

Executive Report

Ward(s) affected:

Report of Director of Resources

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Review of the Use of Right to Buy Receipts and Appropriation of Land into the Housing Revenue Account

Executive Summary

In 2019-20 the Council had to repay Right to Buy (RTB) receipts plus interest to government totalling £2.7million. The reason for the repayment was because the Council did not spend the money on its new build housing investment programme in the HRA within the required time frame. The Council has acquired property to try and mitigate some of the repayment risk however it did not spend enough money on acquisition of property into the HRA to mitigate all of the repayment risk. The Council has seen slippage in the region of 56% to 72% on its Housing Investment Programme (HIP) in recent years which continues into 2020-21.

The HIP is funded 30% through RTB receipts (with the remaining 70% being funded either through HRA reserves or, if necessary HRA borrowing) and as such, any slippage in delivery has a direct impact on the risk of having to repay receipts to government. In order to avoid this risk going forward the Council needs to improve both the monitoring and the delivery of its Housing Investment Programme.

The Executive have set up an Executive working group to consider why RTB receipts needed to be repaid to government, the reporting arrangements around the matter and what can be done to prevent further repayments. Alongside the working group, the Council's internal auditors, KPMG have been asked to carry out an audit of the HRA capital monitoring and specifically the monitoring and use of RTB receipts. The work of the working group is on-going however, this report is an initial report of its findings and presents some immediate actions to be taken.

The council should also consider whether it needs to expand the programme in order to provide scale against the risk of non-delivery. In order to do this, additional resource within the Council's Corporate Programmes team to deliver the projects and further resource within the Housing Strategy team (both funded from the HRA) may be required.

To help spend the RTB receipts in 2020-21, it is recommended that a number of land appropriations from the General Fund into the HRA are urgently agreed. Specifically that land at Guildford Park and Bright Hill is appropriated into the HRA for the purposes of housing development with immediate effect and that once Secretary of State (SoS) approval is provided, that the allotment land at Weyside Urban Village is also appropriated into the HRA for Housing development. The benefit of making these appropriations is that capital expenditure on the projects will become HRA expenditure and RTB receipts can then be used to fund up to 30% of the value of any affordable or social housing produced within the schemes. The appropriations provide an immediate opportunity to expand the Housing Investment programme as well as potentially providing savings to the general fund relating to borrowing costs of the schemes. The report goes on to provide further suggestions as to how the expenditure of RTB receipts can be accelerated, including the consideration of grants to housing associations and whether the council should acquire or develop housing outside of its borough boundary.

Finally it is recommended that the financial monitoring reports to corporate governance and standards committee are updated to incorporate information relating to what expenditure is required on the Housing capital programme in order to utilise all the RTB receipts in each financial year and that the expenditure on the approved capital programme only is measured against the value of expenditure required to ensure that RTB receipts are spent. It is also recommended that the Council re-invigorates the Major Projects Portfolio Board and ensures that funding risks are captured on project risk registers.

Recommendation to Executive

- (1) That the remaining land at Guildford Park car park be appropriated into the HRA with immediate effect
- (2) That the expenditure on the general fund capital programme relating to Guildford Park Car Park be transferred into the HRA following the appropriation
- (3) That no replacement car parking be delivered as part of the Bright Hill Scheme
- (4) That the Bright Hill car park be appropriated into the HRA as soon as possible once an appropriate valuation is received and that the car park be closed for redevelopment once the lease to the hospital expires
- (5) That, once Secretary of State approval and an appropriate valuation is obtained, the allotments site (Plot 1) at Weyside Urban Village be appropriated into the HRA and that the Council commits to delivering Plot 1 at Weyside Urban Village as either a fully affordable or mixed tenure project within the Housing Investment Programme
- (6) That further consideration be given as to whether key sites within the Guildford Economic Regeneration should be appropriated into the HRA for Housing Development in due course
- (7) That the acquisition strategy, as set out in paragraphs 3.31 to 3.33 of the report, be approved.
- (8) That a supplementary estimate of £2.2million, to be funded from HRA reserves, to increase the HRA acquisition budget to £7million for 2021-22 be approved, and that the supplementary estimate be moved straight onto the approved capital programme
- (9) That the HRA acquisition budget of £3million for 2021-22 be moved from the provisional to the approved capital programme
- (10) That the Major Projects Programme Board be re-invigorated in a revised form
- (11) That a Councillor/Officer Housing Working Group be established to monitor delivery of the Housing Investment Programme and to continue to develop the pipeline of projects.

- (12) That a formal Use of Retained Right to Buy Receipts Policy be developed and brought forward for adoption by the Executive at a later meeting
- (13) That further legal advice be sought on the matter of whether granting RTB receipts to local housing associations, other local authorities (without a HRA) or other registered providers is a viable option for the Council and subject to that advice, officers be authorised to enter into discussions with local housing associations to ascertain if there would be a willingness to partner with the Council in this regard.
- (14) That additional resources within the Housing Strategy and corporate Programmes team be approved to accelerate delivery of the Housing Investment Programme
- (15) That officers be requested to consider the logistics and viability of acquiring or developing housing outside of the borough boundary to increase its housing stock within the HRA.

Reasons for Recommendation:

To facilitate the delivery of affordable housing in the borough and try to mitigate the risk of repaying RTB receipts to government in the future

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

- 1.1 The purpose of this report is to review the use of right to buy receipts and seek Executive agreement to appropriate land owned by the Council in its General Fund, into the Housing Revenue Account (HRA). The land is no longer required for the purpose for which it is held immediately prior to the appropriation and it is the intention of the Council to redevelop the land for the purposes of Housing (residential) led development.

2. Strategic Priorities

- 2.1 The Council's emerging new corporate plan includes a priority to provide affordable housing and jobs through regeneration and to facilitate high quality development of strategic sites. The Council's Corporate Plan 2018-2023 includes a strategic priority under the place making theme to deliver the Guildford Borough Local Plan and provide the range of housing that people need, particularly affordable homes.
- 2.2 In addition the Action Plan in the 2018-2023 Corporate Plan included actions to start delivery of the Slyfield Area Regeneration Plan and to complete the development of the Guildford Park Car Park site.

3. Background

- 3.1 In February 2018, the council received its final report from the LGA Peer review undertaken in the Autumn of 2017. One of the recommendations within the report was to explore how the Council's considerable financial muscle can support delivery of strategic outcomes for the Borough and whether the Housing

Revenue Account Borrowing headroom could be used to stimulate mixed development.

- 3.2 Since the report, the Section 151 officer has been researching how the Council could utilise its HRA more to help finance some of the regeneration schemes of the Council. As well as looking at examples from other Council's, Officers have commissioned two pieces of legal advice and guidance on use of HRA resources and more lately, guidance around appropriation of land between the General Fund and HRA.
- 3.3 Alongside the above research, the council has a significant issue with identifying and then delivering schemes within the Housing Investment Programme (HIP) within the HRA. Whilst schemes on some of the smaller sites have been successful, a number of larger schemes in the Housing Investment Programme in the HRA capital programme have, for various reasons, seen significant slippage in delivery which has resulted in the council needing to repay RTB receipts to government during Quarter 4 2018-19, throughout 2019-20 and is at risk of having to repay further receipts in due course.
- 3.4 In order to understand the reasons why the repayments were necessary, review the monitoring and reporting arrangements and identify actions that will need to be taken to mitigate the impact of further receipts being repaid to government, the Executive have set up a working group. The work of the working group is on-going however, this report is an initial report of its findings so far and presents some immediate actions to be taken.

Review of HRA Housing Investment Programme (HIP) Delivery

- 3.5 Since 2018-19 the slippage in delivery of the HIP has ranged from 56% to 72% causing significant underspends. This slippage in delivery and a low level of additional schemes in the pipeline, has led to the Council being required to return just under £2.7million of receipts from the sale of council houses under the right to buy scheme to the government.
- 3.6 The repayment has occurred because the Council was unable to spend enough money on the HRA housing investment programme or acquire enough property into the HRA within the 3 year time frame required to spend the receipts.
- 3.7 A summary of actual expenditure incurred in comparison to budget for 2018-19 and 2019-20 is shown in the tables below:

Scheme	2018-19			
	TOTAL Budget (Approved & Provisional)	Actual Outturn Spend 31.3.19	Difference	% Slippage
Acquisition of Land & Buildings	2,800	519	-2,281	81%
New Build Programme				
Lakeside Close, Ash	0	25	25	
Guildford Park	4,830	341	-4,489	93%
Appletree pub site	2,476	2,209	-267	
Slyfield Green (Corporation Club)	200	0	-200	
Willow Way	300	179	-121	
Garage sites-	1,100	498	-602	55%
The Homestead	50	329	279	
Fire Station/Ladymead	1,800	643	-1,157	64%
Bright Hill	3,475	0	-3,475	100%
Pipeline projects	0		0	
Redevelopment bid 13	0		0	
Redevelopment bid 14	0		0	
Equity Share repurchases	400	143	-257	
TOTAL Housing Investment Prog (HIP)	17,431	4,885	-12,546	72%

Scheme	2019-20			
	TOTAL Budget (Approved, Provisional & Carry Forwards)	Actual Outturn Spend 31.3.20	Difference	% Slippage
Acquisition of Land & Buildings	2,581	1218	-1,363	53%
New Build Programme	0			
Lakeside Close, Ash	0		0	
Guildford Park	1,106	0	-1,106	100%
Appletree pub site	436	719	283	-65%
Slyfield Green (Corporation Club)	72	61	-11	15%
Willow Way	48	2	-46	96%
Garage sites-	189	79	-110	58%
The Homestead	0		0	
Fire Station/Ladymead	1,257	1,257	0	0%
Bright Hill	500	0	-500	100%
Pipeline projects	575	55	-520	
Redevelopment bid 13	533	0	-533	
Redevelopment bid 14	300	0	-300	
Equity Share repurchases	400	155	-245	
TOTAL Housing Investment Prog (HIP)	7,997	3,546	-4,451	56%

3.8 The above tables are an extract and manipulation of the data included in the regular financial monitoring reports that are presented to corporate governance and standards committee. The data has been manipulated to remove the major repairs programme to existing stock and to bring together the approved and provisional capital programme. As can be seen in the tables, there has been significant slippage in expenditure on projects such as Guildford Park and Bright Hill compared to budget for both financial years. The fact that this slippage was

occurring, that there were delays to the projects and the reasons why, were reported through to councillors at the Major Projects Portfolio Board (MPPB) as part of the summary of progress on projects and at a higher level, the Corporate Governance and Standards Committee through the provision of regular financial monitoring reports.

- 3.9 In addition, there was slippage in excess of 50% on the garage sites and the fire station/Ladymead projects from 2018-19 to 2019-20 although the fire station site was completed in 2019-20. During 2019-20 there was also slippage on the pipeline projects and redevelopment schemes 13 & 14. There was also minimal expenditure on the acquisition of new property into the HRA in 2018-19 (despite having a budget of £2.8million) although this activity increased in 2019-20.
- 3.10 The Housing Investment Programme is funded approximately 30% from Right to Buy (RTB) receipts and 70% from the HRA New Build reserve or other HRA capital receipts reserves; the funding of the HRA capital programme is set out within the Council's budget reports. Under government rules, RTB receipts have to be spent within 3 years and can only fund 30% of the cost of replacement housing, the constraints on use of RTB receipts are also set out in the Council's HRA Budget reports. The Council is required to fund the remaining 70% of the HIP from its own resources. The Council has substantial HRA reserves and also has the ability to borrow within the HRA to finance its 70% share of the HIP. In future there may also be S106 developer contributions which would also be available to help finance the programme. However, any slippage or under delivery of the projects in the HIP has a direct impact on the Council's ability to use its RTB receipts within the 3 year timeframe. If money is not spent on the programme the council is legally obliged to pay RTB receipts to government with interest calculated at 4% above base rate.
- 3.11 It is worth noting that replacement housing has to be additional units only so in cases where the Council may undertake the major redevelopment of existing sites it is only the cost of developing any increase in the overall number of units on site that can be funded through RTB receipts. The cost of replacing the existing units with the same number of units needs to be funded by the Council's own resources. Where the HRA is also delivering market housing the RTB receipts can only be used to fund 30% of the cost of the social or affordable units delivered in a scheme.
- 3.12 In addition to the need to deliver the existing schemes in the HIP, there is some concern that the overall size of the HIP may not be sufficient and requires expansion with new schemes. Expanding the programme should help mitigate the risk of future RTB repayments because there will hopefully be enough schemes moving forward in the programme that delays on any one scheme would not be such a sufficient part of the overall programme that the Council would have to repay receipts to government in future.
- 3.13 Receipts from RTB can also be used to finance acquisition of affordable housing into the HRA or to make grants to Housing Associations and other arm's length organisations to deliver social / affordable housing subject to the grant funding meeting the criteria set out in the RTB retention agreement. It is important to

note however that RTB receipts cannot be passed to an entity such as North Downs Housing, within which the council has a controlling interest.

- 3.14 Existing schemes within the HIP for 2020-21 and 2021-22 are shown in the table below:

Scheme	2020-21			2021-22		
	Approved	Provisional	TOTAL Budget	Approved	Provisional	TOTAL Budget
	£000	£000	£000	£000	£000	£000
Acquisition of Land & Buildings	1,800	0	1,800	1,800	3,000	4,800
New Build Programme						
Lakeside Close, Ash			0	0		0
Guildford Park	0	6,760	6,760	0	14,499	14,499
Fire Station/Ladymead	25	0	25			0
Bright Hill	500	1,500	2,000		4,380	4,380
Weyside Urban Village					3,000	
Various small sites & feasibility/Site preparation	0		0		0	0
Pipeline projects	2,250		2,250	3,325	0	3,325
Redevelopment bid 13	553	3,197	3,750		9,058	9,058
Redevelopment bid 14	250	1,000	1,250		2,500	2,500
Equity Share repurchases	400	0	400	400		400
TOTAL Housing Investment Prog (HIP)	5,778	12,457	18,235	5,525	36,437	38,962

Review of Right to Buy repayment risk for 2020-21 and 2021-22

- 3.15 The total budgets for the Housing Improvement programme are shown above. The total budgets are of sufficient value to ensure that RTB receipts can be fully utilised in each year. Schemes and budgets which are on the provisional programme, whilst in the pipeline, are still awaiting Executive approval of a final business case to commence, as such, the likelihood of them moving forward at pace and being fully spent within the relevant financial year is low, particularly on larger and more complex schemes such as Guildford Park. Funding of the HIP and therefore the monitoring of the use of RTB receipts is currently measured against the total budget for the overall programme. Given recent experience and the time limit within which RTB receipts can be spent, it is now the view of the S151 officer that the Council needs to monitor the use of right to buy receipts against the approved HRA capital programme only. This is because if a scheme is still on the provisional programme then it is not in delivery. Monitoring the level of RTB receipts required to avoid repayment against just the approved capital programme should give us early warning of a repayment risk in the future. This will be included in the regular financial monitoring reports to Corporate Governance and Standards Committee and in the Council's budget reports going forward.

- 3.16 In order to ensure there is no repayment risk of RTB receipts going forward, the Council needs to spend a minimum of £7.1million on affordable or social housing the HIP in 2020-21 and if it did that, it would need to spend a further £5.5million in 2021-22. These figures are taken from the Council's RTB model.
- 3.17 The period 8 financial monitoring reported to Corporate Governance and Standards Committee in January 2021 reported that the Council has spent £3.5million on the HIP up to the end of November 2020. At that point, project managers were reporting that the Council was on schedule to spend £7.4million by the end of the financial year and so was just about on target to ensure sufficient expenditure would be incurred during 2020-21 to avoid having to repay further receipts to government. This position is currently being updated through the period 10 monitoring process which will report the position up to end January 2021 to CGSC in March, but early indications are that, due to low levels of expenditure between November and January, the Council still needs to spend a further £3.7million in 2020-21 to avoid the risk of repayment.
- 3.18 For period 10, Project managers are now reporting that they are likely to spend £5.6million by the end of the financial year against an approved budget of £5.7million (as per paragraph 3.6), which on the face of it doesn't give any cause for concern. However, review of the monitoring report shows that £4.3million (95%) of the expenditure is projected to have been incurred on the acquisition programme and only 5% on the new build development programme whereas the budget had indicated that only 31% should be on acquisition and the remaining 69% of the budget should be on the new build programme. Therefore the slippage on the New Build Programme is continuing.
- 3.19 Comparison of forecasted expenditure to approved budget, however, still doesn't identify a risk that RTB receipts will need to be repaid, the expenditure needs to be compared to what expenditure is required as per the RTB model. It is worth noting that the actual amount that may need to be paid to government is complicated by how many RTB sales there have been in year and the fact that the position is calculated cumulatively. The RTB model itself is a rather complicated spreadsheet and so has not been presented as part of this report. An estimate of expenditure required from the RTB model is not currently stated in the HRA Capital Budget, Capital Monitoring or HRA Capital Outturn reports to CGSC and as far as we can tell, never has been (or at least has not been since 2015 when reporting to the CGSC was introduced). This will be immediately rectified on the Period 10 monitoring report and all reports going forward will now include this information.
- 3.20 The RTB Model shows that the Council needs to spend a minimum of £3.7 million in Quarter 4 2020-21 in order to avoid repayment risk unless the government grants a further extension of time due to COVID. The profile of spend required in 2021-22 and future years on the HIP in order to avoid further repayment risk is as follows:

Year	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
	£	£	£	£	£
2020.21	0	0	0	£3.7million	£3.7million
2021.22	£2.068million	£422,000	£838,000	£2.136million	£5.5million
2022.23	0	£1.769million	£2.236million	£3.301million	£7.306million
2023.24	0	£1.643million	£262,000	0	£1.905million
TOTAL					£14.674million

- 3.21 Given on-going slippage on the new build projects, this target may prove challenging unless the Housing Investment Programme can be accelerated and expanded.

Land appropriations

- 3.22 Under the Section 19(1) of the Housing Act 1985, the Council has the ability to appropriate land between the General Fund and the HRA. Officers have recently commissioned further advice regarding the power of appropriation and the conditions under which it can be used. The conclusion of the advice is that the Council may appropriate land into the HRA if it is no longer required for the purpose for which it was held immediately before the appropriation. In order to appropriate land into the HRA the Council will need a certified valuation and the decision to appropriate land needs to be taken. The Head of Asset Management has delegated authority to take the decision but given its profiles the matter has been referred to the Executive.
- 3.23 The advice confirms that any land can be appropriated into the HRA as long as there is a documented intention to use the land for housing purposes. If land is appropriated into the HRA then all income, expenditure, reserves and borrowing in relation to the land will be accounted for within the HRA from the date of appropriation. As well as appropriating land for housing purposes into the HRA, the Council can also give consideration as to whether the land should be appropriated for planning purposes.
- 3.24 The ability to appropriate land is considered specifically in relation to a number of projects not currently within the HRA below.

Potential solutions for the use of Right to Buy Receipts

Guildford Park Car Park

- 3.25 Land at Guildford Park Car Park was originally held by the Council within the general fund. The site is allocated for housing development within the Council's local plan and has previously been granted planning permission for housing development. One third of the site, specifically relating to the area of the site on

which affordable housing would be developed has previously been appropriated into the HRA in the financial year 2017-18. The value of the land appropriated at the time was £1million. However, two-thirds of the site currently remains in the Council's general fund. At the time this decision was made, the structure of the project was that the building of the multi-storey car park within the scheme would be paid for by the sale of the market housing being developed. As such the area of land required for the market housing and car park remained within the general fund.

- 3.26 On 26 May 2020 a report on the Parking Study and Impact on Guildford Park Road and Bright Hill Car Parks was considered by the Executive. The study found that the original decision to develop the sites with replacement parking was no longer required and the Executive decided to authorise officers to seek planning permission for a purely residential scheme on the site. The intention for the new scheme is to be a purely housing scheme and the political ambition of the Executive is to maximise the amount of affordable housing that can be provided on site subject to viability constraints. The current target is for officers to submit a revised scheme for planning approval in the Autumn of 2021.
- 3.27 As the project is now an entirely housing project, it is proposed that the remaining land still held in the general fund is now appropriated to the HRA. The existing use value of the whole site was valued at £3.27million in August 2020 so the value of the remaining land to be appropriated would be around £2.18million but this will need to be confirmed by an independent valuer. The value of the land being appropriated is not a cash transaction but will result in an adjustment between the HRA Capital Financing Requirement (CFR) and the General Fund CFR. It is important to note that RTB receipts cannot be used to fund the value of the land transfer or the value of any market housing developed on site. The benefit of making this appropriation now rather than waiting for the new scheme to be submitted for planning permission, is that there is currently £3.44million of expenditure relating to ground works, site preparation and utility diversions which is currently sitting within the general fund capital programme which, once the executive has agreed to appropriate the land, can be moved into the HRA capital programme. Moving this expenditure into the HRA in Q4 2020-21 will mean that the HRA capital programme expenditure in 2020-21 will increase and therefore should substantially mitigate the risk of needing to repay RTB receipts to the government in respect of 2020-21.
- 3.28 Any further expenditure on this project going forward will then be fully accounted for within the HRA, increasing the likelihood of the Council being able to spend sufficient amounts on the Housing Investment Programme moving forward. All expenditure within the HRA on affordable / social housing replacement will reduce the risk of repaying RTB receipts to government.

Weyside Urban Village

- 3.29 As Councillors are aware, this project involves the movement of a sewage treatment works, council owned depot and waste transfer station, the remediation of land and then the development of 1500 homes on the remediated land. The main area of land on which the housing is to be developed is the land currently

occupied by the Thames water however, the land currently occupied by the allotments and the existing Council depot is also scheduled for housing development. The intention to develop Weyside Urban Village is well documented in Council reports and the site is an allocated site in the Council's local plan. The Council has received Homes England funding for the infrastructure phase of the project and as such would not be able to fund the infrastructure phase of the project partially using RTB receipts. However, following completion of the infrastructure phase, the housing development land will be parcelled up into 10 plots. It is proposed therefore that the plot of land relating to the allotments site is appropriated into the HRA for Housing development purposes following approval both of this report and a decision to move the allotments being granted consent by the Secretary of State (SoS). Given that we need SoS approval to move the allotments it is anticipated that the appropriation will not be possible until the Autumn of 2021 at the earliest. Any further expenditure relating to the development of the allotments site at Weyside from that point forward would then also become HRA expenditure and expenditure on provision of affordable housing within the site could be partially funded from RTB receipts.

- 3.30 In order to appropriate the allotments site, a valuation will be required which will result in an adjustment being made between the HRA CFR and the GF CFR. It is also proposed that in due course, once all of the housing development land is assembled and in the Council's ownership that it is appropriated into the HRA.

Bright Hill

- 3.31 Bright Hill is a car park within the general fund which has been allocated for housing development within the Council's local plan. It is a long-standing project of the Council. In the past the scope of the project was to redevelop the land for both housing and replacement car parking. As such, the site has not yet been appropriated into the HRA. As set out in paragraph 3.17 the Executive agreed in May 2020 that replacement parking was not required but that it might be worth providing within the scheme if the cost of doing so had a payback period of less than 10 years. Currently the car park is only being partially utilised due to issues with a retaining wall. Since May 2020 the impact of the Covid pandemic on car parking income and the need for car parking in the town has been substantially reduced. As such, it could be judged that the consideration of replacing the parking if there was a 10-year payback is also no longer required and that the site should be developed purely for housing. If Executive were now to take a clear decision not to replace the parking as part of this report then, although the land is still operating as a car park at the moment, it could be deemed to be no longer required for the purpose of providing car parking into the future and appropriated into the HRA. If the land is appropriated into the HRA then it should be considered whether the car park should be closed once the lease to the hospital expires, this has been discussed with the relevant service leader who has agreed with the proposal.
- 3.32 If Executive wish to appropriate Bright Hill car park into the HRA then a valuation of the land will be required in order to make the necessary adjustments to the HRA and GF CFRs. If the land is appropriated, all future expenditure in relation

to the development will fall on the HRA and expenditure in relation to development of affordable housing units could be partially funded from RTB receipts. The Council currently has a budget of £13.5million on its general fund capital programme which is scheduled to be spent between 2022-23 and 2023-24 which could be moved into the Housing Investment Programme. Investigations as to whether this project could be accelerated so that the expenditure comes forward at an earlier stage could also now be undertaken.

Guildford Economic Regeneration Programme

- 3.33 The above programme is currently being developed and scoped and is at an early stage, however, if as part of this programme residential development is proposed on any council owned land within the red line of the development then it is recommended that officers seek to appropriate the land into the HRA at the earliest opportunity. This may need further evaluation and should be the subject of a further report. However the Executive could provide a clear direction to the project team to investigate which land should be appropriated to the HRA as part of the programme.

Other transfers

- 3.34 The Council should undertake a review of other General Fund Accommodation and consider transferring general fund accommodation to the HRA to allow development for affordable housing. Officers are currently investigating an opportunity to transfer two general fund properties on York Road to the HRA for affordable housing development and will report further on this in due course. In addition, the Operational Asset Service Challenge review currently being worked on by the Council's asset management team may identify further opportunities.

Formalisation of HRA Acquisition Strategy

- 3.35 Since the Acquisition of property into the HRA was started in June 2019 the Council has acquired 15 properties into the HRA. These have been a mixture of buy-backs of previous housing sold under right to buy and also acquisition of affordable housing 'off-plan' from developers. It is proposed that the Council continues with its acquisition strategy and substantially increases the budget for acquisition of property into the HRA as if the new build development programme does slip, acquisition is one of the quickest ways to ensure we can continue to meet the expenditure target in order to mitigate the RTB repayment risk.
- 3.36 The first priority for acquisition should be to negotiate with developers to acquire property for affordable housing available for rent 'off plan' from developments. The Council is in a unique situation to be able to negotiate this it will have an insight as to what developments are coming forward at pre-application stage. It is proposed that as developments come in for pre-application stage advise that the planning team officers should provide the details of the applicants to the housing team so that the housing team can make contact and try to negotiate or influence developers to develop affordable housing for rent rather than affordable housing for sale and to enter into an acquisition agreement with the Council for the council to acquire the property into its HRA. This should be the first priority as buying off planned developments means that the overall amount of affordable

housing within the borough is increased. Officers are currently investigating this option with a view to estimating the potential supply this could bring.

- 3.37 The second priority for acquisition should be to re-acquire property that has been previously sold under right to buy. This has two advantages:
- The council should already have a first right of refusal to reacquire the property at a discounted price when the property is first sold on.
 - Re-acquiring property may enable the council to increase ownership again over a particular road or area which will then give the council scope to carry out a regeneration of the road or estate to redevelop existing properties that may be coming end of life and to potentially increase the density of housing within the area.
- 3.38 Many other local housing authorities are carrying out 'estate regeneration schemes. One of the Council's pipeline projects currently relates to such a scheme and the Council is actively trying to buy back property which has been formerly sold within the scheme boundary to enable a regeneration scheme to be brought forward.
- 3.39 Finally acquisition of market property into the HRA could be considered but this is likely to be expensive and either unviable or poor value for money over a 30 to 40 year business plan period due to the high value of market property in the borough and the level of affordable rent that can be charged.
- 3.40 The Council has a budget of £1.8million on the 2021-22 HRA approved capital programme and a further £3million on the provisional capital programme to spend on acquisition of property into the HRA. It is proposed that this budget is increased through a supplementary estimate of £2.2million to an overall budget of £7million and the budget is moved from the provisional to the approved capital programme to allow the acquisition programme to continue and be expanded during 2021-22.
- 3.41 Officers have recently been made aware of some software used by other Council's which may help locate suitable properties for acquisition into the HRA taking into account housing need and location of existing HRA property for estate management purposes. Officers are currently investigating whether the software will be of use to aid officers with the acquisition programme.
- 3.42 A further option for consideration is whether the Council would wish to acquire property outside of the local borough boundary into its HRA. Officers have been made aware of a number of London Borough councils that have both acquired and developed housing for affordable rent outside of their borough boundary. Given the value of land within the borough this could be a cheaper option but would involve making a conscious decision to house tenants and people on the Council's housing waiting list outside of the borough which could be controversial.

Consideration of Grants to Housing Associations

- 3.43 Examples from other authorities have now been found where an authority has 'gifted' RTB receipts to another registered provider such as a housing association or another local authority that does not have a HRA but is keen to stimulate delivery of affordable housing. Typically, this has been where a local authority has grant funded the provision of affordable housing with housing associations where the additional funding makes the provision of affordable units for rent viable, and so increased the number of schemes/units. There are examples where other councils have decided not to try and use RTB receipts directly themselves but have invited bids from Housing Associations and other registered providers to use the money on their schemes. Examples include cases where
- a registered provider has a scheme which they can afford to produce shared ownership or affordable rent tenures but the use of RTB receipts allows the provider to deliver the units as social rent over which the Council can then have nomination rights
 - or where the use of RTB receipts will allow a registered provider to deliver more affordable units than the planning policy requirement.
- 3.44 The benefit of considering granting the receipts to a housing association is that at present, housing association tenants do not currently have the right to buy although there are government proposals to potentially change this. It is unclear how much appetite there would be from local Housing Associations for this option however, if it is something that the Executive wish to consider it is proposed that further legal advice on the matter is sought and subject to the outcome of that advice, Officers are authorised to discuss the option with local housing associations.

Constraints on Delivery

- 3.45 One of the constraints on delivery within the HRA is the ongoing Right to Buy, which in turn then creates further receipts and the issues with their use, this includes the fact that the use of the receipts does not allow for replacing losses on a real one for one basis, and there is no protection for high demand stock. There can be problems with trying to keep pace with delivery particularly where there is a limited pool of new schemes, high land values and where the numbers to be delivered will be at the levels proposed. In addition to which if the units can then be sold at a heavy discount there is an impact on viability of development schemes. We need to consider whether, as a sensible investor, if we want to risk an investment in an asset that might have to be sold at a 70 percent discount later. As a result one of the options the Council must consider is whether it wishes to withdraw from the RTB retention agreement with Government due to the issues outlined in spending the receipts and the financial penalty in terms of interest payments for not spending the receipts.

4. Governance and communication arrangements

- 4.1 In previous years, the Council had an internal Housing Working Group, which was an officer only group that used to monitor the delivery of the projects within

the Housing Investment Programme. The group consisted of members of both the Housing and the Finance teams. This group was disbanded around the end of 2017-18 due to the retirement or departure of key members of the group and monitoring meetings were then held between the relevant Director, project managers and members of the Finance team only. As part of these meetings, members of the finance team did report to the Director that repayments of RTB receipts had been necessary, the values involved and discussed options for mitigating the repayments. It is proposed that this working group be reinvigorated with appropriate officers covering housing strategy, housing development, tenant services and the finance team but for it to also include the Lead Councillors for Housing and Finance going forward. It is proposed that the Head of Housing leads the internal officer working group.

- 4.2 At councillor level, as well as regular financial monitoring reports to Corporate Governance and Standards Committee, the monitoring of Housing Investment Programme projects such as Appletree Pub, Bright Hill and Guildford Park sits within the remit of the Major Projects Portfolio Board which is essentially an Executive working group. The MPPB receives a summary update from each project manager relating to brief description of the project and outcomes, the progress on the project, and whether it is on target. The MPPB summary report does not however incorporate key risks identified on projects and it might be useful to do so going forward, particularly as a number of projects are now externally funded or have time limited funding. The risk of project slippage on an individual project funding stream should be captured as a key risk in a project risk register and reported at summary level to the MPPB. Due to the Covid pandemic, the MPPB has not physically or virtually met since March 2020 and the lead councillor for regeneration has expressed a view to revise the format of the board. In order, to help monitor the progress of delivery of the HIP projects going forward it is suggested that a revised MPPB or similar body reconvenes to meet virtually. The Council has recently implemented a new Programme and Project Governance framework and the Housing development team has now formerly moved into the corporate programmes team. As such the governance around projects and reporting to Councillors should already be improved moving forward.
- 4.3 Prior to May 2019 there was also a Planning Policy and Housing Delivery Board which, as part of its remit, covered looking at identifying and evaluating options to increase the delivery of new housing, however the remit of this board was wider than just the Council's Affordable Housing programme. Since May 2019 the board has continued with different membership and its objectives have narrowed to focus on housing delivery to meet the local plan requirements.
- 4.4 Informal one to one meetings are normally held between Directors and their relevant lead councillors. It is understood that meetings were regularly held between the relevant Director for Housing and the Lead Councillor for Housing. Although key individuals have now left the Council, remaining members of the finance team have confirmed that they attended a meeting between key individuals and the relevant Lead Councillor for Housing and another councillor during 2019-20 where the issue of delays to the HRA capital programme and the impact on the use of RTB receipts was discussed. It is understood that the Lead Councillor for Housing was informed that repayments of the RTB receipts were

occurring in 2019-20. However, it is also understood that there had been an intention to write a briefing note on the matter to the council's management team and executive liaison meeting. Unfortunately, due to other issues and priorities, and the departure of key individuals it appears that the briefing note was not produced and as consequence, wider members of the Executive may not have been aware of the issue. That said, in August 2019, a significant discussion took place between Officers and Councillors at the management team / executive liaison meeting in relation to the Guildford Park Car Park scheme, the issues around development of the car park and potential options of how to proceed with the scheme were discussed. Officers recommended the housing part of the scheme proceeded whilst the area related to the car park was redesigned. Prior to the meeting members of the finance team had advised the Housing team to raise the risk of RTB receipt repayments as part of the presentation and briefing provided to the meeting, as one of the reasons why the housing element should continue and not be delayed. Unfortunately, the matter was not included in the presentation however, a number of officer's recall that the matter was raised verbally but have been unable to provide evidence. Councillors present have stated they do not recall the matter being raised and so as there are varying recollections of the discussion, it cannot be categorically proven one way or the other. In future the consequences of underspending on the HRA capital programme in terms of repayment of RTB receipts will be regularly highlighted the Corporate Governance and Standards committee reports and the budget and outturn reports to Executive.

- 4.5 It is worth noting that the repayments to government have been properly accounted for and reported in the Council's Annual Statement of Accounts in line with CIPFA guidance. The Statement of Accounts is presented to Corporate Governance and Standards Committee and externally audited each year. Whilst at the time of writing, the auditors have yet to sign off the 2019-20 accounts for unrelated reasons, there were no issues raised in respect of this matter in the draft audit report presented to Corporate Governance and Standards Committee in November 2020. The transaction for the repayment of the RTB receipts to Government is known in local government accounting terms as a 'below the line transaction' as under accounting regulations it runs through the Council's comprehensive income and expenditure account below the 'Net Cost of Services' (i.e., it is not included in service costs) and then is reversed out through the movement on reserves statement because it isn't a 'real charge on the council tax payer'. As such the transactions are accounted for within the Council's balance sheet codes on the finance system rather than the Council's revenue or capital income and expenditure codes. The accounting treatment is an important factor in understanding why the transactions relating to the repayment of RTB receipts were not naturally shown within the Council's regular financial monitoring reports but are shown in the Council's Statement of Accounts. The regular financial monitoring reports relate to the revenue and capital income and expenditure codes.
- 4.6 In addition, the external auditors also audit the annual (Quarter 4) Housing Pooled Capital Receipts return which is a statutory return which the Council submits to Government reporting the receipts received and the capital expenditure incurred during the period and which calculates the payment (if any) due to government. Again, although the audit report is yet to be finalised for

2019-20 no issues have been raised by the auditors relating to this statutory return. It can be concluded therefore that the repayment transactions are properly accounted for and reported in the Council's statutory accounts and returns.

- 4.7 A small number of examples have been found where other Councils have developed and adopted a formal 'Use of Retained RTB receipts policy'. An example of such a policy from Great Yarmouth Council has been shared with the working group which incorporated many of the ideas and aspects outlined above. It is proposed that the new Head of Housing develops a policy in consultation with the Lead Councillor for Housing and an Executive Advisory Board with the aim to have the policy adopted by Executive by the Autumn of 2021.

5. Key Risks

- 5.1 The key risk has been described in the report – that is that due to on-going slippage and under delivery in the Housing Investment Programme, there remains a significant risk of further repayments to government of right to buy receipts. In order to mitigate this risk delivery of existing programmes needs to be significantly enhanced and the Council needs to identify further housing development schemes to expand its pipeline of projects to ensure the HIP is large enough so that slippage on one scheme doesn't place the council at risk of having to pay further RTB receipts to government.

6. Financial Implications

- 6.1 The financial implications are stated throughout the report. The Council needs to significantly enhance the delivery of its Housing Investment Programme, in particular its new build housing projects in order to avoid any further repayments of RTB receipts to government. The Council will need to spend at least £7.1million on its housing investment programme in 2020-21 and a further £5.5million in 2021-22 in order to avoid this risk. The report suggests appropriating further land and projects into the HRA to mitigate the risk. The report also requests that the overall budget for acquisition of property into the HRA is increased to £7million to help mitigate this risk for 2021-22 if expenditure cannot be secured through the development programme.
- 6.2 In order to ensure that the HIP is enhanced and delivered, further staffing resources may need to be included within the Housing Development part of the Corporate Programmes team in order to manage the programme and within the Housing Strategy team on the client side. Any additional resources required can be funded from the Council's HRA budget and may be capitalised against the capital cost of the development projects.

7. Legal Implications

- 7.1 Section 122 of the Local Government Act 1972 ('LGA 1972') provides the Council power to appropriate for any purpose which it is authorised by the LGA 1972 or

any other enactment to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose it was held immediately prior to that appropriation. This include appropriation for planning purposes.

- 7.2 Section 19(1) of the Housing Act 1985 permits the Council to appropriate land between the General Fund and the HRA. The Council will need a valuation and the decision to appropriate the land by made under officer delegation or the Executive.
- 7.3 Any land can be appropriated into the HRA as long as there is a documented intention to use the land for housing purposes and all income, expenditure, reserves and borrowing in relation to the land will be accounted for within the HRA from the date of appropriation.
- 7.4 The Council is permitted by section 24 of the Local Government Act 1988 and section 22 Housing Act 1996 to provide grants to housing associations provided the criteria as detailed in the provisions are met and subsidy (state aid) rules are complied with.

8. Human Resource Implications

- 8.1 There may be a requirement to increase the number of posts for the Housing Development part of the Corporate Programmes team. This may require the recruitment of additional staffing resources to manage and deliver the programme.

9. Equality and Diversity Implications

- 9.1 Using RTB receipts to deliver affordable housing is likely to have a positive impact on equality and diversity by enhancing the equality of opportunity in respect of housing services to those with a protected characteristic.

10. Climate Change/Sustainability Implications

- 10.1 Delivery of the Council's Housing Investment Programme should have a positive impact on climate change and sustainability as housing can be built with sustainable energy efficiency design into the property. This may have a positive benefit for tenants with respect to lower energy usage and costs.

11. Executive Advisory Board comments

- 11.1 Due to the urgency of the report, the EAB has not been consulted on its content, however it is recommended that proposals for new build housing projects/ schemes are discussed with an EAB as they come forward for approval if possible.

12. Summary of Options

- 12.1 The Council has three options:

1. Preferred Option: improve delivery and monitoring of the Housing Investment Programme and expand the overall programme. This should ensure that any RTB receipts received will be spent on affordable housing in the borough
2. Do nothing and potentially repay further RTB receipts to government with interest calculated at 4% above base rate
3. Withdraw from the RTB retention agreement and pay 75% of RTB receipts to government when they are received.

13. Conclusion

- 13.1 In 2019-20 the Council had to repay RTB receipts plus interest to government totalling £2.7million. The reason for the repayment was because the Council did not spend the money on its new build housing investment programme in the HRA. The Council has acquired property to try and mitigate some of the repayment risk however was unable to spend enough money on acquisition of property into the HRA to mitigate all of the repayment risk. The Council has seen slippage in the region of 56% to 72% on its New Build Housing Programme in recent years which continues into 2020-21. The New build housing programme is funded 30% through RTB receipts and as such, any slippage in delivery has a direct impact on the risk of having to repay receipts to government. In order to avoid this risk going forward the Council needs to improve both the monitoring and the delivery of its Housing Investment Programme. The council should also consider expanding the programme in order to provide scale against the risk of none-delivery.
- 13.2 To help spend the RTB receipts, it is recommended that a number of land appropriations from the General Fund into the HRA are agreed. Specifically that land at Guildford Park and Bright Hill is appropriated into the HRA for the purposes of housing development with immediate effect and that once SoS approval is provided to move the allotments, that the allotment land at Weyside Urban Village is also appropriated into the HRA.
- 13.3 Finally it is recommended that the financial monitoring reports to corporate governance and standards committee are updated to incorporate information relating to what RTB receipts need to be spent in each financial year and that the expenditure on the approved capital programme only is measured against the value of RTB receipts that need to be spent. It is also recommended that the Council re-invigorates the Major Projects Portfolio Board and ensures that funding risks are captured on project risk registers.

14. Appendices

None.