

# Planning Committee

10.00am, Wednesday, 27 February 2019

## Removal of Title Restrictions on Affordable Housing Policy Land for Scottish Government Mid-Market Rent Invitation Funded Projects

Item number	8.4
Report number	
Executive/routine	
Wards	All
Council Commitments	<a href="#">C2, C10 and C11</a>

### Executive Summary

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The Strategic Housing Investment Plan 2019-24 (SHIP) identifies the potential 10,569 affordable housing completions that could be built by the Council and its housing association delivery partners but identifies a £77 million funding gap to support the delivery of this programme. Scottish Government loan funding secured through the Mid-Market Rent (MMR) Invitation will enable affordable housing developers to lever in pension fund investment and deliver affordable housing without the need for grant subsidy. The Scottish Government loan offer and public sector obligation (PSO) ensures that housing is available for mid rent for a minimum of 25 years.

Most affordable housing sites in the city are secured through the affordable housing policy (AHP). The Council places a restriction on the title to ensure that land is used in perpetuity for affordable housing resulting in a lower valuation which in turn places limits on the private funding that the affordable housing developer can secure to deliver affordable homes. Committee is asked to agree to lift the title restriction on AHP land for Scottish Government MMR Invitation Funded Projects in order to deliver affordable homes without subsidy.

## Removal of Title Restrictions on Affordable Housing Policy Land for Scottish Government Mid-Market Rent Invitation Funded Projects

### 1. Recommendations

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- 1.1 It is recommended that Planning Committee:
  - 1.1.1 agrees to lift the title restriction on AHP land for Scottish Government MMR Invitation projects in order to support the delivery of affordable housing without grant subsidy;
  - 1.1.2 notes that a Scottish Government loan offer, PSO and Minute of Agreement will restrict the land use for affordable housing and is enforceable by the Scottish Government;
  - 1.1.3 notes that the proposed Minute of Agreement will enable the Council to enforce the terms of the PSO restricting the land use for affordable housing; and
  - 1.1.4 agrees to receive a report within two cycles on delivery of affordable housing through the AHP policy.

### 2. Background

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- 2.1 On [24 August 2017](#), Council approved its five year business plan. The plan sets out an objective to build 20,000 new affordable homes in the city over the next ten years.
- 2.2 In June 2018 Places for People (PfP) Capital, secured funding from the Scottish Government's [MMR Invitation](#) to invest in MMR properties throughout Scotland.
- 2.3 On [1 November 2018](#), Housing and Economy Committee approved SHIP 2019/24. This report identifies the potential 10,569 affordable housing completions that could be built by the Council and its housing association delivery partners but identifies a £77 million funding gap to support the delivery of this programme.
- 2.4 On [24 January 2019](#), Housing and Economy Committee approved the Approach to Build to Rent (BTR), report which sets out a strategy to encourage private investment in housebuilding in the city.

### 3. Main report

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- 3.1 The SHIP 2019/24 identifies the potential 10,569 affordable housing completions that could be built by the Council and its housing association delivery partners but identifies a £77 million funding gap to support the delivery of this programme. Scottish Government loan funding secured through the MMR Invitation enables affordable housing developers to lever in pension fund investment and deliver affordable housing without the need for grant subsidy.
- 3.2 The PfP Capital mid-market rent fund has been established to deliver 1,000 mid-rent homes by 2021, to be held and operated by the fund for the next 25 years. The objective of the initiative is to attract pension fund investment into the sector and to bring forward more affordable housing than would be possible under the grant programme.
- 3.3 PfP Capital, is a fund management business and part of the PfP Group. The fund is backed by Scottish Government loan, funding from Castle Rock Edinvar (part of PfP) and money to be raised from pension funds.
- 3.4 No grant funding is used by the PfP fund. Given the £77 million shortfall outlined in 2.3 above, it is critical to the delivery of the affordable housing programme to ensure as many non-grant funded projects are secured in Edinburgh.
- 3.5 The fund delivers 100% affordable housing at each site, a significant uplift compared to the typical 25% provision on most sites of scale in Edinburgh.
- 3.6 PfP have indicated that they can accelerate the delivery rates for this rental model, compared to a build and sell model where the delivery rate is driven by sales, which typically sit between three and five per month. Accelerated delivery presents a number of opportunities, including meeting delivery targets, use of modern methods of construction, reduced risk of upfront investment and improved placemaking.
- 3.7 The “Approach to Build to Rent” report approved by Housing and Economy on [24 January 2019](#) identifies the requirement to attract pension fund investment into the Build-to-Rent sector. The entry of the PfP Fund into the sector will help strengthen competition within the housebuilding industry. The fund will consist of roughly two thirds pension fund investment of approximately £100 million and offers an opportunity to further demonstrate that Edinburgh is an investable proposition for Build-to Rent; accelerating delivery of homes.
- 3.8 The fund aims to deliver over 500 MMR homes within Edinburgh, with three sites currently under negotiation:
  - 3.8.1 Site 72 Metres South Of 4A Oxfangs Green, Edinburgh ([18/01055/FUL](#)) – 85 homes;
  - 3.8.2 100 Niddrie Mains Road, Edinburgh ([18/02744/FUL](#)) – 136 homes; and
  - 3.8.3 Former 9-21 Salamander Place, Edinburgh, Lothian, EH6 7JJ ([16/03356/PPP](#)) – 151 homes.

- 3.9 As an initial purchase, the fund is looking to acquire from the developer Hopefield, a site currently in Council ownership at Oxgangs Green 18/01055/FUL (Hunter's Tryst Primary School). Hopefield in turn are in missive with the Council to acquire this land at the former Hunters Tryst Primary School.
- 3.10 At Oxgangs Green, the fund would be delivering 100% of the 85 homes for mid-rent to be operated by the fund for 25 years under the PSO. The basic principles of the PSO, as set out by the Scottish Government under the MMR Invitation are set out in this [Deed of Entrustment](#).

### **Affordable Housing Policy Title Restrictions**

- 3.11 The AHP provides a vital source of land to support the delivery of the affordable housing programme. Around 52% of the homes completed over the SHIP period are expected to be delivered on private sector sites secured through the AHP.
- 3.12 When affordable housing land is transferred to an affordable housing provider through the AHP, the Council's standard s75 obligations restrict the land's use for affordable housing, to ensure the land is used for this purpose.
- 3.13 However, any title or planning condition (including s75 agreements) which has the effect of requiring affordable housing to be provided in perpetuity, almost always constrains the ability of the affordable housing provider to maximise their borrowing capacity.
- 3.14 Properties secured with this title restriction as a result are subject to a lower, affordable housing valuation, as opposed to a higher market valuation. The difference in valuations can be significant as to the amount of additional borrowing that can be achieved by using the higher valuation basis. This restricts the affordable housing provider's capacity to deliver new homes. The Council's current standard s75 obligations restrict the land use to the delivery of affordable housing for a period of 63 months (five years and three months), post transfer.
- 3.15 PfP consider it essential, for valuations to work for the pension fund investors and for the Government loan, that fund assets are considered theoretically liquid and therefore capable of being sold to repay Pension Funds and Scottish Government.
- 3.16 This means that when the Affordable Housing Land is transferred to them that:
- 3.16.1 the Council's obligations on how the affordable Housing is to be delivered is treated as discharged; and
  - 3.16.2 there is no restriction that the land be used for the delivery of affordable housing.

### **Legal Implications and Risk Management**

- 3.17 Without tying PfP to the standard s75 obligations, there is in theory a legal risk that affordable housing may not be delivered on site as the legal obligation would not be tied to the land transfer.
- 3.18 There is however, a contractual obligation on PfP to deliver their affordable housing commitments. The PfP funded projects are bound by a [Deed of Entrustment](#) and

loan agreement requirements. These place obligations upon PfP to deliver 100% affordable Housing and Scottish Government must consent to any of it ceasing to be used for that purpose. Penalties for a breach are provided and this reduces the risk outlined in 3.17.

- 3.19 PfP has agreed to enter into a Minute of Agreement in order to give the Council a direct right of recourse in respect of the obligations contained in the Deed of Entrustment. An agreement on these terms provides the Council with additional comfort, as we could pursue legal action for breach of contract if PfP failed to comply with the Deed of Entrustment terms. This agreement will also require PfP to commit to providing Council officers with an annual report, providing details of affordable housing delivered in Edinburgh through the Fund.
- 3.20 It is desirable for this agreement to be applicable city wide and apply to all sites being transferred to PfP in terms of a Council s75, those currently being considered are identified in 3.7 above.
- 3.21 Collectively, this provides the Council with significant comfort that on PfP acquired land 100% Scottish Government compliant affordable housing will be delivered on site for a minimum 25 years. This level of comfort is considered to be broadly consistent with the Council's Model s75.
- 3.22 The proposals contained in the report will enable the delivery of 100% affordable housing without grant funding on sites which otherwise would deliver 25% affordable housing with grant funding.
- 3.23 PfP has developed this innovative approach to delivering affordable housing in partnership with the Council and Scottish Government. Committee is asked to agree to lift the title restriction on AHP land to enable planned PfP projects to proceed. This approach could encourage other affordable housing developers to bring forward projects through the Scottish Government MMR Invitation.
- 3.24 There are just over 1,100 affordable homes being built on land secured through the affordable housing policy, which is half of the 2,215 affordable homes currently under construction across the city. Around 5,000 of the 10,000 planned affordable completions over the next five years are on AHP land. Committee is asked to agree to receive a report within two cycles on delivery of affordable homes through the affordable housing policy.

## **4. Measures of success**

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- 4.1 Increase annual delivery of homes to meet the housing needs of people on low to moderate incomes and reduce land banking.
- 4.2 Accelerate delivery of affordable housing.
- 4.3 Develop strategically important sites in the city and support the growth of the city.
- 4.4 Deliver additional investment in the local economy, creating jobs, apprenticeships and opportunities for Small Medium Enterprises (SME).

## **5. Financial impact**

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- 5.1 The SHIP 2019-24 identifies a £77 million funding gap to support the delivery of this programme. The MMR Invitation delivers homes without the need for grant funding.

It is anticipated that £50 million in private funding and £25 million Scottish Government loan funding will be invested in the delivery of around 500 mid rent homes through the PfP Fund.

## **6. Risk, policy, compliance and governance impact**

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- 6.1 A key strategic risk to delivery of the 20,000 affordable homes commitment is the availability of grant funding through Affordable Housing Supply Programme (AHSP) to deliver projects. The development of innovative approaches to housing delivery is an essential part of mitigating this risk.
- 6.2 A key strategic risk to the Council achieving its affordable housing ambitions is developer timescales for bringing forward and delivering housing on private sector sites. This proposal accelerates development through building for rent rather than sale.
- 6.3 The potential risk to the Council of this specific provision is that affordable housing land is transferred to PfP and they sell it on to a third party with no obligation upon the new owner to deliver affordable housing on the land. This risk is mitigated through the proposed Minute of Agreement, Scottish Government loan agreement and PSO.

## **7. Equalities impact**

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- 7.1 Increased access to modern, energy efficient, accessible and affordable housing in well-designed, safer and cleaner communities will contribute to improved health, reduce fuel poverty and provide homes which are physically accessible.
- 7.2 The majority of new build properties delivered by the Council and its housing association partners are accessible for people of limited mobility, meaning particular needs housing requirements can often be met through allocation of a standard general needs property.

## **8. Sustainability impact**

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- 8.1 There are no direct sustainability impacts arising from this report although the ability of the Council to mitigate successfully the impacts arising from the growth of the city is critical to achieving sustainable development.

- 8.2 New build homes are built to high standards in terms of energy efficiency and sustainability. There will be a strong emphasis on providing homes that are cheap to heat and affordable to manage.
- 8.3 Priority is given to developing homes on brownfield sites and therefore reducing pressure on Edinburgh's green belt.

## 9. Consultation and engagement

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- 9.1 On [24 January 2019](#) Housing and Economy Committee agreed to engage with the BTR sector, industry bodies, registered social landlords and other stakeholders on the opportunity that BTR presents to increase housing supply.

## 10. Background reading/external references

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- 10.1 City Housing Strategy Update – Housing and Economy Committee on [2 November 2017](#)
- 10.2 Strategic Housing Investment Plan (SHIP) 2018-23 – Housing and Economy Committee on [2 November 2017](#)

### Paul Lawrence

Executive Director of Place

Contact: Elaine Scott, Housing Services Manager

E-mail: [elaine.scott@edinburgh.gov.uk](mailto:elaine.scott@edinburgh.gov.uk) | Tel: 0131 529 2277

## 11. Appendices

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