

**26 SEPTEMBER 2022**

---

## **HOMES FOR ALL THE REGION – HOUSING VIABILITY GAP FUND UPDATE**

### **REPORT OF THE CARDIFF CAPITAL REGION DIRECTOR**

#### **AGENDA ITEM 7**

---

*Appendices 1-4 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 regarding the legal and financial due diligence for the two Housing Viability Gap Fund schemes where CCR are proposing to contract directly with developers.

#### **Background**

2. At its meeting of 25 July 2022, CCR requested approval to enter into contracts directly with developers for two Housing Viability Gap Fund schemes. Paragraphs 7, 8 and 9 of the July cabinet report comprehensively set out the justification for CCR to deal the developers directly, instead of the Local Authority responsible for the area in which those schemes are located.
3. The July cabinet report outlined that some developers are highly leveraged and therefore unable to provide the required levels of security, which is then being pushed back onto the LA. To overcome this issue and ensure momentum of the fund continues, CCR proposed that in these exceptional circumstances and only for the two schemes set out in Exempt Appendices 1 and 2, CCR contract directly with the developers and thereby absolve the LA of any obligations with regards the contracting requirements.

4. At its meeting of 25 July 2022, Regional Cabinet requested further due diligence was carried out in relation to financial matters, particularly in relation to any VAT implications before approval could be granted.

## **Issues**

5. CCR's legal advisors have undertaken further work and considered HMRC's guidance on the circumstances in which they consider a payment is, or is not, a grant. The advice concluded that a grant is not a payment, for a supply for VAT purposes.
6. The funding agreements have been reviewed against the indicators provided by HMRC and the opinion is that funding provided under those agreements should be considered as a grant, in order to determine the treatment for VAT purposes.
7. Whilst there are reporting requirements and milestones, these are considered proportional and limited in nature. Similarly, there is a clawback mechanism designed to ensure compliance with the conditions of funding, which is unlikely to be present, were the payment consideration for a supply. The opinion cannot identify any goods or services and does not consider there is a supply of goods or services made by the developer to CCR to which VAT could attach.
8. Regional Cabinet should note the advice is based on UK tax law and practice current at the date of issue insofar as it relates to issues discussed in the note. The advice is, therefore, subject to any change in law or any change in the attitude or practice of HMRC occurring after this date.
9. The full confidential legally privileged VAT advice provided by CCR's legal advisors is set out in Exempt Appendix 3. Following advice received in this note the template funding agreements have been amended to reflect the advice and the parties intention.

## **Housing Viability Gap Fund Programme Update**

10. Completing contracts is a key programme milestone, however, there remain various pre drawdown conditions which must be met before the funding can be made available for drawdown. Some contract conditions are consistent across all schemes and others are bespoke to the individual scheme, each LA has been issued with a conditions tracker for each scheme which clearly state the requirements. Examples of some of the more significant conditions or milestones which remain outstanding include:
  - planning consent and other statutory consents – The majority of schemes are still required to gain approval from the Local Planning Authority and some schemes require other statutory consents such as from Cadw;
  - land ownership – Not all developers are in ownership of the land and are still to complete the purchase;
  - Local Authority appointment of Independent Project Monitor – The role of the Monitoring Surveyor is to review the project both prior to drawdown and for the duration of the project until practical completion. The Monitoring

Surveyor's reporting will provide the Council with an overview of the project and highlight any key project risks.

11. Progress across the wider programme has continued with a number of schemes now in contract with more to follow shortly. At this time, three of the sites have contracts which have been fully completed, three sites are in the process of completing contracts, with a further three schemes still subject to further discussion concerning the funding agreement. In addition, CCR have been working directly with developers on a further two schemes and expect to be able to complete these contracts in October following the required cabinet approval. An individual scheme update can be found in Exempt Appendix 4.

### **Next Steps and Timescales**

12. 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. It is anticipated that this will be completed before the end of October 2022.

### **Reason for Recommendations**

13. 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 and are comfortable with the further due diligence concerning financial matters.

### **Financial Implications**

14. The report to Regional Cabinet on 25 July 2022 updated on the Housing Viability Gap Fund (HVGF) scheme progress and sought approval for CCRC to contract directly with developers for 2 schemes where the exposure to risk and other barriers were considered too onerous. Under the proposed approach, CCRC would absolve the Local Authority concerned of any future obligations with regards to the contracting requirements.
15. A condition of approval at the July Regional Cabinet was the completion of legal and financial due diligence in order to ensure that there would be no adverse impact as a result of this revised approach for the participating local authorities or for the Accountable Body who would be required to contract in this regard on behalf of CCRC.
16. This report updates on the legal and financial due diligence process completed since the earlier report and the outcomes of this process.
17. Exempt Appendices 1 and 2 set out the background detail to the 2 schemes in question including scheme security options and some high-level financial and performance indicators for the related developers. Key risks to the completion of the development schemes and the proposed mitigating factors are also detailed along with the recommended approach to security provisions.
18. Members are also directed to the HVGF VAT Notice at Exempt Appendix 3 which sets out the due diligence in relation to tax matters. In line with this advice, the

Direct Contract Scheme template for funding agreements have been amended accordingly.

19. Prior to determining the recommendations in this report, members should be content with the proposed approach and with the legal and financial due diligence undertaken.
20. It should also be noted that the due diligence and advice within the report does not extend beyond the 2 schemes in question. It is assumed that each participating Local Authority will already have determined the VAT supply and any tax issues linked to the funding agreement for its own schemes. CCRCD colleagues have confirmed that all authorities have been consulted in this regard and that no concerns have been identified to date.
21. Any risks to the proposed approach should be considered at the outset and throughout the duration of the schemes with any issues brought back to Regional Cabinet for consideration.

### **Legal Implications**

22. This report updates on the legal and financial due diligence process completed since the report to Regional Cabinet at its meeting of 25 July 2022 and the outcomes of this process. It also 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.
23. The legal implications of the VAT position are as referred to in the attached VAT advice attached to this report at Exempt Appendix 3 Regional Cabinet is referred to the legal implications referenced in the report prepared ahead of the 25 July 2022 Regional Cabinet meeting for the wider implications of the proposal.

### **Well-being of Future Generations (Wales) Act 2015**

24. 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 CCRCD) 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.

25. 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 5.

### **Equality Act 2010**

26. 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

27. 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 1 and 2, following the further due diligence concerning financial and legal matters;
- (2) delegates authority to the CCR Director to approve the terms of and arrange execution of those contracts referred to in recommendation (1) 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**  
**26 September 2022**

**Kellie Beirne**  
**Director**

## Appendices

*Appendices 1-4 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 Security Options Scheme 1  
**EXEMPT** Appendix 2 Security Options Scheme 2  
**EXEMPT** Appendix 3 Pinsent Masons Advice in Relation to Tax Treatment  
**EXEMPT** Appendix 4 Individual Scheme Update  
 Appendix 5 Well-being of Future Generations Assessment

## Background Papers

Homes for All the Region Cabinet Report – 25 July 2022  
 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)

<b>Name of the Officer completing the evaluation:</b>  Louise Corbett  <b>E-mail:</b> Louise.Corbett@cardiff.gov.uk	<b>Please give a brief description of the aims of the proposal</b>  Development and operation of the Housing Viability Gap Fund
<b>Proposal:</b> Homes for all the Region	<b>Date Future Generations Evaluation form completed:</b> 26 September 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.

<b>Well Being Goal</b>	<b>Does the proposal contribute to this goal? Describe the positive and negative impacts.</b>	<b>What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?</b>
<b>A prosperous Wales</b> 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.
<b>A resilient Wales</b> 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.
<b>A healthier Wales</b>	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		
<b>A Wales of cohesive communities</b> 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.
<b>A globally responsible Wales</b> 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.	
<b>A Wales of vibrant culture and thriving Welsh language</b> 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.
<b>A more equal Wales</b> 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.**

<b>Protected Characteristics</b>	<b>Describe any positive impacts your proposal has on the protected characteristic</b>	<b>Describe any negative impacts your proposal has on the protected characteristic</b>	<b>What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?</b>
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?

- 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.

#### 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