangements between the Council and the Mid-Essex Primary Care Trust in relation to the provision of support for the sheltered housing schemes (which will be transferring to the Company) will be assigned to the Company. In addition, negotiations are ongoing with the Primary Care Trust in relation to the future operation of the telephone monitoring service which is currently offered to all residents of the district.

2.16 **Clause 13 - destruction of the Property and insurance**

The Council agrees to pursue insurance claims so to reinstate any building which is the subject of any damage as a result of a list of standard insured risks. Details of any such damage known to the Council is set out in the ninth schedule and will include the incident at De Vere Road flats.

Clause 13 also obliges the Company to insure the Property for its full reinstatement cost against fire and other usual risks from the Completion Date.

2.17 **Clause 14 – staff**

2.17.1 The clause deals with the following matters:

2.17.2 It requires the Council to set out (in an annex to the Transfer Agreement) the names and other related employment details of the Council's staff who are to transfer to the Company upon completion.

2.17.3 The Company acknowledges and undertakes that it will become the employer of the transferring staff after transfer and that the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) apply to the transfer, as well as the Statement of Practice "Staff Transfers in the Public Sector".

2.17.4 It provides the Company with various warranties (against which the Council may disclose) in relation to the transferring staffs' employment with the Council. Accordingly, the staff are deemed to transfer on the same terms and conditions as they enjoyed with the Council and so the Company must be aware of all previous employment history.

2.17.5 The Council gives the Company an indemnity against losses which may be suffered by the Company as a result of breaches of the warranties, inaccuracies in the information provided by the Council in respect of transferring staff and other matters such as failure to pay the transferring staff up to the Completion Date. It is therefore imperative that the Council properly consider the warranties being given and any possible disclaimers against those warranties.

2.17.6 The Council also agrees to indemnify the Company against any claims made by or in relation to staff retained by the Council. The Company could bring a claim under this indemnity if, for example, the Council fails to include an employee previously working in the Housing Service on the transfer list and that employee is later dismissed by the Council, and makes a claim against the Company.

2.17.7 Before transfer, the Company will gain entry into the Essex County Local Government Pension Scheme, for the benefit of both transferring employees and new employees of the

Company following the Completion Date. An allowance has been made in the Valuation Agreement between the Council and the Company such that the Company are able to make a contribution of £5.9million on the Completion Date to the Essex County Scheme which is an estimate of the current underfunding in the Essex County Scheme attributable to transferring employees. The Agreement will contain a balancing mechanism should the final figure (which will be certified by the Scheme's actuaries) be different from the amount allowed for in the Valuation Agreement.

- 2.17.8 In the event that the £5.9 million is an under-estimate of the pension deficit, then the half of the additional shortfall will be met from the community fund (see paragraph 3.4.2 below) with the other half to the account of the Council; in the event that a reimbursement is due, then half will be to the account of the Council with the remainder being due to the community fund.
- 2.17.9 In addition, the agreement records that if on termination of a support services agreement (see paragraph 2.18 below), there is a pension deficit attributable to the staff who transfers under TUPE at that time, then the pension deficit attributable to those members of staff will be met 50% by the Council and 50% from the community fund.
- 2.17.10 The Company has accepted commitments in relation to the operation of a "single tier" workforce.

2.18 **Clause 15 – support service employees**

Following the transfer, the Council will provide a number of services to the Company under the arrangements set out in part 1 of the tenth schedule. On termination of these service agreements, a number of Council staff will have TUPE rights at that stage to either employment with the Company or with a contractor of the Company. The Council will be providing a warranty as to the identity of the posts affected so that the Company are able to accurately assess the impact of TUPE on termination of those arrangements in due course.

2.19 **Clause 16 - Council's obligations**

The Council's obligations under this clause include the following:

- To deliver to the Company within 30 days of transfer all management records and accounts relating to the property and the tenancies,
- To assign to the Company the benefit of any guarantees and indemnities which may be in force for the benefit of the Council and which relate solely to the Property,
- To hold on trust for the Company the benefit of that part of any guarantee or indemnity which benefits the Property but which also relates to other property of the Council,
- To transfer to the Company certain furniture, fittings and equipment (which will be listed in the twelfth schedule).
- To assign within 30 days any leases and licences relating computer equipment,

- To warrant that it has obtained all necessary consents for the assignment of the leases and licences of computer equipment,
- To provide a list of the dwellings which are subject to current right to buy applications. The Council will continue to accept applications under the RTB until transfer and these applications will then be processed to completion by the Company.

2.20 **Clause 17 – Company’s obligations**

The Company confirms that it will abide by the covenants in part I of the fourth schedule of the Agreement.

2.21 **Clause 18 and 19 - supplemental agreements**

These clauses requires the Council and the Company to enter into, on the Completion Date, various supplemental agreements scheduled in to the Agreement. Details of these are set out under the schedules below and, in particular, include the RTB Sharing Agreement, the Disposal Clawback Agreement, and the VAT Sharing arrangements.

2.22 **Clause 22 – dispute resolution**

Unless there is a provision elsewhere in the Agreement to the contrary, disputes under the Agreement shall be dealt with in accordance with the dispute resolution procedure set out in this clause.

Conclusion

2.23 This concludes the terms of the Agreement. The above is a summary only of the principal terms of the Agreement between the Council and the Company. The full agreement will be available for inspection on Monday 5 November by request to Chris Fleetham.

3 **Schedules**

3.1 **First schedule – property**

This schedule contains details of the property being transferred to the Company.

3.2 **Second schedule – nominations**

3.2.1 Part 1 – Nomination Rights Deed – the purpose of this deed is to provide the Council with a means to discharge its statutory duty to secure accommodation for those in housing need.

3.2.2 Under the proposed arrangements, the Council will continue to maintain the register of housing need for the Braintree district and will continue to undertake assessments of housing need for applicants. The Council will continue to be responsible for matching applicants on the housing register for vacancies arising in accommodation becoming vacant with other housing associations operating in the Braintree district. In relation to vacancies arising in the Company's housing stock, the Company will be responsible for maintaining access to the Council's housing register and, broadly speaking, will be required to offer accommodation to that applicant with highest priority when a dwelling becomes available for letting. The Agreement contains detailed monitoring provisions to

enable the Council's Strategic Housing Team to monitor the allocation of dwellings by the Company.

3.2.3 In addition, the deed contains a "fallback" position whereby the parties can revert to a traditional Nomination Agreement (whereby the Council would be entitled to nominate persons for housing in three out of four dwellings which become vacant and available for letting) should the proposed arrangements not be workable in practice.

3.2.4 Members should also note that the arrangements in this deed are currently envisaged to be a relatively short term arrangement in contemplation of the introduction of choice based lettings throughout the District in 2008.

3.2.5 **Temporary accommodation arrangements**

Broadly speaking, this part of the Agreement will require the Company to set aside 35 dwellings for occupation by homeless applicants to whom the Council owe a statutory duty for housing. Any costs incurred by the Company in so doing above the Council's historical costs of running this service will be for the Council's account.

3.3 **Third schedule – staff matters**

3.3.1 An annex to the Agreement will list details and essential employment information about all staff transferring from the Council to the Company on the Completion Date.

3.3.2 The third schedule will provide details of disclosures against the warranties contained in clause 14 of the Agreement.

3.4 **Fourth schedule - Deed of Covenant by the Company**

3.4.1 This Deed of Covenant will be entered into by the Company in favour of the Council on the Completion Date.

If the Company breaches any of the covenants then the Council can serve a notice on the Company asking it to remedy the breach within 28 days (or such other period as the parties may agree). If the Company fails to remedy the breach the Council can claim damages from the Company. The exception to this is, however, that the Company shall not be so obliged to comply with particular covenants (covenants which have a direct financial effect on the Company) if the Company can demonstrate to the Council, acting reasonably, that circumstances out of the Company's control have caused a failure to meet a covenant or that to enforce such action would occasion an event of default (or potential event of default) under the Company's Loan Agreement or any refinancing agreement it enters into pursuant to the Loan Agreement.

Wherever possible, the Council will consult with the Company before commencing any action to enforce its rights under the terms of this Deed. Because the covenant (e) referred to below in relation to the use of certain grounds for possession are for the benefit of tenants, the Company agrees that the Council holds those covenants on trust for the benefit of tenants, as required by CLG transfer policy.

3.4.2 The Covenants

The Company have agreed covenants (ie legally binding commitments) in relation to the following issues:

- a The treatment of any surpluses generated by the Company,
- b Rent and service charge increases undertaken by the Company (in particular, restricting the Company to the rent policy as described in the Consultation Document),
- c To partake in formal consultation liaison meetings with the Council,
- d The requirement on the Company to carry out consultation promises,
- e Not to seek possession of transferring tenants' dwellings otherwise done in accordance with the provisions of the enhanced tenancy agreement to be issued by the Company,
- f To continue to allow tenants to exercise the Right to Buy,
- g Changing the constitution of the Company and the maintenance of the Company's independence,
- h To allow the Council to nominate Board Members to the Board of the Company,
- i To assist in the provision of records/files etc,
- j To maintain a specified budget for disabled adaptations,
- k To maintain headquarter offices within the Braintree district,
- l To maintain a town centre presence in Braintree, Halstead and Witham and to consult with the Council and take account of Council representations should those arrangements alter for any reason,
- m To maintain a budget of £5.6m for the upgrade of sheltered housing and to consult with residents of that sheltered housing and with the Council prior to the remodelling of any sheltered schemes. Note that it is accepted by Council officers that not all existing schemes are necessarily desirable for refurbishment and accordingly some may be redeveloped by the Company in which case the disposal clawback agreement (see paragraph 3.14.2) will apply.
- n To implement the Community Gateway Model and to maintain a budget for that purpose,
- o To establish a ring-fenced community fund (which is currently envisaged to be between £10m and £12m in value) and to establish a community fund board to make decisions on the utilisation of the community fund. The community fund board will be established with three representatives from the Company and three representatives from the Council. The fund can only be spent on:
 - New social housing to be developed by the Company

- Estate environmental works
 - Regeneration activities
 - Other projects which benefit the community
 - To make balancing payments in relation to pension deficits (see paragraph 2.17.7)
- p To allow a reasonable period of time for existing Council employees to apply for new positions within the Company before these positions are advertised to the general public,
- q To honour the tenants' pledge which was made to tenants in the consultation period.

3.5 **Fifth schedule - Warranties And Covenants**

The fifth schedule contains two forms of Warranty (one in favour of the Lenders and the other in favour of the Company) and a Deed of Covenant by the Council in favour of the Company.

3.5.1 **Part 1 - Deed of Warranty in favour of the Lenders**

The Deed provides for a procedure for the Lenders to make a claim under the Deed. The damages are to be equal to the loss suffered by the Lenders as a result of the warranty being untrue, misleading or breached. The Lenders must demonstrate a loss before a claim can be made. This is likely to occur only when the Company is in very serious financial difficulties and the Lenders have repossessed some or all of the Property.

The Deed of Warranty will provide that claims may only be brought by the Lenders within the length of the loan to the Company (30-35 years). There is no limit to the Council's maximum financial exposure under these warranties. The warranties are set out in a schedule and include warranties in respect of the matters summarised below:

i **Statements**

That the Council has disclosed all material information which ought to be disclosed to a prudent mortgagee.

ii **Title**

That the Council has good and marketable title to the Property. That the Property enjoys all rights and easements necessary for its continued use and is free from any right of any person which could restrict them. That roads which provide access to the Property and roads and sewers within the Property are maintainable at the public expense.

iii **Encumbrances**

The property is free from any mortgage and is not subject to other adverse matters which may materially affect its value. That there are no subsisting entries at the

Land Registry, HM Land Charges Registry and/or Local Land Charges Registry which are of an onerous or unusual nature.

iv **Planning Matters**

That all the property has appropriate planning permission for its current use. That no enforcement action could be taken in relation to these planning permissions or in relation to any planning agreements.

v **Statutory Obligations**

That no action could be taken against the Council in respect of its compliance with all appropriate statutory and bye-law requirements relating to the Property.

vi **Adverse Orders**

That the Property is not subject to any compulsory purchase notices or other similar matters.

vii **Leases**

Where the Council's title to any part of the Property transferring is leasehold the Council warrants that there are no unusual liabilities associated with the leasehold title. In practice, it is understood that none of the Property transferring is leasehold.

viii **Tenancies**

That the Property has the benefit of all the tenancies and the gross weekly rent information provided by the Council is accurate (i.e that the Rent Roll which shall be annexed to the Agreement is accurate). That there are no claims or potential claims against the Council by tenants.

ix **Information and statistics supplied**

That information supplied by the Council (which is incorporated within the Agreement) is accurate.

x **Sales off**

This warranty relates to the forms of Conveyances, Leases and Transfers used by the Council in previous sales. Examples of such documents are to be annexed to the Agreement. The warranty provides the Company with reassurance that the terms of the sales off are appropriate and in particular that it can recover its future costs of repairs and improvements.

xi **Disputes and litigation**

That there are no ongoing disputes which affect the Property.

xii **Environmental matters**

This paragraph deals with a number of environmental issues which could affect the Property. In particular, the Council warrants that the Property complies with all

current environmental laws and that there is no environmental contamination or dangerous substance affecting at, on, or under any of the Property.

The Council is looking to put in place insurance in respect of claims which the Company or the Lenders make against the terms of the environmental warranties and have appointed Heath Lambert as expert advisors in this regard. Note that such insurance would not necessarily cover the full amount of any claim made, or extend to the same length of time as the warranty period.

xiii **Vires**

That the Council has power to enter into the Agreement.

xiv **Absence of adverse replies**

That if the Company had submitted various standard conveyancing searches in respect of the Property, no adverse replies would have been revealed.

xv **Wayleaves**

That the property is not subject to any wayleave which is of an onerous or unusual nature and that any wayleaves can be terminated by giving not more than six months notice.

xvi **Telecommunications equipment**

That there is no telecommunications or security equipment on the Property belonging to any third party other than that belonging to tenants.

xvii **Flooding**

No property has been flooded in the past 10 years and/or no part of the property has been incapable of insurance at commercial rates. The Council will make disclosures against this warranty.

Indemnities

Because the presence of asbestos in the transferring housing stock is a known issue, it is conventional in stock transfer for an indemnity to be provided in relation to the costs of dealing with asbestos in the properties. Broadly speaking, in the valuation agreements between the Council and the Company, an allowance has been made for the costs of dealing with asbestos in the properties and professional advice has been provided to both the Council and to the Company from a firm of specialist asbestos surveyors (Envirotec Limited) in relation to those costs. Under the asbestos indemnity, once that allowance had been utilised by the Company, any additional costs would be for the Council's account. However, the Company would also have to demonstrate that it had considered Envirotec's advice and were Envirotec negligent, a claim would first need to be pursued against them.

It is important to recognise that under any indemnity that there remains a residual risk to the Council should the valuation allowance prove not to be adequate and that insurance will not be available to mitigate against that risk. It is therefore suggested that the Council give consideration to the establishment of a risk mitigation fund should that uninsured risk

arise (which fund could also be used to meet any other uninsurable risks which will result as a result of the Transfer Agreement).

In addition, the Company have also expressed concerns about the extent, state and condition of unadopted sewers which will be transferring to the Company and an indemnity in respect of the costs of maintaining such sewers on the similar basis to the principles behind the asbestos indemnity has been agreed by the Council save that the Council would only be responsible for 50% of such additional costs. In addition in contemplation of a change in law the Company must take steps to get the sewers adopted. If the sewers are adopted the Company will pass the allowance in its business plan for the maintenance of these sewers into the Community Fund.

Schedule 2 - Disclosures

The Council's disclosures against the warranties are set out in this schedule. A disclosure will be made where a matter is not as stated in one of the warranties.

3.5.2 Fifth schedule, part 2 - Deed of Warranty by the Council in favour of the Company

The form of this document is similar to the Council's warranty in favour of the Lenders and the statements (warranties) given are identical to the Lender's warranties.

As with the Lender's Warranty, the Company may in the event of any warranty being untrue, misleading or breached, serve notice on the Council and if the breach is not remedied within 28 days or if the Council has not given a satisfactory undertaking to remedy the breach (or the breach is otherwise not remediable) the Company is entitled to claim damages for loss suffered.

The principal differences between the Company's Deed of Warranty and the Lender's Deed of Warranty are that the Company's rights to claim are limited in the following ways (the main limitations only are listed):

- claims for breach of any of the warranties may only be brought within 15 years from the Completion Date (other than the environmental and vires warranties where a period of 19 years has been agreed),
- claims for small sums cannot be brought unless a claim is greater value than £1,500 no claim can be brought until they amount (in the aggregate) a threshold of £10,000,
- claims (other than in respect of vires and environmental claims) in respect of each dwelling forming part of the Property or other part of the Property affected by the breach of warranty are limited to higher of the Rent Income foregone figure which is set out in the Right to Buy Sharing Agreement and the average purchase price per dwelling,
- the limit on environmental claims will be a separate fixed sum of £90m,
- there is no financial limit on vires claims,
- there are provisions which are designed to ensure that, if claims arising out of the same facts and circumstances are made both by the Company and its Lenders, the Council will only be required to meet the claim to the Lenders,

- there will be certain restrictions on the Company's ability to claim if it wishes to undertake redevelopment of the Property other than for Social Housing or residential purposes.

The above limitations will be subject to the agreement of the Company's lenders.

3.5.3 **Fifth schedule, part 3 - Deed of Covenant by the Council in favour of the Company**

In this Deed, the Council enters into various covenants with the Company. If the Council breaches any of the covenants set out in this Deed then the Company can serve a notice on the Council asking it to remedy the breach within 28 days. If the Council fails to remedy the breach (or it cannot be remedied) the Company can claim damages from the Council.

The covenants include the following principal covenants:

- To co-operate with the Company by considering joint objectives for housing in the district and by giving formal and reasonable consideration to the use of its statutory powers to assist the Company in the fulfilment of its objectives,
- To maintain all amenity and play areas which will remain in the ownership of the Council and which adjoin or are adjacent to the Property until such areas are sold or their use changes,
- To answer (and at its own cost) all requisitions raised by the Land Registry in respect of the Council's title to the Property to enable the Company to be registered at the Land Registry with absolute title,
- To use reasonable endeavours to process all claims for Housing Benefit within the statutory periods,
- If a Council nominee is removed from the Company board (eg because of a breach of Code of Conduct) not to re-nominate such individual to the board.

3.6 **Sixth schedule**

This schedule will contain a listing of the contracts affecting the property which will be assigned to the Company and those that will be retained by the Council. These are few in number.

3.7 **Seventh schedule - form of transfer for the Property and Accommodation Agreements**

The seventh schedule sets out the form of Transfer which is the form of legal document transferring ownership in the Property to the Company.

The Transfer recites that the Company takes the Property subject to and with the benefit of any existing rights, encumbrances and tenancies/leases which affect the Property.

The Transfer provides for various additional rights to be granted to the Company over land retained by the Council and the Company grants to the Council certain reciprocal rights over the Property purchased.

The Company agrees to abide by all of the covenants which currently affect the title to the Property and indemnifies the Council against any breach.

The Company agrees with the Council to impose various covenants on right to buy purchasers. The terms of these covenants are intended to be similar to those previously imposed by the Council in order to protect the amenity of the estates.

The Company also covenants not to dispose of any of the Property without the Consent of the Department for Communities and Local Government.

In addition, part 2 of this schedule contains the office lease for the Company's occupation of the Council's offices at Causeway House and Millennium Tower and of the Witham Library office.

3.8 **Eighth schedule – Tenancy Agreements**

This schedule contains the Company's Tenancy Agreement.

3.9 **Ninth schedule - insurance claims**

In this schedule, the Council discloses details of any current damage which affects the transferred properties.

3.10 **Tenth schedule - Support Services Agreements**

3.10.1 This schedule contain all of the agreements for services that the Council will provide to the Company after transfer, and includes arrangements for

- Customer service centre and reception
- External posting mail and distribution
- Grounds maintenance
- Street scene
- Procurement
- Payroll
- Leased car administration
- Graphic design
- ICT and telecoms
- Cashiers
- Civil engineering
- GIS system

3.11 Eleventh schedule – Right to Buy applicants

The eleventh schedule contains a list of current Right to Buy Applicants.

3.12 Twelfth schedule - list of equipment transferring

This schedule is split into various points and identifies furnishings and equipment which are to be purchased by the Company. The lists are being prepared by the Council.

3.13 Thirteenth schedule – Setting Up Costs

This is a listing of the costs included in setting up the Company which will be met written off by the Council on the Completion Date and any Repayable Loans which will be repaid to the Council on the Transfer Date.

3.14 Fourteenth schedule

3.14.1 part 1 - Right to Buy Sharing Agreement

This Agreement provides that any capital receipts arising on preserved right to buy sales are to be apportioned between the Council and the Company.

Broadly, the proceeds of sale will be apportioned such that the Company receives a sum of money from each sale to compensate them from the loss of income from that particular property for the remainder of the 30 year time period on which the valuation settlement is agreed, together with a lump sum to compensate them for the costs of administering the Right to Buy scheme. The remainder of the sale proceeds will be then due to the Council.

The financial formula on which the sharing of the proceeds of sale have been agreed has been negotiated between the Company and the Council, following advice received by the Council from financial consultants PricewaterhouseCoopers.

3.14.2 Part 2 - Disposal Clawback Agreement

The purpose of this agreement is to ensure that if the Company disposes of property in a certain way for a period of years from the Completion Date then the Council shall share in the value received by the Company. The Council will receive 50% of any such consideration after the subtraction of any reasonable items of cost and expenditure properly incurred by the Company in relation to the disposal.

Members should note that a number of disposals are exempt from the clawback arrangements. In particular, these relate to a series of "small" disposals and also include disposals where the land to be used for social housing or other community benefit. In addition, where the Company has demonstrated to the Council that a disposal is required to cross-subsidise the development of new social housing, then that sum would also be exempt from clawback.

The provisions of this clawback arrangement are not binding on any mortgagee (ie the Lenders) or any successor.

3.14.3 **Part 3 - Price Adjustment: VAT Sharing**

Pursuant to the provisions of this schedule, the useable savings realised through the VAT shelter scheme arrangements are to be shared on a 50/50 basis with the Company.

Fifteenth schedule

3.14.4 **Part 1 - Deed of Assignment of Rent and Service Charges Arrears**

Under this Agreement, the rent arrears which are to be purchased by the Company are assigned. The Council is also obliged to account to the Company for any arrears received by it after completion.

3.14.5 **Part 2 - Housing Benefit Protocol**

This agreement provides that the Council and the Company will work closely together to ensure a smooth administration of Housing Benefit claims.

3.14.6 **Part 3 - Civil Emergency Protocol**

This protocol provides that the Company will provide help and assistance to the Council in the event of an emergency including making provision for those made homeless, protecting personal effects, and participating in the transfer of its staff on the Council's emergency procedures.

3.15 **Sixteenth schedule – Development Agreement**

3.15.1 **Development Agreement**

Under the terms of this Agreement, the Company agrees to undertake certain works listed in a schedule to the Development Agreement. The aim of the development works is to enhance the value of the transferred properties and broadly corresponds to the programme of works detailed in the Consultation Document. This Agreement is intended to enable the Company to recover VAT incurred on sub-contractor's invoices when carrying out the various enhancement works set out in the schedule.

The Council is able to share in VAT recovered by the Company under the VAT shelter scheme through the VAT Sharing schedule (see schedule 14 above).

Due to recent Inland Revenue decisions, it is possible that the VAT shelter scheme arrangements may lead to adverse consequences for the Company in respect of its liability to pay Corporation Tax. As a consequence of this, the Council and the Company have agreed a mechanism whereby the VAT shelter scheme arrangements may be unwound (but preserving the obligation of the Company to complete the works programme as specified in the promises in the Consultation Document). The mechanism for doing this involves the parties entering into one of the two alternative deeds contained in the seventeenth schedule.

3.16 **Seventeenth schedule – Deeds of Variation**

As mentioned above in connection with the Development Agreement, this schedule contains two deeds which can be used to vary the VAT shelter scheme arrangements. The arrangements can either be unwound in part (pursuant to the deed appearing in part 1) or

in full (pursuant to the deed appearing in part 2). In each case, the obligation of the Company to complete the works programme in accordance with the Consultation Document is preserved through the deed.

Trowers & Hamlins
1 November 2007

Government and Public Sector

November 2007

Braintree District Council

Housing transfer proceeds

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Tenanted market value

Introduction

- 1 Government rules set out the way in which the price paid by a new owner under a housing transfer is calculated. It is required to be based on the Tenanted Market Value (TMV). This method of valuation assumes that the stock is transferred as a going social housing concern and, in simple terms, equates to the income the new owner is likely to receive over thirty years less the related expenditure.
- 2 The “net present value” of estimated income and expenditure over 30 years is then calculated to give the value in today’s money. This is the TMV. The main types of income and expenditure in this calculation are:

Income

- Rents from housing make up the majority of income. These are calculated using today’s rents and then projecting forward using the Government rules that apply to both local authorities and RSLs.

Expenditure

- Maintenance repair and improvement works to the housing, based on the results of an independent stock condition survey
- Supervision and management costs, based on the Council’s current costs, plus an amount for loss of economies of scale and VAT
- Maintenance and repairs to other assets transferred – eg garages.

Agreed TMV

- 3 The provisional TMV of the Council’s housing stock of 8,094 properties was agreed at £36.9m, on the basis that 50% of the net proceeds that this valuation would give rise to, will be set aside in a community fund to be used for projects jointly agreed by GCH and the Council. This calculation leads to a community fund of £11.5m, giving rise to a net TMV of £25.4m.
- 4 It is possible that there will be further adjustments to this agreed TMV subsequent to transfer, arising from the pension deficit attributable to transferring employees, as any pension deficit arising during their employment by the Council remains a liability of the Council. It is normal practice to pass on the deficit to the new RSL and to provide them with the means to address the deficit, through a reduced valuation payment. The latest estimate from the pension scheme actuaries is a deficit of £5.9m and this has been incorporated in the valuation. However, this deficit has not yet been finalised and will not be until after transfer, when an appropriate adjustment will be made.

Transfer receipt

Introduction

- 5 The TMV represents the price that GCH will pay the Council for the housing. However, not all of the proceeds of this capital receipt are actually received by the Council because:
- “Set-up” costs incurred relating to the disposal can be met from the proceeds. This includes administrative costs relating to the sale of housing such as legal fees, surveyors fees, valuation fees and costs, consultants fees and certain staff costs
 - Housing related debt and debt premia will be repaid out of the transfer proceeds. After transfer, subsidy will no longer be received for this debt and debt premia. As a result, it is assumed that local authorities will need to make provision for repayment of housing related debt out of the capital receipt
 - A 20% levy is payable to Government based on the net proceeds from “leviable assets”

Levy

- 6 A 20% levy is payable to Government based on the “leviable receipt”. The leviable receipt is calculated by deducting from the capital receipt:
- Capital receipts relating to non-leviable assets. Whilst dwellings are considered leviable assets, other assets such as garages and shared ownership dwellings, are considered to be non-leviable. Net receipts relating to non leviable assets have been estimated at £2m.
 - Set-up costs pre and post-ballot are currently estimated at £5.2m (see below)
 - Housing related debt (see above). Whilst Braintree has no actual housing debt, it has debt premia of £5m and notional housing related debt of £7m which can be deducted.

Set up costs

- 7 It is currently estimated that the “set-up costs” relating to the housing transfer will be £5.2m. This level of costs is normal for a transfer of this scale and will be deducted from the capital receipt. Set up costs include all the authority’s own costs as well as those of GCH incurred in setting up the new landlord and acquiring the housing. This covers the periods both before and after the ballot.
- 8 The majority of these costs are those incurred by GCH since the ballot in setting up themselves as a new organisation and preparing to acquire the housing stock. Within this the largest single item is the loan arrangement fee of £1.5m payable to GCH’s lenders for providing a loan of up to £120m to them, to acquire and invest in the housing stock.
- 9 Other costs comprise items such as costs of the consultation, insurance costs, legal fees, surveyors fees, valuation fees and costs, consultants fees and staff costs.

Braintree net capital receipt

- 10 Based on a provisional TMV of £36.9m and other assumptions outlined above, the net capital receipt from transfer at Braintree would have been £23.1m (see table below). With an agreement that 50% of this (£11.5m) goes into the community fund, the final TMV is £25.4m.

£m	Levy calculation	Net Receipt
Provisional TMV	36.9	36.9
Receipt re non-leviable assets	(2.0)	
Set-up costs	(4.9)	(5.2)
Housing debt	(7.0)	
Housing debt premia	(5.0)	(5.0)
Leviable receipt	18.0	
Levy at 20%	3.6	(3.6)
Net capital receipt		23.1
Community fund		11.5

	£m
Provisional TMV	36.9
Less community fund	11.5
Final TMV	25.4

11 Deducting the community fund from the leviable receipt will lead to £2.3m levy saving.

VAT shelter

- 12 A common arrangement in housing transfers is the establishment of a “VAT shelter”, to enable the recovery of VAT on major works expenditure post transfer, that would otherwise not be recoverable.
- 13 The mechanism, which is now widely used, involves contractual arrangements through which the council transfers “improved” properties to the RSL and the RSL pays a price for the properties equal to the TMV plus the VAT exclusive cost of the refurbishment. The RSL is appointed to carry out the works on the council’s behalf and receives a payment equivalent to the VAT exclusive costs of the refurbishment. The RSL charges the Council VAT on the costs and the council pays and reclaims it. The enhanced valuation and the VAT exclusive cost of the works are netted off and as the council will be deemed to have incurred the cost of the works, the RSL will recover the VAT from HM Revenue & Customs as it incurs it during the completion of the works.
- 14 As a result of this arrangement, an additional amount of VAT is recovered from HMR&C over a five to ten year period, and this is typically shared 50/50 between the Council and RSL. The current estimate is that total VAT shelter proceeds will be some £27m, and the Council’s share £13.5m, received over a five to ten year period.

Post transfer right to buy receipts

- 15 The level of Right to buy (RTB) sales after transfer is very difficult to predict accurately. To address these difficulties, Government encourages arrangements to divide future RTB proceeds from transferred stock in some agreed proportion between the authority and the new landlord.
- 16 For the new landlord, the financial implications of RTB are:
 - Future rental income is lost
 - Future variable costs relating to the dwelling are lost
- 17 As such it is reasonable for the landlord to retain a portion of the RTB proceeds to cover the loss of net income, and administration costs associated with the RTBs. The precise sharing arrangements will depend on a number of factors, in particular the size of the dwelling and the timing of sale:
 - The income and costs relating to larger houses will differ from bedsits and smaller dwellings.
 - As the TMV is based on income and costs over a 30 year period, the income and costs lost to the landlord will reduce as the end of the 30 year period approaches.
- 18 A RTB sharing agreement will be drawn up reflecting these principles, and setting out the financial compensation that the landlord will receive from the sales proceeds – the “net income foregone”. The balance of sales proceeds will be received by the Council.
- 19 The agreement as drafted, sets out the amount that GCH would retain from a future RTB by size of property for each year over the next 30 years. For example, for a 3 bed property, GCH would retain £23,000 for a sale in the first year, reducing to £20,000 by year 5. Based on an estimated discounted sale price after costs of £110,000, this would lead to a Council receipt of some £87,000 in the first year, rising to £90,000 by year 5.
- 20 The amount of money received by the Council is typically higher than the amount it would have retained from a RTB pre transfer, as 75% of proceeds would have been subject to pooling. However, as the right to buy is only available to tenants at the time of transfer, the number of RTBs and the associated revenue will decline over time.

Other financial implications of transfer

- 21 Whilst the Council is likely to receive a net capital receipt as well as additional proceeds from the VAT shelter and post transfer RTBs this revenue is likely to be needed to balance the financial implications arising from transfer. For a district Council the size of Braintree, such implications can be significant, and will include:
- Environmental warranties – under the terms of the transfer agreement, the Council will be required to provide environmental warranties to GCH. Councils often look to earmark a part of the transfer proceeds to cover these future potential liabilities. In this case, the Council has decided to also mitigate its risks by taking out a 10 year environmental insurance policy with £10m of cover, at a cost of £164,000. This insurance premium forms a part of the set up costs.
 - Housing functions post transfer – even though it will have transferred its housing stock to GCH, the Council will retain a number of housing functions, which cannot now be funded through the HRA.
 - Corporate recharges to the HRA – with the transfer of housing stock and closure of the HRA, it will no longer be possible to recharge any costs to the HRA.
 - General diseconomies – the act of separating out the housing landlord function from a Council inevitably leads to other “diseconomies” in staff costs and overheads.

