

To: Cabinet
Date: 22 January 2020
Report of: Head of Housing Services
Title of Report: Use of s.106 and Retained Right to Buy Receipts to increase the provision of more affordable housing

Summary and recommendations	
Purpose of report:	The report seeks project approval and delegations to enable the spending of Retained Right to Buy Receipts and s.106 funding for the purpose of delivering, or enabling the delivery of, more affordable housing, through new build or acquisition activity.
Key decision:	Yes
Cabinet Member:	Councillor Mike Rowley, Board Member for Affordable Housing
Corporate Priority:	Meeting Housing Needs
Policy Framework:	Housing and Homelessness Strategy 2018 to 2021
Recommendations: That Cabinet resolves to:	
<ol style="list-style-type: none"> 1. Give project approval to the proposals, to purchase accommodation or issue grants, as set out in this report, and within the allocated capital budgets, for the purpose of delivering more affordable housing in Oxford; 2. Note that the proposals set out in this report, in relation to Retained Right to Buy Receipts (RRTBRs) - £13.2m in the HRA in 20/21, and £2.35m in 21/22; Recycled Capital Grant Funds (RCGF) - £370k in the HRA in 20/21; and s.106 funds - £3m in the General Fund in 20/21; have informed the budget setting process and that the implications for budgets are included within the 2020/21 consultation budget; 3. Recommend to Council that a capital budget for £3m of expenditure, subsidised using RRTBRs, is approved in 2019/20, to enable an off-plan purchase of Social Rented homes, this sum being effectively brought forward from the overall £13.2m identified in 2020/21 in the consultation budget, which would then reduce to £10.2m in 20/21 accordingly; 4. Delegate authority to the Director of Housing, in consultation with the Cabinet Member for Affordable Housing; the Head of Financial Services/Section 151 Officer; and the Council's Monitoring Officer, to enter into agreement for the award of grant, contractual arrangement and/or spend, for the provision of additional affordable housing in perpetuity, using 	

- Retained Right to Buy Receipts or Recycled Capital Grant funding;
5. **Delegate authority** to the Head of Planning Services, in consultation with the Cabinet Member for Affordable Housing; the Head of Financial Services/Section 151 Officer; and the Council’s Monitoring Officer, to enter into agreement for the award of grant, contractual arrangement and/or spend, for the provision of additional affordable housing in perpetuity, using s.106 funds; and
 6. **Delegate authority** to the Chief Executive, in consultation with the Cabinet Members for Finance and Asset Management, and Affordable Housing, to approve any property or development purchases over £500,000 for affordable housing, within this project approval.

Appendices	
Appendix 1	Risk Register
Appendix 2	Equality Impact Assessment

Introduction and background

1. The Council continues to develop a programme of affordable housing supply through multiple work streams, including the direct delivery of units through Oxford City Homes Ltd (OCHL); joint ventures, such as Barton Park; regeneration schemes; and helping to enable delivery from Registered Provider partners, community-led organisations, and others.
2. OCHL has recently refreshed its business plan (to 2029) with the ambition of delivering over 2,200 new homes of mixed tenures over this period, including 354 new homes for Social Rent at Barton Park. The Housing Revenue Account (HRA) business plan currently expects to buy over 1,000 of these new homes from the company, with nearly 800 of these being at Social Rent, having to balance this with the demand for investment in existing stock, including responding to the climate emergency.
3. Officers continue to review opportunities to bring forward the development of further affordable homes to increase the supply available to help meet Oxford’s housing needs. This might take the form of developing more new homes; acquiring property to use as affordable housing; or switching tenures to improve affordability and access to these homes.
4. The OCHL development programme also continues to support a significant share of the Oxfordshire Growth Deal (OGD) programme by delivering affordable homes, using OGD grant, within the three years of that programme.
5. Developments are financially appraised on a scheme by scheme basis, and need to be viable and sustainable to move forward in the development process. Many schemes will require additional subsidy to fund costs, in addition to using borrowing and cross-subsidy from market units (sale or rent). Strategic issues that impact on scheme financial modelling includes Government policy; prudential borrowing rules;

and Public Works Loan Board (PWLB) rates, all of which have seen considerable change in recent years. On a site basis, there are also multiple influences on costs including the cost of the land; site and ground conditions; build costs; planning requirements; and valuations (most noticeably impacting on a reduced ability to cross-subsidise from market sale or rent in lower value areas). Should (public) subsidy be insufficient to bridge funding gaps, then developments may not be progressed, or may be re-modelled to reduce the number of affordable units (especially those at the more affordable Social Rent tenure) than might otherwise be supplied.

6. This report identifies some additional funding streams that the Council could use for the purpose of further driving the delivery of more additional affordable homes for rent, supporting scheme development financing with additional grant.

Retained Right to Buy Receipts

7. Retained Right to Buy Receipts (RRTBRs) are the receipts that the Council is able to retain to be recycled into new replacement affordable homes in accordance with the agreement signed in 2012, between the Council and Secretary of State for Housing, setting out the requirements for this, following agreement for the self-financing of the HRA. Receipts that are unspent after three years from the time of the sale must be returned to the Government, with interest (4% over base rate). This receipt/spend profile is monitored quarterly.
8. Spend must be on new rented social housing supply, at up to 30% of the qualifying spend (i.e. £1m spend can be financed by using up to £300,000 of RRTBRs). Currently, activity by OCHL does not qualify and is prohibited as suitable expenditure. The Council originally planned to use these funds as part of the financing for Barton Park, but when Government introduced a raft of financially negative proposals planned for the HRA in 2015 a significant review of HRA spending was required and consequently the Barton acquisitions within the HRA without the removal of the then debt cap, meant that it was therefore an unviable scheme for the HRA. Consequently, the Council took the decision that the social housing on this site would be owned by OCHL, so using RRTB to part fund these acquisitions was no longer an option.
9. To date, the Council has used RRTBRs to support considerable investment across the General Fund and the HRA. This has included:
 - a. **£10m** investment in the National Homeless Property Fund (NHPF) – using £5m of Council funding and £5m match funding (c.£3m of RRTBRs used)
 - b. **£5m** of further Council investment in the NHPF round 2 – with c.£0.5m investment from other parties in Oxford as a result (using c.£1.7m RRTBRs) – which together with round 1, has acquired 70 properties locally to be used to prevent households from becoming homeless, as well as providing an investment return for the Council
 - c. **£10m** investment in acquiring properties for temporary accommodation use and supporting the switch from leasing to owning such units, saving money for the Council; improving quality; and ensuring suitable accommodation is available as required for statutory homelessness activity (c£3m RRTBRs used)

- d. **£2.4m** spend in the HRA to purchase 10 additional permanent units to let at Social Rent, off-plan, from a development in Didcot (using c.£0.7m RRTBRs)
 - e. **£1.5m** spend on acquiring larger homes, to meet the needs of larger families, at Social Rent and within the HRA, using funding from a property disposal and boosted by additional RRTBR funds (c.£0.4m)
10. The Government proposals following its Aug-Oct 2018 consultation on the use of RRTB funds is currently awaited. This consultation indicated that the Government could be considering extending the deadline for the receipts currently held by Council's from 3 to 5 years, there were also indications that this could be monitored annually rather than quarterly; and that in high demand/ high cost areas, receipts might be able to be used at 50% of cost rather than 30%, with combined top-ups with other grant funding also possible. Limitations on using RRTB funding for property acquisition rather than direct new build, in areas where the latter is cheaper were also mooted, as are possible opportunities for use of funding by housing companies, in certain circumstances. There is currently however, no indication as to when an announcement on any of this may be made. Recent representations by officers, in relation to asking for additional flexibilities under the Oxfordshire Growth Deal, have not been supported by Government to date.
11. The Council currently has over £4.6m of RRTBRs unallocated to a project – spends to date having been set out above. This requires 'qualifying expenditure' of over £15.5m to use the receipts and ensure they do not have to be returned to Government.
12. In the Consultation Budget report to Cabinet, a proposed spend allocation of **£13.2m** is proposed for 2020/21. Minimum 'spend' by the end of each quarter of 2020/21 in the following profile is required. 'Spend' can be taken to 'start on site' for a development, rather than an actual completion.

Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
£2.3m	£0.5m	£6.4m	£4.0m	£13.2m

13. There is approximately £705,000 of RRTBRs that require spend in 2021/22 (having resulted from RTB sales in 2018/19. This is less, due to a fall in the amount of RTB sales, and this lower level of sale activity is currently predicted to continue. Qualifying spend of **£2,350,000** is required to use this, and a spend allocation is also proposed in the Consultation Budget, for this sum, in 2021/22.

Recycled Capital Grant Fund (RCGF)

14. The Council has only recently received £111k of funds under this regime. The restrictions and requirements for use are broadly similar to RRTBRs. The funds are the result of sales from the HRA units more recently built by the Council under the Homes England (formerly HCA) AHP1 programme. As with RRTBRs this fund must be used within three years of receipt and be spent at 30p in the pound of 'qualifying expenditure'. Spend must be requested via an application to Homes England, in accordance with their grant conditions (The Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2017). The requirement for spend currently is **£370,000**, profiled as follows:

Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
£186,500	0	£181,500	0	£370,000

Section 106 Affordable Housing Contributions (“s.106 funds”)

15. The Council seeks to secure on-site affordable housing on development schemes through the planning process, where possible, but will take a financial contribution to support affordable housing development in alternative locations in some circumstances. These include schemes of 9 units or less and student schemes, in accordance with the current Local Plan, and the recently changed position in relation to policy HP4 of the Sites and Housing Plan. A significant contribution, in lieu of affordable housing, was also taken from the Westgate development.
16. There are few grant conditions on s.106 receipts for affordable housing, other than that they are used for this purpose within Oxford. The funds held by the Council currently amount to £8,146,843, with over £2.5m of further contributions expected by the end of the 2020/21 financial year, at which point the fund would be expected to exceed **£10.5m** if there continues to be no expenditure. Only two of the contributions have expenditure deadlines agreed with the developer (for £200k of contributions, requiring spend by Dec 2023).
17. The s.106 grant, unlike RRTBRs can be combined with other grant schemes, and could therefore be used to provide top-up funding to schemes currently under consideration. It is for the Council to decide on the operation and governance arrangements of such. Spend could therefore be considered for any affordable housing tenure. For auditing purposes, it may be decided to be best issued on unit completions, although this might be flexible also, depending on the scheme and the provider/ developer circumstances.

Proposals for Spend

18. There are a number of scenarios where these additional funding streams could be of significant benefit in the development of the affordable housing programme. Due to the different restrictions, it is best to consider them as two separate funding streams.

RRTBRs and RCGF funds

19. Opportunities for spend need to be developed at pace. These could include the following initiatives:
- a. Purchase of a development off-plan. Where this does not include affordable housing, the funding could subsidise the purchase cost to the HRA and allow all the units to be used for Social Rent. In scenarios where schemes already include affordable housing, to ensure planning compliance, the HRA could still seek to purchase the affordable units from the developer using this to

subside the purchase cost, although less additionality might be achieved in such a scenario

- b. Recognising that there are very limited opportunities for such off-site purchases, within Oxford or its immediate vicinity within the timescales required (starting on-site in 2020/21, and noting the quarterly deadlines also), officers should also mobilise to re-start an acquisition programme by buying units from the open sale market. This can achieve high levels of value for money, especially in the re-purchase of property where the Council is the free holder. It will require resourcing, and in-house resource is less likely to be able to support this at present, requiring a contractual arrangement for the property search function with a third party. Such an initiative will also not be able to purchase a sufficient volume of properties that are suitable and of the right value from the local market in this timescale
- c. Officers should explore whether some market sale units from OCHL schemes could be purchased by the HRA using RRTBRs, on smaller schemes (under c. 30 units) where tenure mix is not a requirement to ensure the long term sustainability and community mix in a development.
- d. RRTBRs can also be used on land purchases, and officers should explore and action any possibilities for this also, including the consideration of any voluntary sales or CPOs to support development or possible regeneration schemes, or purchases from other public authorities.
- e. Should HRA capital commitments be close to the agreed debt cap/ prudential borrowing limits, then officers should consider further General Fund options for spend, this being temporary accommodation for homeless households, and bring forward a further report to Cabinet and Council should this be considered viable.
- f. Officers should continue to explore further options to use RRTBRs and RCGF flexibly to ensure spend and increasing affordable housing supply.

20. It is proposed that RRTBRs and RCGF are spend up to the full financial envelope available, as outlined above.

S.106 Funds

21. These funds can be used more flexibly with other public grants. As such, it is proposed that further opportunities for spend should be explored and actioned, including:

- a. Determination of the likely requirement to support the affordable housing element of the Blackbird Leys District Centre regeneration project, and other subsequent estate regeneration schemes. As such, only £3m of these funds are being included in this report. Further reports to Cabinet will relate to other proposed expenditure of s.106 funds, such as the Blackbird Leys District Centre regeneration project.
- b. For the creation of a top-up fund to improve the viability of schemes that are proposed, or might be brought forward, through the Oxfordshire Housing and Growth Deal. This additional injection of funds might allow schemes to be accelerated and be brought forward faster; make them viable or viable to be

developed within the Growth Deal when otherwise they might not be able to; or allow for a greater proportion of affordable rented homes (preferably Social Rent) to be supplied within a scheme. The Growth Deal grant rate for Social Rent is currently £55k per unit, whereas the Homes England AHP programme will support grants for Social Rent in this area of £75k. A £20k top-up grant, may be able to improve viability by closing this gap and recognising the high and rising cost of development in this area. Officers from across the Oxfordshire Districts are engaging with the Growth Deal team to agree a common value for money assessment framework for assessing such grant awards (aligned to similar Homes England processes).

- c. A top-up fund might also be used to fund the difference in capitalised valuations of seeking to switch the tenure on a small number of schemes, from shared ownership to affordable rent, thus improving affordability and access to persons in housing needs from the housing registers.
- d. A local enabling grant could also be considered, with the Council drafting a suitable prospectus and inviting submissions from RPs as to what they might be able to develop for the award of an agreed grant.

22. It is proposed that s.106 funds are used up to the limit of a £3m financial envelope available, as 'top-up' or 'enabling' grant for Affordable Housing, as outlined above, with subsequent reports to be developed for Cabinet relating to the remaining s.106 funds. Delegation for this spend rests with the Head of Planning Services as the signatory of s.106 agreements with developers.

Financial implications

23. This report seeks the required delegations to further develop the programme of affordable housing supply. The decision to proceed with any purchase or development will be supported by a financial model outlining short, medium and long term impacts on Council finance, and will require a neutral or positive impact in order to proceed.

24. Financial modelling on overall scheme viabilities will also be undertaken in relation to any grant programme, based on open book principles, to ensure that grant positively impacts on affordable housing supply as set out in this report.

25. In the event that the Council secures an opportunity for the purchase of a site/ multiple unit development, then the purchase price is likely to exceed general delegations (up to £500k). For this reason, this report recommends a further delegation to the Chief Executive, to provide for this circumstance and to allow the Council to move rapidly to enter into agreement should it wish to.

Legal issues

26. Sections 24 & 25 of the Local Government Act 1988 enable Councils to make grants and provide financial assistance for the purposes of the provision of more affordable housing.

27. It is proposed that any conveyancing for a new acquisition programme continues to be undertaken using existing resource provision available to the Council.

28. Grant funding agreements for top-up or enabling grants will be prepared and executed by the Head of Law and Governance to ensure value for money as well as effective and efficient outcomes from this investment, with grant only expecting to be awarded to Registered Providers.
29. The Council has considered the State Aid rules and to avoid any contravention it intends to adhere to the following four tests set out in the Altmark judgment (Case C-280/00) in relation to the provision of Services in the General Economic Interest (SGEI):-
- a. the grant recipient must have public service obligations to discharge which must be clearly defined
 - b. the parameters on the basis of which the grant is calculated must be established both in advance and in an objective and transparent manner
 - c. the grant cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit
 - d. where the grant recipient is not chosen in a public procurement procedure, the level of grant awarded must be determined by a comparison with an analysis of the costs that a typical undertaking would incur (taking into account the receipts and a reasonable profit from discharging the obligations).
30. The Council will monitor compliance with these tests by ensuring that the grant agreements contain clauses imposing requirements that:-
- a. any land purchased with or benefitting from grant funding is only used for the provision of social or affordable housing; and
 - b. the grant recipient must demonstrate that its costs of provision of the social/affordable housing are no greater than it would cost a typical well-run community led housing undertaking.
31. Officers will mitigate the application of State Aid rules by following public procurement rules in selecting any grant recipient wherever possible.

Level of risk

32. A Risk Register is provided at Appendix 1. The main risk identified is not spending RRTBRs or RCGF within the three year deadline from the time of receipt, and thereby being required to return the funds to Government with interest applied from the time of receipt.

Equalities impact

33. An Equalities Impact Assessment is provided at Appendix 2. There are no adverse impacts in undertaking this activity, with the potential to improve provision for persons in housing need.

Conclusion

34. That the Council agrees to spending as set out in this report to further support the delivery and enabling of more affordable rented housing accessible to help persons on the housing register to secure much needed permanent homes.

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Background Papers:	None

