

## **POLICY & FINANCE COMMITTEE**

**23 JANUARY 2020**

### **HOUSING MANAGEMENT SERVICES – TRANSFER FROM NEWARK AND SHERWOOD HOMES LTD**

#### **1.0 Purpose of Report**

- 1.1 To consider and approve the necessary legal agreements to facilitate the transfer of the housing management service from Newark and Sherwood Homes Ltd back to the Council.

#### **2.0 Background Information**

- 2.1 As Members are aware the Council and Newark and Sherwood Homes Ltd are working together to facilitate the transfer of the housing management service back to the Council following this Committee's decision on 26 September 2019. The service transfer is scheduled to take place by 1 February 2020, with the Company's employees transferring to the Council on this date together its assets and liabilities. The winding up of the Company will take place at a later date.
- 2.2 To reflect the fact that the Council and the Company's Board are working together on this project and that we have a substantially common interest in the matter, Anthony Collins Solicitors LLP have been jointly instructed to advise on the legal process and documentation required to achieve the transfer.

#### **3.0 Proposed Transfer Agreement**

- 3.1 To facilitate the transfer it is necessary for the parties to enter into a Transfer Agreement incorporating the terms by which the parties agree what is to happen to all existing company contracts, assets and liabilities. It should be noted that the Company is in a strong financial position with significant reserves and a number of properties. Therefore the Company's solvency is not an issue. Members' attention is drawn to the previous report on the Committee's agenda, which sets out the options relating to the 25 Company owned properties and the officer recommendation that these be transferred into the ownership of Newark & Sherwood District Council's Housing Revenue Account.
- 3.2 It should be noted that expert tax advice has been sought to ensure to review the proposed transactions involving the transfer of the Company's assets.
- 3.3 The Transfer Agreement is in the process of being drafted on the basis of the following heads of terms, which are recommended for approval:

##### **Termination of the Management Agreement:**

The Council and the Company agree that the Management Agreement between the parties (under which the Company performs the housing management services) will terminate by mutual consent on 1 February 2020.

##### **Transfer of the Business and Assets:**

The business and assets of the Company (including the 25 housing units) will transfer to the Council.

**Consideration and Completion:**

The consideration for the transfer of all of the business and assets is the assumption by the Council of the Company's liabilities.

**Assumption of the Liabilities:**

With effect from the date of the transfer the Council will assume responsibility for, pay and discharge the Company's liabilities in full as and when they fall due. Pending their discharge the Council will indemnify the Company against all liabilities.

**Contracts:**

All Company contracts will be transferred to the Council with effect from the date of service transfer.

**Leases:**

All leasing agreements will be transferred to the Council with effect from the date of the service transfer.

**Premises:**

The Company will hand over possession of any premises that it occupies to the Council from the date of the service transfer and surrender any leasehold or licence interest that the Company holds in those premises.

**Employees:**

The employees of the Company will transfer to the Council upon the date of the service transfer on their same terms and conditions, including those relating to pension entitlements. The Council will ensure that the employees are treated fairly and equally with the Council's existing employees.

**Pensions:**

The Company and the Council shall endeavour to ensure that the assets and liabilities of the Company in the Fund shall transfer to the Council and that no exit payment or exit credit shall be paid.

**Dissolution/Winding up of the Company:**

The Company will be dissolved by application in due course. This avoids the need for a liquidator.

**The Board Members:**

The Council will release the Board Members from any claims it may have against them except to the extent that these arise from their negligence, misfeasance or malfeasance.

**4.0 Company's Articles of Association**

- 4.1 If the Council and the Company support the recommendation to transfer the 25 properties and assets back to the Council it is suggested that the Company's Articles of Association be amended to allow for the transfer of assets being reserved to the Council as shareholder. This would allow the transfers to take place without the Council making a payment.

## **5.0 Equalities Implications**

- 5.1 There are no equalities implications arising from the provision of the Transfer Agreement as such. Any relevant equalities issues arising from the transfer of the staff, in terms of any possible negative impacts upon persons with protected characteristics will be taken into account and relevant actions taken as part of the formal TUPE process, but none are envisaged at present as staff will be transferring on the current terms and conditions.

## **6.0 Financial Implications (FIN19-20/591)**

### Revenue Current Year

- 6.1 At 4 April 2019 Policy & Finance Committee agreed a project budget of £150,000 in order to fund the independent tenant consultation exercise and other transitional arrangements. To date £91,199 has been spent and committed against this budget in respect of the consultation exercise, HR and legal advice and obtaining a closure valuation report from Local Government Pension Scheme. It is anticipated that this budget will be fully expended.
- 6.2 The cost to reflect the time spent with Anthony Collins LLP has been budgeted for within the project budget of £150,000. The cost for this assignment has been agreed to be split with Newark and Sherwood Homes, so that they pick up 50% of the costs incurred by Anthony Collins.

### Revenue Future Years

- 6.3 Based on the Savills report that was presented to Policy & Finance Committee 4 April 2019, there are significant efficiencies to be generated from the re-integration of the Housing Management Service. These efficiencies can then be re-invested in further services for tenants and investment in new homes.
- 6.4 There may also be opportunities to increase further the total efficiencies that could be generated from the re-integration of the service once more detailed discussions take place. Contracts for services and consumables can be re-aligned across the Council to ensure that the organisation is receiving maximum value for money on its purchases.
- 6.5 The plan for re-investment of the efficiencies will be formulated over a period of time, strategically taking into account the tenants' and Councils' priorities and how best to maximise the potential of the resources made available through the efficiencies generated.

## **7.0 Community Plan – Alignment to Objectives**

- 7.1 These proposals align with the Council's Community Plan objective to "Generate more income, improve value for money and increase residents' satisfaction with the Council". There is a specific action under this objective to undertake a review and implement the option that delivers the management of the Council's housing stock in the most cost effective and appropriate way. The proposed Transfer Agreement and changes to the Company's Articles will facilitate the reintegration of the Housing Service back with the Council.

**8.0 RECOMMENDATIONS that:**

- a) approval be given for the Transfer Agreement to be entered into on the basis of the Heads of terms as detailed in paragraph 3 of the report, and delegated authority be given to the Director - Governance & Organisational Development to approve the final agreement terms on the behalf of the Council in order to best facilitate the transfer of the housing management service and the Company's assets and liabilities by the 1 February 2020; and
- b) the proposed amendment to Newark and Sherwood Homes Ltd.'s Articles of Association as set out in paragraph 4 of the report be supported, and delegated authority be given to the Director - Governance & Organisational Development to implement any Shareholder resolutions/decisions required on the part of the Council to facilitate this.

**Reason for Recommendations**

**To facilitate the transfer of the Housing Management Service from the Company to the Council.**

**Background Papers**

Nil.

For further information please contact Karen White on Ext 5240.

**Karen White**  
**Director Governance & Organisational Development**