



COMMITTEE SECTION ONLY

Decision No:	<u>DPH03</u>
Notification Date:	<u>19/11/14</u>
Implementation Date: (unless called in)	<u>20/11/14</u>
Call-in:	<u>No</u>

**Notice of Decision Taken by Portfolio Holder/Leader of the Council
Between Meetings of the Cabinet**

(Please read the attached guidance notes before completing this notice)

A. Decision taken by: Councillor Sue Chandler, Portfolio Holder for Housing, Children's Services and Safeguarding, Youth and Community Safety

B. Part of the Constitution authorising decision:

Paragraph 4 of Part 4 (Budget and Policy Framework Procedure Rules) of the Constitution

C. (a) Subject (including whether it is a Key Decision and included within the Notice of Forthcoming Key Decisions):

The purchase of 8 affordable homes from Abbey Developments Ltd at Mill Road, Deal for £608,000.

This is a Key Decision which has not been included within the Notice of Forthcoming Key Decisions.

(b) Is the decision likely to disclose exempt information?

No

D. Decision:

1. To accept an offer from Abbey Developments Ltd to purchase 8 affordable dwellings for rent at their residential development site at Mill Road, Deal, for the sum of £608,000, and agree to enter into the contract for purchase of the dwellings and associated land.
2. To authorise the Director of Environment and Corporate Assets and Director of Finance, Housing and Community, in consultation with the Portfolio Holder for Housing, Children's Services and Safeguarding, Youth and Community Safety, to negotiate the potential purchase of an additional dwelling and to agree the terms of the purchase.

E. Reason(s) for decision (including why the decision cannot wait until the next meeting of Cabinet (or Council where appropriate)):

The homes referred to in the report have been offered to the Council under the terms of a

planning agreement which required the developer to make reasonable endeavours to enter into a contract with a Registered Provider of Social Housing. The developer was unable to enter into such a contract and under the agreement was obliged to offer the homes to the Council. The legality of the process by which the developer sought to make an initial offer was challenged by the Council and the subsequent offer was only received on 31 October 2014. By virtue of the planning agreement, the Council has 28 days from the date of the offer to accept and enter into the contract. The deadline for this is 26 November 2014 and this does not allow sufficient time for the matter to be reported to the next meeting of Council. This is also why the Chairman of the Council has been requested to suspend call-in.

F. Details of alternative options considered and rejected:

The options are to either accept or reject the offer. These options are considered in the report and the acceptance of the offer is the recommended option.

G. Any interest declared by the decision-taker or any Executive Member who is consulted by the decision-taker:

None.

H. Where a conflict of interest has been declared, details of any dispensation granted by the Monitoring Officer:

Not applicable.

I. Background Documents:

Attached report.

J. Decisions within the Budget or Policy Framework taken by the Portfolio Holder (or Leader of the Council) between Meetings of the Cabinet (Part 3, Section 3C, paragraph 13 - General Responsibilities Delegated to All Members of the Executive)

I confirm that the decision-taker has taken the decision in consultation with me.

Not applicable.

Signed: _____ Dated: _____
(Leader of the Council or Deputy)

K. Decisions outside the Budget or Policy Framework taken by the Portfolio Holder (or Leader of the Council) between Meetings of the Council (Part 4, paragraph 4 – Budget and Policy Framework Procedure Rules)

Please give reasons why it is not practical to convene a quorate meeting of the Council or General Purposes Committee to take the decision.

The homes referred to in the report have been offered to the Council under the terms of a planning agreement which required the developer to make reasonable endeavours to enter into a contract with a Registered Provider of social housing. The developer was unable to enter into such a contract and under the agreement was obliged to offer the homes to the Council. The legality of the process by which the developer sought to make

an initial offer was challenged by the Council and the subsequent offer was only received on 31 October 2014. By virtue of the planning agreement, the Council has 28 days from the date of the offer to accept and enter into the contract. The deadline for this is 26 November 2014 and this does not allow sufficient time for the matter to be reported to the next meeting of Council.

I have given my consent to the decision being taken as a matter of urgency.

Signed: _____ Dated: 18/11/14
(Chairman of the relevant Scrutiny Committee)

L. Urgent decisions not subject to call-in

I confirm that this decision is an urgent one and should not, therefore, be subject to call-in.

Yes/No

Signed: _____ Dated: 17/11/14
(Decision-taker)

On the advice of the decision-taker, I agree that the decision is reasonable in all the circumstances and, as a matter of urgency, should not be subject to call-in.

Yes/No

Signed: _____ Dated: 17/11/14
(Chairman/Vice-Chairman/Head of Paid Service or their nominee)

(Please note that M-O relate to Key Decisions not in the Notice of Forthcoming Key Decisions (Part 4; Rules 15 and 16 of the Access to Information Procedure Rules))

M. Reason(s) for General Exception/Special Urgency (i.e. why the decision was not included in the current Notice of Forthcoming Key Decisions and why it would be impracticable to defer the decision until the period covered by the next Notice)

The decision was not included in the current Notice of Forthcoming Key Decisions as the offer was not received until 31 October.

A General Exception Notice has been issued.

N. Notice of use of General Exception Procedure (to be followed where at least five clear days will have elapsed between issuing a General Exception Notice and informing the Chairman of the relevant Scrutiny Committee, and the Key Decision being taken)

I have informed the Chairman of the relevant Scrutiny Committee.

Signed: _____ Dated: _____

O. Agreement to use of Special Urgency Procedure (to be followed where it is not possible to give five clear days' notice that a Key Decision will be taken)

I agree that the taking of the decision cannot reasonably be deferred.

Not applicable.

Signed: _____ Dated: _____

(Chairman of the relevant Scrutiny Committee)

Signed: _____

(Decision-Taker)

Dated: 19/11/14

Guidance Notes for Completion of a Notice of Decision Taken by the Portfolio Holder or Leader of the Council between Meetings of the Cabinet

- (1) The Decision Notice should be clear, concise and capable of immediate publication by the Democratic Services Manager.
- (2) It must include the following information:
 - A Details of the decision-taker (i.e. Portfolio Holder or Leader of the Council).
 - B Part of the Constitution authorising decision. Where the decision is one which would normally be taken by the Cabinet, Part 3 (Responsibility for Functions); Section 3C; paragraph 13 (Responsibility for Executive Functions) will apply. Where the decision is outside the Budget or Policy Framework and would therefore normally be taken by the Council, Part 4 (Rules of Procedure); paragraph 4 (Budget and Policy Framework Procedure Rules) will apply.
 - C
 - (a) State the subject of the decision and whether it is a Key Decision (Part 2 (Articles of the Constitution); Article 13.03 – Decision-Making). A Key Decision is defined as any executive (i.e. Cabinet) decision that:
 - results in the Council incurring expenditure which is, or savings which are, significant (£200,000 or more) having regard to the Council's budget for the service or function to which the budget relates;
 - is significant in terms of its effects on communities living or working in an area comprising two or more wards in the District; or
 - has a particularly significant impact on any community as experiencing social exclusion or discrimination, whether geography or interest defines that community and even if that community is only located in one ward in the area of the local authority.
 - (b) If the decision relates to an exempt item, please specify the relevant paragraph(s) of Part 1 of Schedule 12A of the Local Government Act 1972 which applies. Exempt information is information relating to any individual or organisation, or information

Subject:	PURCHASE OF AFFORDABLE HOUSING AT MILL ROAD, DEAL
Meeting and Date:	Decision between meetings
Report of:	Mike Davis, Director of Finance, Housing & Community
Portfolio Holder:	Councillor Sue Chandler, Portfolio Holder for Housing, Children's Services and Safeguarding, Youth and Community Safety
Decision Type:	Key Decision
Classification:	Unrestricted

Purpose of the report:	To seek approval to accept an offer made by Abbey Developments Ltd for the Council to purchase 8 affordable dwellings for rent which form part of their residential development at Mill Road, Deal.
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Recommendation:	That the Portfolio Holder for Housing, Children's Services and Safeguarding, Youth and Community Safety agrees: <ol style="list-style-type: none"> 1. To accept the offer made by Abbey Developments Ltd to purchase 8 affordable dwellings for rent, for the sum of £608,000 and agree to enter into the contract for purchase of the dwellings and associated land 2. To authorise the Director of Environment and Corporate Assets and Director of Finance, Housing and Community in consultation with the Portfolio Holder for Community, Housing and Youth to negotiate the potential purchase of an additional dwelling and to agree the terms of the purchase.
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1. Summary

Abbey Developments Ltd has formally offered the Council the option of purchasing 8 affordable homes for rent to be developed as part of their residential development on land at Mill Road, Deal. The homes comprise 6 one bedroom flats and 2 two bedroom houses and the offer is being made pursuant to the terms of a Deed of Unilateral Undertaking dated 1 May 2013 which was made in accordance with the requirements of S.106 of the Town & Country Planning Act 1990. The offer price is £608,000 and the Council has until 26 November 2014 to formally accept or reject the offer and enter into the contract for purchase. This report advises that the homes will help the Council meet affordable housing need in the district and that the purchase represents good value for money. It is therefore recommending that the Council accepts the offer.

There may be an opportunity for the Council to negotiate with Abbey Developments Ltd the acquisition of an additional 2 bedroom house and this report recommends that delegated authority should be given to the Director of Environment and Corporate Assets and Director of Finance, Housing and Community in consultation

with the Portfolio Holder for Community, Housing and Youth, to agree the final terms of the purchase agreement.

2. Introduction and Background

2.1 Abbey Developments Ltd purchased the former South Deal Primary School site in Mill Road, Deal from Kent County Council and secured a planning consent on appeal for the development of 44 residential homes. They prepared a Deed of Unilateral Undertaking which was signed by Kent County Council.

2.2 Schedule 2 of the Deed sets out the arrangements by which a proportion of the land was to be designated as 'Affordable Housing Land' in order to provide 'Affordable housing', which was to comprise 13 units with the objective that they should be genuinely affordable. Of the 13 units, 8 were identified as the 'Registered Provider Affordable Dwellings', which were to be used as rented accommodation only. The Deed went on to provide a time period within which the developer would make reasonable endeavours to enter into a contract with a Registered Provider for the provision and ownership of the 'Registered Provider Affordable Dwellings' with the price to be no less than £1,303.00 per square metre (the 'Affordable Housing Price') for each affordable dwelling, index linked.

2.3 The Deed also includes a provision whereby if the developer is unable to enter into a contract with either a Registered Provider nominated by the Council or their own registered provider, they shall offer to sell the 'Registered Provider Land' to the Council at the 'Affordable Housing Price'.

2.4 The Registered Provider Land is defined in the Deed as that part of the Affordable Housing Land required to provide the Registered Provider Affordable Dwellings which are defined as 8 affordable dwellings to be used as rented accommodation only.

2.5 In June of this year the developer wrote to the Council advising that they had not been able to enter into a contract with any Registered Provider which met the Affordable Housing Price requirement. The Council was able to confirm that one of the Registered Providers it had nominated had made an offer but that the price was below the Affordable Housing Price.

2.6 The developer subsequently advised the Council that it considered it had complied with the terms of the Deed as it had made an offer to the Council of the Registered Provider Land at the Affordable Housing Price.

2.7 The legal validity of the offer letter was challenged by the Council and the developer has since accepted the initial offer was invalid and has submitted a revised offer for the purchase of the 8 affordable rented units at a price of £608,000. This offer is now properly in accordance with the Schedule to the Deed. The Council has until 26 November 2014 (28 days from the date of the letter) to accept the offer in writing and enter into the contract for purchase, allowing for a transaction completion date of 28 days after the date of exchange. Failure to comply with these timescales may result in the developer being released from the affordable housing obligations contained within the Deed.

2.8 Information provided with the offer letter included a specification of the units and related plans and drawings. The specification has been appraised by the Council's Assets & Building Control Consultancy Manager and the Head of Asset management for East Kent Housing. Their view is had the Council been consulted at an earlier

opportunity it would have recommended some changes relating to the specification and the provision of street lighting and a parking space on the affordable housing land. However, these are not considered to be major issues and the scheme is considered to be acceptable in its current form.

- 2.9 The homes will help the Council meet housing need in the district and the smaller, 1 bedroom units will provide an opportunity for existing social tenants to down-size and release larger family homes for letting.
- 2.10 From a financial perspective the purchase of the properties at the price offered does represent good value for money. There is no land cost and square metre build price is less than the m2 build cost of another current DDC led affordable housing development. If a total rent income of £34,000 per annum is assumed on the basis of the 2 bed houses being charged a rent of £90.00 per week and the 1 bed flats a rent of £80.00 per week and a management & maintenance cost of £500 per property/per annum, the payback period would be around 20 years.
- 2.11 The homes will also attract New Homes Bonus at the higher, affordable housing, rate.
- 2.12 The homes can be purchased using a combination of Excess Right to Buy receipts retained by the Council for the express purpose of providing new, replacement affordable housing and Housing Revenue Account funds (including Housing Initiative Reserve if appropriate). At this time it is not envisaged that there will be a requirement for HRA borrowing.
- 2.13 There may be the potential to negotiate with Abbey Homes regarding the purchase of an additional 2 bedroom house but there have been no discussions with them at this time and it is unclear whether they would wish to consider this or what their expectation regarding price would be. It is therefore, recommended that the agreement of any terms relating to this should be delegated to the Director of Environment and Corporate Assets and Director of Finance, Housing and Community in consultation with the Portfolio Holder for Community, Housing and Youth.

3. Identification of Options

3.1 The options are:

3.2 Option 1: to accept the offer and to enter into a contract to purchase the affordable housing units for the sum of £608,000.

3.3 Option 2: to reject the offer.

4. Evaluation of Options

4.1 Option 1 is the recommended option as it will secure the provision of affordable housing for which there is a clearly demonstrated need in the district. HRA and other funding is available to fund the purchase and the scheme represents good value for money.

4.2 Option 2 is not recommended as it will result in the loss of affordable housing.

5. **Resource Implications**

- 5.1 As explained at 2.12 the Council can use a combination of existing retained Right to Buy receipts and HRA balances to fund the purchase of the homes. The use of HRA balances will not have any detrimental impact on the HRA business plan and additional borrowing will not be required. The homes will generate a long term rental income stream for the HRA.

6. **Corporate Implications**

- 6.1 Comment from the Section 151 Officer: Excess Right to Buy receipts are ring fenced to provide up to 30% of the cost of affordable housing and have to be repaid to Government (with interest) should they not be expended in the allotted time period. This scheme would be an appropriate use of this funding and the current level of receipts is sufficient to contribute 30% to the purchase of the 8 units and depending on cost should be sufficient to contribute to the purchase of the further unit should this be required. Currently they are sufficient HRA reserves to meet the balance of the cost. (PH)
- 6.2 Comment from the Solicitor to the Council: The Senior Solicitor has been consulted in the preparation of this report and has no further comment to make.
- 6.3 Comment from the Equalities Officer: This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>.
- 6.3 Other Officers (as appropriate): None received

7. **Appendices**

None

8. **Background Papers**

None

Contact Officer: Paul Whitfield, Head of Strategic Housing