

DATED 29 October 2009

**REPORT ON THE TRANSFER AGREEMENT
FOR THE TRANSFER OF HOUSING STOCK BY
GWYNEDD COUNCIL TO
CARTREFI CYMUNEDOL GWYNEDD CYFYNGEDIG**

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1 INTRODUCTION

This guide summarises the terms of the contract (the “**Transfer Contract**”) between Gwynedd Council (the “**Council**”) and Cartrefi Cymunedol Gwynedd Cyfyngedig (the “**Association**”) relating to the transfer of the Council’s properties to the Association. This guide reflects the position as at 29 October 2009.

1.1 The Transfer Contract has been drafted by Shoosmiths acting on behalf of the Council, and has been the subject of negotiation with Trowers and Hamlin acting on behalf of the Association. The Transfer Contract has not yet been seen or commented on by solicitors acting on behalf of the funders as funders have yet to be appointed by the Association.

1.2 The Transfer Contract currently consists of 32 Clauses, 16 Schedules and 12 Annexures. The information schedules are in the course of preparation.

2 PRELIMINARIES AND THE LAND TRANSACTION

These are standard clauses in all transfer agreements.

2.1 Clause 1 of the Transfer Contract sets out the definition of the words and expressions used in the document. These are linked to the relevant Clauses, Schedules and Annexures in the Contract.

2.2 Clauses 2, 3, 4 and 5 recite the Contract to sell the Property defined in the Transfer Contract. The “**Property**” is defined in detail in Clause 3(i) and the First Schedule and includes all of the housing stock, (garages), common areas, electricity sub-stations, freehold reversions to RTB properties and wayleaves. These clauses confirm that the Property is sold subject to incumbrances (including, of course the tenancies of the current occupiers) and deals with completion arrangements and the capacity in which the Council sells.

2.3 Clause 6 contains standard contractual conditions applicable to any sale of land.

2.4 Clause 9 deals with the transfer of arrears of rent and service charges and, by implication, the benefit of any possession proceedings and orders obtained by the Council. The Association will effectively “stand in the shoes” of the Council in such proceedings and need to pursue them in accordance with their arrears policies. This is done by completion of the Deed of Assignment which is found at Part I of the Fourteenth Schedule.

2.5 The Transfer Contract provides for payment by the Association for the arrears, payment being in two equal instalments. The first payment is due to be on the Completion Date with the second six months’ after. However, this has not yet been agreed by the Association. Also, the level of arrears and the amount to be paid for them have yet to be agreed. It is likely that one of the CIPFA methods of calculation

will be used. These are calculated using percentages based on either the age of the arrears or the value of the arrears.

- 2.6 The Transfer Contract spells out in Clause 11 how an apportionment of outstanding work to the Property would be dealt with. The arrangement is that the Council is responsible for all works undertaken up to and including the day before the Completion Date and the Association is responsible thereafter.

3 **NOMINATION RIGHTS**

Clause 8 deals with nominations under the Transfer Contract. The Second Schedule will contain the Nominations Rights Agreement which is required to allow the Council to fulfil its statutory duties to house the homeless and without which the Welsh Assembly Government (WAG) will not approve the transfer. The level of nominations, as agreed between the parties, is 75%.

4 **WARRANTIES AND COVENANTS**

- 4.1 Clause 7 and the Fifth Schedule cover the warranties and covenants which the Council will be giving.
- 4.2 The Fifth Schedule contains the warranties, including at Part I the collateral warranty that is to be given by the Council, to the Association's funders. The warranties are in standard and industry form, and will include the disclosures to be given by the Council. The warranties to be given to the Association are contained in Part II of the Fifth Schedule and the length of the warranties is linked to the length of the loan. The funders will also require warranties which will cover the period of their loan to the Association. The current proposal is thirty three years.
- 4.3 The covenants in Part III of the Fifth Schedule cover such matters as;
- The Council's enabling role;
 - Open space and amenity land;
 - Land registry requisitions;
 - Housing benefit;
 - Enforcements of rights; and
 - General assistance to the Association after transfer.
- 4.4 There will be a requirement for the Council to give, both to the Association and its funders, an indemnity in respect of asbestos in the dwellings. The length of this indemnity is yet to be agreed by the parties.

5 OTHER SUBSTANTIAL MATTERS

- 5.1 Clause 10 contains an obligation on the Association to issue the new form of assured tenancy to all eligible (“qualifying”) transferring tenants and to act in accordance with the principles of good housing management practice in its treatment of tenants who are not, for the time being, “qualifying” tenants.
- 5.2 Clause 12 deals with the contracts affecting the transferring housing stock and covers those being assigned, those being retained by the Council and any contracts still in their retention period which will also remain with the Council.
- 5.3 Clause 13 deals with insurance of the transferring housing stock and the Council will be supplying a list of current insurance claims affecting the property.
- 5.4 Clause 14 covers transferring staff and the effects of TUPE. It contains all of the warranties and indemnities the Council is giving in respect of staff transferring to the Association. The Clause also covers admission of the Association to the Local Government Pension Scheme.
- 5.5 Clause 15 covers the termination of Service Level Agreements and the position of staff employed by the Council when the agreements come to an end (deferred TUPE). Again the Council will be providing warranties and indemnities in respect of these staff which will essentially be the same as those contained in Clause 14.
- 5.6 Clause 16 contains a number of obligations on the Council to deliver up all information and records relevant to the transfer, the passing of furniture and equipment to the Association and all obligations on the Council to undertake the qualifying works to the Property in order to comply with the provisions of the VAT Development Agreement and the VAT saving scheme.
- 5.7 Clause 17 sets out the Association’s obligation to comply with the Fourth Schedule which is the Deed of Covenant to be entered into by the Association. This Deed sets out all of the covenants which includes, amongst others, a requirement on the Association to honour the promises made to tenants in the Consultation Document, issued by the Council, prior to ballot. The Deed permits the Council to intervene if the Association breaches any of these commitments. In addition there is an obligation on the Association to attend formal liaison meetings with the Council, for an initial period of six years, together with an obligation to report annually to the Council on how it is complying with the promises to tenants. The Deed of Covenant also contains obligations in respect of;
- The provision of information to the council;
 - Any proposed mergers;
 - Housing benefit;

- 5.8 Whilst the Council will retain a statutory responsibility for Disabled Facilities Grants, the Association has included in its business plan an annual amount to cover the cost of such works for the transferring properties.

6 INCIDENTAL MATTERS

6.1 Clause 18 details the further agreements being entered into including the Service Level Agreements in the Tenth Schedule and the Housing Benefit Verification and Civil Emergency Agreements in the Fourteenth Schedule. The Council will be providing a number of Service Level Agreements and the negotiations in respect of these are ongoing

6.2 The remaining clauses in the Transfer Agreement cover:

- 6.2.1 Interest (Clause 19);
- 6.2.2 Complete Agreement Clause (Clause 20);
- 6.2.3 Dispute resolution (Clause 21);
- 6.2.4 Notices (Clause 22);
- 6.2.5 Non-Merger (Clause 23);
- 6.2.6 VAT (Clause 24);
- 6.2.7 Data Protection (Clause 25);
- 6.2.8 Confidentiality (Clause 26);
- 6.2.9 Law (Clause 27)
- 6.2.10 Waiver (Clause 28);
- 6.2.11 Contracts (Rights of Third Parties) (Clause 29);
- 6.2.12 Severance (Clause 30);
- 6.2.13 Assignment (Clause 31);
- 6.2.14 Mortgagee Exclusion (Clause 32).

7 SCHEDULES AND ANNEXURES

7.1 As indicated, there are some 16 Schedules and 12 Annexures, many of which are referred to above. The Schedules and Annexures will also include;

- A copy of the proposed new Assured Tenancy Agreement to be offered to Qualifying Tenants;
- Copies of the plans of the property to be transferred;

- A full rent roll; and
- Garage list.

8 VAT

- 8.1 The Transfer Contract contains, in the Fifteenth Schedule, the VAT Development Agreement which deals with the saving of VAT. The Development Agreement sets out the cost of the works to be undertaken to the properties together with the VAT saving and contains a Schedule giving a detailed breakdown of the works included in the Agreement. The Agreement is likely to run for fifteen years. The parties have been advised by PwC on the VAT arrangements.
- 8.2 The Sixteenth Schedule contains Deeds of Variation which allow for a partial or total collapse of the scheme should the law relating to VAT savings change in the future.

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