

25 JULY 2022

HOMES FOR ALL THE REGION – HOUSING VIABILITY GAP FUND UPDATE

REPORT OF THE CARDIFF CAPITAL REGION DIRECTOR

AGENDA ITEM 5

Appendices 1-6 to this report are exempt from publication because they contain information of the kind described in paragraphs 14 (information relating to the financial or business affairs of any particular person) and 21 (public interest test) of parts 4 and 5 of Schedule 12A to the Local Government Act 1972 and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information, and because they contain information of the kind described in paragraph 16 (information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) of part 4 of Schedule 12A to the Local Government Act 1972.

Reason for this Report

1. To provide Regional Cabinet with an update on progress made in respect of the Homes for the Region Programme, following the approval of the final shortlist of schemes to progress to the next stage of the Housing Viability Gap Fund in November 2021.
2. To seek Regional Cabinet's approval for CCR to contract directly with developers in circumstances where it is evidenced that the exposure to risk is too high for the Local Authorities (LAs) to manage.
3. To provide an update regarding UK Subsidy Control Measures in relation to the Housing Viability Gap Fund (HVGF) following a further review by CCR's legal advisors.

Background

4. At its meeting of 29th November 2021, Regional Cabinet approved sign off for the final shortlist of schemes to progress to the next stage of the HVGF. This approval allowed CCR to enter into contract with each of the LAs who submitted successful applications as set out in Exempt Appendix 1.

5. Since December 2021, CCR and its legal and technical advisors have been working with LAs, their advisors and delivery partners to progress discussions relating to the contract requirements.
6. A draft funding agreement was issued to LAs for each scheme and has been subject to discussion, this has enabled the majority of LAs to make progress and the draft agreement between CCR and the LA has provided a foundation for LAs to draft the 'back-to-back' legal agreements with their delivery partners, where applicable.

Issues

7. During the last couple of months, it has become apparent that for a minority of LAs the level of exposure and risk that some schemes present is difficult to manage effectively. This is mainly because of some developers being highly leveraged and therefore unable to provide the required levels of security, which is then being pushed back onto LAs. This is proving problematic on a small number of schemes where SME developers are delivering the homes. This issue is creating delays and holding up vital progress and as such CCR has reflected on the current process and is proposing a change for those LAs who can demonstrate and evidence that there are barriers to progress which cannot be managed in the way originally envisaged.
8. All LAs have been asked to provide further information to CCR if they feel the current security requirements are an obstacle to moving forward. One LA notified CCR of concerns regarding two of their schemes and a meeting was held to discuss concerns further. Following this meeting and a review of the issues being faced by the LA and delivery partners, CCR is satisfied that the security requirements of the funding agreement is challenging for the LA given the developers financial circumstances. Further details are shown in Exempt Appendices 2 and 3.
9. To overcome this issue and ensure momentum of the fund continues, CCR are proposing that in these exceptional circumstances and only for the two schemes set out in Exempt Appendices 2 and 3, CCR contract directly with the developers and thereby absolve the LA of any obligations with regards the contracting requirements.
10. As part of this review CCR has considered the status of all eleven schemes and sought to implement a deadline for all the shortlisted schemes to be in contract on or before 22nd July 2022. CCR and all LAs are working together to meet this deadline and ensure that all schemes where CCR are contracting with LAs are in contract around 22nd July 2022. Each scheme delivery programme has been reviewed and the expected start date on site, expected housing completion date and capital expenditure forecast is set out in Exempt Appendix 4.
11. As part of the contract discussions an up-to-date review of UK Subsidy Control has been undertaken by CCR's legal advisors. It has been confirmed that subsidy does apply for several schemes receiving an allocation of Housing Viability Gap Funding.
12. CCR's legal advisors have reviewed the schemes in detail and provided assurance that any subsidy which applies can be lawful if it is given in

accordance with the Subsidy Control Principles. A summary of the advice is included in Exempt Appendix 5.

Risks

13. CCR contracting directly with the developer on two schemes will impact on CCR's risk profile and expose CCR to a level risk. As part of the contracting process CCR's legal and technical advisors have undertaken due diligence for each developer and scheme to mitigate against potential risks. The detailed diligence involves financial diligence, including advice on accounting and tax treatment issues, review of certificate of title and a thorough assessment of the security provision including instructing any valuations to support the preferred security provision and evidence that it is satisfactory.
14. CCR's legal advisers have reviewed the information provided to them in relation to each scheme to assess the level of subsidy control risk and advised CCR on the appropriate approach to take with each scheme.
15. In addition to the additional legal and technical requirements CCR will be reviewing the internal process to manage the scheme through to delivery for schemes where CCR are undertaking the contracting function directly with a developer. There will be a requirement for CCR to appoint a Project Monitor to undertake the quarterly monitoring function on behalf of CCR prior to any developer claim for funding, this will allow CCR an additional level of oversight on each of the schemes.
16. The impact of cost inflation is an issue which will continue to be monitored; however, current evidence suggests that increased property values are currently offsetting increases in costs and contingencies have also been allowed for within scheme appraisals to mitigate this risk.
17. The development process is at times uncertain and although detailed due diligence has been completed and CCR and its advisors are comfortable to enter into contract, there are processes which are beyond the control of CCR. For example, some schemes must obtain the relevant planning permission and legal consents, some have to navigate procurement processes or there could be labour and supply issues. CCR will continue to monitor and mitigate these risks in order to avoid any adverse impact on LAs and CCR's ability to deliver the scheme.

Next Steps and Timescales

18. While this report sets out a proposed change to the current process for two schemes where CCR will contract directly with a developer, CCR must still enter into contract with either the LA or the developer before Housing Viability Gap Funding can be fully approved and made available to LAs or developers on an unconditional basis.
19. The contracting phase will continue to be addressed and CCR and its legal and technical advisors will continue to work with LAs and developers to sign off the individual contracts for each scheme. All LAs and CCR are working to a deadline of 22nd July 2022 for discussions to conclude and contracts to be sealed.

20. Cardiff Council, acting in its capacity as Accountable Body for CCR, is expected to enter into the contracts with the developers for the two schemes for and on behalf of CCR. As per paragraph 13 above, this will be subject to the necessary outstanding due diligence and tax and accounting treatment assessments, particularly in relation to any VAT implications.
21. CCR are in the process of concluding the required due diligence on the Tranche 2 reserve schemes before making a recommendation to progress the successful schemes into contract.
22. Once LAs and CCR are in contract the Housing Viability Gap Fund will move to the Post Award and Monitoring stage. A robust Monitoring and Assurance Framework is in place and this along with the funding agreement sets out the requirements of the fund recipients.

Revenue Budget Update

23. The Full Business Case (FBC) approved by Regional Cabinet back in March 2020, included revenue budget totalling circa £1.6 million. These resources were identified to cover a range of activities over the life of the Fund to 31st March 2024. In November 2021 Regional Cabinet approved an increase of £864,000 to the Housing Viability Gap Fund revenue operating budget to take account of the increased number of schemes, due diligence on reserve fund schemes and to meet future needs. The actual spend for 2020/21 and 2021/22 and the projected spend for financial years 2022/23 and 2023/24 is set out in Table 1 below.

Table 1 – Housing Viability Gap Fund Revenue Position

Approved Budget	Spend 2020/21, 2021/22	Projected Costs 2022/23, 2023/24	Total Projected Cost
£2,489,192	£1,130,642	£1,356,550	£2,487,192

24. The request for an additional £864,000 included contingency to meet unforeseen costs. It is expected the additional due diligence and increase in professional fees required to support CCR to contract directly with developers on two schemes can be met through the contingency already built into the budget.

Reason for Recommendations

25. To seek Regional Cabinet’s approval for CCR to enter into contract directly with developers where CCR and its advisors are satisfied the LA risk exposure is unmanageable.
26. To note the up-to-date UK Subsidy Control Measures and advice provided where lawful subsidy applies.

Financial Implications

27. This report seeks approval for CCRC to enter into contract directly with developers for 2 identified schemes as part of the Housing Viability Gap Fund (HVGF).

28. The report to Regional Cabinet on the 15th March 2021 identified that the HVGF would be set up to target schemes which demonstrated a financial viability gap preventing housing delivery. Any intervention through the fund would be on the assumption that risk and exposure would be borne equally across all partners to the scheme. CCRCD would not be responsible for the provision of any additional funding in the event of cost over-runs or unforeseen costs. Each applicant would take on the full risk on the adequacy and sufficiency of the funding award with cost over-runs for the account of the applicant.
29. It is essential that this proposal for direct contracting on the 2 identified schemes does not change these agreed conditions of funding and that there is no adverse impact on any of the participating local authorities as a result.
30. The legal and tax implications of this proposal are unclear with further work required to be completed prior to the finalisation of any funding agreements or contract award.
31. CCRCD is not a legal entity and, as such, cannot enter into legal contracts or grant awards or undertake any procurement activity. Cardiff Council as the Accountable Body will be required to undertake to contract in this regard on behalf of CCRCD and must be satisfied that this does not result in any adverse implications for Cardiff Council. This is particularly relevant as regards any cost over-runs and, should any contract or grant be awarded, it must clearly identify whether the local authority in which these schemes are located will continue to have this responsibility or whether this will now lie with the developer.
32. The report identifies that there will be a requirement for CCRCD to appoint a Project Monitor to undertake the quarterly monitoring function on behalf of CCR prior to any developer claim for funding. A robust monitoring and reporting process must be put into place to give CCRCD and the Accountable Body the requisite assurance for these schemes.
33. The report additionally references updated UK Subsidy Control measures and members should be satisfied with the advice and ongoing compliance in this regard. Members should also note the due diligence carried out to date by CCR legal and technical advisors, particularly with regard to security provisions. Exempt Appendices 2 and 3 set out the full detail of the advice received.
34. The report identifies that any additional costs of due diligence and professional fees required as a result of the recommendations within this report can be met through the contingency already built into the budget as approved by Regional Cabinet in November 2021.

Legal Implications

35. This report seeks approval for CCRCD to enter into contracts directly with developers for 2 identified schemes as part of the Housing Viability Gap Fund (HVGF). Cardiff Council, acting in its capacity as Accountable Body for CCR, is expected to enter into the contracts with the developers for the two schemes for and on behalf of CCRCD.
36. Legal advice has been obtained from external legal advisors on the change to providing funding to a developer rather than a LA and is set out at Exempt Appendix 6 to this report. It should be noted that the tax implications of this

proposal are under review with further work required to be completed prior to the finalisation of any funding agreements or contract award.

Well-being of Future Generations (Wales) Act 2015

37. In developing the Plan and in considering its endorsement regard should be had, amongst other matters, to
- a) In developing the Plan and in considering its endorsement regard should be had, amongst other matters, to:
 - b) the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards;
 - c) public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: a. age; b. gender reassignment; c. sex; d. race – including ethnic or national origin, colour or nationality; e. disability; f. pregnancy and maternity; g. marriage and civil partnership; h. sexual orientation; i. religion or belief – including lack of belief, and;
 - d) the Well-being of Future Generations (Wales) Act 2015. The Well-being of Future Generations (Wales) Act 2015 ('the Act') is about improving the social, economic, environmental and cultural well-being of Wales. The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language and is globally responsible. In discharging their respective duties under the Act, each public body listed in the Act (which includes the Councils comprising the CCRC) must set and published wellbeing objectives. These objectives will show how each public body will work to achieve the vision for Wales set out in the national wellbeing goals. When exercising its functions, the Regional Cabinet should consider how the proposed decision will contribute towards meeting the wellbeing objectives set by each Council and in so doing achieve the national wellbeing goals. The wellbeing duty also requires the Councils to act in accordance with a 'sustainable development principle'. This principle requires the Councils to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

Put simply, this means that Regional Cabinet must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, Regional Cabinet must:

- look to the long term;
- focus on prevention by understanding the root causes of problems;
- deliver an integrated approach to achieving the 7 national well-being goals;
- work in collaboration with others to find shared sustainable solutions;
- involve people from all sections of the community in the decisions which affect them.

38. Regional Cabinet must be satisfied that the proposed decision accords with the principles above. To assist Regional Cabinet to consider the duties under the Act in respect of the decision sought, an assessment has been undertaken, which is attached at Appendix 7.

Equality Act 2010

39. In considering this matter regard should be had, amongst other matters, to the Councils' duties under the Equality Act 2010. Pursuant to these legal duties the Regional Cabinet must in making decisions have due regard to the need to (1) eliminate unlawful discrimination (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are:

- age;
- gender reassignment;
- sex;
- race – including ethnic or national origin, colour or nationality;
- disability;
- pregnancy and maternity;
- marriage and civil partnership;
- sexual orientation;
- religion or belief – including lack of belief.

RECOMMENDATIONS

40. It is recommended that the Cardiff Capital Region Joint Cabinet:

- (1) approves entering into contract directly with the developers for the two schemes as outlined in this report and set out in Exempt Appendices 2 and 3, subject to confirmation of tax treatment which will be reported back at a future date;
- (2) delegates authority to the CCR Director to approve the terms of and arrange execution of those contracts referred to in recommendation (a) with authority for the CCR Director to further sub-delegate that authority to another Officer within the Accountable Body.

Louise Corbett
Lead for Housing Viability Gap Fund
Cardiff Capital Region
25 July 2022

Kellie Beirne
Director

Appendices

Appendices 1-6 to this report are exempt from publication because they contain information of the kind described in paragraphs 14 (information relating to the financial or business affairs of any particular person) and 21 (public interest test) of parts 4 and 5 of Schedule 12A to the Local Government Act 1972 and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information, and because they contain information of the kind described in paragraph 16 (information in respect of which a claim to legal professional

privilege could be maintained in legal proceedings) of part 4 of Schedule 12A to the Local Government Act 1972.

- EXEMPT** Appendix 1 Final HVGF Shortlist
- EXEMPT** Appendix 2 Security Options Scheme 1
- EXEMPT** Appendix 3 Security Options Scheme 2
- EXEMPT** Appendix 4 Capital Expenditure Forecast
- EXEMPT** Appendix 5 Subsidy Control Update
- EXEMPT** Appendix 6 Legal Implications (PM)
- Appendix 7 Well-being of Future Generations Assessment

Background Papers

- Homes for All the Region Cabinet Report – 29 November 2021
- Homes for All the Region Cabinet Report – 15 March 2021
- Homes for All the Region Cabinet Report – 14 September 2020
- Homes for All the Region Cabinet Report – 9 March 2020

Future Generations Assessment Evaluation

(includes Equalities and Sustainability Impact Assessments)

Name of the Officer completing the evaluation: Louise Corbett E-mail: Louise.Corbett@cardiff.gov.uk	Please give a brief description of the aims of the proposal Development and operation of the Housing Viability Gap Fund
Proposal: Homes for all the Region	Date Future Generations Evaluation form completed: 25 July 2022

1. Does your proposal deliver any of the well-being goals below? Please explain the impact (positive and negative) you expect, together with suggestions of how to mitigate negative impacts or better contribute to the goal.

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
A prosperous Wales Efficient use of resources, skilled, educated people, generates wealth, provides jobs	Shared prosperity is a feature of the fund with a focus on economic inclusion, viability appraisals and priority for areas of lower competitiveness that can show connections with public transport, jobs and regeneration opportunities.	The scheme seeks to move beyond creating wealth – to spreading wealth and aims to stimulate local housebuilding, promoting local skills growth and development and ensuring local benefits and retained and recycled back into local areas.
A resilient Wales Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change)	The scheme sets the conditions only for unlocking sites and the weight of responsibility around delivering on core objectives will be through local-led delivery and effective partnership working.	Resilience is embedded through the focus on areas of lower competitiveness and productivity and the need for demonstrations of connections to jobs, public transport and community infrastructure. Independent assessments have been carried out as part of the business case development stages with CHC, RSLs, Home Builders Federation, CBRE, DBW and Savills to comprehensively test assumptions and deliverability and contributions to sustainability and resilience.
A healthier Wales	The link between good quality housing and people's health and wellbeing is documented and the Homes for region programme will deliver a range of housing for a variety of purposes i.e. affordable, open market.	

Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
People's physical and mental wellbeing is maximized and health impacts are understood		
A Wales of cohesive communities Communities are attractive, viable, safe and well connected	Improving regional infrastructure and building new homes (improving the overall quality of housing stock within the region) will make a key contribution to travel to work modes, denser labour market creation and development of human connections	This will feature as a core part of the viability assessment and VFM checks and local planning policies will need to be adhered to. The appointed Technical Advisors will support the Fund's design and implementation, as well as monitor and review such conditions.
A globally responsible Wales Taking account of impact on global well-being when considering local social, economic and environmental wellbeing	The fund has been designed to solve market failure in all areas of the region and has recognised that other existing initiatives may be available but aims to address gaps in existing provision.	
A Wales of vibrant culture and thriving Welsh language Culture, heritage and Welsh language are promoted and protected. People are encouraged to do sport, art and recreation	The Cardiff Capital Region City Deal is uniquely Welsh – but pitches towards being world leading in areas of competitive strength. This enables a strong reflection on our rich culture and heritage.	The fund will be accessible by all LAs within the Region and key stakeholders.
A more equal Wales People can fulfil their potential no matter what their background or circumstances	Economic Inclusion is a central objective of this initiative and it's aimed at levelling up provision, accessibility and opportunities for all within the region.	

2. How has your proposal embedded and prioritized the sustainable governance principles in its development?

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Long Term</p> <p>Balancing short term need with long term and planning for the future</p>	<p>The scheme operates over four years but will build legacy for the future around which denser labour markets can be created and access to new opportunities such as Metro and Metro Plus.</p>	<p>The scheme viability criteria and VFM credentials have been tested and validated by CCR's appointed Technical Advisors and secured onward recommendation from Investment Panel to Regional Cabinet for approval.</p>
 <p>Collaboration</p> <p>Working together with other partners to deliver objectives</p>	<p>The scheme is a partnership across public and private sectors and involves all ten councils, RSLs, developers and land owners and agents.</p>	<p>Ongoing co-ordination and support is being offered through a Fund co-ordinator role and the establishment of a dedicated fund to support all LA's.</p>
 <p>Involvement</p> <p>Involving those with an interest and seeking their views</p>	<p>WG are the Funds partners and there will be opportunities for comprehensive public engagement as part of the full scheme operation and delivery.</p>	<p>Local planning policies will need to be adopted and adhered to in relation to local consultation and public engagement.</p>
 <p>Prevention</p> <p>Putting resources into preventing problems occurring or getting worse</p>	<p>The evidence base shows such sites have blighted communities. Continuing to 'do nothing' will ensure problems will grow worse and situations that impact communities negatively will not improve.</p>	<p>Each scheme will need to demonstrate contribution to wellbeing goals as part of investment criteria.</p>
 <p>Integration</p> <p>Considering impact on all wellbeing goals together and on other bodies</p>	<p>At the front of the FBC is a consideration of wellbeing objectives and the potential of the scheme to maximise contributions towards resilience and prosperity.</p>	<p>Each scheme will need to demonstrate contribution to wellbeing goals as part of investment criteria.</p>

3. Are your proposals going to affect any people or groups of people with protected characteristics? Please explain the impact, the evidence you have used and any action you are taking below.

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Age	LAs will be required to inform the shape, type and nature of provision required including tenure, flexibility, lifetime homes and so on.	None arising at this time – needs to be assessed through scheme delivery and compliance.	Relevant criteria to be developed via CCR's Technical Advisors and key stakeholders progress individual schemes.
Disability	As above – the LA will be required to comply with local planning requirements and to demonstrate the value it is adding through scheme development in accordance with local housing needs assessments such as LHMA and housing registers.	As above.	This will be demonstrated at criteria application stage
Gender reassignment	As above –With regard to any allocation of affordable housing, this will be done in strict compliance with adopted lettings policies and procedures for the fair and independent allocation of homes.	As above.	Ongoing and long-term monitoring frameworks for demonstrating scheme benefits
Marriage or civil partnership	As above.	As above.	As above.
Pregnancy or maternity	As above.	As above.	As above.
Race	As above.	As above.	As above.
Religion or Belief	As above.	As above.	As above.
Sex	As above.	As above.	As above.
Sexual Orientation	As above.	As above.	As above.
Welsh Language	As above.	Not at this time but the situation will be kept under review.	As above.

4. Safeguarding & Corporate Parenting. Are your proposals going to affect either of these responsibilities?

	Describe any positive impacts your proposal has on safeguarding and corporate parenting	Describe any negative impacts your proposal has on safeguarding and corporate parenting	What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts?
Safeguarding	Not directly relevant however, building the future economy should have a profoundly positive impact on ability to safeguard the future of our residents.	All Councils will have individual adopted safeguarding procedures and policies which must be complied with.	
Corporate Parenting	Not directly relevant – however building strength in the economy should create opportunities for all of the young people entrusted in our care.	As above.	

5. What evidence and data has informed the development of your proposal?

<ul style="list-style-type: none"> • Engagement with LAs and their key partners in 2020 and again in 2021 • PIN Notice – July 2020 • Evidence of market supply and demand – Savills 2019 • KPMG SOC 2019 • KPMB OBS – 2019 • Testing site viability and deliverability – Savills 2019-20 • Partner data and evidence • WG evidence on Innovative Housing Fund • Soft market testing • Evidence from similar Homes England programmes

6. SUMMARY: As a result of completing this form, what are the main positive and negative impacts of your proposal, how have they informed/changed the development of the proposal so far and what will you be doing in future?

Ensure the adopted evaluation framework is implemented and monitoring the impacts.
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7. MONITORING: The impacts of this proposal will need to be monitored and reviewed. Please specify the date at which you will evaluate the impact, and where you will report the results of the review.

The impacts of this proposal will be evaluated on:	Ongoing from April 2021 to March 2024
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