

WELWYN HATFIELD BOROUGH COUNCIL
CABINET – 6 FEBRUARY 2023
REPORT OF THE EXECUTIVE DIRECTOR (FINANCE & TRANSFORMATION)

NOW HOUSING LIMITED UPDATE

1 Executive Summary

- 1.1 This report presents an update on the difficulties which Now Housing Limited (Now Housing) is currently experiencing as a result of matters such as increases in construction costs, wider inflationary pressures and limitations on its ability to raise rents. In addition, the report presents an update on the implications for Now Housing Limited of proposed legislative changes and explains how these will increase the challenges which the company is already facing, such that it will not be able to reach a stage where it is able to trade profitably.
- 1.2 The proposals set out in the report for the exit strategy have been unanimously agreed by the Cabinet Housing Panel on 27 January 2023 for recommendation to Cabinet.

2 Recommendation(s)

- 2.1 That Cabinet note the update and approve the Exit Strategy for the company.
- 2.2 That Cabinet delegate authority to the Executive Director (Finance and Transformation), in consultation with the Executive Member (Planning and Resources) to agree the asset transfer price, finalisation of accounts and any write on/off position.

3 Background

Minimum Revenue Provision Consultation

- 3.1 In November 2021, the government commenced a consultation on changes to the calculation of the Minimum Revenue Provision (MRP).
- 3.2 The MRP is an annual charge that the Council must make to its General Fund, to finance the cost associated with Capital projects. It represents a prudent charge to ensure that borrowing is affordable in the longer term, and the funds generated from this charge can only be used towards reduction of borrowing or new capital projects.
- 3.3 The proposed changes were caused by the level of risks that some authorities had been entering into with subsidiary companies, without demonstrating any ability to repay loans.
- 3.4 The newly proposed legislation, as originally drafted, would have meant that the Council would have needed to charge MRP on loans to third parties, even if a third party was making payments to reduce the principal of the loan. This in turn would have meant that the Council would have needed to increase the interest charges to Now Housing to ensure these additional costs were covered.

- 3.5 A large number of Councils responded to the consultation, and the Government amended the proposed legislation to allow an MRP charge not be made on third party loans if three conditions were met.
- 3.6 One of these conditions is that the Council must charge to its Revenue Account, an expected amount of credit losses. Credit losses are notionally calculated based on market conditions, performance of similar companies and on the trading position of a company. Due to the fact the company is not yet in a profitable trading position, it is anticipated the calculation could lead to a significant charge to the General Fund.
- 3.7 Whilst, as a result of the changes which have been made, the impact would not be as large as with the previously proposed legislation, it could still be in the millions if the company were able to reach the trading levels previously forecast, where over £100m of loans would be issued by the Council.
- 3.8 Such costs would need to be passed onto the company through increasing the interest charges on new loans.
- 3.9 Whilst this legislation has not yet come into force as the Government is considering the responses from the second consultation, implementation is considered to be highly likely and these potential risks must be considered alongside the other factors already impacting on the company.

Now Housing - Update

- 3.10 There are several factors currently impacting on the company's ability to deliver homes at the pace originally assumed in the business plan, all linked to site viability.
- 3.11 Construction costs have been increasing significantly. Whilst these costs have been increasing, the company is limited in its ability to raise rents, as these are capped at Local Housing Allowance levels. This has made the identification of new schemes more and more challenging over the last two years.
- 3.12 This has been further compounded in the current year, due to wider inflationary pressures, including more recently, significant increases in borrowing, labour and construction costs.
- 3.13 Since the first site was delivered in December 2020, which delivered 12 homes for the company, the team have been unable to identify any further schemes which would be viable. The viability gap on schemes has become increasingly wider as inflationary pressures and interest rates have continued to rise.
- 3.14 The company is currently in a loss-making position, and it was previously expected that it would not move into a profitable position until the company had a stock of between 40 and 50 units. With no schemes currently identified it could be some time before this is achieved, if at all.
- 3.15 Taking these factors into account, if the MRP legislation does come into force, it will increase the expected credit losses, and therefore will mean the council would have to increase loan rates to the company. This in turn would further increase the challenges the company would have in identifying viable sites.
- 3.16 Given the current loss-making position, challenges of identifying further viable sites and the potential of the draft legislation being introduced, it is recommended that the Council look to close the company before losses accumulate to an unreasonable level.

- 3.17 The Now Housing Board resolved, on 16th November 2022, that given the challenges in meeting its objectives as outlined in this paper, an exit strategy, by means of winding up Now Housing is recommended to Cabinet Housing Panel was in the best interests of its stakeholders and residents.

Exit Strategy

- 3.18 It is proposed, subject to tenant consultation, that the council purchase the 12 units from the Company at market value, and convert these to social housing. As retained right to buy receipts were not used in the original construction, the council can utilise these receipts to fund up to 40% of the purchase. An alternative would be to dispose of the units on the open market or to a registered provider, but as there are shared facilities with the council owned block on the site, it is felt a transfer back to the Council is the best option.
- 3.19 Tenancies of these properties would be converted from assured shorthold tenancies to secure tenancies at social rent, following a consultation period. These may be via flexible fixed term tenancies, or lifetime secure tenancies, in line with the councils policy at the point of acquisition.
- 3.20 Whilst the company has accumulated losses, the properties have increased in value. Transactions between the company and the council will continue up to the point of transfer of the assets, as the Council continues to undertake work on behalf of the company. The purchase price will be determined by external valuers at the point of purchase, but it is expected that the increase in value will substantially cover the accumulated losses to date, and that any associated write offs will not be material. The company will be expected to complete tax returns for the consolidated position, including profit on disposal of the property.
- 3.21 Once the transfer is complete, it will be proposed that the company be left dormant for three months, after which time it can apply to be closed following the period of dormancy.
- 3.22 The tenants of the company are being consulted on these proposals. The consultation closes on 31 January and the results of the consultation shall be summarised and published for Cabinets consideration when considering the recommendations set out in the report.

Implications

4 Legal Implication(s)

Tenancies:

- 4.1 Upon transfer of Now Housing's housing units to the council, the tenants will cease to hold assured shorthold tenancies and will become secure tenants of the council (the basis of the tenancy agreement will be in line with the council policies at the point of transfer). This is on the basis that:
- a) each housing unit is a dwelling-house which is let as a separate dwelling;
 - b) the interest of the landlord will belong to a local authority (WHBC);
 - c) each tenant will be:
 - an individual who occupies the dwelling-house as his only or principal home; or
 - joint tenants each of whom is an individual with at least one of them occupying the dwelling-house as his/her only or principal home; and
 - d) none of the exceptions to secure tenancies will apply.

- 4.2 The council's tenancy agreement would need to be issued to each tenant, signed by the respective tenant and on behalf of the council.
- 4.3 As the council would acquire the properties at a time when those properties will have been affordable rent housing, the council would have a discretion to charge affordable rent, as provided for in the Regulator of Social Housing's Rent Standard – April 2020, although it is proposed that these would move to social rent in line with all other council properties in the Housing Revenue Account.
- 4.4 The Landlord and Tenant Act 1985 imposes a duty upon a new landlord - where the interest of the landlord under a tenancy of premises which consist of or include a dwelling is assigned – to give notice in writing of the assignment and of his name and address, to the tenant not later than the next day on which rents is payable under the tenancy or, if that is within two months of the assignment, the end of that period of two months.

Removal of the company from the register:

- 4.5 As referenced in paragraph 3.20, above, the right to apply to have Company has been dormant for a period of time.
- 4.6 Now Housing Limited will be able to make application to the registrar of companies for the Company's name to be struck off the register so long as, within the three months immediately before making the application, the Company has not:
- a) changed its name;
 - b) traded or otherwise carried on business;
 - c) disposed for value of property or rights that, immediately before ceasing to trade or carry on business, it held for the purpose of trading or otherwise carrying on business;
 - d) engaged in any other activity (with certain exceptions);

and provided that none of the circumstances, in which an application to strike off cannot be made, apply.

- 4.7 Once the application is filed with the registrar of companies s/he will publish notice in the Gazette and allow at least two months to pass before s/he may strike the company's name off the register.
- 4.8 After a company's name has been struck off the registrar and dissolved it is, in theory, possible for future claimants against the company to apply to restore the company to the register: (a) at any time if they have claims against it for personal injury; and (b) within 6 years of the dissolution for other types of claims.

Consultation:

- 4.9 Whilst there is not an express duty to consult, it would be prudent to consult in order to properly inform an equality impact assessment to demonstrate that the obligation to pay due regard to the council's public sector equality duty (s149 Equality Act 2010) has been met. Consultation has commenced with the tenants who will be affected by the winding up of the company. The views of those who take part in the consultation will be published before the meeting to be considered by Cabinet in making a decision.

Other Matters:

- 4.10 In addition to the transfer of the properties from Now Housing Limited to the Council arrangements will need to be made to deal with, amongst other things:
- 4.10.1 The existing loan agreement;

4.10.2 Now Housing's Tenancy Deposit Scheme;

4.10.3 The Service Level Agreement and the Shareholder Agreement; and

4.10.4 The service contracts between Now Housing Limited and its directors.

4.11 Subject to the matters which are set out in paragraph 4.6 (above) at the point at which the Company is ready to make application to the registrar of companies for the company's name to be struck off the register, the following procedure will apply:

4.11.1 The Company must give the following persons notice of the intention to submit an application for strike:

- a) a member of the company
- b) a director of the company (including de facto directors), other than those who have signed the application form
- c) a creditor of the company
- d) an employee of the company
- e) banks
- f) suppliers
- g) former employees if the company owes them money
- h) landlords or tenants
- i) guarantors
- j) personal injury claimants
- k) HMRC and DWP
- l) any directors who have not signed the form

4.11.2 The Company must complete Form DS10 – striking off application by a company (the form includes a declaration that neither sections 1004 nor 1005 of the Companies Act 2006 prevents the application from being made);

4.11.3 The completed form must be filed with the registrar, together with payment of the relevant fee (the application can be done online)

4.11.4 Within seven (7) days from the day on which the application is made, the Company must give a copy of the application to every person who at any time on that day falls within any of the categories set out in paragraph 4.11.1 (above);

4.11.5 There will be a continuing obligation on a director of the Company to send a copy of the application to any person who, after the application has been made, falls within any of the categories of people listed in paragraph 4.11.1 (above). The director must deliver the copy within seven days of the recipient falling with the relevant category. The duty continues until the application is finally dealt with or withdrawn. It will be an offence not to serve notice as required and it will be an aggravated offence punishable by a term of imprisonment if the person's failure to perform this duty is with the intention of concealing the application.

4.11.6 On receipt of the application for voluntary strike off, Companies House will examine the form. If it is acceptable Companies House will:

- a) register the information
- b) put it on the company's public record
- c) send an acknowledgement to the address shown on the form
- d) notify the Company at its registered office address to enable it to object
- e) publish a notice in the Gazette: (a) stating that the registrar may exercise the power to strike off in relation to the Company; and (b) inviting any person to show cause why that should not be done.

- 4.11.7 Once the application has been registered the Company will technically still need to file documents, such as accounts;
- 4.11.8 Any objections to the proposed strike off must be made in writing and sent to the registrar with any supporting evidence;
- 4.11.9 If there is no reason to delay, the registrar will strike the Company's name off the register not less than two months after the date of publication of the notice in the Gazette.
- 4.11.10 The Registrar will publish a notice in the Gazette that the Company's name has been struck off the register;
- 4.11.11 The Company will be deemed to have been dissolved once the Registrar publishes a notice in the Gazette that the Company's name has been struck off the register.

5 Financial Implications

- 5.1 Financial implications will be finalised as part of the valuation of the assets, and the company trading position will be finalised following assets being transferred.
- 5.2 The company purchased the units for £2.1m and the current estimated value of the units are around £2.4m. The council can utilise right to buy receipts toward the purchase, up to 40% of the purchase price.
- 5.3 An estimate has been undertaken to give an indicative value of the potential write. If the company were to dispose of the properties in December, using the last property valuation from March 2022, it would give a net accumulated profit/loss of around £120k.

6 Human Resources Implication(s)

- 6.1 There are no Human Resources implications as there are no staff employed by the company.

7 Risk Management Implications

- 7.1 There is a risk due to the increasing challenges in identifying viable sites, that if the company continues to trade that losses will continue to accumulate, and the company may see financial challenges in trading. This in turn could increase potential losses for the council. Having an exit plan from the company reduces this risk and seeks to minimise any potential losses.
- 7.2 There is a reputational risk to the council associated with the closure of the company, however the factors that have led to the recommendations are highly unusual and unforeseen, providing clear rationale for the decision. Tenants of Now Housing will be consulted and a communications plan will be developed.

8 Security & Terrorism Implication(s)

- 8.1 There are no security & terrorism implications arising as a result of this report.

9 Procurement Implication(s)

- 9.1 There are no direct procurement implications arising as a result of this report.

10 Climate Change Implication(s)

10.1 There are no climate change implications arising as a result of this report.

11 Link to Corporate Priorities

11.1 The subject of this report is linked to the Council's Corporate Priority "Our Council".

12 Equality and Diversity

12.1 An Equalities Impact Assessment (EqIA) was not completed because this report does not propose changes to existing service-related policies or the development of new service-related policies.

13 Communication and Engagement

13.1 The tenants of the company are currently being consulted in advance of the final decision. The consultation closes on 31 January 2023, and responses shall be published for Cabinet to consider when taking a decision.

14 Health and Wellbeing

14.1 There are no health and wellbeing implications arising as a result of this report.

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