WEST NORTHAMPTONSHIRE COUNCIL CABINET

17TH JANUARY 2023

CABINET MEMBER RESPONSIBLE FOR FINANCE – COUNCILLOR MALCOLM LONGLEY

Report Title	**Purchase of the long leasehold interest in six houses in Brackley**
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List of Appendices

None.

1. Purpose of Report

1.1 To seek approval for the purchase of the long leasehold interest of six residential properties in Brackley, currently used by the Council to provide a residential service to Adult Social Care customers.

2. Executive Summary

2.1 The Council owns the freehold of six houses in Brackley. These houses are on long leases to Paradigm Housing Association (PHA) and subject to a contact under which the Council pays PHA a fee each year. The fee is currently £113k. It rises by RPI each year.

2.2 Three of the houses are occupied by tenants, who receive support in living. The remaining three houses are vacant.

2.3 The Council could terminate the arrangement but would need to transfer the freehold of the houses to PHA without payment. This would leave it needing to accommodate the residents otherwise. This is unlikely to be suitable or cost-effective.

2.4 An agreement has been reached in principle with PHA for the Council to buy out PHA’s interest for £1.858m. It is also proposed to refurbish the properties. A total budget of £2.012m would therefore be required.

2.5 Once the Council had full control over the properties it would be able to provide arrangements more suitable for residents’ needs and which reduced the Council’s net costs. Additionally, the three vacant properties would be used for other suitable services or disposed of.

2.6 Overall, the initial annual saving, after allowing for capital financing costs, should be £69k (£55k in the first 12 months). This should rise over time.

3. Recommendations

3.1 It is recommended that the Cabinet:

3.1.1 Recommends to Council that a capital budget of £2.012 million is created to acquire the long leasehold interest in the six residential properties in Brackley referred to in the report and refurbish them.

3.1.2 Subject to Council approval of the budget, authorises the Assistant Director Assets & Environment, in consultation with the Cabinet Member for Finance, to agree the terms of the acquisition and any related transactions.

4. Reason for Recommendations

4.1 To allow WNC to end the historical agreement with PHA which is no longer fit for purpose and is not in line with best value objectives.

4.2 To remove the requirement to pay the RSP to PHA and mitigate the Council’s exposure to annual index linked uplifts.

4.3 To allow the Council to use the properties as it determined, rather than being confined by the funding agreement. This would enable the customers to receive better tailored care and support and would enable the Council to use vacant or underutilised properties to meet additional Council needs.

4.4 The Council would own the properties and the interest and capital payment requirements would pay down the Council assets, rather than an asset effectively owned by a third party.

4.5 The Council will have greater control over the future of the properties. If they were deemed surplus to requirements, the Council could dispose of any of them and generate a capital receipt.

5. Report Background

Project initiation

5.1 In 2002 Northamptonshire County Council (NCC) partnered with Chiltern Hundreds Housing to acquire the six residential properties in Brackley for service users who needed moving from a hospital setting and to reduce revenue costs. Subsequently Chiltern Hundreds Housing became part of Paradigm Housing Association (PHA) and NCC was replaced by West Northamptonshire Council. For convenience, the housing association is referred to as PHA throughout this report.

5.2 Six properties were identified within Brackley, all of which were within traditional housing estates. It is understood that the original intention was for PHA to acquire the freehold. However, due to the presence on covenants placed on these properties by the original developer, it was agreed that NCC would acquire the freehold of the properties but using monies provided to it by PHA.

5.3 As part of the agreement, NCC was required to simultaneously grant PHA a 125-year lease (of which 105 years are currently unexpired) to protect the investment that PHA had made in the properties by funding their acquisition. PHA provided NCC with £816,950 to purchase the properties and paid all legal fees and stamp duty.

5.4 NCC also entered into a care and support contract, under which care and support is provided on a residential care model (WNC pays a set amount which includes all care, food, and housing costs). Currently this is with Livability via the Commissioning for a Good Life framework. This contract began in 2020 and is for five years. However, Livability has just served notice and it will accordingly end in early 2023.

Agreements and the impact on the Council's freehold interest

5.5 There are three agreements in place, which interact:

1. The lease between WNC and PHA.
2. A funding agreement between WNC and PHA.
3. The care and support contract between WNC and Livability.

5.6 The funding agreement has the following key terms:

- A minimum period of 15 years from 2002.
- PHA to maintain the properties to an agreed standard.
- NCC to pay Revenue Support Payment (RSP) of approximately £82,000 per annum, indexed by RPI.

- If the Council terminated the agreement, it would be required to transfer the freehold to PHA for a nominal £1.
- If the Council terminated the care and support contract it would trigger the termination of the PHA funding agreement and thus the transfer of the freehold to PHA.
- The Council can also terminate the funding agreement if (a) the Council's reasonable view was that the accommodation failed to meet the needs of the residents, or (b) the Council judged the service was no longer cost effective, or (c) if PHA became insolvent. This would require the transfer of the freehold to PHA as above.

5.7 Thus, while WNC owns the freehold, it does not have control of this given the obligations and triggers in the other agreements. Nor do the agreements provide a mechanism for WNC to acquire PHA's interests in the properties.

5.8 While this is not explicitly defined in the funding agreement, it appears that the RSP reflected the market rent for the properties at the time of the original transaction. The RSP would give PHA the income that it would have anticipated should PHA have purchased the properties and then made them available to NCC. The assumption is also consistent with the obligations placed on PHA which requires it to maintain the structure of the properties (like the obligations of any residential landlord)

Evolution of the position

5.9 Over the initial 15-year term of the funding agreement, the financial structure was sustainable, and the accommodation model was suitable for the customers as they stepped down from hospital settings. However, this arrangement is no longer sustainable for the Council. The model no longer meets the customers' needs, and the RSP has increased to a level which exceeds reasonable levels (discussed in more detail below).

5.10 It appears that the intention was that within the 15-year term, NCC would have found and/or developed alternative provision to replace the six Brackley houses and then exited the arrangement. However, this not happened, nor has WNC used its rights to terminate the Funding Agreement as this would cause a chain of events which would ultimately remove the current residents from their homes, which the Council is not seeking.

Revenue Support Payment

5.11 For as long as the current structure remains in force, the Council is obligated to continue to pay the RSP to PHA. Following historic RPI increases the RSP current stands at approximately £133,000 per annum. It will rise further.

5.12 It is predicted that in ten years' time WNC could be paying £197,248 per year using based on the forecast provided but the Office of Budget Responsibility.

Ending the Revenue Support Payment

5.13 The only two contractual mechanisms currently available to the Council to terminate the RSP would be to terminate the care contract or to notify PHA that it considers that the service is no longer cost effective. Both these options would bring the agreement to an end but would place an obligation on WNC to transfer the freehold interest in the houses to PHA for £1.

5.14 PHA has informed the Council that, if it owned the freeholds, it would intend on selling them as it does not operate in Northamptonshire any longer. It would therefore be risky for the Council to terminate under the grounds mentioned in 5.4.4, because PHA would sell and WNC has no suitable alternative accommodation to move the current customers on to. It is therefore attractive to negotiate an exit where the Council purchases the leaseholds off PHA.

5.15 Initial talks on a negotiated exit which would leave the Council in ownership of the properties have therefore taken place. These have been positive, and the parties have provisionally agreed on a fair purchase price of £1,857,500. This figure was provided by PHA and represents an external valuation of the six properties taking into account the condition of the properties. The breakdown is shown in Table 1.

Table 1: The Six Houses and values	
Property	**Value, £**
Remus Gate	332,500
Westminster Croft	305,000
Holly Close	315,000
Hanover Drive	325,000
Hawkins Close	285,000
Tudor Way	295,000
Total	1,857,500

5.16 An internal desktop review of the values has been conducted. From that assessment it is concluded that that with the freehold title and the refurbishment work of £154k to bring them up to decent standard, the properties could be valued at £2.282m collectively. This suggests the price is fair and would not impose undue risks on the Council.

Future care provision

5.17 The current customers have lived in these properties since 2002. The relevant services have confirmed that these properties, in terms of location and size, are still suitable to meet the residents' needs. However, the care and support model needs changing to provide more suitable and tailored care and support. This should also help WNC mitigate its revenue costs.

5.18 WNC currently cannot change the care model. As a result of this three of the properties are now empty, but WNC still pays for them as part of the RSP. Under the contractual terms WNC cannot extract itself from the agreement in relation to some properties without terminating them in relation to all the properties.

5.19 In addition, there are range of options to positively use the vacant properties.

Proposal

5.20 It is therefore proposed to purchase the PHA interest in the properties and refurbish them. The costs would be as set out in Table 2.

Table 2: Acquisition and refurbishment costs	
Item	**Cost, £k**
Agreed purchase price	1,858
Stamp Duty Land Tax (SDLT)	100

Table 2: Acquisition and refurbishment costs	
Item	**Cost, £k**
Allowance for legal and professional fees	20
Refurbishment	154
Total	2,132

5.21 It is possible the Council may be able to benefit from an SDLT exemption. If so, that element of cost would be removed.

6. Issues and Choices

6.1 The Council has the following options.

6.2 Option 1 (do nothing): The Council could 'doing nothing', leaving the current arrangements in place, but this would mean that the customers would stay in accommodation that is not suitable for their needs and over the next 10 years the Council would pay a minimum of £1.330m in revenue support to PHA. In practice it would be higher since RPI is currently running at over 10%. In addition, the Council would continue to pay for three empty properties.

6.3 Option 2 (purchase alternative properties): The Council could terminate the current arrangement and purchase alternative properties. Nothing suitable has been identified in the market. The cost of purchasing six similar properties would be higher than the £2.032m to purchase and refurbish the six Brackley properties (purchasing only three would obviously be cheaper, but the 'surplus' three could if not required for service purposes be sold, meaning the financial balance is still in favour of purchase). Moving the four remaining customers would also be very disruptive. They have lived in these houses, close to each other, for many years.

6.4 Option 3 (leasing alternative properties). This is similar to Option 2, but the alternative properties would be leased. The estimated (average) Market Rent for these properties at the moment is around £1,895 per calendar month (£22,740pa, or £136,440pa for all six), based on a 4-bed property in Brackley. This is slightly higher than current levels of RSP. There is currently a shortage of houses in the market which is driving rental prices up further. The disadvantages of relocating the residents would remain.

6.5 Option 4 (terminate the arrangement and move residents to extra care). The residents are not considered suitable for extra care accommodation at present. There currently is not any suitable extra care provision within Brackley.

6.6 Option 5 (proposed purchase of PHA's leasehold interest). This arrangement would deliver savings which grew over time, whilst enabling the Council to provide suitable care and support for the residents.

6.7 The Council would also have choices about what to do with the three homes currently unoccupied. They could either be sold (thus reducing the financing costs) or used for other service purposes.

6.8 The Council would also need to consider who will manage the properties. A suitable organisation will be needed to provide housing related support when the houses are registered as supported living units. Work on this is underway.

7. Implications (including financial implications)

Resources and Financial

7.1 It is proposed to use General Fund capital to purchase the leasehold interest of the six properties.

7.2 It is proposed to expend £2.132m on the acquisition and refurbishment. If this is assumed to be borrowed at 4.5% over 60 years, the annual financing cost on an annuity basis would be £103k. This would remain constant in cash terms whilst, conversely, the RSP would continue to rise by RPI.

7.3 While the responsibility is likely to be passed to a future operator, it is appropriate to include an allowance for the management and maintenance for these properties within the proposal. This is estimated to be £9k per year once the properties have been upgraded. Thus, the annual revenue cost should be £112k pa.

7.4 Against the (current year) cost of £133k pa WNC should thus make a revenue saving in each year, which would increase over time.

7.5 Allowance should be made for periodic refurbishment thereafter. Every ten years a cost (in current values) of £63k is estimated. This would increase the nominal annual cost after year 10, but well below the increasing savings as RSP would have increased by well over that amount during the 10-year period.

7.6 For these purposes if it is assumed the three vacant properties are sold this would generate a capital receipt in the order of £1.141m, reducing capital financing costs by £56k pa. Thus, the initial annual costs would be around £64kpa, and the initial annual saving around £69k pa. There is potentially some erosion of this arising from holding costs until properties were sold (or brought into use, as in 7.7) so a saving figure of £55k for the first 12 months may be appropriate for budgeting purposes.

7.7 If the vacant properties, or any of them, were put to service use rather than being sold, it would be on the grounds that this delivered greater benefits than the financial saving relating to that property. Thus, the saving identified in 7.6 would be a minimum figure.

7.8 By pursuing Option 5, WNC would also have an unfettered freehold interest. While the capital repayment costs have been included in the assessment, it is important to draw a distinction between this and the RSP. Under the RSP, WNC’s payment (in effect) repays PHA’s capital investment. By adopting the current approach, those costs will go directly to paying off the debt, increasing the Council’s effective equity in the property over time. In addition to this, WNC would be able to directly benefit from any capital appreciation and would have full control over the disposal process should the properties no longer be needed to meet the service need.

7.9 The freehold is currently held within the General Fund, having migrated from NCC. Depending on the choice of housing related support provider, it may be that the property interest would be transferred to the Housing Revenue Account (HRA). If so, the HRA would pay the General Fund to 'purchase' the properties and then receive the benefit of the rent.

Legal

7.10 The Council can acquire the leasehold interests under Section 120 of the Local Government Act 1972. This empowers the Council to purchase land for the purposes of any of its functions. 'Land' is defined in Section 270 of that Act as including "any interest in land and any easement or right in, to or over land" and thus includes the leasehold interests it is proposed to acquire.

7.11 The Council would need to ensure it, or any organisation it appointed to manage the properties, would comply with the requirements set by the Regulator of Social Housing as well, as applicable, those of the Care Quality Commission.

Risk

7.12 There are a number of risks involved in pursuing the proposed course of action. None seem particularly significant.

7.13 The Council could face a lack of demand for the properties for the intended purposes. This would be resolved by disposing of them.

7.14 Changes in the law might make the proposed arrangement unviable. Whilst this is possible, having unfettered freehold ownership should make it easier to make any changes needed to respond to changes in the law. The Council would also have the option of disposing of some or all of the properties.

7.15 The Council might not secure a suitable registered provider. In this case, it could undertake the function itself (doubtless making use of NPH). It may also choose to undertake the function itself.

Consultation

7.16 The customers and their families have been consulted about the proposals and are very supportive of this.

Consideration by Overview and Scrutiny

7.17 This report has not been considered by an Overview and Scrutiny committees.

Climate impact

7.18 The recommendation is not considered to have any impact on climate change. The properties already exist, and their emissions would not change as a result of a change of ownership.

Community impact

7.19 The properties have been used to provide residential care since 2002. Their continued use, in a new arrangement, for similar purposes should not cause any adverse effects on the community.

7.20 The proposal would enable the Council to bring the three vacant properties back into use, which should have a positive community impact.

Communications

7.21 The current residents would be kept informed as the process proceeds.

8. Background Papers

8.1 None