

INDIVIDUAL CABINET MEMBER DECISION

Developing a Registered Provider Framework

Report of Chief Officer – Planning and Climate Change

PURPOSE OF REPORT			
The report seeks Cabinet Member approval for Lancaster City Council to implement a new Registered Provider Framework for Lancaster district.			
Key Decision	N	Non-Key Decision	Referral from Cabinet Member
Date of notice of forthcoming key decision			
This report is public			

RECOMMENDATIONS OF THE CHIEF OFFICER – PLANNING AND CLIMATE CHANGE

- (1) That the Cabinet Member approves the proposed Registered Provider Framework.
- (2) That the Registered Provider Framework is implemented forthwith, and all existing partners and new entrants are invited to apply for inclusion on the Framework.
- (3) That the Registered Provider Framework is reviewed on a two-yearly basis to ensure its effectiveness and purpose is maintained.

1.0 Introduction

1.1 Lancaster City Council has very well-established links with key Registered Providers (RP's) in Lancaster district who own existing social housing and/or who are actively seeking development opportunities. The role of Registered Providers is critical to increasing the supply of social and affordable housing in Lancaster district, and to ensure that there is a sufficient number of partners to work with developers in delivering new affordable housing negotiated on market housing schemes (whereby the planning permission requires the developer to provide on-site affordable housing referred to in this report as Section 106 opportunities). The term Registered Provider means any person, body or entity registered with Homes England (formerly the Homes and Communities Agency) as a provider of social housing in accordance with section 80 (2) and chapter 3 of the Housing and Regeneration Act 2008.

- 1.2 When the housing strategy function transferred into the Planning Service in 2010, the partnership arrangements were refreshed and have continued to strengthen since then. The Service Manager for Planning and Housing Strategy has chaired quarterly meetings which all existing RP partners are invited to attend, and the Principal Strategic Housing Officer has acted as the single point of contact for RP's. More recently, the partnership meetings have been split into two distinct groups for neighbourhood management staff and development staff, so there is ample opportunity to discuss and debate specific issues pertinent to staff roles and areas of responsibility and to share best practice. At the present time, there are 11 RP partners who actively engage in the existing partnership as developing RP's, although it should be noted that there are 35 in total providing a mix of general needs accommodation, homes for the elderly and supported housing for vulnerable groups. Some existing partners are large national organisations and others very small and specialist in nature.
- 1.3 The council is seeking to formalise the current arrangements and implement a new framework for RP's which will ensure that existing partners and new entrants will meet the council's required standards and work to shared priorities and objectives. Most notably, the proposed framework is intended to be an effective tool to ensure that new RP's seeking to join the framework are suitable partners and can demonstrate an ability to align to the council's housing, planning and homelessness priorities, objectives and policies going forward.
- 1.4 Some of the existing RP's are well established, longstanding and trusted partners. Whilst the number of developing RP's has increased in recent years, the pre-cursor has been to engage in dialogue with the council and discussing the council's priorities and housing needed in the district prior to commencing any development activities or seeking to acquire S106 affordable housing units. More recently there has been a regional increase in speculative RP's increasing their activities in Lancashire and Cumbria without either the knowledge or prior consent of the respective Local Authority and this has been a key driver in bringing the proposed Framework into fruition. It should be noted however, that Local Authorities have no direct powers to regulate RP's as this is a power that falls to the Regulator of Social Housing (RSH) set out in the Housing and Regeneration Act 2008. However, the Framework allows the city council to exercise better control of those RP's who apply to be included and provides a very clear message regarding the standards and practice expected.

2.0 Framework Principles

- 2.1 All existing RP partners have been consulted on the proposed Framework over a series of partnership meetings with officers outlining the purpose and need. As well as measuring the quality and effectiveness of RP partners, one of the key elements is to control the

number of partners included at any one time. Over the years, the city council has taken a fairly relaxed stance on allowing new entrants to join the partnership but having too many partners can be counter-productive by creating unnecessary competition between RP's bidding for the same sites/S106 affordable housing units and runs the risk of driving up costs. Whilst officers have previously considered the implementation of fixed transfer values (which sets a cap on the amount the RP pays for affordable housing units by tenure through S106 opportunities), this is not being proposed at this time and may be reconsidered when the council undertakes a full review of the Local Plan when affordable housing viability will be robustly re-tested.

2.2 Appendix 1 of the report is the proposed Framework document which sets out the process and criteria by which RP partners will be assessed against. The assessment process contains two stages: Stage 1 requires all RPs to pass every stage, and if successful, Stage 2 considers the suitability of each RP in terms of the management of their existing stock (where applicable) development delivery, organisation performance generally and in relation to nominations percentages and collectively the responses in Stage 2 will constitute a pass or a fail.

2.3 New entrants will be required to submit additional information which will detail their existing activity and stock portfolio, the organisation structure and operational management arrangements along with key policies in relation to the allocation and management of their social and affordable housing. This information is critical to assess whether a new entrance is considered suitable.

3.0 Details of Consultation

3.1 Along with consulting existing RP partners over a series of partnership meetings, the council's Legal Services recommended that independent Legal Advice was obtained prior to implementing the proposed framework. This was primarily to establish whether there were any elements that could give rise to risk of potential challenge.

3.2 Trowers and Hamlins LLP were commissioned for this purpose. Their advice took account of subsidy control, procurement, local authority decision making and planning constraints. In summary, these are set out below:-

3.2.1 Trowers' advice made it clear that the RP framework should not give partners any unfair advantage over any transactions constituting a public contract where tendering is necessary and that a level playing field exists. Furthermore, that the assessment criteria applied pertains to the ownership, management and maintenance of social

housing.

3.2.2 In relation to planning duties, concern was raised about the extent to which the council could impose a requirement that developers must only transfer affordable housing units to those RP's included on the proposed Framework which could be considered unreasonable in the context of applying the Reg 122 Test. The advice recommended that developers should be allowed to contract with an RP not on the framework if they would otherwise satisfy the eligibility criteria but provide an undertaking to use reasonable endeavours to contract with an RP already included on the RP Framework.

3.3 In taking account of the Trowers advice a further series of public consultation took place in January 2023 inviting developers, house builders and agents to comment. Only two responses were received with no substantive reasons being presented for the council not to proceed with implementing the Framework. Should the proposed Framework be approved, the opportunity to join the Framework will be advertised on the council's website. The council will also adopt the suggest clauses recommended by Trowers for inclusion on new Section 106 Planning Agreements.

3.4 An officer panel will assess all applications for inclusion on the Framework. A right of appeal will be provided as part of the process and undertaken by an officer not involved in the original panel decision.

4.0 Options and Options Analysis (including risk assessment)

	Option 1: Implement the proposed Registered Provider Framework	Option 2: Do not Implement the proposed Registered Provider Framework
Advantages	It will give the council greater control over which Registered Providers can join the proposed framework. The suitability of RP's will be properly scrutinised. The framework gives the council the ability to remove any RP should they fall below our expected standards, be subject to any regulatory judgement by Homes England or become de-registered. it gives a clear message to deter	No real advantages other than no further officer time spent on implementing the framework and assessing the applications.

	speculative Registered providers who seek to advance proposals that do not align to council priorities and policy framework.	
Disadvantages	The framework itself is not legally binding but it will better control how Registered providers operate in the district and how S106 affordable housing units are delivered.	The existing system would remain in place but as outlined in the report without any degree of scrutiny and performance review of new and existing RP's. the council could remain more exposed to the impact of speculative RP's and their activities.
Risks	As long as the Framework does not affect free competition, appropriate procurement requirements and regulatory practice and does not fetter the LPA planning functions, then there are no reasonably foreseeable risks to the Framework. If the converse occurs then there is a risk of legal challenge against the use of the Framework.	No risk of challenge although the modifications made would sufficiently reduce the risk of challenge based on Trowers advice.

5.0 Officer Preferred Option (and comments)

5.1 The officer preferred option is Option 1.

6.0 Conclusion

6.1 The establishment of the RP Framework will ensure that all RP's admitted can demonstrate a track record of adopting suitable management, performance and development standards along with mechanisms to remove RP's from the Framework should the need ever arise.

RELATIONSHIP TO POLICY FRAMEWORK

Both the Local Plan 2011-2031 and the Homes Strategy 2020-25 seek to increase the supply of social and affordable housing in Lancaster district with planning policies stipulating that new affordable housing should be delivered by suitable Registered Providers.

CONCLUSION OF IMPACT ASSESSMENT

(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, HR, Sustainability and Rural Proofing)

The implementation of the RP Framework is not expected to have any negative impacts. Successful RP's will be expected to demonstrate their suitability and adhering to housing

legislation, policies and practices which do not directly or indirectly discriminate any particular group.

LEGAL IMPLICATIONS

External legal advice has been sought on the Framework. Details of relevant issues are set out in the body of the report. In implementing the Framework, the Council needs to make sure that they do not stray into practices that affects appropriate procurement, state subsidy and appropriate regulatory practices. The practical workings of the Framework need to be appropriately kept under regular review and any development on the use of the Framework should be appraised for legal compliance and risk.

In determining applications to the Framework Officers must be mindful of their public law duties when making decisions. A decision on an application may be subject to a judicial review challenge if not made correctly.

FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report. The process of adopting and implementing the RP Framework and assessing applications can be resourced from within existing budgets.

OTHER RESOURCE IMPLICATIONS

Human Resources:

None

Information Services:

None

Property:

None

Open Spaces:

None

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

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