



HEREFORDSHIRE COUNCIL

Report to Cabinet Outlining Options for the Delivery of New Council Homes

Revised - November 2020

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1 INTRODUCTION, BRIEF AND APPROACH

- 1.1 ARK has been jointly appointed by the Council and one of your Development and Regeneration Partnership partners Engie, to review options to support the Council's ambition "to help tackle the housing market's failure to meet local housing need in Herefordshire by increasing the delivery of affordable housing and open market housing and to create improved housing choice generally, including for vulnerable residents".
- 1.2 The report investigates the opportunities and delivery mechanisms for the Council to develop and own its own housing stock and the approaches that might be adopted to support the objective of tackling the housing market failures across a range of tenures.
- 1.3 This paper does not address the standards, specifications or the costs and viability of building homes merely the options available to the Council to develop, own and manage new housing stock.
- 1.4 The brief was issued as part of a tender pack on 14 July and submitted on 23 July, the key points discussed in the briefing include:

"Purpose of Commission:

To commission an investigation of different models of delivering council housing. The ambition of the Council is to help tackle the housing market's failure to meet local housing need in Herefordshire by increasing the delivery of affordable housing and open market housing and to create improved housing choice generally, including for vulnerable residents.

In support of the objectives outlined above, Herefordshire Council wishes to engage specialist support to undertake the investigations. The brief therefore is to review the background to the Council's desire to investigate potential models of delivery of council housing, investigate the different models of delivering council housing available for Herefordshire Council to consider and to prepare and deliver a report of findings".

- 1.5 The Council described this assignment as being "an initial stage to assist the Council to consider its options and agree any next steps".
- 1.6 The background information regarding Herefordshire is presented as **Appendix 1**.
- 1.7 ARK submitted a detailed response and the key actions proposed are presented in highlights below together with a brief synopsis of the activities undertaken to date.

1.7.1 ACTION 1 – INCEPTION MEETING(S) & CONFIRMATION OF ASSIGNMENT BRIEF AND METHODOLOGY

We held inception meeting with David Walker and Debbie Greenhill representing Engie and Richard Gabb and Hayley Crane representing the Council.

That meeting confirmed the requirement of the brief and began to expand on the likely requirements of the Council and your members.

1.7.2 ACTION 2 - RESEARCH

As the assignment has progressed, we have completed a range of research assignments to inform this report. A summary list of this is attached as **Appendix 2**.

A further element of the research has been to ascertain the drivers underpinning the brief and to more fully understand the expectations and the ambitions of the Council. To date we have held four meetings with councillors and several meetings with officers.

ARK, with Council officers and Engie, met Homes England on 12 August to discuss the initial reaction from Homes England to the prospect of the Council becoming a delivery partner.

1.7.3 ACTION 3 - SCOPING THE OPTIONS

In preparation for a Cabinet Briefing on 13 August we produced an options matrix outlining a number of options for the delivery of homes by the Council and included an option for the delivery of homes by your Registered Provider (RP) partners. That Matrix has subsequently been updated and is presented as **Appendix 3**.

1.7.4 ACTION 4 - CABINET WORKSHOP

Held on 13 August the Cabinet Workshop received a presentation and an initial report.

1.7.5 ACTION 5 - FURTHER OPTION DEVELOPMENT AND REPORT DRAFTING

This current stage of the process and, in essence, this report.

1.7.6 ACTION 6 - REPORT CIRCULATION AND ATTENDANCE AT CABINET

The assignment was commissioned on 27 July with the initial report being delivered by 24 August. The report has been completed in short order but within that timeframe we have held meetings with the members responsible for Housing, Regulatory Services, and Community Safety; Finance and Corporate Services; Commissioning, Procurement and Assets; and Environment, Economy and Skills and with Council Officers including the Senior Project Manager, Programme Director Housing and Growth, Strategic Housing Manager and Senior Solicitor.

We have met the Cabinet in a briefing session and were part of a team who met Homes England.

Since the delivery of the August report and following discussions with officers the report has been reviewed and final amendments accepted in October.

1.8 UNDERSTANDING THE COUNCILS DRIVERS FOR CHANGE

In our report and presentation to the Cabinet we noted a series of drivers for change, we tested those drivers for change with the wider Cabinet and set out below the drivers for the Council wishing to develop Council owned Housing:

- 1.8.1 **CUSTOMERS AT THE HEART** – The desire is to put local people at the heart of your aspirations, you want to see more and better engagement during the planning, design and development process and you wish to investigate the possibilities of delivery of homes through by CLT and cooperative arrangements once your own programme is underway.
- 1.8.2 **LACK OF BREADTH OF HOUSING PROVISION** – You are keen to increase the range of provision and the mix of affordable housing, above that provided by the housing providers in the County, especially the supported and specialist homes that your communities need.
- 1.8.3 **LOCALITY APPROPRIATE** – You want placemaking to be at the forefront of development in the County and to provide local design solutions and a sense of place that is genuinely Herefordshire.
- 1.8.4 **SCALE AND AT PACE** – You feel that with your land bank you can make an immediate and substantial contribution.
- 1.8.5 **RENT & SPACE STANDARDS** – You are concerned to ensure that homes are built to decent space standards and that rents are genuinely affordable across all social / affordable housing tenures.
- 1.8.6 **DE-CARBONISATION** – The Council wants to seize the opportunity to build houses to a far higher environmental standard than is currently being achieved by your existing partners.
- 1.8.7 **SOCIAL VALUE** – You are keen to use any resulting programme of development to deliver increased social value over and above that being achieved by your partners. Your land holding provides an opportunity to add real social value.
- 1.9 The highlighted sections are the bullet points from the presentation and the additional wording is how we describe the detail of those points.
- 1.10 What is clear is that the Council’s initial focus is on the development of social/ affordable homes owned by the Council for the benefit of residents. However, there is a recognition that market homes have a place in the mix to support affordable housing developments by:
- Provide cross subsidy
 - Pump priming key sites
 - Offering, particularly for first time buyers, different opportunities.

2 THE COUNCIL'S KEY PRIORITIES

2.1 Following the Cabinet presentation, we have distilled your drivers for change into key priorities as follows:

- To provide high quality, genuinely affordable housing (to be defined as rents of 80% market rents or less) across the County that contributes to both the social value and the economic development ambitions of the County.
- To provide a range of social/affordable housing to suit all generations, including the provision of specialist and supported housing in the County through the delivery of appropriate housing where people can age well.
- To have greater input into managing and controlling the type and delivery of units that are required in the County and not be fully dependent upon developers and Registered Providers in this regard. However, the Council will continue to work with and encourage other housing providers across the tenures to invest in Herefordshire.
- To potentially have income generating publicly owned assets, well designed and built to high environmental standards (for example Passivhaus / CfSH / Home Quality Mark / AECB Lifetime Carbon Standard).
- To be able to make choices when developing, regarding rent levels, service charge levels and management and maintenance standards.
- To be able to utilise and benefit from external sources of funding including that provided by Homes England and/or other funding bodies.
- To potentially build up a portfolio of assets and benefit directly from capital appreciation that could be utilised to borrow against in the future.
- To establish a structure that balances risk and reward and has the flexibility to adapt to future needs and changing priorities.
- To start to deliver quickly affordable housing in the County.

3 DEFINITIONS OF HOMES THAT CAN BE CONSIDERED AS COUNCIL HOMES

3.1 Council housing fits in the broader definition of affordable housing and your Draft Affordable Housing Supplementary Planning Document (SPD) describes such housing in some detail (see **Appendix 4** for that detail). Broadly these are homes made available to those who cannot afford to rent or purchase a home at market value. In summary, they are:

- Social rented for which guideline target rents are determined through the national rent regime.
- Affordable rented housing subject to rent controls that require no more than 80% of the local market rent.
- Intermediate homes for sale and rent, provided at a cost above social rent but below market levels, including Shared Ownership (SO).
- In addition, the Government have recently promulgated a new model.
- First homes – Under this programme it is planned that homes would be sold at a minimum 30% discount in perpetuity.
- By omission, homes that are sold at their full market value with no discount or let at their full market rate are considered to be “market homes”.

4 SUPPORT FROM HOMES ENGLAND

- 4.1 In considering the Council's options we felt it worth noting our interpretation of the discussions held by Council Officers with Homes England on 12 August. Homes England were interested to hear of the extent of the Council's land holding and the potential for the development of homes on your sites.
- 4.2 To some extent they were ambivalent about whether those sites were brought forward by the Council or others.
- 4.3 However, after understanding the Council's drivers for change the Homes England representatives were engaged in the prospect of working with the Council to fund development. They are interested in longer term programmes but equally keen to say that if the Council were interested in bringing forward early schemes for consideration, they would be interested in understanding those early opportunities.
- 4.4 Homes England schemes are developed under a standard contract arrangement between Homes England and their providers and the Council will be expected to sign the contract unamended from the standard. The contract sets out the grant relationship between Homes England and Grant recipients.

5 OPTIONS FOR THE DEVELOPMENT OF COUNCIL OWNED HOMES

- 5.1 Based on our engagement with the Council to date there is a clear desire for owning your own homes. Therefore, in this section of the report we have considered the routes to achieving that objective.
- 5.2 In so doing we have excluded any route to owning your own homes that would disallow the Council from benefiting from grants available from Homes England. We cannot envisage a scenario where you would want to build social/affordable homes and not benefit from publicly available grants.
- 5.3 There are few examples that we have yet come across where Councils who disposed of their Council housing stock have fully established their HRA, examples of LA's who have considered or are considering re-opening their HRA include Sunderland, Peterborough, Bromley, Liverpool and Pendle.
- 5.4 We understand that having exceeded the number of homes now allowed under the general fund exemption Bradford Council have re-established a HRA from 1 April 2020.
- 5.5 Broadly and to meet your obligations to deliver homes within the existing structure of the Council or on "balance sheet" there are two credible options:

5.6 OWNERSHIP WITHIN THE GENERAL FUND

- 5.6.1 Councils are allowed to develop homes outside of the HRA but there is a limit of 199 homes that can be held within the Council's General Fund, before there is a requirement to open an HRA those homes do not have to be bought into a HRA (subject to conditions) so there is the opportunity to get started on your housing journey without establishing a Housing Revenue Account (HRA).
- 5.6.2 The Government require that "Local authorities planning to build outside the HRA must write to the Secretary of State for Housing, Communities and Local Government to apply for a direction that permits these homes to be held outside the HRA; this is usually a formality, though in some instances there is a duty to consult". There are accounting implications for owning property within the General Fund and the Council must be satisfied that it has established the minimum requirements of the regulator. In summary those requirements are included in the table below:

Standard	Summary of Requirement
Governance and Financial Viability	Ensure effective governance and resource management that delivers long-term financial viability.
Value for Money	Obtain best value from assets and resources.
Rent	Charge rent in line with Government rules.

Standard	Summary of Requirement
Home	Keep homes safe, decent and in a good state of repair.
Tenancy	Let homes and manage tenancies in a fair, transparent and efficient way.
Neighbourhood and Community	Keep the wider area clear and safe, help tackle anti-social behaviour and promote community wellbeing.
Tenant Involvement and Empowerment	Understand and respond to the diverse needs of tenants, provide choice and opportunities for involvement, resolve complaints fairly and promptly.

5.6.3 The Council must comply with the Accounting and Service Codes of Practice issued by The Chartered Institute of Public Finance and Accountancy (CIPFA) so there are internal resource requirements in establishing the correct finance and housing management protocols to operate within the general fund. Any investment in new homes need to be included in a revision to the Council's annual investment strategy. The Council will also need to consider any impact of Minimum Revenue Provision (MRP) on the programme.

5.6.4 We have set out the relative strengths and weaknesses of owning homes within the General Fund below.

Ownership within the General Fund	
Strengths	Weaknesses
<ul style="list-style-type: none"> • A straightforward route to owning the Council's first 199 new homes. • Grant available from Homes England. • Low external resource costs. • Council wholly in control of what it does and when it does it. • The Council has access to development advice and support through the DRP. • Many of the processes required under an HRA will be required of the accounting and management within the general fund and will be transferrable. 	<ul style="list-style-type: none"> • Public procurement rules apply to all development but mitigated as DRP was procured to be compliant. • The Council will be reliant on developing in house client management (intelligent client) expertise or outsourcing that role to deliver a programme and to manage and maintain the homes. • Although we do not agree wholeheartedly with the view expressed, we should record that some members see Right to Buy as a weakness.

5.6.5 In the table below we have set out the likely costs of establishing and managing and maintaining housing within the general fund.

Ownership within the General Fund		
Likely requirement heading	Likely Requirement Description	Internal Resource Implications
External consultancy and advisory fees	Assumes most work undertaken internally with 10 days consultancy support.	Finance team setting up accounting processes Housing team setting up housing processes if delivered internally or developing contract standards if outsourced.
Procuring Management and maintenance services from an existing RP	Local short-term arrangements for low numbers of homes could be entered into with the competition managed by the Council and we assume no recourse to external support.	We have assumed that initially the Housing team establishes processes for managing in-house or processes and standards for the procurement and ongoing management of an outsourced service.
Managing the Development, management and maintenance contracts	We assume that additional resources will be required to establish and manage a range of contractual relationships.	We have assumed there is insufficient capacity within the existing in-house team for the management and monitoring of construction, management and maintenance contracts. But the Council must develop an “intelligent client” capability.

5.7 OWNERSHIP WITHIN A HOUSING REVENUE ACCOUNT

5.7.1 Once the threshold of 199 homes has been reached a Council must establish a HRA, the Council is though allowed to establish a HRA at any point once it has decided to develop and own Council Housing.

5.7.2 The Government states that the HRA “is intended to record expenditure and income on running a council’s own housing stock and closely related services or facilities, which are provided primarily for the benefit of the council’s own tenants”.

5.7.3 We have set out the relative strengths and weaknesses of owning homes within the HRA below.

Ownership within a HRA	
Strengths	Weaknesses
<ul style="list-style-type: none"> • The Government expects stock owning Councils to operate a HRA. • Changes from November 2018 have released the borrowing cap on an HRA increasing borrowing capacity. • There are established rules and guidance to follow. • Grant available from Homes England. • Council wholly in control of what it does and when it does it. • The Council has access to development advice and support from the Council’s DRP partners 	<ul style="list-style-type: none"> • Although there are clear rules and guidance it is likely that external advice will be required to guide the establishment of the HRA. • Public procurement rules apply to all development but mitigated as DRP was procured to be compliant. • The Council will be reliant on developing in house client management expertise or buying it in to deliver a programme and to manage and maintain the homes. • Although we do not agree wholeheartedly with the view expressed, we should record that some members see Right to Buy as a weakness.

5.7.4 In the table below we have set out the likely costs of establishing and managing and maintaining housing within the HRA.

Ownership within the HRA		
Likely requirement heading	Likely Requirement Description	Internal Resource Implications
External consultancy and advisory fees	Facilitation and workshop-based consultancy support to guide the finance team through the process.	Finance team setting up accounting processes Housing team setting up processes for in-house or outsourced service delivery.
Procuring Management and maintenance services from an existing RP	Long term contract required to support larger numbers of homes. Assumes procurement competition managed externally Maintenance services are available through the DRP partners(s).	Housing team establishing processes for in-house or outsourced service delivery

Ownership within the HRA		
Likely requirement heading	Likely Requirement Description	Internal Resource Implications
Managing the Development, management and maintenance contracts	We assume that additional resources will be required to establish and manage a range of contractual relationships.	We have assumed there is insufficient capacity within the existing in-house team for the management and monitoring of construction, management and maintenance contracts. But the Council must develop an "intelligent client" capability.

5.8 SETTING UP AN HRA

5.8.1 If your target is to exceed 199 homes in ownership, then the Council should consider the work required to establish a HRA at an early stage.

5.8.2 The key features of an HRA are:

- It is a landlord account, recording expenditure and income arising from the provision of housing accommodation by local housing authorities (under the powers and duties conferred on them in Part II of the Housing Act 1985 and certain provisions of earlier legislation).
- It is not a separate fund but a ring-fenced account of certain defined transactions, relating to local authority housing, within the General Fund.
- The main items of expenditure included in the account are management and maintenance costs, major repairs, loan charges, and depreciation costs.
- The main sources of income are from tenants in the form of rents and service charges.
- The HRA should be based on accruals in accordance with proper accounting practices, rather than cash accounting.

5.8.3 Legislative features are:

- Ring-fenced account within the General Fund.
- Credits and Debits are prescribed by statute.
- No general discretion to breach the ring-fence.
- Cannot budget for a deficit.
- All borrowing within the HRA is in line with the CIPFA Prudential Code.

5.8.4 The Council does not have to manage the homes held under the HRA and can, if you wish, engage other parties to manage the development, management and repair of the homes held in the account.

5.8.5 The account will be maintained and monitored through a local authority's existing accounting channels. You do not need to have permission granted by the Secretary of State to open an HRA, however the Ministry of Housing, Communities and Local Government requests a letter to the Secretary of State declaring the intention to open an HRA.

- 5.8.6 The process for establishing an HRA is achievable and other Councils are going down this route. It will require as a minimum the approval and development of an HRA business plan, a strategy for borrowing included in the Council's Treasury Strategy, and update to the Council's Medium Term Financial Strategy (MTFS) and a notification sent to the MHCLG.
- 5.8.7 The Council should not underestimate the work required to establish the systems, processes and procedures required to account for and manage the development, management and maintenance of Council owned homes. Some things to consider are:
- HRA accounting is a specialist area of public finance and expertise might need to be engaged where not held in-house.
 - The HRA business plan will need to be maintained, accounted for regularly and reported upon annually. Assumptions underpinning the HRA Business Plan will need to be reviewed annually.
 - Borrowing within the HRA will contribute to the Council's overall borrowing headroom.
 - Any land held in the general fund and transferred to a new HRA for housing use will need to be appropriated at a market value at the appropriate time. Land cannot be simply moved into a HRA at no cost. A valuation policy will therefore need to be developed.

5.9 RIGHT TO BUY

5.9.1 Most homes developed in the General Fund or within the HRA are subject to the Right to Buy (RTB). This is a statutory responsibility of stock owning authorities and we would generally advise that off-balance sheet structures where not used for trading purposes, should not be deliberately constructed to avoid such duties. We have, however as requested by Members considered the impacts of Right to Buy and wish to draw attention to two significantly mitigating elements under Right to Buy.

- (a) Cost floor rule – If the home has recently been purchased by a Council landlord or they have spent money on repairing or maintaining it. The discount could be reduced to nil if the cost floor is more than the value. The cost floor is based on either the 10-year period prior to receipt of the RTB application form: or 15 years if the home was built or acquired by the Council after 2 April 2012. (Which would apply here).
- (b) Supported housing is largely excluded from the Right to Buy.

6 OPTIONS FOR THE DEVELOPMENT OF NEW HOMES OUTSIDE OF ANY HRA

- 6.1 The establishment of subsidiary companies, both wholly owned and as JV's, is a well-established route for the development of market homes where councils have been willing to accept sales risk in return for income rewards.
- 6.2 Most, if not all councils, setting up such companies do so from a position of owning their own stock within an established HRA and often after re-establishing the council as a council house builder. In this way they can then take the learning from their council house building programme into their market subsidiaries.
- 6.3 Whilst most companies are created to facilitate the development of homes for sale, a company could be created to own your homes. However, that company would have to register to become a Registered Provider incurring time and additional costs. The Regulator states that the process of becoming an RP takes around 12 months.
- 6.4 The processes required of a company; accounting, rent charging, voids, arrears, management and maintenance arrangements will be the similar to those required within a General Fund or HRA. The arrangements for lending and loan repayments, accounting for tax and establishing governance arrangements and remunerating Board members add complexity and cost.
- 6.5 The Council requested that ARK provide details of these options as members have expressed a willingness to engage in the development of homes under a wider range of "market sale and rent" tenures than those offered within the HRA. For instance, there is a recognition that the development of larger sites should incorporate a range of tenures in order to create sustainable and balanced communities.
- 6.6 There is, we believe, a further recognition that in some locations private housing developers are failing to step forward and take on risk, so there may be a need to "pump prime" development.
- 6.7 The Council could use surpluses generated from open market housing (sale and market rent) to help fund the development of the target – affordable homes.
- 6.8 In this report we have concluded that the subsidiary would focus on the development, sale or management of open market homes. Routes to development of new market homes by the Council can broadly be:
- **Option A** – Developing new homes as a Council standalone developer through a company for the purposes of housing development and trading plus delivery of policy compliant S.106.
 - **Option B** – Set up a wholly owned Joint Venture company for the purposes of housing development and trading plus delivery of policy compliant S.106 subject to JV partner agreement.

6.9 OPTION A – THROUGH A COMPANY STRUCTURE

6.9.1 If the Council wishes to build homes for profit, then it must exercise its powers to do so through a company. The Council has two general powers granted under legislation that it may use to set up a company. Namely, the general power of competence contained within Section 1, Localism Act 2011 (the 2011 Act) and the power to trade contained within section 95, Local Government Act 2003 (the 2003 Act).

Power to Trade – Section 95 Local Government Act 2003 gives the Council the power to trade but is subject to restrictions contained within Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the **2009 Order**). The 2009 Order states at Regulation 2 that "a best value authority" (such as the Council) is authorised to do, for any commercial purpose, anything which it is authorised to do for the purpose of carrying out its ordinary functions and will be required to prepare a business case supporting the exercise of the section 95 power and the council must approve this.

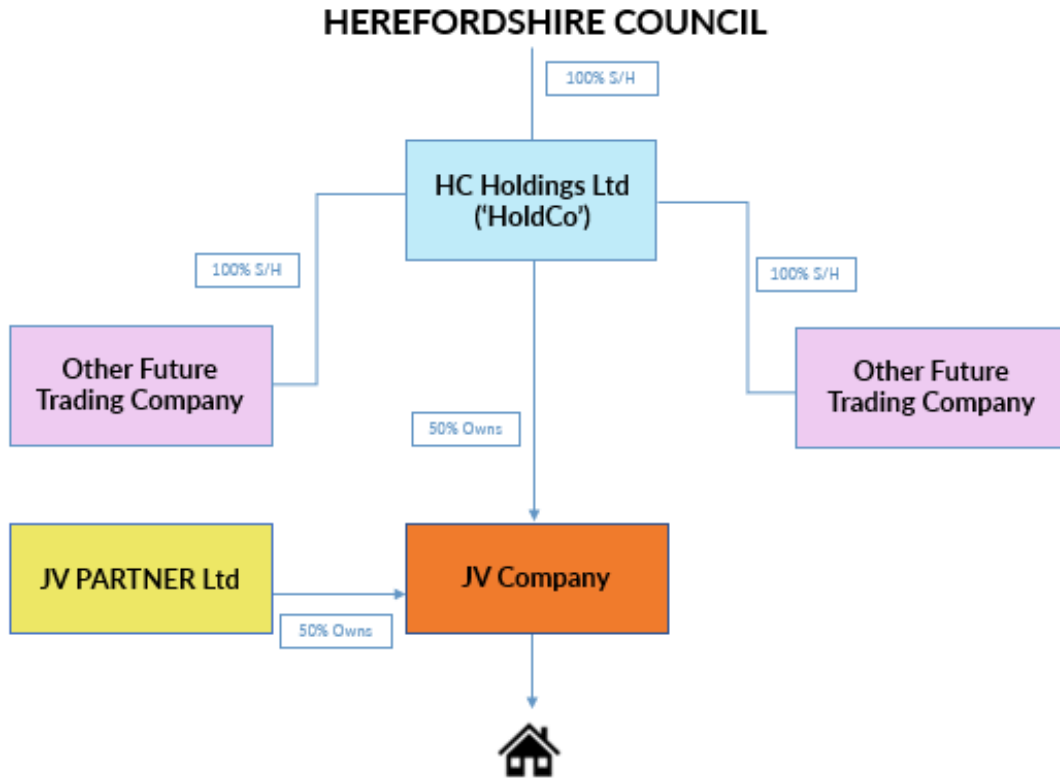
General Power of Competence – Local authorities have the power to do anything that an individual may do in accordance with section 1 of the 2011 Act. This is referred to as the "general power of competence", and a local authority may use this power for its own purpose, a commercial purpose or/and for the benefit of others. This is the power that most councils that ARK has worked with have used.

6.9.2 The Council would set up a group structure (generally with a holding company and trading subsidiary) and then broadly has two options:

Option A1 – Use the subsidiary and enter directly into contract with a contractor for build. Council takes reward for commercial sales and transfers any S.106 homes social/affordable to local RP or stock holding district. Council can take the decision to go beyond 'policy compliance' in the delivery of affordable homes where viable.

Option A2 – The HoldCo sets up a JV with another party who undertakes the construction and any profits are shared. Outcome as per direct delivery company but with reduced delivery risk and therefore reduced reward.

6.9.3 The suggested structure for options A1 and A2 is shown graphically in the diagram below:



6.9.4 We have set out the relative strengths and weaknesses of Developing new homes for profit with HC as a standalone developer through a group structure below.

Option A – Developing new homes for profit with HC as a standalone developer through a group structure	
Strengths	Weaknesses
<ul style="list-style-type: none"> Any reward that results from trading is returned 100% to HC rather than shared. Any S.106 can be policy compliant or beyond and transferred to the Council. Council remains in direct control without sharing governance structures. Council wholly in control of what it does and when it does it without influence from a partner. The time taken in setting up, might allow the current market to settle and become less volatile. The Council has access to support from your DPR partners. 	<ul style="list-style-type: none"> The Council is not sharing the risk or the costs in its trading at a time when the market is less certain. Public procurement rules apply to all development contracts (unless it is able to and uses a Teckal exempt vehicle). The Council will be reliant on developing in house client management expertise or buying it in to deliver a programme. This expertise is not currently in place but could potentially come from your DRP partners. Developing property for a return is a risk and losses are always possible. Will take more time in setting up which could result in delivery being delayed.

Option A – Developing new homes for profit with HC as a standalone developer through a group structure	
Strengths	Weaknesses
<ul style="list-style-type: none"> • Non-executive directors with specific talent in the business stream can be appointed to support the delivery of the business plan. • Councillors sitting on the Board develop business expertise which can transfer to other projects. • Profit is returned to the Council for use on wider regeneration projects. 	<ul style="list-style-type: none"> • Council owned companies are seen by some commentators as being too remote in governance terms. • Building for profit may reduce focus on core activity – homes for rent. • More complex structure than building directly or in partnership with an RP. • Structure requires executive support to maintain effective operation. • Conflicts can arise with councillor/officer director appointees where those conflicts are not managed effectively. • Challenge - setting local housing policies AND acting as a ‘for profit’ developer.

6.9.5 In the table below we have set out the likely costs of Developing new homes for profit with HC as a standalone developer through a group structure.

Option A – Developing new homes for profit with HC as a standalone developer through a group structure		
Likely requirement heading	Likely Requirement Description	Internal Resource Implications
External consultancy and advisory fees	<p>Consultancy and legal support to guide the Council through the establishment of the company.</p> <p>Consultancy support to work through the application to register the company as a Registered Provider with the Regulator of Social housing.</p>	Finance team setting up accounting and monitoring processes. Legal team setting up and monitoring Governance structures.
Procuring Management and maintenance services from an existing RP	<p>Long term contract required to support larger numbers of homes. Assumes procurement competition managed externally.</p> <p>Maintenance services are available through the DRP</p>	Housing team establishing processes for in-house or outsourced service delivery

Option A – Developing new homes for profit with HC as a standalone developer through a group structure		
Likely requirement heading	Likely Requirement Description	Internal Resource Implications
	partners/s or could be separately procured.	
Managing the Development and sales or market lettings and management process	We assume that additional resources will be required to establish and manage a range of contractual relationships.	We have assumed there is insufficient capacity and sales capability within the existing in-house team. But the Council must develop “intelligent client” capacity to manage services that are outsourced. That capacity could, in itself, be outsourced.
Governance and relationship arrangements and reporting	The Council may wish to bring Non-Executive Directors on board these would expect to be remunerated.	The Council may also choose to bring officers into the Governance arrangements.

6.10 OPTION B – JV DEVELOPMENT COMPANY

6.10.1 We have set out the relative strengths and weaknesses of Developing new homes for profit with HC as a standalone developer through a group structure below.

Option B – The setting up a JV development company for profit	
Strengths	Weaknesses
<ul style="list-style-type: none"> • Non-executive directors with specific talent in the business stream can be appointed to support the delivery of the business plan. • Councillors sitting on the Board develop business expertise which can transfer to other projects. • Council, though objectives agreed in advance, remains in control of the programme and annual review of the business plan. • Procurement advantages - JV can be structured to operate outside of public procurement rules. • Strong experienced partner improves the likelihood of a profitable return. • Any S.106 can be policy compliant or beyond and transferred to the Council HRA. • Potentially the partner, which could be a DRP partner, bids for and administers grant which is transferred 	<ul style="list-style-type: none"> • Developing property for a return is a risk and losses are always possible. • Council owned companies are seen by some commentators as being too remote in governance terms. • More complex structure than building directly or in partnership with an RP. • Structure requires executive support to maintain effective operation. • Conflicts can arise with councillor/officer director appointees where those conflicts are not managed effectively. • Challenge - setting local housing policies AND acting as a ‘for profit’ developer.

Option B – The setting up a JV development company for profit	
Strengths	Weaknesses
to the Council (now an RP) on completion.	

6.10.2 In the table below, we have set out the likely costs of setting up a JV development company for profit.

Option B – The setting up a JV development company for profit		
Likely requirement heading	Likely Requirement Description	Internal Resource Implications
External consultancy and advisory fees	<p>Consultancy support to guide the Council through the establishment of the company and selection of a JV partner.</p> <p>Additional Legal, treasury and tax advice</p> <p>Consultancy support to work through the application to register the company as a Registered Provider with the Regulator of Social housing.</p>	<p>Finance team setting up accounting processes.</p> <p>Teams involved in selecting the JV partner.</p>
Procuring Management and maintenance services	<p>Long term contract required to support larger numbers of homes.</p> <p>Services could come from JV partner or be procured separately.</p> <p>Maintenance services are available through the DRP partners/s.</p>	<p>Housing team establishing processes for in-house or outsourced service delivery</p> <p>The Council may choose to review the DRP arrangements and potentially scope a DRP based JV.</p>
Managing the Development and sales or market lettings and management process	<p>We assume that additional resources will be required to establish and manage a range of contractual relationships.</p>	<p>We have assumed there is insufficient capacity and sales capability within the existing in-house team. But the Council must develop “intelligent client” capacity to manage services that are outsourced. That capacity could be outsourced.</p>

Option B – The setting up a JV development company for profit		
Likely requirement heading	Likely Requirement Description	Internal Resource Implications
Governance and relationship arrangements and reporting	The Council may wish to bring Non-Executive Directors on board these would expect to be remunerated.	The Council may also choose to bring officers into the Governance arrangements.

6.11 OPEN MARKET HOMES DELIVERED BY OTHERS

6.11.1 The most straight forward route to the sale and market renting of homes is to utilise the skills, experience and capacity of the market.

6.11.2 Our understanding of the DRP is that it was established to deal with the development and sale of homes on your existing sites. We understand that both partners stand by their commitment to support development with their wider skills and expertise.

6.11.3 Sales can then be addressed on a site by site basis. In designing the schemes, the quantity and type of the open market homes can be established, and your partners engaged.

6.11.4 The arrangements for the transfer of land to enable market housing development can include building licences, transfers with overage or claw back arrangements or the simple receipt of a land value.

6.11.5 As the landowners the Council will be able to influence the design and specification of the homes and to build placemaking into the scheme design.

6.11.6 An alternative route would be to engage with your RP cohort to ascertain whether they will be prepared to take sale risk.

Open Market Homes delivered by others		
Likely requirement heading	Likely Requirement Description	Internal Resource Implications
External consultancy & advisory fees	Legal services to scope the sale, licence or development agreement.	Legal department

6.12 STRATEGIC ALLIANCE WITH A REGISTERED PROVIDER (RP)

6.12.1 The drivers for owning your own Council housing are clearly set out but we think it right to highlight that working with RP partners can be a direct and efficient way of building affordable homes without an HRA. The RP's are already established to develop, manage and maintain social and affordable homes and many also provide market homes to complement their affordable offer.

6.12.2 The Council could choose to transfer the freehold or long lease of some land to an established and developing RP. RP develops and manages stock. The Council could seek 100% nominations and set design and other standards as part of the land sale or lease arrangements.

6.12.3 We have set out the relative strengths and weaknesses of this approach in the table below.

Strategic Alliance with an RP	
Strengths	Weaknesses
<ul style="list-style-type: none"> • Simplest of all options with no further in-house development structure. • Quickest in delivery. • Council selects partner(s) with shared values and aspiration could be a Housing Association or a district Council HRA. • Council remains in direct control of outcome without additional governance or new development risks. • Choice of transfer of land for immediate development through partner or could use building licences to control standards. 	<ul style="list-style-type: none"> • Additional income through trading not realised. • Expertise that could be developed through trading is not realised. • Council influences delivery through land supply agreement but subsequent management is the domain of the RP with little or no influence from HC. • Council will cede a degree of design, specification and viability control to the partner RP.
<ul style="list-style-type: none"> • Management undertaken by established RP. • RP can access grant for delivery from Homes England. 	

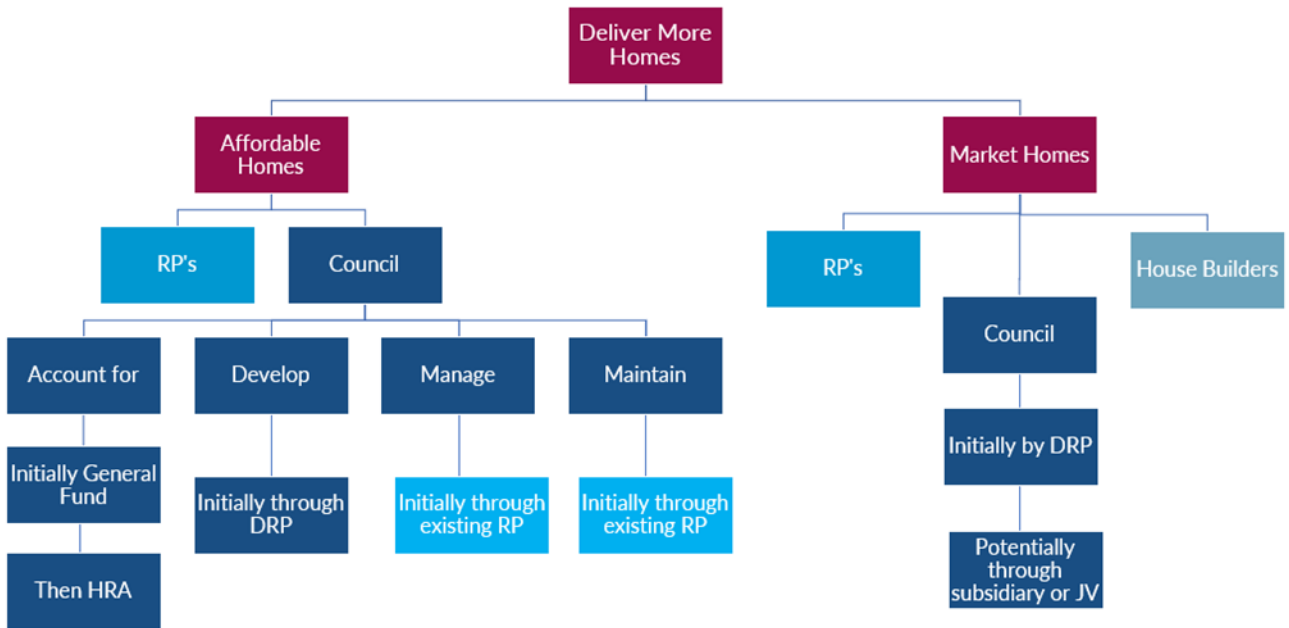
6.12.4 The Council names the following Registered Providers as partners:

- Citizen Housing Group
- Platform Living
- Connexus
- Stonewater
- Sanctuary Housing Group
- Two Rivers Housing
- The Wrekin Housing Trust Ltd
- Bromford Housing
- Legal and General

- 6.12.5 This is a diverse group of partners and one which we would expect to be able to deliver the range of homes that the Council requires and who would be able to work at pace with you. However, it is clear from discussion that your partners are often restricted in their delivery by the lack of revenue support for mostly supported housing. This sometimes results in them not being able to deliver to the Council's expectations.
- 6.12.6 Whatever the decision of the Council with regard to the delivery of Council housing your relationships with your partner RP's will be an essential part of the future delivery of affordable homes across the County. Successful developing Council's work closely with RP partners to ascertain their current ambitions and explore any decision regarding Council Housing (whatever that may be) with them. Their experiences of working with the Council and what steps can be jointly agreed to maximise the delivery of affordable housing in the County can be crucial to future delivery on both sides.

7 DELIVERY OPTIONS SUMMARY SCHEMATIC

- 7.1 The chart below offers a schematic view of the interaction between various parties involved in new homes being developed, managed, maintained and accounted for by the Council.
- 7.2 This schematic drawing compliments the options table in Appendix 3 and should be read in conjunction with it.



8 DELIVERY OPTIONS NEXT STEPS

- 8.1 Depending upon the delivery option chosen there will be a number of key next steps for the Council. Each start with an outline business plan for the chosen scenario which will include scheme level feasibility and viability analysis. Viability of schemes and the understanding of what goes into an assessment is critical to understanding delivery. Training and information on viability is already being planned in anticipation.
- 8.2 The table below outlines the critical next steps to reach a viable plan for delivery.

Delivery & Management Scenario	Critical Next Steps
New Homes Development Scenarios	
All development scenarios	<p>Develop an organisational and Political understanding of 'viability' and development and what contributes to a viable scheme of new homes. Draw conclusions to the quality and standard of homes to be developed within the context of a financially viable programme. Develop an outline business plan based upon realistic and contemporary assumptions on borrowing costs, overheads, estimated returns. Set financial 'hurdles' or 'tests' for the delivery of new homes including expected development payback period and Internal rate of Return for each scheme.</p> <p>Develop a programme pipeline of new homes and combine the costs and returns of that programme into a comprehensive 30-year business plan showing all costs, including assumptions of management, maintenance and capital improvement over the life of the plan.</p>
Developing new homes through a company structure	In addition to the above, confirm returns on investment and preferred governance structure for delivery and transparency. Assess the impact of state aid, taxation, transfer pricing and company structural costs (e.g. the service costs of Non-Executive directors, annual audit and additional legal support) in delivery
New Homes Management Scenarios	
If management of new homes by an provider	Develop a brief for the management of stock and soft market test potential strategic management partners. Assess likely costs and factor these into the business plan.
If management of new homes 'in house' is	Assess the costs of setting up a housing management service from scratch including, IT,

Delivery & Management Scenario	Critical Next Steps
preferred	staff, internal corporate support, leadership and technical. Develop strategies and policies for the delivery of management and maintenance services and the implications of meeting the standards of the Regulator of Social Housing.

ARK Consultancy Limited
November 2020

APPENDIX 1 – BACKGROUND CONTAINED IN THE BRIEF

1. Herefordshire has experienced a housing affordability gap for a number of years and is regularly identified as having one of the worst house price to earnings ratios in the West Midlands. Based upon median house price to income levels the ratio was 9.82 in September 2018 compared to highest (Malvern Hills) at 11.31 and lowest (Stoke on Trent) at 4.39.
2. A Local Housing Market Assessment has recently been commissioned and due for publication in October. This is a survey to understand market and affordable need in the County and from the results it will be possible to determine what the unmet need in the County is and where delivery should be focused. There is a limited supply of affordable housing being released through the housing waiting list each year and access to the private rental sector, which might ordinarily represent an alternative route to housing, is similarly limited due to high rental values being out of reach to many households (Shelter Report 'The cost of unaffordable rents in the private rented sector' November 2019), and, more recently, evidence of smaller private landlords withdrawing from the private rental market.
3. At a strategic supply level the delivery of both market and affordable new housing is falling short of the housing target of 16,500 new homes set out in the adopted Herefordshire Core Strategy, with only a 4.05 years forward housing land supply reported in 2019 against the 5 year minimum requirement set out in the National Planning Policy Framework (NPPF) and currently dropping. In the developer-led market where the focus continues to be on developing the most profitable housing types on the most profitable and deliverable sites, some larger strategic housing sites in the Core Strategy have not yet been delivered. The lack of delivery of smaller and more affordable new homes is therefore placing additional pressure on house prices and the associated accessibility of the housing market to local and/or newly forming households. NPPF policy, removing any obligations to deliver affordable housing on sites of 10 houses or less, has contributed to the challenges faced by local authorities in securing new affordable homes.
4. The impact on Herefordshire's population is that many residents, especially within the younger population, are unable to remain living in their local communities. The lack of housing availability and choice in the County raises house prices and creates barriers for Herefordshire's vulnerable residents and its growing population of older people to secure suitable homes that are affordable, accessible and can be adapted to suit their changing needs. This therefore increases the risk of older and vulnerable households becoming overly reliant on statutory support and care services and losing independence at an earlier stage than necessary. The wider economic, health and wellbeing impacts of housing market failure in Herefordshire represents a significant challenge for the broad communities of Herefordshire and creates a financial risk for the Council in sustaining services to meet the increasing demand for support services.

5. Delivering Council owned housing to help address the shortage of affordable housing in the County is intrinsically linked to the ambitions of the new County Plan 2020 – 2024:
- Environment – protect and enhance our environment and keep Herefordshire a great place to live
 - Community – strengthen communities to ensure everyone lives well and safely together
 - Economy – support an economy which builds on the County’s strengths and resources

APPENDIX 2 – SUMMARY LIST OF RESEARCH

ARK have received and reviewed a number of documents during out work including:

Affordable Housing DRAFT Supplementary Planning Document Consultation Document
June 2020 (*Herefordshire Council*)

Becoming a registered provider -Information for intending applicants – Regulator for
social Housing –
(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/801982/Becoming_a_registered_provider.pdf)

Guidance - Housing Revenue Account- Gov.uk
(<https://www.gov.uk/guidance/housing-revenue-account>)

Herefordshire Council Development & Regeneration Programme - Affordable Housing -
Housing Numbers (*Herefordshire Council*)

High Level Affordable Housing Sites and Programme, Rev 1, 14 July 2020
(*Herefordshire Council*)

Inside Housing – articles relating to HRA including
(<https://www.insidehousing.co.uk/news/news/bradford-council-forced-to-reopen-hra-following-mhclg-guidance--64225>)

QWest Services brochure

Section 106 Standard Template 10.05.2018 (*Herefordshire Council*)

Technical data to support the Supplementary Planning Document for Planning
Obligations (April 2008) *Herefordshire Council*)

APPENDIX 3 – OPTIONS MATRIX

Updated 24 August 2020

Route	Notes	Tenures Delivered	Level of Council Control	Access to Capital Funding - Loans	Access to Grants	Impact of/on RTB	Ability to retain surplus	Access to expertise	Establishing Governance Structures	Cost of Establishing the Structure/ Organisation etc.	Legal Implications	Tax Implications	Risk		
													Sales	Contract	H&S
	Descriptor	SR / AR / IR / SO / FH / ORS / MR	High - Green	Readily accessible = Green	A range available = Green	Have to offer RTB = Red	Retain all = Green	Expertise as part of package = Green	Complex structure = Red	Green - lower cost	Complex advice required = Red	Complex advice required = Red	Higher sales risk = Red	Higher sales risk = Red	More direct appointments = Red
Undertake development under General Fund	Limited to 199 Council Homes but could start under this model	SR / AR / IR / SO / FH	Full Control of the levers	PWLB	Possibly access some grant funding	Unlikely early years sales	Yes but general fund surplus	Would have to be bought in for Development, management, asset mngt Could utilise DRP partners skills	Undertaken under General fund	£10K The processes for accounting for housing need establishing within the GF £50K allowed for ongoing management of contracts	Deliver to CIPFA accounting standards & comply with HRA guidance / rules	Within GF regime	Low no of sales	All the Contract / contractor risk is with the Council	All the Client CDM risk is with the Council
Undertake development within HRA account	Undertake Council House Building (assuming not mixed tenure AH only)	SR / AR / IR / SO / FH	Full Control of the levers	PWLB	HE	Will impact over time	Yes -ring fenced in HRA account	Would have to be bought in for development, housing management, asst mngt could utilise DRP partners skills	Will need to establish internal governance structures	Consultancy support to establish HRA accounting & reporting process £30K Procuring Mngt / Maint agreements £25K & allowed for ongoing management of contracts £50K	Deliver to CIPFA accounting standards	Within HRA regime	SO Only	All the Contract / contractor risk is with the Council, mitigated by the procurement process for your DRP partners	All the Client CDM risk is with the Council
Company Structure A - Wholly Owned Subsidiary	Undertake Open Market initiatives to compliment AH, generate surplus or pump prime development. SR/AR/SO/ FH completed and returned to the HRA	SR / AR / IR / SO / FH / ORS / MR	Full Control of the levers	On lending from council PWLB	Possibly infrastructure type grants	NA open market homes	Yes but take all risk	Would have to be bought in for development, management, asset management - Likely to bring in expertise to the Board	Need to establish Parent (Council) & subsidiary governance arrangements	£30K to establish the company £25K to support application to become an RP £25K to procure mngt and maint £50K to manage devt / mngt / maint	Requires legal advice regarding structure / funding & governance	Corporation tax and gifting of surplus	All the sales risk is with the Council or could proentially be shared with DRP partners	All the Contract / contractor risk is with the Council, mitigated by the procurement process for your DRP partners	All the Client CDM risk is with the Council
Company Structure B - JV	Undertake Open Market initiatives to compliment AH, generate surplus or pump prime development. SR/AR/SO/ FH completed and returned to the HRA	SR / AR / IR / SO / FH / ORS / MR	Joint Board control	On lending from council PWLB & access to partners capital funding	Possibly infrastructure type grants	NA open market homes	Risk and reward is shared	Partner should bring expertise to the JV	A slightly more complicated governance arrangement to facilitate JV partner	£30K to establish the company £30K tax, legal & treasury advice £25K to support application to become an RP £25K to procure mngt and maint £50K to manage devt / mngt / maint	Requires legal advice regarding structure / funding & governance	Corporation tax and gifting of surplus - Agreement as to how reward & tax are accounted	Depending on the agreement sales risk could proportionately sit with partner but rewards would be lower	Depending on the agreement contract risk could proportionately sit with partner but rewards would be lower	Depending on the agreement H&S risk could proportionately sit with partner but rewards would be lower
Enter a formal partnership with an existing provider / providers	Could use building licences and long leases to set standards on own sites. Deliver full range of tenures	SR / AR / IR / SO / FH / ORS / MR	Control only exercised through the agreement	Partner access to capital funding	HE	But RTA applies and possibly RTB if grant funded	No risk = No reward but might be able to shape an agreement	Access through partners own team/s	Arrangements governed by contract	Contract arrangement should be low cost £10K	Straight forward SLA type contract	NA	Partner risk	Partner risk	Partner risk

APPENDIX 4 – GLOSSARY

AFFORDABLE HOUSING DEFINITIONS

Affordable Housing: housing that is provided for sale or rent to those whose needs are not met by the market including low cost home ownership and which complies with one or more of the following definitions:

Affordable Rent (AR): affordable rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Discounted Market Sales Housing: housing that is sold at least 20% below local market value.

First Homes (FH): a recent government initiative initially targeted at armed forces and keyworkers allows the home to be purchased at 70% or less of its market value with that percentage being held in perpetuity.

Intermediate Rent (IR): offered to eligible households at a rent of up to 100% of the Local Housing Allowance (housing benefit for people who rent a home from a private landlord) for Herefordshire.

Low Cost Market Housing (LCMH): is housing that is sold at a discount of at least 20% below local market level. A Herefordshire product therefore any discount should be sufficient to meet local housing needs.

Rent to Buy: let at an intermediate rent for a maximum of 5 years to a household that is looking to buy but are unable to save for a deposit.

Shared Equity: is housing that 100% of the title is to be transferred to a Qualifying Purchaser at no more than 80% of Open Market Value subject to a legal charge in favour of the Council for 20% of the units' equity value.

Shared Ownership (SO): part rent, part buy by leasehold. Rents on the unsold equity (USE) set below 2.75% for Homes England funded schemes and up to 3% for S106 schemes. Initial sale percentages set to be affordable.

Social Rent (SR): rents set in line with guideline target rents which are determined through the Government's rent policy. Generally presumed to be lower than affordable rents.

HOUSING MARKET DEFINITIONS

Market Rent (MR): housing that is available for rent to any party and which is determined by the landlord, locality and property type. Is taken as the base point for affordable rents.

Outright Sale (ORS): a term used to describe homes made available on the open market and sold at the market value. Sometimes referred to as Open Market Sale (OMS).

HOW AFFORDABLE HOUSING IS SECURED

Building Regulations: set minimum standards for the design and construction of **buildings** to ensure the safety and health for people in or about those **buildings**.

Homes England: is the non-departmental Government body that funds new affordable housing in England.

Homes England Grant Funding: is available to Homes England partners to assist them in purchasing land for development or properties for refurbishment.

Perpetuity: an unlimited duration of time. For instance, homes provided under the First Homes Initiative must remain available at 70% in perpetuity.

Planning System: through the submission of a planning application that is over 10 dwellings, negotiated on the threshold of the HMA in which it is located, taking into consideration the results of any needs studies and specific needs e.g. accessible homes.

Purchase & Repair: achieved through match funding RP's with capital funds to purchase properties off the open market to meet the needs of identified families requiring a dwelling that will not be available through Home Point.

Rural Exception Sites: for small affordable housing schemes to be developed on land either within or adjoining the village where housing would not normally be permitted as an exception to normal planning policy.

S.106: is a legally binding agreement between an applicant seeking planning permission and the local planning authority and are an established and valuable way of bringing developments in line with the objectives of sustainable development as articulated through relevant Local Regional and National Planning Policies.

Shared Ownership and Affordable Housing Program (SOAHP): Homes England's current main funding pot. Still open for bids and providing funding through to SOS in March 2023.

HOUSING MANAGEMENT

Registered Provider/Registered Social Landlord/Housing Association (RP/RSL/HA): these are all terms, often used interchangeably, for private non-profit making organisations that provide low cost housing. Although independent they are regulated by the state and often receive public funds. The different names reflect alternative designations in legislation.

The term Registered provider includes profit-making organisations. These are also sometimes known as housing associations or registered social landlords.

Choice Based Lettings (CBL): choice based lettings is an approach to the allocation of social housing which puts the onus on the applicant to express an interest (or 'bid') on properties becoming available to let. Applicants are shortlisted in priority for the specific property they have bid on. The property is usually offered to the applicant at the top of the shortlist. The CBL scheme in Herefordshire is known as **Home Point**.

Cost Floor Rule: if the home has recently been purchased by a Council landlord or they have spent money on repairing or maintaining it the RTB discount could be reduced to nil if the cost floor is more than the value and is capped at the difference between cost and value. The cost floor is based on either the 10-year period prior to receipt of the RTB application form, or 15 years if the home was built or acquired by the Council after 2 April 2012 (which would apply here).

General Fund (GF): the fund/account from which most Council services are funded and in which most assets including land are held.

General Needs Housing: a term applied to homes made available to non-specialist groups therefore often applied to the bulk of housing stock – houses.

Housing Revenue Account (HRA): this is a landlord account, recording expenditure and income arising from the provision of housing accommodation by local housing authorities. It is ring-fenced within the General Fund. Any local housing authority that owns 200 or more social dwellings are required to account for them within their HRA.

Regulator of Social Housing (RSH): regulates registered providers of social housing to promote a viable, efficient and well-governed social housing sector able to deliver homes that meet a range of needs.

Right to Acquire (RTA): applies to most homes owned by RP's and operates in a similar way as the RTB but the discounts are significantly lower. In Herefordshire the RTA discount is £10,000.

Right to Buy: the Right to Buy scheme helps eligible council and housing association tenants in England to buy their home with a discount of up to £84,200 outside London. All homes held within a General Fund or Housing Revenue Account, with some exceptions for supported and older people's accommodation, are eligible for the discount.

Service Level Agreement (SLA): is a contract between a service provider and its internal or external customers that documents what services the provider will furnish and defines the service standards the provider is obligated to meet.

Preferred Partners Operating in Hereford: Connexus, Stonewater, Platform, Citizen, Two Rivers, Sanctuary, Bromford, Legal & General Affordable Homes.

DELIVERY TERMS

Development Regeneration Partnership: between the Local Authority, Engie and Keepmoat, procured as a delivery partner to accelerate development in the County by building on LA land or through the identification of new sites.

Joint Venture (JV) and Joint Venture Company (JVco): a company limited by shares jointly owned by the Council and another or other partners. The basic premise of the model rests on a local authority entering an equal partnership with private investors. The council transfer property assets into a new joint venture company, with the JV partner – a developer or RP – matching the value of the portfolio.

Prudential Code: local authorities are able to borrow without government consent, provided they are satisfied they can afford the borrowing costs. They are required by law to “have regard” to the Prudential Code, published by the Chartered Institute of Public Finance and Accountancy (CIPFA) and MHCLG. The PWLB requires assurance from the authority that it is borrowing within relevant legislation and its borrowing powers.

Public Works Loan Board (PWLB): the Public Works Loan Board (PWLB) is a statutory body within HM Treasury. Its function is to lend money to local authorities mainly for capital projects, and to collect the repayments. PWLB funds borrowed by a council can be lent on to a subsidiary company (e.g. wholly owned local housing company) though there are State Aid issues.

State Aid: is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU).

Wholly Owned Local Housing Company: there are a number of legal forms that could be used including establishing a Company Limited by Shares in which 100% of shares are held by the Council.

(Note - Based on original work by Herefordshire with ARK enhancements)

CONTACTS

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