

CABINET - 9 NOVEMBER 2011

THE OVERVIEW AND SCRUTINY COMMITTEE – 14 NOVEMBER 2011

POOLING OF HOUSING CAPITAL RECEIPTS

REPORT OF CORPORATE DIRECTOR GOVERNANCE (AS MONITORING OFFICER)

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RECENT REFERENCES:

[CAB1336](#) – Disposal of Vacant HRA dwellings – 15 November 2006

[CAB2095](#) – Disposal of Vacant HRA dwellings – 8 December 2010

[CAB2227\(HSG\)](#) – 2011/12 Performance Monitoring Report – HRA Services – 22 September 2011

[AUD012](#) – Annual Governance Report - 26 September 2011

[AUD013](#) – Statement of Accounts 2010/11 – 26 September 2011

EXECUTIVE SUMMARY:

At its meeting on 26 September 2011, the Audit Committee approved the Statement of Accounts which included a provision for the pooling of £1.6m of capital receipts arising from vacant HRA property sales; being subject to a national pooling requirement rather than being available for local use.

The Department of Communities and Local Government advise that a pooling requirement has arisen. The advice of Leading Counsel and officers is that the pooling requirement should now be paid.

Report CAB2247 elsewhere on this agenda, indicates that the Government recognises that the Regulations need amendment to give effect to their intention that

100% of receipts should be retained locally to enable investment in affordable housing/regeneration. However, correspondence with DCLG on this aspect has indicated that any clarification will only apply to future sales, not those that have already occurred.

## RECOMMENDATIONS

### To Cabinet:

- 1 That it be noted that the Head of Finance is now required to make payment to DCLG of £1,635,280, plus interest in accordance with the revised pooling returns which have been submitted to the external auditor and as reflected in the approved Statement of Accounts.
- 2 That the reduced availability of capital receipts be taken into account in the revised Capital Programme 2011/12 to 2014/15 as follows:
  - (a) £817,640 - 50% General Fund – Affordable housing/regeneration
  - (b) £817,640 - 50% HRA – Re-investment in stock condition.
- 3 That should any further sales be progressed under the vacant HRA sales policy, to ensure that the Council can retain 100% of the capital receipt:
  - (a) such sales should be made only to builders/developers who covenant to carry out substantial works of repair, improvement or conversion required prior to onward sale into owner/occupation by an individual who intends to use it as their only or principal home.
  - (b) additional categories of purchasers be also considered if the Government's proposals to add additional categories where 100% of the receipt can be retained, as referred to in Report CAB2247, are implemented.
- 4 That the advice of Leading Counsel that Barnes House and 84-88 Sussex Street could be sold under the existing Regulations, subject to the condition outlined in recommendation 3(a) above, be noted.
- 5 That in view of the current increase in need for additional homelessness accommodation, the Head of Landlord Services be authorised to delay the disposal of Barnes House and 84-88 Sussex Street until 2012/13.
- 6 That a report on the increasing pressures on the Homelessness service be brought to Cabinet in December, including an options appraisal of utilising the above properties as temporary homeless accommodation at least for the next twelve months.

- 7 That the previous decision to dispose of 41a St Catherines Road (CAB2095 refers) be rescinded and that this property continue to be used as temporary homeless accommodation until further notice.
- 8 That it be agreed that the vacant HRA sales policy be reviewed in due course following the implementation of the Government's Housing Refinancing proposals – as the policy had been adopted as an interim measure pending implementation of the refinancing measures for the HRA.
- 9 That all Members of Council be advised of Cabinet's response to this report, as set out above.

To The Overview and Scrutiny Committee:

- 10 To consider whether to raise any issues with the portfolio holder and whether any items of significance need to be drawn to the attention of Cabinet.

## CABINET - 9 NOVEMBER 2011

### THE OVERVIEW AND SCRUTINY COMMITTEE – 14 NOVEMBER 2011

#### POOLING OF HOUSING CAPITAL RECEIPTS

#### REPORT OF CORPORATE DIRECTOR GOVERNANCE (AS MONITORING OFFICER)

#### DETAIL:

##### 1 Introduction

- 1.1 An issue has been raised by the District Auditor about the treatment of some capital receipts arising from the sale of vacant Housing Revenue Account (HRA) properties under the Council's assets sales programme. The programme applied to a limited number of properties which were no longer suitable for continued HRA use.
- 1.2 The Cabinet (Housing) Committee and the Audit Committee were briefed on the situation at their meetings on 29 June 2011.
- 1.3 Both Committees were given an update at their meetings in September – Reports CAB2227 (HSG), AUD012 and AUD013 refer. A capital pooling payment to DCLG of £1.6m plus interest was identified and a provision was included in the Statement of Accounts for 2010/11, which the Audit Committee approved in September.
- 1.4 Correspondence with the DCLG and advice from Leading Counsel has confirmed that the pooling payment should be made and a formal request for settlement was received from DCLG on 17 October 2011.

##### 2 Pooling Requirement

- 2.1 Capital Receipts arising from HRA sales are subject to pooling requirements where a percentage of the receipts have to be passed to the Government. For vacant house sales and sales under the right to buy, the normal requirement under the Local Authority (Capital Finance) Regulations 2003 is that 75% of the receipt has to be pooled and passed to DCLG.
- 2.2 There are some exceptions under the 2003 Regulations where sale receipts do not have to be pooled.
- 2.3 In 2006 the Council considered a limited programme of sales of vacant HRA dwellings which were no longer suitable for continued HRA use because of the nature of the accommodation or the significant cost of required repairs (CAB1336 refers). The programme continued and the most recent update of the policy is contained in CAB2095 of 8 December 2010.

- 2.4 The reports indicated that a pooling payment would not have to be made if the receipts were set aside and used by the Council for the provision of affordable housing. The approved policy provided that the receipts would be used in accordance with the pooling exception related to the provision of affordable housing. 50% of the receipts would be used for housing enablement and 50% to assist with the HRA maintenance programme.
- 2.5 At the time (2006) a question of interpretation was raised as to whether the affordable housing exception applied if receipts were to be spent on maintenance of existing HRA homes as opposed to the provision of new units. The (then) external auditor and DCLG were consulted on this aspect. No issues were raised and the Council proceeded on this basis. The application of the receipts for these purposes is acknowledged to be within the Regulations and is not the subject of the current query.
- 2.6 Since the policy was approved in 2006, 16 properties have been disposed of. The issue raised by the District Auditor was whether the disposals had been made in full accordance with the pooling rules, and consequently whether the pooling returns that had previously been certified, were correct.
- 2.7 Whether pooling is required depends upon the interpretation of several linked regulations together with the general consents issued by the Secretary of State for the disposal of HRA Housing.
- 2.8 In simple terms the question now raised by the Auditor and the DCLG position is:
- If the sale of a vacant house was direct to a builder/developer for renovation/conversion who then sold on to an owner/occupier for use as their only or principal home, then the pooling requirement would not apply. 100% of the receipt could then be retained.
  - If the sale was direct to a person who intended to be an owner/occupier of a principal home, who engaged their own builder, then the combined effect of the detailed wording of the regulations and general disposal consent was that the pooling exception could not be used. 25% of the receipt could then be retained.

### 3 The Council's Position

- 3.1 The Council has submitted to the District Auditor and DCLG that the effect of Regulation 14 (2A) (b) of the 2003 Regulations, (together with Regulations 12, 15, 16 and 17 and the wording of the general disposal consents issued by the Secretary of State under separate legislation in S32 Housing Act 1988) was that capital receipts were not to be included within the pooling exception if the disposal was made ....

“ with a relevant consent , to a person who, when he acquires that dwelling, occupies or intend to occupy the dwelling as his only or principal home.”

- 3.2 The Council's position was that there were 3 general consents as follows:
- (a) A.3.1 (disposal to an individual for only or personal home)
  - (b) A3.2 (disposal [to any person e.g. a builder/developer] with covenant to put in repair and to dispose to individual for only or personal home)
  - (c) A5.1 (disposal of one vacant house to any individual – limited to one disposal per individual per year).
- 3.3 The Council's case to the District Auditor and DCLG was that it did not rely on general consents A3.1 and A3.2 to authorise the transactions. Those consents limited the disposal to sales which limited the occupancy to an individual for use as the only or personal home.
- 3.4 Instead it relied upon consent A5.1 which did not have such an occupancy limitation. The Council's submission was that the consequence was that the receipt did not come within Regulation 14 (2A) (b) and did not need to be pooled.

#### 4 The Auditor's Position

- 4.1 The Council's current Auditor is from the Audit Commission and has been responsible for the certification of Accounts and pooling returns from 2008/09 onwards. He has raised the issue but has not taken a view on the legality of the treatment of the capital receipts and annual pooling returns. Instead he has asked the Council to resolve the issue with DCLG, as any pooling payment would be made to them. He has been kept informed of the up-to-date position with DCLG and was satisfied that the Council was acting appropriately in making a provision of £1.6m in the 2010/11 Accounts, approved by the Audit Committee in September 2010.
- 4.2 The current Auditor has also drawn attention to the issue in his report on the Council's annual pooling return for 2010/11, which has been qualified. The actual transactions took place in years prior to the appointment of the current auditor and the issue was not then raised by the then auditor (PwC) on either the Statement of Accounts or pooling returns. However, that does not prevent the issue from being raised at a later stage.
- 4.3 The current Auditor understands that this Council is not the only authority to be affected by the issue, but is not in a position to identify other affected councils.

#### 5 The DCLG Position

- 5.1 The Head of Landlord Services has been in correspondence with DCLG on the matter. In response, DCLG's interpretation is that Regulation 14 (2A) (b) applied to any disposal under a general consent to a person who occupied or intended to occupy the dwelling when he acquired it as his only or principal home. It applied where those circumstances occurred, whether or not, the

actual general consent, made reference to those words. On this interpretation pooling of 75% of the receipt was required.

- 5.2 DCLG indicated that it was for the Auditor to be satisfied whether the evidence of what occurred was sufficient in each case. The Auditor has accepted the Council's evidence that the amount at issue is £1,635,280 and relates to 8 properties. Appendix 1 lists the 8 sold properties subject to the 75% pooling requirement.
- 5.3 Subsequent to this response to Winchester, the DCLG issued its consultation paper "Self-Financing: Planning the transition." In this document the Government accepts that the current rules are confusing and conflicts with their own policy to allow councils to retain receipts from vacant property sales if spent on affordable housing/regeneration. The consultation paper proposes changing the regulations to make it clear that councils can retain and spend such receipts on affordable housing/regeneration. CAB2247 elsewhere on this agenda deals with the proposed response to the consultation paper.
- 5.4 Given the comments in the consultation paper, with the implication that the approach taken by Winchester to the sale of surplus vacant dwellings to provide re-investment in affordable housing is supported by the Government, officers have raised the issue with the DCLG. However, the response is that the issue must be dealt with under the wording of the current Regulations – "the legislation as it is actually stated at the time... and not as the Government arguably intends it to be. It would otherwise be unfair on the authorities who have pooled these amounts and would suffer lower housing allocations if other authorities failed to pool such amounts."
- 5.5 Furthermore, the DCLG has stated that a retrospective provision cannot be included in the proposed changes to the Regulations. The DCLG will also not consider the possibility of a retrospective special consent when the circumstances are "clearly covered under the General consent, it ....(would be)...an intentionally wrong use of the Secretary of State's powers; and it could lead to inconsistent treatment of local authorities' receipts."
- 5.6 DCLG were also not prepared to consider any variation in the amount of debt that the Council will be required to take on under Self-Financing - to take account of the investment opportunity that will no longer be available to Winchester if pooling of £1.6m is to be made. The Government's "priority is bringing public borrowing under control and there are no plans to adjust the measure of borrowing or the limit to reflect local circumstances.
- 5.7 However, the Head of Landlord Services points out that the sale of the 16 properties from the stock was taken into account when DCLG determined the amount that would have to be paid to it by Winchester under the Self-Financing arrangements.
- 5.8 DCLG, therefore, requires the pooling payment to be made and have written to the Head of Finance requesting settlement.

## 6 Next Steps

- 6.1 Advice has been taken from Leading Counsel. His view was that the Council should seek to clarify the position with DCLG to ascertain their approach. However, in the absence of any assistance from DCLG, the pooling requirement would need to be met.
- 6.2 The officers consider that the provision made in the Accounts now needs to be released, as all avenues have now been explored.
- 6.3 The actual amount required is £1,635,280 plus interest accumulating up to the date of payment (£78,901 to 31 March 2011) is payable for the period from which the sums would originally have been payable.
- 6.4 The Council is able to make the pooling payment as over £2m of the receipts remain uncommitted. The overall impact, therefore, of the Government clarification is a lost opportunity of further investment in affordable housing locally.
- 6.5 As the original treatment of these capital receipts is now considered to have been incorrect and contrary to the Regulations, the issue is subject to this formal report from the Monitoring Officer to Cabinet, as the body responsible for the implementation of the sales policy. All Members of the Council have been notified that this report is being considered at this meeting. A copy of Cabinet's response and decisions will need to be sent to all Members. At its meeting on 17 October 2011 The Overview and Scrutiny Committee also asked to see the report.

## 7 Related Issues

- 7.1 The Disposal of Vacant HRA Policy was most recently considered and updated in Report CAB2095.
- 7.2 The current policy is:
1. That future disposals of vacant HRA dwellings be considered against the following criteria:-
    - a) High value properties of non-standard stock which have a high asset value compared to a relatively low income stream which no longer make a significant positive contribution to the Council's housing strategy aims or community development priorities, reviewed on a case by case basis.
    - b) Other HRA dwellings with exceptional maintenance liabilities including cases where costs exceed £50,000 (the estimated cost of grant needed to support the building of a new dwelling) or where the very rare event of the Council not being able to get a property up to the Decent Homes standard occurs.



2. That 50% of the receipts generated from the vacant dwelling disposals be reinvested in the Housing Repairs Programme with the other 50% being allocated to developing new affordable housing and/or regeneration.
  3. That the disposal of “non dwelling HRA assets” and the use of receipts generated from those disposals continue to be reviewed on a case by case basis.
  4. That the Council’s Capital Strategy, Housing Strategy and Housing Revenue Account Business Plan all be amended to reflect this approach.
- 7.3 The policy does not need amendment, as such, to take account of the current position on pooling. The policy is also to be re-considered as a consequence of new rules on HRA self-financing which fundamentally change the way in which the HRA is financed. The sales policy in its original 2006 form was introduced to assist with a short term funding gap until the Government’s reforms of the HRA took place. Sales will not be needed for this purpose in future. However, sales may still be appropriate in a limited number of circumstances due to the lack of suitability of the property for continued HRA use.
- 7.4 A decision needs to be made on the impact of the non-availability of the £1.6m on the Capital Programme. This has been taken into account in the current revision of the Capital Programme. It is recommended that the assumption that the impact should follow the 50:50 principle set out in the policy to take account of the reduced availability of receipts, be confirmed.
- 7.5 The DCLG interpretation of the current pooling rules means that it is necessary to ensure that any future sales should be direct to builders/developers who covenant to carry out substantial works of repair, improvement or conversion required prior to onward sale into owner/occupation by an individual who intends to use it as their only or principal home. The categories of purchaser can be extended if the Government’s proposals in Report CAB2247 are implemented.
- 7.6 Report CAB2095 authorised the disposal of three further properties. The two larger properties were Barnes House, St Cross (leased as bedsits to a supported housing partner) and 84-86 Sussex Street (homeless hostel). For capital receipt budgeting purposes these had an estimated combined value of £1.5m. The properties are large and in need of conversion so would not be suitable for direct sale to individuals. Leading Counsel has confirmed that if the sale was made under the current Regulations and subject to the current consent A3.2 as set out above, the pooling exemption would apply. Sales have not yet taken place as the properties are not yet vacant. However, the current homelessness situation could mean that it would be sensible for the Council to use these two properties itself in the short term as hostel accommodation. It is proposed to bring a separate report concerning the current pressures facing the Homelessness service and options open to the

Council to address them to Cabinet in December. These options will include the continued use of Sussex St. in the short term and, subject to the costs involved, also using Barnes House in the short term as temporary accommodation. The layout of the properties is such, however, that it would still be appropriate for the Council to dispose of them for substantial conversion, in the medium term.

- 7.7 Report CAB2095 also authorised the disposal of a two bed property at 41a St Catherine's Road. Whilst this property is not considered to be ideal for use as general needs housing due to its design and layout, it has proved to be a very useful addition to the Council's stock of temporary accommodation (it is larger than most other hostel units and suitable for families) and is currently occupied. It is therefore proposed that the Council retain this property for its own use until further notice.

## 8 Overall impact of the policy and the way forward.

- 8.1 As a direct result of disposing of 16 properties that required major investment to bring to a decent homes standard, the Council has been able to invest £750,000 in improving significantly outdated kitchens and bathrooms in Council stock and also used approximately £750,000 to support the development of 43 units of new social housing. Over £2 million of the total receipts remain uncommitted (prior to making provision for repayment). Therefore, the overall impact of the Government clarification is the Council is not entitled to retain 75% of the receipts as they had always belonged to the Government. The Council has not incurred a financial loss but has not achieved an opportunity to further invest in affordable housing as that proportion of the capital receipt is payable directly to the Government under the Regulations.
- 8.2 In due course, Barnes House and 84-86 Sussex Street could still be disposed of under the policy to produce further capital receipts in the order of £1.5m, which could be retained by the Council.
- 8.3 The 8 properties affected would have cost £150,000 to bring back to a reasonable lettable standard at a time when HRA resources could simply not absorb that level of expenditure. In addition, they were properties assessed as having above average ongoing maintenance needs. The sales policy recognised the financial pressures the HRA was facing at the time with no long term certainty of any improvement in the situation and was seen as the only feasible way of generating capital to meet maintenance backlogs. It is anticipated that Housing Finance Reform will now address this major concern.
- 8.4 In the recent consultation paper (Report CAB2247 refers), the Government accept the current rules are confusing and conflict with their own policy to allow councils to retain receipts if spent on affordable housing/regeneration.
- 8.5 In retrospect, the risk of a potential pooling requirement was not specifically identified by any of the Departments involved when the policy was developed in 2006. At that time the major issue that was considered was the permissible

use of the receipts – in circumstances where the receipt could be retained locally and a pooling requirement could be avoided. Consultation that took place with DCLG and the then external auditor concentrated on that aspect. Even though informal advice was sought, it was given on the basis of the Council having to take its own view and without any liability. The advice sought concentrated on aspects that were not linked to the current issue which has arisen.

- 8.6 The issue was also not raised when the Council submitted its annual pooling returns at the time the sales occurred.
- 8.7 Housing Finance Reform will help to ease the budget pressures on the HRA for the future. The clarification of the pooling rules proposed by the Government in CAB2247 will also assist should future disposals of unsuitable properties be necessary.

#### OTHER CONSIDERATIONS:

#### 9 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

- 9.1 The Sustainable Community Strategy and Change Plans contain provisions to increase the supply of affordable housing and to commit to the Decent Homes standard in the maintenance of the Council's own stock.

#### 10 RESOURCE IMPLICATIONS:

- 10.1 As set out above.

#### 11 RISK MANAGEMENT ISSUES

- 11.1 See paras 8.1 to 8.7 above.

#### BACKGROUND DOCUMENTS:

Correspondence with the District Auditor and DCLG.

APPENDIX 1 : 8 Sold Properties subject to 75% pooling requirement.

Appendix 18 Sold Properties subject to 75% pooling requirement

<b>Address</b>	<b>Total Receipt</b>	<b>Pooling payment reqd. (after allowable deductions)</b>
	<b>£</b>	<b>£</b>
7 The Goodens, Cheriton	197,000	145,578.75
11 Eastgate St, Winchester	450,000	334,470.53
Meadowview	450,000	330,791.78
6 Botley Road, Curdrige	182,000	134,417.74
8 Eastgate Street, Winchester	160,261	118,511.25
23 Jesty Road, Alresford	212,500	158,697.84
122 Alresford Road, Winchester	205,000	151,174.88
101 Colebrook Street	350,000	261,637.23
Total	<u>2,206,761</u>	<u>1,635,279.99</u>
8 other properties sold not subject to pooling	<u>1,717,000</u>	-
Total	<u>3,923,761</u>	