

AGENDA SUPPLEMENT



MEETING VENUE:

**Council Chamber Council Offices,
Priory Road, Spalding**

Contact: Gregory Watkinson
Direct Dial: 01775 764599
e-mail: GWatkinson@Sholland.gov.uk
Date: 15 January 2019

Dear Councillor,

A meeting of the **DISTRICT COUNCIL** will be held in the **Council Chamber, Council Offices, Priory Road, Spalding** on **Wednesday, 23 January 2019**, commencing at **6.30 pm** at which your attendance is requested.

Yours faithfully,

A handwritten signature in cursive script that reads 'Anna Graves'.

Anna Graves
Chief Executive

(Quorum:13)

AGENDA

9. Report from the Cabinet meeting held on 15 January 2019
To consider recommendations of the Cabinet in respect of: (Pages 135 - 160)
- a) Log of Delegations to Officers – Contracts delegations and Contract Procedure Rules (Cabinet Minute 61/18) (Cabinet Agenda Item 9)
 - b) A report concerning a proposed HRA development at Small Drove, Weston (Cabinet minute 61/18) (Cabinet Agenda Item 10 and 13)

(Please note that some appendices associated with this report are not for publication by virtue of paragraph 3 (information relating to any individual, information which is likely to reveal the identity of an individual and information relating to the financial or business affairs of any particular person (including the authority holding that information)) in Part 1 of Schedule 12a of the Local Government Act 1972, and are therefore attached at agenda item 16).

16. Report from the Cabinet Meeting held on 15 January 2019 (exempt appendices)
Agenda item 9 refers.

(Pages
161 -
278)

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Cabinet

To: South Holland District Council Wednesday, 23 January 2019

(Author: Christine Morgan Democratic Services Officer)

Subject Report from Cabinet meeting held on 15 January 2019

Purpose: To consider recommendations of the Cabinet in respect of:

- a) **Log of Delegation to Officers – Contracts delegations and Contract Procedure Rules (Cabinet minute 58/18) (Cabinet Agenda Item 9)**
- b) **A report concerning a proposed HRA development at Small Drove, Weston (Cabinet minute 61/18) (Cabinet Agenda Item 10 and 13)**

Recommendations to Council:

a) Log of Delegation to Officers – Contracts delegations and Contract Procedure Rules

1. That the Constitution be amended in accordance with Appendix C.

b) A report concerning a proposed HRA development at Small Drove, Weston

2. That approval be given for the authority to enter into a grant agreement with Homes England in relation to grant funding through the Shared Ownership Affordable Homes Programme 2016-2021 to support the delivery of 34 homes at Small Drove, Weston.

1.0 BACKGROUND

- 1.1 Article 4 of the Council's Constitution provides that only the full Council may exercise the functions of approving, adopting or amending the policy framework and budget, and adopting or changing the Constitution. Staffing matters are also a Council function. The Cabinet however has a responsibility for advising the Council on such matters. At its meeting on 15 January 2019, the Cabinet made recommendations to Council in respect of the above items which may affect the budget and policy framework, Constitution or comprise staffing issues.
- 1.2 The remainder of this report details the recommendations of the Cabinet which must be read in conjunction with the individual reports to Cabinet, copies of which are attached as appendices. Please note that appendices 1, 2, 3 and 4 relating to

the Welland Homes Business Plan Update item are enclosed at agenda item 16 due to their confidential content. Please note that an additional exempt appendix (appendix 5), requested by the Cabinet is also enclosed at agenda item 16.

**2.0 LOG OF DELEGATION TO OFFICERS – CONTRACTS DELEGATIONS AND CONTRACT PROCEDURE RULES
(Report submitted to Cabinet – Item 9 attached)**

2.1 Consideration was given to the report of the Portfolio Holder, Governance and Customer which asked the Cabinet to consider revised Delegations to Officers in relation to contracts and to consider proposed amendments to the Contracts Procedure Rules.

DECISION:

- a. That the proposed delegations to officers relating to contracts, detailed in Appendix B, be approved and the Log of Delegations be amended accordingly; and
- b. That the proposed amendments to the Contracts Procedure Rules detailed in Appendix C be approved.

(Other options considered:

- *To decline to approve the delegations detailed in Appendix B and the proposed amendments to the Contract Procedure Rules set out in Appendix C.*

Reasons for decision:

- *The existing delegations detailed in Appendix A correlate with the former Contract Procedure Rules. The proposed delegations in Appendix B will correlate with the amended Contract Procedure Rules. The proposed amendments in Appendix C will comply with audit requirements and ensure that officers are notified of the level of delegation that applies to each part of the Contacts process.)*

3.0 A REPORT CONCERNING A PROPOSED HRA DEVELOPMENT AT SMALL DROVE, WESTON

Report submitted to Cabinet – Item 10 attached. Exempt appendices 1, 2, 3 and 4 (by virtue of Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) – Item 13 of the Cabinet agenda, are attached at item 16 of the Council agenda. An additional exempt appendix (appendix 5), requested by the Cabinet is also enclosed at agenda item 16.

Consideration was given to the report of the Portfolio Holder for Corporate Delivery and Strategic Oversight, which sought to secure agreement for the delivery of 34 affordable homes by the Authority at Small Drove, Weston, sought member approval for the award of the build contract for the construction of the dwellings,

and sought member approval for the acceptance of grant funding from Homes England, based on the proposed grant funding agreement appended to the report.

Members agreed that the third recommendation (seeking approval of the build contract) be amended to allow Full Council to be consulted on the main terms of the proposed build contract, prior to a final decision being made. It was requested that an additional appendix be submitted with the report to Full Council to cover these issues raised by the Cabinet.

DECISION:

- a. That approval is given for the construction of 34 new-build affordable homes by the authority at Small Drove, Weston, enabling the scheme to move towards delivery phase, subject to 3 and 4 below;
- b. To approve the budget spend for the scheme, based on the financial business case contained within the report;
- c. That the Cabinet consults Full Council on recommendation 3 (as set out in the original report) in respect of the main terms of the proposed build contract and, subject to the outcome of that consultation, the final decision in respect of the build contract be delegated to the Portfolio Holder, Corporate Delivery and Strategic Oversight.

(Other options considered:

- *To do nothing.*

Reasons for decision:

- *To enable the scheme to move into the delivery phase of the project. To formally enter into contract with Homes England and to secure the grant funding for the scheme. To formally enter into a build contract for the construction of the 34 homes.)*

Background papers:- None

Lead Contact Officer

Name and Post: Christine Morgan Democratic Services Officer
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Key Decision: No

Exempt Decision: No

Appendices attached to this report:

Appendix A Cabinet Agenda Item 9 (report and appendices)
Appendix B Cabinet Agenda Item 10 (report only)

Exempt appendices to Cabinet Agenda Item 10 are attached as Item 16

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SOUTH HOLLAND DISTRICT COUNCIL

Report of: Portfolio Holder for Governance and Customer

To: Cabinet – 15 January 2019
Council – 23 January 2019

(Author: Jacqui Berridge Lawyer)

Subject Log of Delegation to Officers - Contracts delegations and Contract Procedure Rules

Purpose: To consider revised Delegations to Officers in relation to contracts and to consider proposed amendments to the Contracts Procedure Rules

Recommendation(s):

- 1) That the proposed delegations to officers relating to contracts, detailed in Appendix B, be approved and the Log of Delegations be amended accordingly; and
- 2) That the proposed amendments to the Contracts Procedure Rules detailed in Appendix C be approved; and
- 3) That full Council be recommended to amend the Constitution in accordance with Appendix C.

1.0 BACKGROUND

- 1.1 The Log of Delegation to Officers currently includes the delegations relating to contracts shown in Appendix A. As is set out in more detail below, there is a need to make changes to the Contract Procedure Rules in the Constitution. In addition, and to reflect amendments to the Contract Procedure Rules over recent years, the establishment of the Contracts Team, and changes in post titles, there is a need to update the current delegations to officers in respect of contract matters.
- 1.2 An amended list of officer delegations relating to contracts, as detailed in Appendix B, is therefore submitted for consideration.
- 1.3 The contracts service has recently been subject to an audit. One of the recommendations arising from that audit is that the Contract Procedure Rules be amended to show what level of officer may authorise each level of the procurement process. In the event that the proposed amended list of officer delegations detailed in Appendix B is approved, proposed amendments to the Contract Procedure Rules to comply with this audit requirement are attached at Appendix C.

2.0 PROPOSED AMENDED DELEGATIONS

2.1 Comparison between the existing and proposed delegations is difficult because the Contract Procedure Rules have been completely rewritten since the existing delegations were granted. The following issues are, however, highlighted:

- both sets of delegations essentially deal with the (i) tender (ii) evaluation (iii) award (iv) signing and (v) termination of contracts; and (vi) the waiving of any requirements of the Contract Procedure Rules
- tendering and evaluating - the existing delegations require the tendering of all contracts over £75,000 to be undertaken by Service Managers (SMs) and above, subject to consultation with the portfolio holder. The new delegations allow officers below SM level to undertake all parts of the tendering process, without portfolio holder consultation, but not the award and signing of contracts. This allows lower level officers to request, receive and evaluate tenders/quotations in compliance with the Contract Procedure Rules, with portfolio holder input for the award of certain contracts
- awarding contracts - in both sets of delegations, officers at SM level and above award contracts. The awarding of most contracts was previously subject to consultation with the relevant portfolio holder. It is proposed that this requirement for consultation should continue, except for (i) routine contracts (for example, routine ongoing or annual maintenance contracts, routine purchasing of goods and equipment; routine servicing of vehicles etc); (ii) contracts for 1-off schemes where the scheme itself has been formally approved and where sufficient money has been allocated within the budget for the contract; and (iii) indirect services such as legal services or consultants for schemes which have been formally approved and where sufficient money has been allocated within the budget for the contract. This should help to simplify the process.
- signing contracts - in both sets of delegations, officers at SM level and above sign contracts. In the new delegations the Contracts and Procurement Manager has been added as a signatory
- in both sets of delegations officers at SM level and above may enter into post tender negotiations
- terminating contracts - in both sets of delegations officers at SM level and above may terminate any contract where there is lawful cause (in the new delegations this is subject to consultation with the Monitoring Officer and s151 Officer)
- the proposed delegations continue to ensure that no officer delegations are actioned unless the funding for the proposed contract has been included within the approved budget. As some contracts extend beyond the current financial year, this includes the approved 5 year capital programme
- waiving any Procedure Rule requirements - in the existing Rules any exemptions to the Rules were authorised by the Chief Executive or Director following consultation with the Monitoring Officer and appropriate portfolio holder (or Leader or Deputy Leader in his/her absence). This is not referred to in the existing Log of Delegation. In the proposed delegations the Chief Executive, Chief Officers and Deputy Chief Officers have such authority following consultation with the MO or s151 Officer.

- 2.2 If the proposed amended delegations are approved, the Cabinet and full Council will continue to recommend and approve the budget/capital programme for each contract, with officers then tendering and awarding contracts in compliance with the Contract Procedure Rules, subject to any necessary consultation with the relevant portfolio holder.
- 2.3 Most officer decisions must be published. However, this does not apply to routine administrative decisions and minor operational matters, or to decisions which are not closely connected to the discharge of an executive function. There is no legal definition of a minor or administrative decision, but the approach that officers adopt is to consider whether a decision would be of public interest. As such, low value contracts would likely be considered minor. Larger contracts could be of public interest and would therefore result in a decision notice. Decisions on the process such as tendering and evaluation of tenders/quotations are not closely connected with the discharge of the function and are most likely administrative and are not published as they follow the process already approved as part of the Contract Procedure Rules in the Constitution.
- 2.4 So in conclusion it is proposed that:
- only officers at SM level and above be given authority to enter into post tender negotiations, and to award, sign and terminate contracts
 - officers at lower level be given authority to deal with all aspects of the tendering process
 - portfolio holders be involved in relation to the awarding of contracts (except contracts which are routine; contracts which comprise part of a formal approval for a 1-off scheme; or indirect contracts for legal or consultancy services etc)
 - only the CX, COs and DCOs be authorised to waive any requirements of the Contract Procedure Rules following consultation with the MO or S151 Officer
- 2.5 A need for two additional delegations has been identified in order to ensure consistency with current procedures and Contract Procedure Rules:
- The use of Standing (Approved) Lists of Contractors (Rule 8.1.2 and 8.1.3) (SMs and above)
 - the disposal of obsolete assets (Rule 9.2) (SMs and above)
- 3.0 PROPOSED AMENDMENTS TO THE CONTRACTS PROCEDURE RULES**
- 3.1 The proposed amendments to the Contracts Procedure Rules set out in Appendix C follow the proposed amended Log of Delegations to Officers.
- 4.0 OPTIONS**
- 4.1 Cabinet can approve or decline to approve any of the delegations detailed in Appendix B and the proposed amendments to the Contract Procedure Rules set out in Appendix C.
- 5.0 REASONS FOR RECOMMENDATION(S)**
- 5.1 The existing delegations detailed in Appendix A correlate with the former Contract Procedure Rules. The proposed delegations in Appendix B will, if approved, correlate with the amended Contract Procedure Rules. The proposed amendments in Appendix C will comply with audit requirements and ensure that officers are notified of the level of

delegation that applies to each part of the Contracts process.

6.0 EXPECTED BENEFITS

6.1 The proposed delegations to officers will relate more closely to the current Contract Procedure Rules. The proposed amendments to the Contracts Procedure Rules will secure compliance with the audit requirements.

7.0 IMPLICATIONS

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

7.1 Constitutional & Legal

7.1.1 As the award of contracts is an executive function, delegation of part of that function is reserved to the Leader and the Cabinet.

7.1.2 The Contract Procedure Rules relate to the contracts function and Cabinet therefore has an opportunity to consider proposed amendments to the Rules, but as the Contract Procedure Rules form part of the Constitution full Council approval is required.

7.2 Contracts

7.2.1 The amended delegations will correlate and comply with the current Contract Procedure Rules. The proposed amendments to the Contract Procedure Rules will allow compliance with the audit requirements.

7.3 Risk Management

7.3.1 Full compliance with the Contract Procedure Rules and the relevant Officer delegations should lower any risk of challenge to any contracting procedure.

8.0 WARDS/COMMUNITIES AFFECTED

8.1 None

9.0 ACRONYMS

9.1 The following acronyms, contained in Appendices A and B, apply.

- AD means Assistant Directors (now defunct - replaced by DCOs)
- CPM means the Contracts and Procurement Manager
- CX means Chief Executive
- CO means Chief Officer (currently the CX and the Shared Executive Directors)
- DCO means Deputy Chief Officer (currently the Executive Managers)

- HLM means Housing Landlord Manager (the HLM is a SM and specific reference to the HLM is therefore removed from the proposed delegations)
- SM means Service Manager
- SLO means the Senior Legal Officer (currently the Executive Manager Governance)

Background papers:- The Log of Delegation to Officers

Lead Contact Officer

Name and Post: Jacqui Berridge Lawyer
 Telephone Number
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Key Decision: N
Exempt Decision: N

This report refers to a Mandatory Service / Discretionary Service

Appendices attached to this report:

Appendix A Existing delegations to officers relating to contracts
 Appendix B Proposed delegations to officers relating to contracts
 Appendix C Proposed amendments to the Contract Procedure Rules

APPENDIX A – existing delegations to officers relating to contracts

Officer(s)	Subject	Delegation From	Power	Authorising Minute
(a) CX, Directors, AD's, SM's, HLM	Contracts – Consultants (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	Authority to act as “Authorised Officer” to ensure that any procurement in accordance with the Procedure Rules, and that consultant’s performance is monitored (Rule 1.4).	C112/07
(b) CX, Directors, AD's, SM's, HLM	Contracts (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	Authority to authorise staff to place orders against Framework Agreements (Rules 3.2 and 32.1).	C112/07
(c) CX, Directors, AD's, SM's, HLM and any other officer with the approval of the CX/Director/SM	Contracts – Low Value Procurement including emergency works (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	<u>The seeking of written quotations</u> and the raising of purchase orders.	C112/07
(d) CX, Directors, SM's, HLM and any other officer with the approval of the CX / Director / SM	Contracts – Medium Value Procurement including emergency works (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	<u>The seeking of written competitive quotations</u> and the raising of purchase orders.	C112/07
(e) CX, Directors, SM's and HLM in consultation with appropriate portfolio holder	Contracts – High Value Procurement not subject to EU Regulations (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	(i) Authority to <u>seek tenders</u> by way of:- <ul style="list-style-type: none"> · Open Competitive Tendering · Selective Tendering from an Approved List of Contractors · Selective Tendering by Advertisement for Specific Contracts (ii) Serial Negotiated Contracts - Authority to <u>negotiate with contractor</u> a contract forming part of a serial programme on basis of rates and prices contained in an initial contract previously awarded competitively following an invitation to tender (iii) Single Negotiated Contract - Authority to <u>negotiate with a contractor</u> already approved on the Council's list of contractors or on the Constructionline database where considered to be in the Council's best interest (iv) Partnership - Authority to <u>enter into a longer term contract</u> with a single service provider for the supply of supplies, services or works on the principles of shared objectives, risk, resources and continuous improvement in performance (following tender)	C112/07
(f) CX, Directors, SM's, HLM in consultation with appropriate Portfolio Holder	Contracts – High Value Procurement subject to EU Regulations (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	Authority to <u>seek tenders</u> in accordance with Regulations under the open, restricted or negotiated procedure, as appropriate.	C112/07

(g) CX, Directors, SM's, HLM and any other officer with the approval of the CX / Director / SM	Contracts – opening of tenders	Cabinet	Authority to act as “Authorised Officer” for the purposes of opening of tenders (Rule 19.2)	C112/07
(h) CX, Directors, SM's, HLM in consultation with appropriate Portfolio Holder	Contracts – awarding of (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	Authority to <u>award any contracts</u> not dealt with under (e) above following appropriate procedure	C112/07
(i) CX, Directors, SM's, HLM and any other officer with the approval of the CX / Director, SM's	Contracts (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	Authority to issue letter of intent (Rule 27.1)	C112/07
(i) CX, Directors and SM's, HLM	Contracts – Miscellaneous (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	(i) Authority to enter into post tender negotiations (Rule 23.1) (ii) Authority to <u>sign contracts</u> where not under seal (Rule 29.1) (iii) Authority to nominate to main contractor (Rule 34.2) (iv) Authority to approve variations (Rule 34.4) (v) Authority to require performance bond or other sufficient security (Rule 34.5) (vi) Authority to extend contract in accordance with its terms (unless portfolio holder report required) (Rule 35.1) (vii) Authority to negotiate extension of contract where terms do not expressly provide for extension (Rules 35.2 and 35.3) (viii) Authority to terminate contracts (Rule 36)	C112/07
(k) CX, Directors, SM's, HLM in consultation with appropriate Portfolio Holder	Contracts – Miscellaneous (All delegations relating to contracts are subject to the scheme falling within the approved budget)	Cabinet	Without prejudice to the foregoing, the power to <u>enter into any contract</u> for the supply of goods, services or works.	C112/07

APPENDIX B – proposed delegations to officers relating to contracts

Officer(s)	Subject	Delegation From	Power
CX, COs and DCOs following consultation with the MO or S151 Officer	Contracts - contracting activities of any partnership for which the Council is the accountable body	Cabinet	(Note to Contract Procedure Rule 1.1) Authority to agree that Contract Procedure Rules do not apply to contracting activities of any partnership for which the Council is the accountable body.
CX, COs, DCOs and SMs subject to consultation with the appropriate portfolio holder (consultation is not required for (i) routine contracts (eg routine ongoing or annual maintenance contracts, routine purchasing of goods and equipment; routine servicing of vehicles etc); (ii) contracts for 1-off schemes where the scheme has been formally approved and where sufficient money has been allocated within the budget for the contract; and (iii) indirect services such as legal services or consultants for schemes which have been formally approved and where sufficient money has been allocated within the budget for the contract.)	Contracts – letting (awarding) of contracts through framework agreement	Cabinet	(Contract Procedure Rules 2.1.5 and 8.2) Authority to let (award) a contract through any framework agreement to which the Council has access where considered expedient by a CO or a DCO subject to the scheme falling within the approved budget which includes the approved 5 year capital programme. (A decision notice must be published for each award of contract unless administrative, minor or not closely connected to discharge of function.) (The signing of contracts is dealt with separately below.)
CX, COs and DCOs following consultation with the MO or S151 Officer	Contracts - variation or waiver (exemption) of Contract Procedure Rules	Cabinet	(Contract Procedure Rules 3.1 and 3.2) Authority to vary or waive any Contract Procedure Rules subject to complying with all relevant requirements of Rule 3, and subject to the scheme falling within the approved budget which includes the approved 5 year capital programme.
CX, COs, DCOs and SMs	Contracts - Standing (Approved) Lists	Cabinet	(Contract Procedure Rules 8.1.2 and 8.1.3) Authority to determine that a Standing (Approved) List shall be kept of persons suitable for undertaking contracts for the execution of specified categories of work or for the supply of specified categories of goods, materials or services within such values or amounts as may be specified, in accordance with Contract Procedure Rule 8, and to use such Lists, subject to full compliance with Rule 8. (The awarding and signing of contracts are dealt with separately below)
CX, COs, DCOs and SMs	Contracts - assets for disposal	Cabinet	(Contract Procedure Rule 9.2) Authority to dispose of obsolete stocks, stores or assets, other than land, subject to complying with Contract Procedure Rule 9.2.
CX, COs, DCOs, SMs and any other officer with the written approval of the CX/CO/DCO/SM (any sub-delegations lasting more than 6 months must be reported to the SLO)	Contracts - pre tender market testing and consultation	Cabinet	(Contract Procedure Rule 10.1) Authority to consult potential suppliers prior to issue of the Invitation to Tender or Request for Quotation subject to the scheme falling within the approved budget which includes the approved 5 year capital programme.
CX, COs, DCOs, SMs and any	Contracts – all	Cabinet	(Contract Procedure Rules 8.1.8, 8.2 (where a

other officer with the written approval of the CX/CO/DCO/SM (any sub-delegations lasting more than 6 months must be reported to the SLO)	values – seeking, receiving and evaluating quotations/tenders for contracts for works, goods materials and services, and hiring of consultants		competition is required), 9.1.3 and 9.1.4, 11.0, 12.0, 14.0, 16.1, 17.2). Authority to request and receive tenders and quotations, and to evaluate tenders and quotations subject to compliance with the Contract Procedure Rules (as amended by any authorised variation or waiver) and subject to the scheme falling within the approved budget which includes the approved 5 year capital programme. (The awarding and the signing of contracts are dealt with separately below.)
CX, COs, DCOs and SMs following consultation with the relevant portfolio holder (consultation is not required for (i) routine contracts (eg routine ongoing or annual maintenance contracts, routine purchasing of goods and equipment; routine servicing of vehicles etc); (ii) contracts for 1-off schemes where the scheme has been formally approved and where sufficient money has been allocated within the budget for the contract; and (iii) indirect services such as legal services or consultants for schemes which have been formally approved and where sufficient money has been allocated within the budget for the contract.)	Contracts - awarding of contracts	Cabinet	(Contract Procedure Rules 8.2, 16.2) Authority to award contracts subject to compliance with the Contract Procedure Rules (as amended by any authorised variation) and subject to the scheme falling within the approved budget which includes the approved 5 year capital programme. (Decision notices must be published for each award of contract unless administrative, minor or not closely connected with discharge of function.) (The signing of contracts is dealt with separately below.)
The CPM plus the CX, COs, DCOs and SMs	Contracts – signing of contracts which are not under seal	Cabinet	(Contract Procedure Rule 18.2) Authority to sign contracts which are not under seal and which come within the jurisdiction of the officer concerned. (Contracts under seal must be signed only by officers who have specific authority to do so.)
CX, COs, DCOs, SMs and any other officer with the written approval of the CX/CO/DCO/SM (any sub-delegations lasting more than 6 months must be reported to the SLO)	Contracts - refusal of hard copy tenders	Cabinet	(Contract Procedure Rule 14.4) Authority to refuse to accept hard copy tenders which do not comply with the Contract Procedure Rules.
Officers of the Contracts team	Contracts - Authorised Officer of relevant team	Cabinet	(Contract Procedure Rules 14.3.2 and 14.4) Officers appointed as "Authorised Officer of relevant team"
CX, COs, DCOs, SMs and any other officer with the written approval of the CX/CO/DCO/SM (any sub-delegations lasting more than 6 months must be reported to the SLO)	Clarification of an invitation to tender	Cabinet	(Contract Procedure Rule 15.1) Authority to provide clarification of an Invitation to tender
CX, COs, DCOs, SMs and CPM	Post tender negotiations	Cabinet	(Contract Procedure Rules 15.2 to 15.6) (at least 2 officers are required – see rule 15.6) Authority to undertake post tender negotiations
CX, COs, DCOs and SMs	Authority to terminate contracts	Cabinet	(Contract Procedure Rule 29) Authority to terminate contracts subject to consultation with the MO and S151 Officer

APPENDIX C – Proposed amendments to the Contracts Procedure Rules

Rule 2.1.1 be amended to read as follows:

“Officers will comply with:

- (a) these Contract Procedure Rules (CPRs);
- (b) the Council’s Constitution;
- (c) **the Log of Delegations to Officers; and**
- (d) with all UK and EU legal requirements (including ensuring that any contractors are mandatorily excluded from participation in a procurement procedure where Regulation 57 of the Public Contracts Regulations 2015 applies).”

That, with the exception of Rules 8.2, 16.2 and 29 which are dealt with below, the following wording be added to the beginning or end (as appropriate) of any Contract Procedure Rule mentioned in the proposed Log of Delegations to Officers at Appendix B:

“(See the Log of Delegations to Officers for details of officers who may action this Rule)”

A new Contract Procedure Rule 5.2A be added as follows:

“Most contracts will be awarded by officers making a decision under delegated authority (see the Log of Delegations to Officers). All such officer decisions must be published unless the decision is administrative, minor or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-In. Where Call-In applies the winning contractor must not be advised of the outcome of the process until the Call-In period has expired.”

Rule 5.6 be amended to read as follows:

“Subject to complying with Rule 5.2A, prospective candidates must be notified simultaneously in writing and as soon as possible of any contracting decision. If a candidate requests in writing the reasons for a contracting decision, the officer must give reasons in writing within 15 days of the request.”

Rules 8.2.4 and 8.2.5 be added as follows:

“8.2.4 Where a Framework Agreement is used and the arrangements under that Agreement include mini competition, the Log of Delegations to Officers details which officers may seek, receive and evaluate quotations/tenders.”

“8.2.5 Most contracts will then be awarded by officers making a decision under delegated authority (see the Log of Delegations to Officers). All such officer decisions must be published unless the decision is administrative, minor or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-In. Where Call-In applies the winning contractor must not be advised of the outcome of the process until the Call-In period has expired.”

Rule 16.2.4 be added as follows:

“16.2.4 Most contracts will be awarded by officers making a decision under delegated authority (see the Log of Delegations to Officers). All such officer decisions must be published unless the decision is administrative, minor or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-In. Where Call-In applies the winning contractor must not be advised of the outcome of the process until the Call-In period has expired.”

Rule 29 be added as follows:

“29.0 TERMINATION OF CONTRACTS

The Log of Delegations to Officers details which officers may terminate a contract. Any termination must be strictly in accordance with the terms of the contract and subject to consultation with the Monitoring Officer and Section 151 Officer.”

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SOUTH HOLLAND DISTRICT COUNCIL

Report of: Cllr Colin Johnson, Portfolio Holder for Corporate Delivery and Strategic Oversight

To: Cabinet Tuesday, 15 January 2019 & Council Wednesday 23rd January 2019

Author: Matthew Hogan Executive Manager Growth

Subject A report concerning a proposed HRA development at Small Drove, Weston

Purpose: To secure agreement for the delivery of 34 affordable homes by the authority at Small Drove, Weston. To seek member approval for the award of the build contract for the construction of the dwellings. To seek member approval for the acceptance of grant funding from Homes England, based on the proposed grant funding agreement appended to the report.

Recommendation(s) for Cabinet :

- 1) That approval is given for the construction of 34 new-build affordable homes by the authority at Small Drove, Weston, enabling the scheme to move towards delivery phase, subject to recommendation 4 being agreed by Full Council.
- 2) To approve the budget spend for the scheme, based on the financial business case contained within this report.
- 3) That approval be given for the council to enter into a build contract with the preferred contractor for the construction of 34 homes at Small Drove, Weston, and to delegate authority to the Executive Director for Commercialisation (s.151) to undertake any incidental amendments required to complete the contract.

Recommendation(s) for Council :

- 4) That approval be given for the authority to enter into a grant agreement with Homes England in relation to grant funding through the Shared Ownership Affordable Homes Programme 2016-2021 to support the delivery of 34 homes at Small Drove, Weston,

1.0 BACKGROUND

- 1.1 South Holland District Council currently owns 10 pre-fabricated two bedroom bungalows at Small Drove, Weston. As an asset, the 10 bungalows are held within the council's Housing Revenue Account and are currently used as short-term lets, as part of the council's wider stock of temporary accommodation. The 10 units on the site are of poor quality in terms of their condition, and the units occupy a large 'land take' by modern development standards (10 dwellings on an area of 0.818 hectares).
- 1.2 Due to the factors relating to condition, and the scope to make better use of the available land, the site was identified in 2015 as a potential redevelopment site for the council.

Following initial feasibility work, a planning application for 34 homes was submitted to the authority as Local Planning Authority for the site in April 2018. In July 2018, following consideration by planning committee, full planning consent was awarded for the site.

- 1.3 In August 2018 work commenced on a procurement exercise for a building contractor for the site as a means of securing a firm 'contract price' for the development, therefore supporting the refinement of a final business case for the scheme. Alongside the procurement exercise, officers engaged with Homes England in respect of a potential application for affordable housing grant to support the delivery of the site. This process included the authority formally applying for 'Investment Partner Status' with Homes England as a means of paving the way for a future formal grant application.
- 1.4 In October 2018, the window for tender submissions from the private sector to deliver the scheme closed. A period of tender analysis followed whereby the submissions were assessed against a 50% Quality and 50% cost criteria. The process has resulted in a preferred building contractor partner being identified. Details of the procurement exercise and the preferred contractor are included within exempt Appendix 2.
- 1.5 Running concurrently, South Holland District Council was granted Investment Partner Status by Homes England and a bid for grant funding was submitted and considered by the local Homes England Team and at a national level. This has led to Homes England providing the authority with a grant funding allocation to help subsidise the delivery of the site.
- 1.6 Having secured planning consent, undertaken a procurement exercise for a building contractor and having been awarded an allocation of grant funding through Homes England to support the scheme, this paper seeks to present to members the business case in respect of the proposed development at Small Drove, Weston. Should the business case receive member approval, the project will move into delivery phase with a view to the development commencing 'on site' in March 2019, with an anticipated 60 week build-out period.
- 1.7 **The development proposal**
- 1.8 The development proposed for the site consists of 34 homes, consisting of 20 homes for affordable rent and 14 homes for shared ownership (part buy, part rent). The scheme will provide a mix of property sizes and types, including one, two and three bed houses alongside bungalow accommodation.
- 1.9 The design, mix and specification for the properties has been drawn up in conjunction with a range of teams from across the council, including Property Services from an asset management perspective, Housing Management from an estate management perspective, and Strategic Housing from a housing need perspective. Other teams, such as the council's Environmental Services team, have also been involved in supporting the development of proposals for the site. The design has also been drawn up in conjunction with the Architectural Liaison Officer from Lincolnshire Police. The specification and layout of the scheme has been designed using the secure-by-design principles and the scheme is looking to achieve a 'secure by design' accreditation for prioritising safety and reducing the opportunity for crime within the new estate. A detailed building specification has been developed as part of the procurement exercise. All tenders adhered to this document as part of their submissions.

- 1.10 The exact proposed mix in terms of type, size and tenure is set out below;
- 4 x one bed bungalows for rent @ 50 m2
 - 4 x one bed houses for rent @ 50 m2
 - 10 x two bed houses for rent @ 73 m2
 - 2 x three bed houses for rent @ 79 m2
 - 4 x two bed house for shared ownership @73 m2
 - 6 x three bed houses for shared ownership @ 79 m2
 - 4 x two bed bungalows for shared ownership @ 66 m2
- 1.11 The site was awarded full planning consent in July 2018, following consideration by the council's Planning Committee.
- 1.12 **Procurement of a building contractor**
- 1.13 Following the conclusion of the planning application process, a procurement exercise for a building contractor has been carried out. The tender exercise opened on Tuesday 28th August 2018 and closed at 5PM on Wednesday 10th November 2018. The tender exercise was operated on an open basis (as opposed through a closed tender or through a framework agreement approach), and the details of the tender were promoted to local contractors. The outcome of that tender exercise has been as follows;
- A total number of five tenders were received. This includes tenders from small local contractors, through to both larger and regional contractors.
 - A tender evaluation exercise, based around a weighting split 50/50 between price and quality, has identified a preferred contractor.
 - The preferred contractor had the most economically advantageous tender, is a local contractor and the build cost submitted required no adjustments and contained no provisional sums.
- 1.14 The procurement exercise was run on the basis of the construction of the dwellings being governed under the terms of a standard JCT Design and Build Contract (2016 Edition). This is a standard contract commonly used within the construction industry and it is one that the council's employer's agent deems suitable for use as the contractual basis for the proposed development. It should be noted that the council has previously used JCT contracts in other construction projects, alongside 'live' construction projects involving Welland Homes Ltd; the council's wholly-owned housing company.
- 1.15 **Grant funding application to Homes England**
- 1.16 Alongside undertaking the process of advancing a development proposed for the site, officers have sought to explore the scope for the scheme to attract grant funding from Homes England as a means of subsidising the proposed development. Homes England have an active affordable housing funding programme (known as the Shared Ownership and Affordable Homes Programme 2016-21), under which housing associations and local authorities can apply for grant funding to support the financial viability of affordable housing development.

- 1.17 In order to access funding, applicants need both to hold status as a 'Registered Provider' and an 'Investment Partner' with Homes England. The authority has long held the status as a 'Registered Provider', and in November 2018 secured status as an 'Investment Partner', thus paving the way for the authority to apply for funding as part of the 2016-21 grant programme.
- 1.18 Having secured Investment Partner status, the authority submitted a grant application to Homes England for funding to support the delivery of Small Drove, Weston, subject to final approval by the Council. In November 2018, the authority received a grant offer from Homes England of £1,100,000 to support the delivery of the Small Drove scheme, subject to the authority entering into a grant agreement with Homes England.
- 1.19 The grant agreement includes a number of clauses and requirements to which the authority will need to adhere in order to draw-down grant funding throughout the lifespan of the project. The purpose of the clauses within the grant condition agreement are largely to ensure that the funded scheme is delivered as originally proposed at the outset, including being delivered to the timescales and tenures proposed in the original bid.
- 1.20 The authority has secured legal advice on the proposed grant agreement with Homes England (which is set out in Appendix 4). The key requirements of the agreement which are detailed below:
- **Timescales for delivery** - The grant offer has been made to the council on the assumption that SHDC will deliver the scheme as detailed in the original application and to the timeframe agreed. The bid has been submitted committing to a start on site by 17th May 2019 and achieving practical completion of the scheme by 17th July 2020. These dates align with the proposed dates for delivery agreed with the preferred contractor. Note that the grant agreement requires that any deviation from this has to be agreed by Homes England, with a long-stop date for delivery of March 2022. Officers are confident in the ability of the authority to deliver against the timescales set and agreed with Homes England.
 - **Reporting** – The grant offer is subject to the council keeping in regular and on-ongoing communication with Homes England as the scheme is built-out. Homes England require strict monitoring and reporting requirements and all data must be kept for a minimum of 10 years. Homes England require regular updates on progress and the submission of an 'Officers Certificate' confirming compliance at intervals through the life of the project.
 - **Penalties** - The Grant Agreement lists a series of potential 'grant withholding events', which are instances whereby Homes England may choose to withhold payment of the grant. These include a material breach of an obligation under the agreement or through not delivering the scheme within timescales.
- 1.21 Officers are confident in the council's ability to comply with the terms of the proposed grant agreement. Whereas the authority has not itself accessed Homes England affordable housing grant for a number of years, the council's Housing Development team includes officers with considerable experience of managing Homes England grant-funded projects, as does the council's 'employers agent' Focus Ltd. The authority has also enlisted the support of Longhurst Housing Association to assist with the administration of data returns to Homes England in respect of any grant funded schemes.

1.22 The financial business case

1.23 The council's approved capital budget includes a budget line consisting of £4,147,000 for the redevelopment of Small Drove, Weston. This figure is based on the total costs estimates for the scheme, excluding any form of external grant funding.

1.24 A financial evaluation has been completed on the scheme, based on the build contract price and the grant allocation from Homes England. This financial evaluation demonstrates the following;

- That when supported with Homes England grant, the proposed development will provide the authority with a positive and financially viable return on investment.
- That the scheme cost falls under the budget agreed for the scheme through the previous budget setting process
- That the scheme will generate a positive 'gross development value' (based on November 2018 prices)

1.25 The detail of this financial business case is set out in Appendix 1.

1.26 Shared Ownership

1.27 Members will note that the proposed development includes a number of units of 'shared ownership' housing. The authority already owns and manages a small number of shared ownership properties within its Housing Revenue Account, and therefore these units will form an addition to that existing small portfolio. Officers within the Housing Management team are presently undertaking a review of their processes and procedures in relation to the management of shared ownership housing to ensure that they are up-to-date ahead of any potential modest expansion of the council's shared ownership portfolio.

1.28 The inclusion of shared ownership housing on the scheme is designed to support the following;

- Providing a mix of tenures on the site, as opposed to a single tenure development
- To meet planning policy requirements concerning the mix of housing tenures on larger sites
- To meet identified need within an area where there is evidence of need and demand for accommodation aimed at first time buyers who require financial support.

1.29 The model works under a 'part buy, part rent' basis, whereby the purchaser acquires a share of the property through a lease arrangement (typically between 25% and 50%) with a mortgage and then pays rent on the unsold share. SHDC as the landlord retains the freehold of the property, and annual rent is usually calculated on the basis of 2.75% of the value of the unsold share, which is then paid as a monthly rent.

1.30 It is proposed that the homes will be sold on the basis that the purchasers will be able to 'staircase' to full ownership over time, if they are minded to do so. This will enable the owners to acquire full ownership of the dwellings if their financial capacity to own outright changes over time, whilst also providing the authority with a capital receipt to invest into further housing development.

1.31 Note, however, that evidence within the district on other sites where shared ownership exists suggests that, as opposed to 'stair-casing', shared-owners tend to use shared ownership housing as a means to build equity that funds their next purchase, typically in pursuit of a larger property further up 'the ladder', as opposed to purchasing the dwelling outright overtime. In a scenario where a shared-owner moves, the percentage of the property owned by the leaseholder is then re-sold to another eligible purchaser on a shared ownership basis, at the market value at the time of the sale, with the remaining percentage still subject to rent.

1.32 **Proposed next steps**

1.33 If formal agreement is to proceed with the scheme to delivery phase, officers will look to enter into the build contract with the preferred building contractor partner and complete the grant agreement with Homes England in order to draw down 75% of the grant at 'start on site', with the remainder being claimed at scheme completion. This will enable the scheme to commence on-site from March 2019, with an anticipated 60 week build programme to conclude the construction.

2.0 **OPTIONS**

2.1 **Do nothing** – Under this option, the authority will not proceed with the proposed development of 34 new affordable homes at Small Drove, Weston.

2.2 **Proceed as per the report recommendations** – Under this option, the council will proceed to contract and delivery phase for the 34 new affordable homes at Small Drove, Weston. The council will enter into a grant agreement with Homes England in respect of the 'affordable housing funding' to support the development, and will enter into a construction contract with the preferred building contractor as a means of enabling construction to commence. The scheme will then move into delivery phase, with a view to commencing 'on-site' in March 2019.

3.0 **REASONS FOR RECOMMENDATION(S)**

3.1 To enable the scheme to move into the delivery phase of the project. To formally enter into contract with Homes England and to secure the grant funding for the scheme. To formally enter into a build contract for the construction of the 34 homes.

4.0 **EXPECTED BENEFITS**

4.1 The expected benefits from the delivery of 34 homes at Small Drove, Weston are as follows;

- **The delivery of 34 houses into the HRA.** The proposed development at Weston will deliver 34 new homes into the HRA, supporting the delivery of the wider HRA business plan and providing a revenue stream for further investment in new housing.
- **Leveraging of external grant.** To bring national affordable housing funds into the district to support affordable housing delivery.
- **The replacement of homes sold through Right to Buy.** The proposed development at Small Drove Weston will support with the replacement of homes sold through Right

to Buy. It should be noted that a total of 19 properties were purchased through Right to Buy in 2017/18.

- **A competitive return on investment, and the generation of capital receipts.**
Please see the exempt financial Appendix 1 attached.
- **Meeting housing need.** The homes proposed will meet housing need in a location where there is evidence of a need for additional affordable homes, both in terms of homes for rent and homes for first time buyers who require support to access the housing market. This includes a small provision of bungalow accommodation for shared ownership, which will be aimed at supporting households who wish to access age appropriate accommodation but who lack the means to purchase a new build bungalow on the open market.
- **Replacing old for new.** The proposed development at Small Drove Weston will see 10 properties at the end of their functioning life replaced with 34 new build homes. Consequently the proposal will contribute to an improvement in housing conditions on the site, in addition to replacing assets with a high maintenance cost with units with a lower maintenance cost.
- **Supporting growth.** Through directly investing in the proposed development at Weston, the authority will be directly enabling the delivery of 34 homes which would not come forward without the council's intervention.

5.0 **IMPLICATIONS**

5.1 **Carbon Footprint / Environmental Issues**

- 5.1.1 The proposed development will see 10 existing and poor quality properties replaced with higher quality new build homes that meet the latest requirements in respect of building regulations with regards to energy and thermal efficiency.

5.2 **Constitutional & Legal**

- 5.2.1 Given the value of external funding sought through Homes England to support the scheme, Full Council approval is sought for the acceptance of such grant, on the conditions provided, in order to support the development of the scheme.

5.3 **Contracts**

- 5.3.1 If the scheme proceeds, the council will enter into a Joint Contracts Tribunal (JCT) contract with the building contractor to deliver the scheme. JCT contracts are the standard form contract for 'design and build' development schemes, and have been used by the authority to support the development of previous housing schemes. The council is being supported by both its internal contracts team and its 'employers agent' (Focus Ltd) in respect of the work on the contract for the development.
- 5.3.2 A common features of the standard form JCT contract (the contract type proposed with the preferred building contractor) include the following;
- JCT contracts provide the employer (e.g. the Council) with a single point of responsibility in respect of the construction
 - JCT contracts transfer a large proportion of the construction risk from the employer to the contractor
 - JCT provides a fix cost lump sum for the construction

- JCT contracts place the requirement for the contractor to develop the approved final construction design for works

5.3.3 The grant agreement with Homes England act as a contract between the council and Homes England in respect of grant received to fund the development. The authority has secured legal advice on the proposed grant agreement with Homes England, which has assisted in identifying the key requirements associated with the grant. Officers are confident in the council's ability to comply with the terms of the proposed grant agreement.

5.4 **Corporate Priorities**

5.4.1 The development of the proposed scheme supports a number of the council's corporate priorities, especially in relation to 'encouraging the local economy to be vibrant with continued growth', alongside 'to develop safer, stronger, healthier and more independent communities while protecting the most vulnerable'

5.5 **Crime and Disorder**

5.5.1 The scheme has been designed in conjunction with Lincolnshire Police's Architectural Liaison Officer, as a means of planning the layout of the scheme in such a way to reduce and limit crime and anti-social behaviour.

5.6 **Financial**

5.6.1 If the authority proceeds to contract and delivery on the scheme, this will seek the authority to commit to the investment as detailed in the Exempt financial Appendix 1. As set out within the appendix, the scheme will generate a long term positive return on investment, in addition to capital receipts through the sale of shares in shared ownership housing.

5.7 **Reputation**

5.7.1 The council's reputation in respect of this project will be managed as part of the wider 'risk management' approach detailed within the section below.

5.7.2 It should be noted that a communications plan is in place to support the delivery of the project throughout its lifespan.

5.8 **Risk Management**

5.8.1 It should be noted that the proposed development comes with a number of risks. These risk will be managed through the council's Housing Development team, utilising risk registers and other project management tools. Those risks are as follows;

- **Sales risks associated with shared ownership.** The proposed development includes 14 homes for shared ownership. The authority will seek to sell shares in these properties on the open market to qualifying purchasers. This introduces an element of sales risk. However, it should be noted that officers have sought to mitigate (and will seek to mitigate) this risk in the following ways;
 - **Market intelligence.** Officers have engaged in informal discussions concerning market demand for shared ownership for the type of properties proposed, and in the location proposed. This has returned a positive view that there is indeed a

strong market demand for shared ownership in Weston. In that sense, there is a good degree of confidence in the level of market demand.

- **Marketing allowance.** In addition to the estate agent fee allowed for within the scheme budget, the appraisal for the project includes a budget per shared ownership unit to support additional marketing activity of these homes.
- **Specification.** It should be noted that the specification for the shared ownership units includes enhanced requirements, to reflect the market nature of the product.
- **Phasing.** It is proposed that the delivery of the shared ownership housing will be phased to ensure an appropriate flow of properties on to the market for sale at any given time.
- **Construction risk.** The development will be overseen by an Employers Agent and a clerk of works, appointed by the council and independent of the contractor, as a means of inspecting the site throughout the build and ensuring quality. Key construction elements are inspected and signed off by NHBC. Subcontractors with design responsibility such as those providing the timber frame, plumbing, piling, and electrics, are subject to a collateral warranty which creates a contractual link between the council and a subcontractor responsible for design to safeguard the council's ability to claim directly if a fault occurs. In terms of post-construction matters relating to quality, the properties will be subject to a 12 month defects period and will come with a 12 year NHBC warranty including insolvency cover. The project budget also includes a contingency at 4% of build cost as a means of providing the financial means to address any unforeseen risks that arise during the construction period.
- **Dependency upon grant.** The scheme requires a form of external subsidy as a means of ensuring that the development is viable. Whereas the authority has not itself accessed Homes England affordable housing grant for a number of years, the council's Housing Development team includes officers with considerable experience of managing Homes England grant-funded projects, as does the council's 'employers agent' Focus Ltd. The authority has also enlisted the support of Longhurst Housing Association to assist with the administration of data returns to Homes England in respect of any grant funded schemes.
- **Vacant possession.** The site currently consists of 10 pre-fabricated bungalows, which are used by the authority as additional temporary accommodation for families at times when demand is high on the council's core temporary accommodation stock. It is anticipated that vacant possession of the remaining occupied properties will be achieved by the end of January 2019.

5.9 Stakeholders / Constitution / Timescales

- 5.9.1 The validity of the tender price provided by the council's chosen contractor for the scheme is time limited, and expires on February 7th 2019. If there is a delay in achieving the approval to proceed as per the recommendations, the authority will have to negotiate with the preferred contractor and request an extension to the validity of the build cost which is not guaranteed and therefore may be subject to change.

6.0 WARDS/COMMUNITIES AFFECTED

- 6.1 Cowbit, Weston and Moulton Ward

Background papers:- n/a

Lead Contact Officer

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Key Decision:	Y
Exempt Decision:	Partially

This report refers to a Discretionary Service

Confidential Appendices 1 – 4 attached to this report:

(Please note that the following appendices are not for publication by virtue of Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information))

Appendix 1 – Financial details and modelling
Appendix 2 – Procurement and tendering report
Appendix 3 – Valuation Report (Longstaffs December 2018)
Appendix 4 – Grant Agreement with Homes England

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