

| Report of | Meeting | Date |
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| Director (Development and Planning) (Introduced by the Executive Member (Economic Development and Public Service Reform)) | Executive Cabinet | 17 th June 2021 |

Registered Provider Partnership Framework - final version for implementation

Purpose of report

1. To set out the consultation responses received to the draft Registered Provider (RP) Partnership Framework which was consulted on between 13th November and 11th December 2020, identify the changes made to the Framework as a result of the consultation responses and seek approval to implement the amended version of the Framework.

Recommendation(s)

2. Approve the amended version of the Framework for implementation.

Executive summary of report

3. A RP Partnership Framework is a strategic partnership between a Council and the RPs who wish to develop within their boundaries. It sets out an agreed framework for the delivery of affordable homes secured through s106 agreements and can provide Council's with direct control of the allocation of these affordable units. It will therefore give the Council opportunity to control which RPs can secure s106 units in the borough.
4. A draft Framework was consulted on between 13th November and 11th December 2020. 84 organisations were consulted including developers, RPs and agents operating in the borough.
5. In total only 6 responses were received but a number of issues/objections were raised in these responses that needed to be considered before finalising the Framework. Legal advice was sought and as a result several changes were made to the Framework.
6. Approval is now being sought to implement the amended Framework. Following implementation RPs will be invited to apply to be a partner of the Framework A selection panel will be set up to assess applications and decide which RPs should be selected as partners.
7. Once partners have been selected the Framework will be implemented. The requirements of the Framework will then be incorporated into s106 agreements for developments that require affordable housing provision. This ensures that developers must meet the requirements of the Framework.

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| Confidential report Please bold as appropriate | Yes | No |
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| Key Decision? Please bold as appropriate | Yes | No |
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Reasons for recommendation(s)
(If the recommendations are accepted)

8. To enable the Council to have direct control of the allocation of affordable units secured through s106 agreements.

Alternative options considered and rejected

9. None.

Corporate priorities

10. This report relates to the following Strategic Objectives:

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| Involving residents in improving their local area and equality of access for all | | A strong local economy | |
| Clean, safe and healthy homes and communities | ✓ | An ambitious council that does more to meet the needs of residents and the local area | ✓ |

Background

11. A RP Partnership Framework is a strategic partnership between a Council and the RPs who wish to develop within their boundaries. It sets out an agreed framework for the delivery of affordable homes secured through s106 agreements and can provide Council's with direct control of the allocation of these affordable units. It will therefore give the Council opportunity to control which RPs can secure s106 units in the borough. The Council is a RP so will also be able to apply to be on the Framework and have the opportunity to secure some of these units.
12. A draft Framework was consulted on between 13th November and 11th December 2020. 84 organisations were consulted including developers, RPs and agents operating in the borough.
13. In total only 6 responses were received but a number of issues/objections were raised in these responses that needed to be considered before finalising the Framework. Legal advice was sought and as a result several changes were made to the Framework.
14. Approval is now being sought to approve the amended Framework for implementation.

Summary of responses to draft RP Partnership Framework

15. The responses received are set out in Appendix 1 of this report and are summarised below:

Challenges to the lawfulness of the Framework

- Several responses advised that the Council should take legal advice as to whether or not the Framework would fall within and be contrary to competition law as it sets a fixed transfer price for affordable units and limits which RPs can be a partner. This creates a dominant position for a limited number of RPs and creates an anti-competitive process.

- One response stated that they will object to the Framework being brought forward without any evidence being consulted on which demonstrates the need for the Framework, whether this approach actually benefits suppliers and beneficiaries of housing, the impacts of such an approach and how the fixed transfer prices have been arrived at.

Membership criteria and number of partners

- The membership criteria places unreasonable restriction on which RPs can operate in the area. The only requirement should be that they are on the governments list of Registered Providers of Social Housing.
- Can the requirement for only RPs that have existing stock of at least 75 units in the borough be changed? This excludes RPs that are actively developing in the borough but do not yet have 75 units.
- The number of partners should be limited to ensure partners can secure units, the Framework currently only sets out a minimum of 5 partners.

Fixed transfer values

- Concerns about the lawfulness of having fixed transfer prices as identified above.
- A single approach across the borough does not recognise that transfer values will differ across the Council area due to different Housing Market Areas and property values.
- A provider should be able to agree the transfer value based on the current market situation and type of dwellings proposed.
- The transfer values are significantly below what would be expected in a competitive scenario and below what has been achieved in Chorley.
- Household income and affordability are limited factors in determining the price of an affordable dwelling.
- Could allow developers to argue viability or cut quality standards.
- It is not practical to agree the fixed transfer values at the outline planning application stage when the s106 is signed as the size and type of dwellings are not known at this stage.

Allocation process

- How will an RP be selected to take on units (if the Council does not want them) if the price is fixed? Will this be on a rotational basis?
- The Council should stipulate who the units go to otherwise it is left to who developers prefer and could be open to foul play. Recommend a rota system.

Councils response and amendments to Framework

16. Following the analysis of the consultation responses received a number of changes were made to the Framework. The Council's response to each consultation response is set out in Appendix 1 of this report and the amended Framework is set out in Appendix 2.
17. The main changes proposed are identified below:

The transfer values will be a guide rather than fixed

18. Legal advice has been sought on whether having fixed transfer values in the Framework is contrary to competition law. It concludes *"By joining the Framework, the RPs could be deemed to be entering into an agreement between themselves and the Council in its capacity as an RP, being a potential acquirer of section 106 affordable housing units, to fix the transfer prices for the purchase of the section 106 affordable housing units from the developer, potentially in breach of competition law. To avoid this, we advise that the Framework should not require the RPs only to pay the fixed transfer price but that the transfer prices in the Framework should be seen as guidance to influence the negotiation of the transfer price between the RP and the developer."* We may therefore be open to challenge if we keep them.

19. Continuum were commissioned to provide the fixed transfer values. Their report sets out proposed transfer values however they do recommend undertaking further research with Registered Providers to assess the appropriateness of the application of the calculated transfer values. They acknowledge that in areas of the Borough that are performing well, their transfer values for shared ownership are lower than the values generated from price paid data provided by Jigsaw. They also state *“When setting Transfer Values for affordable housing if the values are too low it could serve to create an adverse impact on the viability of proposed private sector schemes. Developers will achieve less value for each affordable house from Registered Providers which could lead to less affordable houses being delivered overall. Further research is required to determine where to set Transfer Values to achieve the optimum balance between viability at the decision-making stage and true affordability of affordable homes.”* Therefore, if we did keep the fixed transfer values we would be open to challenge if we did not undertake further research.

The membership criteria has been amended to remove the 75 dwelling threshold and allow RP's that have any amount of existing stock in the borough to apply to be a partner

20. The purpose of the threshold was to limit which RPs can apply to be a partner of the Framework and only allow those with a significant existing presence to apply. The threshold of 75 dwellings was selected as it seemed a reasonable threshold and enabled the Council to be a partner. Several consultees have requested that this threshold is removed as it limits how many RPs can apply and some RPs have implied that they will object to the introduction of the Framework/seek a judicial review if we proceed without sufficient evidence of where the figure came from. It has therefore been amended and RPs with any existing stock or those that have secured s106 units but not yet developed them can apply to be a partner. The selection process will enable any poor performing RPs to be refused as a partner of the Framework.

Next Steps

21. Following approval to implement the Framework it will be circulated to developers, RPs and agents in the borough along with a summary of representations received and the Council's response.
22. RPs will then be invited to apply to be a partner of the Framework. A selection panel will be set up to assess applications and decide which RPs should be selected as partners.
23. Once partners have been selected the Framework will be implemented. The requirements of the Framework will then be incorporated into s106 agreements for developments that require affordable housing provision. This ensures that developers must meet the requirements of the Framework.

Implications of report

24. Risks are addressed in the body of the report.
25. This report has implications in the following areas and the relevant Directors' comments are included:

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| Finance | ✓ | Customer Services | |
| Human Resources | | Equality and Diversity | |
| Legal | ✓ | Integrated Impact Assessment required? | |
| No significant implications in this area | | Policy and Communications | |

Comments of the Statutory Finance Officer

26. The framework provides the council with control regarding affordable units in the borough that has financial implications for S106 receipts and potential future New Homes Bonus (or future equivalent).

Comments of the Monitoring Officer

27. No comments received.

Jonathan Noad
Director (Development and Planning)

| Report Author | Ext | Date |
|----------------------|------------|-------------|
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