

MEETING	Council Board
DATE	24 November 2009.
TITLE	Report on the Housing Stock Transfer Contract
PURPOSE	To consider the Report on the Housing Stock Transfer Contract and suggest recommendations to the Full Council
RECOMMENDATIONS	That the Council Board considers the contents of the Report and makes recommendations which can be contained in the Report to the Full Council on 10 December 2009. Also, that the Board authorise the Corporate Director to act on any further changes to the Agreement which may become evident from discussions with Gwynedd Community Homes.
AUTHOR	D P Lewis, Corporate Director.
PORTFOLIO LEADER	Councillor Trefor Edwards.

1.0 Background.

- 1.1 The Assembly's Guidance on Transferring Housing Stock require the Council to prepare a Stock Transfer Contract document outlining all the relevant issues regarding establishing Gwynedd Community Homes which are to be presented to the Assembly in good time so that it can give its approval. This Agreement will then be signed by the Council and Gwynedd Community Homes on the date of the transfer.
- 1.2 The document itself is a very large and significant legal document and the recognised routine is for the Council's Legal Advisors, Shoosmiths in this case, to present a report to the Council's Committees highlighting the main elements of the agreement and the report is contained as an Appendix to this cover report.
- 1.3 The report was presented for consideration to the Special Care Scrutiny Committee on the 10th of November and the committee's comments are incorporated within this report.

1.4 The Advisors stress that there is a lot more work to be done on the details of the Contract. A document with 90-95% of the final contents is likely to be available at this point in the preparation process and this document will be presented to the Assembly on that basis in order to keep to the generally tight timetable of the project. Trowers and Hamlin, the solicitors acting as Gwynedd Community Homes's legal Advisors, have not answered all the queries and a principal external lender has not yet been appointed. It is foreseen that the principal lender will, in due course, come to a definite opinion regarding the contents of the Contract and the Council will have to respond to this before the transfer.

2.0 The main issues and risks to be considered by the Board.

2.1 While details are still being discussed it is possible to recognise certain key issues that the Council's Board should be aware of:

2.1.1 **Guarantees** – The guarantees tend to follow a common form and are being discussed further. Further issues may arise when the current environmental assessment of the transferred assets will have been completed during the next weeks, particularly about any insurance which may be needed. There are other important aspects regarding:

- (i) What will be the period of the guarantees? – this will have to be confirmed with the Lenders.
- (ii) What is the possible level of the Council's financial commitments in the event of any guarantees being broken? – this is still to be agreed through negotiations with the lenders.
- (iii) Which guarantees arise about asbestos in particular? – this is currently being assessed in discussions on the Gwynedd Community Homes's Business Plan.

2.1.2 **Covenants** - The Deed of Covenant between the Council and Gwynedd Community Council transfers responsibility for fulfilling the promises made to tenants prior to the vote from the Council to the

Housing Association. The Council needs to be totally clear about these promises and they have to be incorporated in the document so that the covenant can be implemented in the future if necessary. A further issue is the need for a clear understanding about responsibility for matters such as financing welfare adaptations for tenants before the document is formally signed. The understanding about the Council's relationship with Gwynedd Community Homes following the transfer and any other commitments with regards to economic development etc is included in this section. The document will include a commitment by CCG to report back regularly to the Council on progress against the promises made.

- 2.1.3 **Transfer of assets** – The process of identifying, auditing and discussing assets to be transferred is coming to an end and this includes responsibilities for assets which may be contentious. For example “unadopted” sewers and roads and sewage works where there is a mixture of private and public housing. A short list of land which the council wishes to be exempted from the transfer is being prepared and is being discussed with Gwynedd Community Homes. The expected outcome is that all the HRA land will be transferred unless there is a genuine reason for not doing so.
- 2.1.4 **Service Level Agreements and Agency Agreements** – Much work has already been done to identify, prepare and negotiate Service Level Agreements between the Council's Services and Gwynedd Community Homes but there is still a lot of work to do on this as regards agreeing a price and the period of the agreements. Any decision to contract out the administration of the Housing Register and Nominations will require a formal Agency Agreement between the Council and Gwynedd Community Homes.
- 2.1.5 **Nomination Agreement** – A draft Nominations Agreement is being presented to the Board separately

and this document will be an important part of the Transfer Agreement which will be sent to the Assembly, as will be information about the Housing arrangements which remain with the Council following the transfer.

3.0 Recommendations made by the Care Scrutiny Committee.

- 3.1 “Resolved to accept the report and recommend to the Council Board that the Contract should include clauses noting:
- (i) That building work tenders will not be packaged in a way which will disadvantage small and medium sized companies.
 - (ii) That formal contact meetings are expected to be held often and regularly between Gwynedd Council and Gwynedd Community Homes Ltd.
 - (iii) That reports are submitted in the contact meetings on contracted work as well as on how everyone involved in the building industry gets the opportunity to benefit.
 - (iv) That firm targets are set regarding the numbers of contractors and local workers who are offered work.
 - (v) That Gwynedd Community Homes Association Ltd is required to report to the Council every six months on how it complies with the promises made to the tenants.
 - (vi) That further consideration is given to the length of the period when the formal contact meetings are held, with a further report on the new procedure of scrutinising the work of Gwynedd Community Homes Ltd submitted before March 2010.
 - (vii) That further discussions are held in relation to the indemnity given by the Council to Gwynedd Community Homes Association Ltd and its financiers regarding asbestos in the properties.”

4.0 Recommendations

- 4.1 That the Board considers the Advisors' report and the recommendations of the Care Scrutiny Committee and make recommendations which can be presented to the Full Council on 10 December 2009.

- 4.2 That the Board delegates powers to the Corporate Director to act on any changes to the Transfer Contract prior to and after presenting it to the Assembly for comment.

A. Barn y Aelod Lleol / Views of the Local Member:-

B. Barn y Swyddogion Statudol / The views of the Statutory Officers:-

1. Prif Weithredwr / Chief Executive:-

Fel y noda'r Swyddog Monitro, yn ei sylwadau, mae'r gwaith hwn yn hynod gymhleth ond yn seiliedig ar negodi gydag amryw o fudd-ddeiliaid a gyda chyngor manwl arbenigol. Yn amlwg hefyd mae'r Pwyllgor Craffu Gofal wedi rhoi sylw manwl i'r mater a mae'r adroddiad yn crynhoi eu hargymhellion. Wrth gwrs, rhaid pwysu a mesur dyheadau'r Pwyllgor Craffu yn erbyn y cyngor cyfreithiol ac arbenigol.

As the Monitoring Officer notes in his comments, this work is extremely complex, but based on negotiating with several stakeholders and with detailed specialist advice. Obviously, the Scrutiny Care Committee has also given due consideration to the matter and the report summarises their recommendations. Of course, the aspirations of the Scrutiny Committee must be measured against the legal and specialist advice.

2. Swyddog Monitro / Monitoring Officer:-

Mae'r Cytundeb Trosglwyddo Stoc Tai wedi bod, ac yn parhau yn destun cyngor arbenigol manwl gan gynnwys cyngor cyfreithiol. Mae'r gytundeb yn ddarostyngedig i broses negodi a chyrraedd cytundeb gyda'r Gymdeithas Dai a'u harianwyr ynghyd a'r angen i dderbyn cymeradwyaeth Llywodraeth y Cynulliad. Yn anorfod oherwydd natur y broses mae'r modd y gellir gosod gofynion yn y gytundeb ar y Gymdeithas Tai a'i rheolaeth i'r dyfodol yn ddarostyngedig i rai cyfyngiadau. Wrth ystyried yr adroddiad a gwneud argymhellion mae rhaid cadw y cyd destun yma mewn golwg.

The Housing Stock Transfer Agreement has been, and continues to be, the subject of specialist advice, including legal advice. The agreement is subject to negotiating with and reaching agreement with the Housing Association and their funders, as well as the approval of the Welsh Assembly Government. Unavoidably, due to the nature of the process, the manner in which demands can be made in the agreement on the Housing Association and its management in the future is subject to some restrictions. In considering the report and making recommendations, this context must be kept in mind.

3. Prif Swyddog Cyllid / Chief Finance Officer:-

Mae'r Prosiect Trosglwyddo Stoc Tai yn gynllun sy'n eithriadol o sylweddol ac arwyddocaol. Mae'r adroddiad yn rhoi blas o faint a niferoedd y ffactorau - sawl un ohonynt gydag oblygiadau ariannol - sydd angen ystyriaeth, ac mae maint y gytundeb, gyda 32 o gymalau, 16 atodlen a 12 atodiad yn adlewyrchiad o hyn. Gwelir hefyd fod nifer o faterion allweddol yn parhau i fod dan drafodaeth. Yn y cyd-destun hwn,

mae'r Cyngor wedi penodi ymgynghorwyr arbenigol yn y meysydd cyfreithiol a chyllid er mwyn lliniaru'r risgiau ariannol i'r Cyngor sy'n berthnasol i'r trosglwyddiad.

O ran ymhlygiadau ariannol i'r Cyngor, fel adroddais i Fwrdd 09/06/2009:

“Tra bydd cyllideb y prosiect [trosglwyddo'r stoc tai] yn ‘gost-niwtral’, bydd ymhlygiadau ariannol yn deillio o allanoli'r stoc tai, gyda'r Cyngor yn colli manteision maint yn ‘y canol’, ac yn sefyll cost [sylweddol] y diffyg hanesyddol yn y gronfa bensiw'n parthed staff fydd yn trosglwyddo. Fel cydbwysedd, ar y llaw arall, bydd balansau'r cyfrif cyllid tai yn aros gyda'r Cyngor, a bydd tenantiaid y tai yn gweld budd o'r £90m o fuddsoddiad (dros 6 mlynedd) yn yr eiddo, gyda manteision ehangach yn deillio o hynny i'r economi leol o ran cyflogaeth, ayb.”

The Housing Stock Transfer Project is exceptionally substantial and significant. The report gives an outline of the size and number of factors - many of which have financial obligations - that need consideration, and the size of the contract, with 32 clauses, 16 schedules and 12 annexures is a reflection of this. It is also seen that a number of key matters continue to be under discussion. Within this context, the Council has appointed specialist consultants in the fields of law and finance in order to mitigate the financial risks to the Council that pertain to the transfer.

With regard to financial implications to the Council, as I reported to the Board on 09/06/2009:

“While the project's [housing stock transfer] budget is ‘neutral cost’, financial implications will derive from the transfer of the housing stock, with the Council losing quantity advantage ‘in the middle’, and standing the [substantial] cost of the historical deficit in the pension fund with regards to staff who will be transferring. As a balance, on the other hand, the housing budget account balance will remain with the Council, and the housing tenant will see benefit of the £90m investment (over 6 years) in their property, with broader advantages derive to the local economy with regards to employment, etc.”

C. Papurau Cefndir

CH. Goblygiadau Polisi
