


Commissioner Decision Report Insert Date 12 April 2016	 TOWER HAMLETS
Report of: Aman Dalvi - Corporate Director Development & Renewal	Classification: Unrestricted
Local Affordable Housing Grant 2016/19	

Originating Officer(s)	Jackie Odunoye
Wards affected	All wards
Key Decision?	Yes
Community Plan Theme	Great Place to Live

1. Executive Summary

- 1.1 In December 2015, The Commissioners agreed £7.065m of retained RTB receipts could be used to set up a Local Housing Affordable Grant Programme for the period 2016/19 for the provision of affordable housing in Tower Hamlets.
- 1.2 At the same time the Commissioners endorsed the process and timetable within which the programme would operate.
- 1.3 This report is intended to update the Commissioners on the bidding process, details of the submissions received, and the result of the interview and selection process for awarding grant funding to the successful Registered Providers (RPs).

2 Recommendations:

The Commissioners are recommended to:

- 2.1 Consider and endorse Officers' recommendations to award Right To Buy grant funding in the amounts listed to the Registered Providers outlined in point 5.2 of the report and allow for a 10% uplift to this amount to allow flexibility to take account of potential higher build or acquisition costs.
- 2.2 Note that the programme has been extended beyond December 2017 to encourage the inclusion of more new build schemes and facilitate the take up of RTB receipts that continue to accumulate.

3 REASONS FOR THE DECISIONS

3.1 An advertisement inviting Registered Providers to submit an Expression of Interest was placed on the Council's website on the 14th December 2015, immediately after the decision to operate a grant scheme was agreed by the Commissioners. The advert was also placed in East End Life, RP's were formally advised individually and at Tower Hamlets Housing Forum meetings.

3.2 To qualify to submit more detailed proposals on prospective schemes, RPs were required to demonstrate their ability to satisfy the following criteria :-

- a) Have knowledge of the Borough's housing needs.
- b) Be a signed up member of the Common Housing Register or be able to sign up to it.
- c) Have a management arm based in the Borough.
- d) Be easily accessible to their new tenants.
- e) Have extensive experience of affordable housing development.
- f) Be included on the Homes and Communities Agency (HCA) published list of RPs.
- g) Have the financial liquidity needed to successfully deliver a development programme over period of the grant scheme
- h) Consider the prerequisite that priority will be given to schemes with planning permission or in the planning process to enable them to meet the required deadline of December 2017 for completed spend.

3.3 Thirteen Registered Providers had expressed an interest by the stipulated deadline of the 15th January 2016.

4 The Bidding Process.

4.1 On the 5th February 2016 the Bidding Packs were made available on the Council's website incorporating a Grant Agreement, Application Form, a worked example and Certificate and invoice for payment. Interested bidders were advised that full submissions must be received by the Council by 5pm on Friday 4th March 2016.

4.2 Seven detailed bids were received by the deadline from the following Registered Providers :-

ARHAG, East End Homes, Family Mosaic, and Peabody Housing Association.

4.3 The Bids were examined and a précis compiled by a panel of Officers against the agreed criteria noted in the grant pack which was then copied to the Corporate Director of D&R and the Head of Strategy, Regeneration & Sustainability.

- 4.4 Following this initial invitation to submit proposals, a process of continuous market engagement (CME) will be open for delivery in the Years 2016-20 with each potential bidder having been assessed under Stage 1 of the process. The Council will issue a statement when it stops accepting bids, once it has committed the total grant available.

5 Interview Process

- 5.1 Points of clarification or any areas of concern with the recommended bids were discussed with the respective RPs at an interview with a panel of Officers on the 16th March.
- Approval for grant funding was assessed on the basis that priority be given for homes that meet the LBTH specific strategic criteria of :-
 - Deliverability – This is of paramount importance. Milestones will be set and the grant may be repayable if they are not achieved.
 - Affordability – preference was given to homes that are most affordable to local residents.
 - Tenancies – preference was given to homes with longer tenancies as the RTB receipts fund permanent social/affordable rented accommodation.
 - The grant element will represent a maximum of 30% of the scheme cost and can only be utilised for the replacement of Social/Affordable Rented Units although this can be part of a larger mixed tenure development.
 - Delivery of other strategic objectives of the Council and deliver wider community benefits.
 - Accessibility – Homes for residents with disabilities will be fully accessible and preference will be for wheelchair housing located on the ground floor. Preference will also be given to schemes that assist the housing of households with disabled members. No less than 10% of the affordable rented stock in the scheme will be wheelchair units.
 - Schemes that fit in with the Planning or Supported Borough Housing Investment Strategy.
 - Schemes that exceed the minimum planning requirements for the provision of Affordable Housing.

- 5.2 That process culminated in the Panel recommending the following RPs for grant funding of the amounts detailed in the table below.

	Registered Provider	Scheme	Num Rent	Num Int.	Num Mar.	Aff Rent	Soc Rent	Grant £
1	ARHAG	Land at Wellington Way, Bow E3	8	0	2	0	8	547,631
2	East End Homes	Purchase of ex RTB's	8	0	0	8	0	870,000
	Total		16			8	8	£1,417,631

(grant requested will contribute 30% of scheme costs associated with the rented element).

Terms of the grant to RPs will be covered by a grant agreement that will be a contract between the parties for each scheme to ensure compliance.

6. ALTERNATIVE OPTIONS

- 6.1 Doing nothing has been considered, However, whilst in the short term it would remove the pressure on the HRA, it would then result in the Council having to return RTB receipts to central government with interest (*compounded 4% above base rate*), in line with the conditions of usage set down by the DCLG. Therefore, this initiative could be considered to be an efficient use of the current available resources.
- 6.2 In considering whether to return the RTB receipts to central government, the Council has the duty to consider not only the financial impact on the HRA but also the provision of affordable housing, the acute housing need in the borough, and service enhancements made possible through the use of the RTB Receipts. Giving up the one-for-one RTB receipts would imply that the Council would not take the opportunity of exercising greater control over the provision of affordable housing. Instead funding affordable housing delivery by the housing association sector allows the Council to target its own priorities, without the restraints of the conditions of GLA grant and of the requirements of the HCA Capital Funding Guide.

7. DETAILS OF REPORT

- 7.1 The Council has accumulated significant retained receipts from the disposal of properties under Right to Buy legislation. These must be used for the provision of new social housing in accordance with the terms of the agreements that the Council has entered into with the DCLG. One-for-one RTB receipts can only be used to fund up to 30% of the cost of replacement Social Rented or Affordable Rented units.
- 7.2 The borough holds a total of £43.3m RTB receipts (one-for-one retained receipts) to be spent by Quarter three of 2018/19, requiring a total spend of £144.3 million on replacement social housing.
- 7.3 On 6th October 2015 the Mayor in Cabinet approved a strategy to address the issues around the accumulated Right To Buy Receipts and the conditions for their expenditure. This included a range of measures, one of which was the provision of £7.065m to grant fund Registered Providers towards the delivery of affordable housing units for rent for letting to housing applicants on the Council's Housing Waiting List. The Commissioners approved this on 2nd December 2015.
- 7.4 It was proposed and agreed that the Council set up a Local Affordable Housing Grant calling on RPs active in the borough to use the grant:-
- in the construction of new homes on land acquired by the RPs
 - in the acquisition of properties either on the open market or of leasehold buybacks (this would apply to previously transferred estates) whereby the RPs would buy back the dwelling and offer the nomination rights to the Council.
- 7.5 For the schemes to count towards the Council spend on 'replacement social housing', government guidance reminds authorities that one for one receipts must have been spent by the required deadline. In the event that RPs within the borough failed to spend sufficient sums, or do not spend by the required deadlines, the Authority would be liable to return the receipts plus interest due to a failure to spend in line with the RTB agreement.
- 7.6 In order to spread risk between the RPs and the Council and to make it attractive to RPs, it is proposed that the allocations are subject to review and to a clawback mechanism. Scheme allocations which do not project to meet the deadline of spend will be reallocated to other schemes to enable a full spend within the required timescale to spend RTB receipts before their maturity. Schemes that keep to their delivery outputs and time-table will not

be liable to have their funding withdrawn. This includes any retention monies due after December 2017

- 7.7 Retention money accounts for 3% of the expenditure on new build projects which is held by the RP until 12 months after scheme completion. To avoid RPs losing this money on these projects if their schemes complete near to the December cut-off date, and thereby being offered only 27% of eligible costs instead of 30%, it is proposed that the retained money is paid after December 2017 if it:
- a) Is eligible expenditure as set out in the Right to Buy Agreement with DCLG
 - b) Only relates to replacement affordable rented housing, and
 - c) The amount claimed in grant is no more than 30% of the spend and meets a) and b) above
- 7.8 The sum of £7.065 million represents a 30% one for one contribution towards RP schemes, therefore the total amount of replacement social housing that could be delivered would be of a value of £23.550 million.
- 7.9 As there is an expectation that RTB receipts will continue to be acquired for the foreseeable future, it would be prudent to consider extending the provision of grant funding beyond December 2017. This would help eliminate the time constraint built into the current bidding round which prevents RPs putting some schemes forward.

8. COMMENTS OF THE CHIEF FINANCE OFFICER

- 8.1 The Mayor in Cabinet on 6th October 2015 approved a programme to utilise the significant levels of Right to Buy receipts that the council has retained for the provision of replacement social housing. It was agreed that £7.065 million of the receipts would be allocated towards a Local Affordable Housing Grant scheme for Registered Providers of Social Housing. The sum earmarked represented the amount of 'one for one' receipts retained by the authority in Quarter 3 of 2014/15, and which need to be spent on replacement social housing within three years – i.e. by the end of December 2017.
- 8.2 Following the completion of the application process for the programme, this report requests that the Commissioners agree to endorse officers' recommendations to grant fund ARHAG and East End Homes the sums of £547,631 and £870,000 respectively, as outlined in paragraph 5.2. It is recommended that an uplift of 10% is applied to these sums to allow for a possible increase in build or acquisition costs.
- 8.3 Including the uplift provision, the total amount of grant to be agreed for ARHAG for 8 affordable new build properties is £602,394. The total amount of grant to be agreed for East End Homes to carry out 8 buybacks is £957,000. The Authority's contribution will be limited to 30% of the cost of the eligible

expenditure incurred on replacement social housing. ARHAG and East End Homes will be responsible for funding the remaining 70% of the cost of the replacement social housing being built or acquired.

- 8.4 As the authority retains responsibility for spending a sufficient amount on replacement social housing within the required timescales, in the event that Registered Providers (RPs) fail to spend enough, or do not spend by the required deadlines, there is a high risk that the resources will be payable to the Government, with the authority being liable for a significant interest penalty.
- 8.5 The authority is at this time proposing to award maximum grant funding of £1.559 million and is looking to extend the grant scheme past December 2017 in order that RPs may be able to include more new-build schemes. However, the uncommitted balance of £5.506 million from Quarter 3 of 2014/15 will still need to be spent by the deadline of December 2017; this will require total spend on replacement social housing of £18.353 million, and resources of £12.847 million will be required to finance 70% of this cost. Therefore if the grant scheme spend slips then the authority will have to reassess its one for one spend assumptions to ensure that the required spend on replacement social housing will be delivered within the necessary deadlines. This may require the authority to bring forward some of its own planned spend.
- 8.6 It will therefore be crucial for the authority to closely monitor the projected and actual progress and spend by third parties. This report proposes in paragraph 7.6, that in order to spread risk between the RPs and the council, allocations are subject to a review and clawback mechanism, and that funding awarded to schemes that are not projected to meet spending milestone deadlines will be reallocated [Financial implications to be prepared by Directorate Finance Manager and agreed with Corporate Finance]

9. LEGAL COMMENTS

- 9.1 Whilst there is no strict legal definition of grant, a grant is in the nature of a gift and is based in trust law. However, grants are often given for a purpose so it is sometimes unclear whether a grant has been made or the arrangement is a contract for services. A contract for services is not a grant and therefore, an arrangement which is classified as a contract for services would be outside the remit of the power conferred upon the commissioners to approve.
- 9.2 There will be many grants which are made by the Council for the purpose of discharging one of its statutory duties. However, as a grant is in the nature of a gift, it is considered there must be some element of discretion on the part of the Council as grantor as to whom a grant is made to and whether this is made. If the Council is under a legal duty to provide a payment to a specific individual or organisation, and cannot lawfully elect not to make such a payment, then that should not amount to a grant.
- 9.3 In this case, the Council is not under a legal duty to provide these payments. The payments are discretionary and therefore considered to be a grant.

- 9.4 The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31st March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).
- 9.5 To the extent that the Commissioners are exercising powers which would otherwise have been the Council's, there is a need to ensure that the Council has the power to make the grant in question.
- 9.6 Affordable Housing Grants are supported by the Council's general power of competence. Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that individuals generally may do, subject to specified restrictions and limitations imposed by other statutes. There are no such restrictions and limitations and therefore the general power of competence applies.
- 9.7 The Council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This is referred to as the Council's best value duty. Best Value considerations have also been addressed in paragraph 11 of the report.
- 9.8 The Council must operate a fair and open application procedure to process a request to obtain funding. Requests for grant funding should ordinarily be measured against a predetermined set of criteria and the criteria themselves must be fair and transparent.
- 9.9 The grant agreement should include a clear monitoring process against defined parameters in order for the Council to demonstrate either: that delivery is in line with the application and, therefore, the grant achieved its purpose; or provide clear delineation where outcomes were not achieved and the reasons for such failure are apparent. Monitoring should therefore include measuring performance against the expected outcomes.
- 9.10 When implementing the scheme, the Council must ensure that no part of the funds issued represents a profit element to any of the recipients. The inclusion of profit or the opportunity of making a profit from the grant or third parties indicates that the grant is really procurement activity and would otherwise be subject to the Council's Procurement Procedures and other appropriate domestic and European law. This would mean therefore, that the Council would have failed to abide by the appropriate internal procedures and external law applicable to such purchases.
- 9.11 The Treaty on the Functioning of the European Union (TFEU) provides that certain government activities may be prohibited because they give an

advantage in a selective way to certain entities, which might affect competition within the internal market. Those advantages may amount to prohibited state aid, or may be state aid which is either expressly allowed by the Treaty, or which may be allowed, dependent on the circumstances. Certain activities are considered to be compatible with EU law however and which includes “aid having a social character” (see Article 107(2)(a) of TFEU. In this case, the grants would be to provide affordable housing and which would be “aid having a social character” and are therefore not prohibited.

9.12 When making decisions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty and information relevant to this is contained in the One Tower Hamlets section of the report.

10. ONE TOWER HAMLETS CONSIDERATIONS

10.1 The delivery of more affordable homes will help give households, particularly those from black, Asian, or other minority ethnic backgrounds on low incomes (many of whom are benefit dependent) a secure home. This has the potential to create an environment for household members – particularly children – to improve their educational attainment which will in turn help them access sustainable employment in the future. The delivery of more housing that is wheelchair accessible and meets lifetime homes standards is a proven method to help reduce inequalities.

10.1 The provision of additional rented schemes can potentially impact on community cohesion. The amount of private housing developed for sale and private rent has been particularly high in Tower Hamlets. However, the large majority of this housing is inaccessible to residents due to high house prices. Therefore, maximising the amount of affordable housing for rent wherever possible can contribute to community cohesion. This can be achieved by reducing the number of households on the Common Housing Register waiting for a home, whilst also giving an opportunity for local applicants to access low cost home ownership opportunities.

10.3. The Local Affordable Housing Grant scheme directly makes a significant contribution to the core Local Plan target of new affordable homes delivery. The programme also makes a wider contribution to Community Plan objectives, such as on increasing household recycling; reducing crime (through Secure By Design standards); and increasing skills and training opportunities. The proposal is a good ‘strategic fit’ with the Community Plan and will help Tower Hamlets deliver both the housing and sustainable communities priorities identified.

11. BEST VALUE (BV) IMPLICATIONS

- 11.1 This is a capital programme which proposes to make use of the Council resources in order to fund partners in the delivery of affordable homes rather than be required to pay interest to the government on unspent receipts. It places the responsibility for 70% of the costs of building replacement one for one homes on RPs, thereby protecting the borrowing margin of the Council and making possible the delivery of larger programme.

12. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 12.1 The schemes will comply with the Council's requirements on the reduction of carbon emissions, energy consumption along with green and sustainable construction delivery.

13. RISK MANAGEMENT IMPLICATIONS

- 13.1 A Grant Agreement has been will be drawn up by Solicitors and issued with the bidding documents.
- 13.2. Bidders have provided proof of their ability to finance the scheme in the form of a funder's letter.
- 13.3. All bidders are Members of the Common Housing Register and to sign up to the Standard Nominations Agreement so the Council will benefit fully from the programme.
- 13.4. An audit of the programme is planned and provided for in the Legal Agreement.
- 13.5. The scheme adopted an open book approach so the Council has been able to scrutinise the project finance.
- 13.6. The qualifying criteria has provided safeguards against organisations that would not have the capacity, expertise or financial stability to deliver the programme.

14. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 14.1 The schemes proposed will be designed to Secure By Design Standards. The conditions of the housing grant programme will include the need to meet the London Housing Design Guide and other standards of building including Secure by Design.

14.2 The impact on the local community and the local environment will be factors in assessing the quality of a scheme proposal. RPs will be encouraged to identify sites which if developed, would improve the safety and security of the local communities.

14.3 The role of design in “designing out crime “ will be part of the solution for addressing community safety hot spots in the borough. In addition, the natural surveillance offered by the new developments is likely to improve safety in the respective areas.

15. SAFEGUARDING IMPLICATIONS

15.1 N/A

Linked Reports, Appendices and Background Documents

Linked Report

- Cabinet Report 28th July 2015 – Strategy & Options for the Use of Right To Buy Receipts
- Cabinet Report October 2015 – Housing Resources and Capital Delivery
- Commissioners Decision Report 2nd December 2015 - A Local Affordable Housing Grant

Appendices

none

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

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