

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL  
RECORD OF EXECUTIVE / CHIEF OFFICER DECISION**

This form should be used to record key and other decisions made by individual Portfolio Holders and key decisions made by Chief Officers. The contact officer will ensure that the signed and completed form is given to Democratic Services as soon as reasonably practicable after the decision has been taken.

Unless permission has been obtained from the Chairman of Council and the Chairman of the Scrutiny and Overview Committee that this decision be treated as a matter of urgency under Rule 12.19 of the Scrutiny and Overview Committee Procedure Rules, this decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless called in under Rule 7 of the Budget and Policy Framework Procedure Rules or Rule 12 of the Scrutiny and Overview Committee Procedure Rules.

<b>Portfolio</b>	Lead Cabinet member for Housing
<b>Subject Matter</b>	Provisional of 36 Affordable Dwellings at Bennell Farm, Toft
<b>Ward(s) Affected</b>	Hardwick
<b>Date Taken</b>	Wednesday, 22 May 2019
<b>Contact Officer</b>	Kirstin Donaldson, Development Officer (Kirstin.Donaldson@scambs.gov.uk)
<b>Date Published</b>	Friday, 24 May 2019
<b>Call-In Expiry</b>	Monday, 3 June 2019
<b>Key Decision?</b>	No
<b>In Forward Plan?</b>	No
<b>Urgent?</b>	No

<b>Purpose / Background</b>
<p>The purpose of this Decision Notice is to give approval for South Cambridgeshire District Council (SCDC) to enter into Heads of Terms followed thereafter into a JCT Design &amp; Build Contract (JCT 2016 – industry standard) to purchase 36 no affordable homes representing the S106 40% affordable housing contribution on a site at Bennell Farm, Toft.</p> <p>The site has been brought forward by Beechwood Estates who are the long term land owners and whom have built out a number of high quality homes in our district. Beechwood have employed a respected contractor ( E. N Suiter &amp; Sons Ltd ) as a contractor and also an experienced project manager to manage the delivery of all dwellings.</p> <p>In its entirety the site totals 90 new homes - with the policy compliant 40% affordable housing of 36 new homes comprising 25 rented homes and 11 shared ownership homes.</p> <p>Beechwood have been negotiating with SCDC for some time and have reverted to SCDC after receiving competing bids from other RP's.</p> <p>All reserved matters have been resolved and Beechwood intend to commence works in May 2019 with a phased build programme delivering all affordable units by summer 2021</p> <p>This development is well located opposite Comberton Village College with direct pedestrian access from the affordable units.</p> <p>This site was one of a number included in Appendix L of the HRA Budget setting report approved by council in November 2018 (see attached). It is therefore one of the development sites that are part of the 'Unallocated New Build/Acquisition Budget' included in the New Build Investment Cashflow (Appendix E) of the MTFs approved in February 2019.</p>

### Enabling/Strategic support

Strategic Housing fully support this mix, as it will provide much needed homes in Toft/Comberton where SCDC has existing stock and where new affordable housing has not been built for many years.

The overall affordable housing mix has previously been agreed by Housing Strategy as meeting the housing needs in Toft/Comberton and its environs. Notwithstanding this it may be that minor adjustments to the shared ownership dwelling mix will be required should market forces dictate.

### Planning Reference number :

The site has planning (ref: S/4552/17/RM) with all conditions now discharged.

The S106 is signed and completed.

### Mix:

<b>Description of Units to be delivered:</b>	<b>No of Units:</b>	<b>Type of Tenure:</b>	<b>Stock Category:</b>	<b>No of Beds:</b>
1 bed flat	8	Rent	Flat	1
2 bed flat	9	Rent	Flat	2
2 bed house	5	Rent	House	2
3 bed house	3	Rent	House	3
2 bed house	8	Shared O'p	House	2
3 bed house	2	Shared O'p	House	3
4 bed house	1	Shared O'p	House	4

Shared Ownership units will be sold as part of this scheme and their ongoing sale forms part of this decision

Average equity buy-in will be 40%. It anticipated that the 4 bed unit will be 30% share or may be 'swapped' to a 3 bed unit

### Contract type:

The contract will be a JCT 2016 contract. (Joint Contracts Tribunal) Design & Build Contract

### Procurement Officer advice:

The total cost of all 36 new affordable homes exceeds the OJEU threshold.

Procurement Officer advises: *"The total contract value needs to be considered in the context of the total development. This means that it would be an above threshold contract, however the developer has exclusive rights and so Section 32 (b) iii of the regulations would apply. This means that you are able to enter to into a contract with the party that has exclusive rights."*

Public Contracts Regulations 2015.

"Where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:

- (i) the aim of the procurement is the creation of acquisition of a unique work of art or artistic performance;
- (ii) competition is absent for technical reasons;
- (iii) the protection of exclusive rights, including intellectual property rights"

Legal Advice : Freeths Andrea Greensmith ( email to Rory McKenna 23<sup>rd</sup> November 2018)

*As I understand it, a development of 90 homes is taking place and the affordable homes*

requirement is at 40%, ie 36 properties which SCDC would like to commission at a development value of £6.22m. It is suggested that the Council enter into a contract directly under JCT Design & Build with the Developer, R&J Arnold.

*Analysis – generally speaking, of course, a Public Works Contract with a value in excess of £4.551m is subject to the requirement for a Competitive Procedure with certain exceptions.*

*The key exception provided where a competition can be not held is under Regulation 32(2)(b) of the Public Contracts Regulations 2015. This would allow a direct award to take place where either competition is absent for technical reasons or where the properties may be supplied only by a particular supplier in protection of his / her exclusive rights.*

*Additionally, it is necessary to show that no reasonable alternative or substitute exists and that the absence of competition is not the result of an artificial narrowing down of the parameters of procurement.*

*We understand that there is a shortage of affordable housing provision with the SCDC area and this is one of a few suitable sites. We suspect (although this has not been stated), that R&J Arnold would not be willing to proceed in such a manner as to sell the land to the Council or to otherwise allow it to procure its own separate developer. It would see that therefore R&J Arnold are protecting their exclusive rights to control what goes on the land and there is no reasonable alternative or substitute. If there were another suitable site nearby where a full Competitive Process could be undertaken for affordable housing units, my answer and advice would be different. However, under all the circumstances, I am able to advise that the Council is acting in accordance with the Public Contracts Regulations 2015 by letting a contract for the affordable housing without a Competitive Process directly to R&J Arnold.*

Toft / Comberton are small villages which have not had any development sites commenced of this size for some considerable time. There are no other suitably sized permissioned sites in Toft/Comberton that are available for consideration at this time.

#### **Financial**

##### Use of Right to Buy Receipt:

This scheme consists of 25 rented homes which allows the use of Right to Buy receipts totalling £1,366,382

##### Use of Commuted Sum:

We are using £550,000 of commuted sum monies to assist in bringing these 11 shared ownership homes forward as council new build. This aligns with our standard £50k per unit commuted sum spend profile on new build schemes

The scheme is considered to be value for money for the council. The offer and price per sq. m is commensurate with sums paid for recent council new build development schemes. In addition a robust financial appraisal has been carried out and a commercially sensitive financial appendix is attached. The scheme has a Payback year within the business plan parameters.

#### **Declaration(s) of Interest**

**Record below any relevant interest declared by any executive Member consulted or by an officer present in relation to the decision.**

None

#### **Dispensation(s)**

**In respect of any conflict(s) of interest declared above, record below any dispensation(s) granted by the Council's Standards Committee.**

None

<p><b>Consultation</b>  <b>Record below all parties consulted in relation to the decision.</b></p>
<p>Beechdale has consulted widely and for over 2 years with the Parish Council, Member(s) and local residents on the new build scheme proposals. In addition the principal of Comberton Village College has been consulted due to the proximity of the site and need for staff housing.</p>
<p>Note: The Council has not been involved in this scheme until post Planning.</p>

<p><b>Other Options Considered and Reasons for Rejection</b></p>
<p><b>Option 1:</b> Option 1: The Council decides not to enter into contract with Beechdale for the purchase of the 36 affordable homes on this site.</p>
<p>Reason for Rejection:</p> <ul style="list-style-type: none"> <li>To reject the scheme would require a substitute scheme of similar size and cost to be found in the district to provide new affordable homes. This would be by no means certain and is unlikely to be achieved in the timescales. It would be resource intensive and is unlikely to be possible, with the return of unspent right to buy receipt back to the Treasury with interest if no suitable scheme could be sourced.</li> <li>There are no other suitably sized permissioned sites in Toft/Comberton that are available for consideration at this time.</li> </ul>

Final decision	Reason(s)
<p>To approve South Cambridgeshire District Council entering into Heads of Terms followed thereafter by a contract to purchase 36 no affordable homes on a site at Bennell Farm , Toft.</p>	<ul style="list-style-type: none"> <li>This scheme will provide 36 affordable homes - and affordability is a huge issue for the District in terms of housing.</li> <li>These homes will also add additional affordable homes to the Councils housing stock and will be managed by the in house SCDC Leasehold team.</li> <li>The provision of affordable homes is likely to reduce significantly due to recent policy changes for housing providers and the lack of HCA funding available.</li> <li>Changes to housing benefit and welfare reform will also mean that the demand for affordable homes will only increase in this area.</li> </ul>

Signed	Name (CAPITALS)	Signature	Date
Portfolio Holder	Signed copy available upon request from Democratic Services (democratic.services@scambs.gov.uk)		
Chief Officer			

<p><b>Further Information</b></p>
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