Meeting:	**Cabinet**
Meeting date:	**3 November 2016**
Title of report:	**Variation to the large scale voluntary transfer agreement with Herefordshire Housing Limited**
Report by:	**Cabinet member health and wellbeing**

Classification

Open

Key Decision

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates and because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

Notice has been served in accordance with Part 3, Section 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

Wards affected

Countywide

Purpose

To approve the variation of the large scale voluntary transfer agreement (LSVT) with Herefordshire Housing Limited (HHL) to waive the council's right to clawback on property disposals to 2020 so as to enable increased housing development consistent with the council's strategic priorities.

Recommendation(s)

THAT:

(a) **a variation of the LSVT with HHL be approved to waive the clawback of capital receipts by the council where up to 20 properties are sold, conditional upon those properties meeting specified criteria for disposal and all net receipts from sales being invested in new social and affordable housing in Herefordshire; and**

(b) the director for adults and wellbeing be authorised to determine the criteria and conditions to which the waiver will be subject in allowing disposals.

Alternative options

1 The council could decline to waive its right to clawback of receipts for any HHL properties. This option is not recommended as it would in all likelihood not result in any capital receipts to the council under the LSVT. Once the agreement expires in 2020, the council will have no right to clawback monies and as a result of changes in national policy, would also have no right of veto over disposals. In the light of this, HHL would be obliged to consider how best to maximise the value of its assets and has confirmed that it would to opt to defer disposals in order to do so. Declining to waive the council's rights in this way could be expected to disrupt and impair the strategic and operational partnership with HHL, which encompasses significant provision of social housing and many other services and initiatives. Additionally, if HHL were to defer all disposals until 2020, this option would also reduce the scale of HHL's additional housing development programme and deny the council any additional influence over it. This is likely to minimise the availability of newly developed housing for care leavers, people with learning disability or other priority groups of vulnerable people.

2 The council could decline to provide a general waiver of its rights and continue to waive its rights only for specific properties on an ad hoc basis. This option is not recommended as it is likely to have similar effects as option 1 above. HHL will defer much of its additional development programme and negotiate housing for the council's priority vulnerable groups only so far as required within the usual planning processes. This option therefore is likely to bring no capital income to the council, impair and disrupt the partnership with HHL and allow little or no additional housing development to meet strategic priorities.

Reasons for recommendations

3 Among the assets transferred by the council under the LSVT, HHL owns some properties which it is no longer economic for it to let and which it may therefore wish to sell. Under the LSVT, the council is entitled to receive 50% of the net value of receipts from any such sales. HHL has asked the council to waive this entitlement so that all of the capital receipts from up to 20 properties can be invested in new housing development.

4 The LSVT expires in 2020 and with it, the council's entitlement to receive a share of capital receipts from disposal. HHL's current obligation to obtain consent for disposals will shortly be lifted by the Planning and Housing Act 2016. Therefore, whilst HHL currently requires the council's approval to sell properties and invest the receipts, in 2020 it will not and has stated clearly that it would wait until that time if the council declines to waive its rights.

5 HHL has undertaken to use all receipts from the disposals to invest in additional housing development, over and above its existing development programme. As a condition of the variation to the LSVT, the council would require this additional development of around 35 housing units to be focused on supported housing for vulnerable people, including care leavers and learning disabled people. Such new supported housing would make a valuable contribution to improving outcomes for vulnerable people and to increasing the availability of affordable housing in Herefordshire.

6 The availability of up to 35 new units of supported housing will enable savings to be made on the costs of supporting both learning disabled adults and young people leaving care. Supporting people in housing of this kind is a cost effective alternative to residential care including specialist placements. Savings engendered from an additional 35 units will contribute useful savings to medium term financial strategy targets.

7 In order to facilitate a waiver of rights in respect of multiple properties, the council will need to negotiate a variation to the LSVT agreement by way of a change and control notice. The notice will incorporate a maximum number of possible property disposals and the criteria which each property must satisfy for approval. It will also set out the conditions to which the retention and subsequent investment of capital receipts will be subject to ensure consistency with strategic housing priorities.

Key considerations

8 HHL is an independent housing provider, a registered charity and has adopted a group structure in recent times. It manages close to 6,000 housing units and acts as a housing provider only in Herefordshire. It also operates a range of social care and community services within the county, as well as in Gloucestershire and elsewhere. HHL was created in conjunction with the transfer of properties from council control under the LSVT agreement in 2002. Recent changes in national policy, notably under the Housing and Planning Act 2016, release registered housing providers from many of their established obligations which gave strategic housing authorities and the Homes and Communities Agency (HCA) some control over their actions.

9 As the strategic housing authority, Herefordshire Council retains considerable interest in the assets and services of housing providers including HHL and they retain an obligation to assist the council in discharging its statutory duties. Parallel to the LSVT agreement the council and HHL entered into a “disposal clawback agreement”, which provided that as and when HHL decides to sell or otherwise dispose of properties, 50% of the net capital receipts would be payable to the council. The agreement does not oblige HHL to dispose of any properties. Given the imminent expiry of the agreement its effect at this late stage is that, if HHL wishes to direct 100% of the value of properties it sells into new housing it will have two options;

- Obtain the council’s agreement to waive the rights to clawback; or
- Wait until 2020 when its obligations to the council will expire.

10 Additionally, whilst at present all social housing providers must obtain the consent of the housing authority before disposing of properties, in due course, s130 of the Planning and Housing Act 2016 will have the effect of relieving providers of that obligation. The provisions in the agreement around disposal are entirely separate from the provision for clawback of “right to buy” sales receipts. The right to buy clawback obligations would be unaffected by this proposal.

11 On 8 May 2013 cabinet approved a waiver of clawback rights where HHL was demolishing 214 units on the Oval site in Hereford to allow for development of improved and sustainable housing. Over a number of years, the council has also agreed on an ad hoc basis to discount the capital share it clawed back on HHL disposals from 50% to 25%.

12 Housing in some locations and of some types can be persistently difficult to let and others may sometimes be especially expensive to run or require disproportionate

investment to bring up to appropriate standards, where this does not reflect on the provider's maintenance practice. Such properties can usually be sold on the open market for valuable capital receipts.

13 Properties considered for disposal will be those that HHL finds uneconomic to continue letting as social housing for one or more of the following reasons;

- They are hard to let owing to their rural location or village location with poor access to transport.
- They are hard to let because of the type of property, for example former sheltered housing schemes.
- They require significant investment to rectify substantial defects in the fabric or condition of the building.
- They are not economic for tenants, for example where there is no mains gas.

14 Where the property is uneconomic because it requires investment, the council would need to be satisfied that HHL had maintained it in accordance with its obligations under the decent homes standard and its contractual obligations in the LSVT itself.

15 HHL is already bringing forward a significant development programme of new housing in the county. However, HHL has ambitions to build yet more housing for local people and contribute to the council's strategic housing priorities over the next five years, enabled in part by a substantial capital bond. The potential disposal of the proposed 20 properties would support that additional development, stimulating the building of approximately 35 housing units in total. The focus on a small portfolio of properties for disposal will ensure the timely progression of housing development to deliver new units. HHL has already identified multiple sites where the proposed additional 35 units would be built. These small sites are all in the ownership of HHL which will minimise delay in the development and planning processes. All the sites will be within Hereford City.

16 There is a strategic need for significant increases in the availability of accessible and supported social housing for vulnerable people in Herefordshire. That need is focused especially upon two groups of people who depend substantially on the council for their support during their lives and for whom there are significant risks where appropriate housing is not found;

- Vulnerable young people in particular those looked after and leaving care
- People with learning disabilities of all ages

17 The housing strategy for Herefordshire identifies these groups as priorities whilst also emphasising the needs of people with dementia and other mental health needs. Accommodation strategies for people with learning disabilities and young people are now in development and elements are already being implemented.

18 The accommodation strategies and housing development will contribute significantly to the achievement of Medium Term Financial Strategy (MTFS) targets Increases in supported housing will help deliver significant reductions in high cost placements of both learning disabled people and young people leaving care. In general, supported living for learning disabled people offers a saving of at least 30% of the cost of residential care for people with moderate levels of need. However, this depends on the needs of individuals and the particulars of supported living services. The long term phase of the accommodation strategies depends on new development by housing providers.

Community impact

19 Herefordshire's Health and Wellbeing Strategy identifies good quality housing as very influential in promoting people's health and wellbeing and emphasises the importance of eradicating or improving housing of poor quality. The proposed disposal programme will enable to HHL to resolve problems with poor quality housing and replace with an increased availability of higher quality housing units. The council's corporate plan identifies among its strategic priorities supporting the growth of the economy and securing better quality of life and value for money. The proposed disposal and development programmes will increase the availability of housing for local people, improve the quality of life of social housing tenants through enhanced building quality and promote jobs and economic activity through a new building programme.

20 The provision of new and increased housing for young people leaving care and people with learning disabilities will improve the life chances and quality of life for those population groups. Whilst disposal of some properties may reduce social housing availability in some neighbourhoods, it will lead to increased availability overall and enable greater targeting of social housing for those most vulnerable groups.

Equality duty

21 The council is committed to equality and diversity using the Public Sector Equality Duty (Equality Act 2010) to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. The equality duty covers the following nine groups with protected characteristics: age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The recommendations in the report have no adverse implications for groups of people with protected characteristics.

22 Care leavers and people with learning disability each belong to groups of people with protected characteristics. The proposed development of new housing targeted to these groups will have a significantly positive impact on their life chances and quality of life. An equality impact assessment has been prepared in respect of these proposals and is attached as Appendix 1.

Financial implications

23 Whilst the recommendations in the report will lead to many changes in the payment of council tax for individual properties, any impact on the council's income is likely to be negligible. It is expected that the majority of the tenants and licensees of properties newly developed by HHL will pay council tax only at a discounted rate. However, this is also true of the majority of social housing tenants generally.

24 The proposals will involve no direct expenditure by the council. In principle, the proposals will require the council to forego significant income from capital receipts. The LSVT provides that the council receive 50% of the net value of properties once sold. The market values of all the properties have not been assessed fully but are expected to fall within the range £90k to £150k, with an indicative average net value of £119k. This would suggest total capital receipts of around £2m and a notional or theoretical capital share for the council of up to £1m in respect of the 20 properties proposed for disposal.

25 However, the council's right to clawback of these capital receipts exists only until the LSVT expires in 2020, which is a short time in relation to housing development. After this time, HHL can dispose of properties without reference to the council and spend the receipts as it likes. Without a waiver of the council's rights, HHL has indicated that it would defer the disposals in order to maximise the assets available to invest. Therefore, in practice there may be no real potential for the council to receive capital income from the sale of these properties and so this proposal may not involve the foregoing of any income.

26 Under the proposal the council would impose explicit conditions on the use of the funds released through disposals by HHL. It would be required to devote all the net capital receipts to new housing development on agreed sites and the targeting and letting of that housing would be directed by the council to priority vulnerable groups.

27 It is anticipated that the proposed council influence over HHL's development programme would bring forward approximately 35 new tenancies or licences for vulnerable young people and supported living tenancies for disabled people within three to five years. Each of these properties would either;

- save the council money by reducing current spending on residential or other specialist care; or
- avoid additional cost to the council by diverting young or disabled people from residential or other specialist care.

28 The cost differential between supported tenancies and specialist care varies according to need but it is expected that the new units provided would generate significant saving or cost avoidance for the council. For learning disabled people, the range of typical costs per person, per annum is as follows;

	Low need	moderate need	higher moderate need
Residential Care	23.5k - 30k	31k - 37k	38k-49k
Supported Living	11k - 19k	20k - 25k	25k-34k
Indicative Annual saving	11k	12k	14k

29 Generally speaking for similar levels of need, the costs of supported living are around 65% of those of residential care. This applies across a broad sweep of moderate need, but is subject to individual circumstances. Assuming an annual net saving or cost avoidance for each individual of up to £12k, the availability of 35 additional units would generate a contribution to MTFS savings of around £400k.

The overall cost/benefit analysis for the proposal is as follows;

Theoretical capital income foregone (to 2020) £1m

Annual net saving or cost avoidance (from 2020/21) £0.4m

30 Therefore the benefit would exceed cost by 2023. In reality, the interplay between capital foregone and savings made would begin earlier but the net effect is expected to be consistent with these figures. Clearly the cost benefit gain, whether in the form of cost avoidance or cashable savings will contribute mainly to MTFS savings after the current planning cycle to 2020.

31 Whilst it is not possible to say with certainty that the potential savings will be either cashable or all cost avoidance, in practice the proposal is likely to provide a combination of outcomes, including some cashable savings. By enabling young disabled people transitioning into adulthood to be placed in suitable lower cost accommodation within the community, future residential care costs may be avoided. Meanwhile, the new accommodation may enable existing service users to move towards independence in the new accommodation and reduce existing care costs.

Legal implications

32 Under the LSVT agreement, the council is entitled to clawback a percentage of the net capital proceeds of sale of relevant properties. If this clawback is to be waived before 2020, it will be potentially classified as state aid. However, the nature of the service is known as 'service of a general economic interest' (SGEI)). Therefore, HHL may receive up to €500,000 (approximately £431,000 at current market rates) in SGEI over a rolling 3 year period from all public sources without breaching state aid rules. HHL would be obliged (under the variation agreement) to keep the council informed if it receives any other SGEI state aid from other public sources. Such other SGEI state aid would be reduced from the threshold.

33 After 2020, this right of the council to clawback net capital proceeds from the sale of properties is lost. Therefore, for properties sold after 2020, HHL will be able to retain the clawback; the waiver merely brings it forward by up to 3 years (i.e. from now until 2020). The state aid is effectively the value of allowing HHL to sell properties before 2020 without having to pay the clawback.

34 The variation agreement must state that the waiver would immediately discontinue if and when the SGEI threshold has been reached within a 3-year period. If that 3-year period ends before 2020 (e.g. in the latter months of 2019, depending on when the first property is sold), then further properties may be sold subject to the waiver. The amount of state aid for each property will be calculated using an agreed formula detailed within the variation agreement.

35 The variation agreement must include clauses to cover: the obligations of HHL to follow a particular programme for disposing of the relevant properties; strict conditions attached to HHL's use of the clawback funds which the council has waived (and effectively 'granted); monitoring obligations; the right of the council to clawback amounts which are misapplied by HHL or not applied by a particular deadline; termination of the arrangement when the waived clawback reaches a certain threshold to ensure there is no unlawful state aid (described above) plus other standard termination clauses.

Risk management

36 A theoretical risk arises from the recommendations in the report relating to a possible breach of rules relating to state aid. However, liability for any unlawful state aid attaches to HHL as the recipient and so there is no risk to the council. This will be made clear also in the LSVT variation agreement.

37 In the event that the recommendations in the report are not approved, the following risks would arise;

- The strategic partnership with HHL would be significantly frustrated and disrupted having an impact on the council's influence over the full range of HHL's role as housing provider, housing developer and provider of social care and community services.

- The poor condition of a range of urban properties would remain unaddressed with consequent impact on the potential for them to be let consistently or on the health and wellbeing of tenants.

- A number of properties in rural and village locations would remain hard to let and uneconomic to run placing ongoing strain on social housing operations by HHL.

- The long term phases of draft accommodation strategies for young people and people with learning disability would be significantly curtailed, with significant impact on outcomes for vulnerable people and potential savings or cost avoidance for the council.

Consultees

38 None.

Appendices

Appendix 1 Equality impact assessment

Background papers

- None identified.