

OVERVIEW AND SCRUTINY BOARD

A meeting of the Overview and Scrutiny Board was held on 22 November 2011.

PRESENT: Councillor Brunton (Chair), Councillors Dryden, Kerr, Purvis, Sanderson and J Sharrocks (as substitute for Councillor J A Walker) and Williams.

OFFICERS: J Bennington, P Clark, P Clarke and J Turner.

**** PRESENT BY INVITATION:** G Prior, Erimus Housing.

**** ALSO IN ATTENDANCE:** Councillor Hubbard and a member of the public.

**** APOLOGIES FOR ABSENCE** were submitted on behalf of Councillors Cole, C Hobson, Mawston, McIntyre, Saunders and J A Walker.

**** DECLARATIONS OF INTERESTS**

Name of Member	Type of Interest	Item / Nature of Interest
Councillor Brunton	Personal/Non-Prejudicial	Agenda Item 3: Affordable Housing Policy - in so far as it related to planning applications – Vice-Chair of the Planning and Development Committee.
Councillor Sanderson	Personal/Non-Prejudicial	Agenda Item 3: Affordable Housing Policy - in so far as it related to planning applications – Member of the Planning and Development Committee.

INTRODUCTION – SCRUTINY REQUESTS - REMOVAL OF ASBESTOS - AFFORDABLE HOUSING

Further to the meeting of the Board held on 18 October 2011 the Scrutiny Support Officer submitted an introductory report regarding two requests received for scrutiny investigation.

The report outlined a request from the Audit and Governance Committee for a scrutiny investigation to be undertaken into the arrangements with Erimus Housing concerning the removal of asbestos. The reasons for the request centred on a clause in the Housing stock transfer document which stated the responsibilities of Erimus Housing and the Council in respect of the removal of asbestos and concerns regarding its progress. Such concerns were categorised as financial implications, health implications and conflicts of interest.

A concern had been expressed that Middlesbrough Council would continue to have a financial obligation to remove any existing asbestos once Erimus' finance had been depleted. Such a liability was considered to be substantial as the costs associated with asbestos removal were increasing. A view had been expressed that the amount of work which could have been undertaken in 2004 with such funding would have been substantially greater than could now be achieved.

Concerns had been expressed regarding the continued level of risk to health of people by the existence of asbestos in buildings.

In terms of conflict of interests it had been suggested that as there were key issues and challenges facing both Erimus and the Council on the removal of asbestos and the financial implications it was questioned as to whether the present structure and appointments resulted in conflicts of interest.

The report also outlined a request from a member of the public to consider undertaking an investigation into the Council's adopted affordable housing strategy.

Concerns had been conveyed that three planning applications, two of which were major (290 and above homes) had been agreed with developers and two more which were in the process of being set out in which the Council was not adhering to its own adopted strategy.

Reference had also been made to adherence of the Council to the affordable housing strategy with particular reference to the number of viability assessments that resulted in the waiving of the contribution. It had been questioned as to whether or not this should be considered across all areas of the Town and not just as an overall figure ensuring affordable housing was provided in the more desirable areas.

Reference had been made to the procedure used for deciding where a viability assessment could be used to waive the affordable housing contribution and how transparent this was.

It had been questioned that should the provision of affordable housing prevent the development taking place then would this be waived even when the prevailing economic situation could make an affordable housing contribution difficult for developers.

ORDERED that the information provided be noted and taken into consideration in examining the following detailed reports.

SCRUTINY REQUESTS - REMOVAL OF ASBESTOS

As part of the background papers a report of the Director of Regeneration was presented which outlined the responsibilities of Erimus Housing and the Council in respect of asbestos removal within ten years of stock transfer.

It was reported that the Council had commissioned the MIS survey which had been completed between April and July 2003 prior to the Stock Transfer in November 2004. The purpose of the survey had been to identify the potential costs needed to tackle asbestos related materials and to agree an arrangement with Erimus Housing for dealing with them. The total figure estimated by the survey to complete the works was reported as £13,129,223.

The MIS survey had recommended a 'controlled asbestos removal' approach which entailed emergency asbestos removal in the early years while addressing the remaining works through responsive repairs and void works; capital programmes; environmental works; and demolition works.

It was confirmed that the Stock Transfer Agreement required Erimus Housing to complete the asbestos work in accordance with the recommendations of the MIS Survey over a period of 10 years from the date of the Agreement or such further time as may be deemed reasonable to complete the works.

Following the Stock Transfer Officers from Strategic Housing and Erimus Housing had met on a bi-annual basis to monitor the actions within the Stock Transfer Agreement, which included progress on the asbestos removal programme. Erimus Housing had completed the emergency works in the early years as recommended in the MIS survey as shown in Appendix 1 of the report submitted.

Works had continued to remove asbestos through responsive repairs and void works; capital programmes; environmental works; and demolition works. Finance already incurred and still available was reported as follows:-

Total spend up to March 2011	£3,645,705
Total still available from April 2011	£9,483,517
Total budget	£13,129,223

The Board was advised that should the budget be spent without completing all the works the responsibility for removing the remaining asbestos from properties would revert back to the Council.

An assurance was given that Officers from Strategic Housing would continue to monitor the asbestos removal works on a bi-annual basis to ensure that Erimus Housing were making progress on removing the asbestos and spend. Details were also given that Officers would:

- (a) continue to request further information from Erimus on their management of the asbestos programme based on the MIS survey and their own management database;
- (b) further to the removal of the high risk in 2004/05 ask Erimus to confirm that high risk asbestos had now been removed from all properties;
- (c) as the 10th year approaches in 2014 request an update on progress and details of a proposed completion date and estimated costs;
- (d) seek further legal advice to consider the indemnities offered under the Stock Transfer Document so as to analyse the risks if any to the Council.

The Chair welcomed Geoff Prior, Group Head of Asset Management, Erimus Housing to the meeting who presented a report which outlined progress made by Erimus Housing in managing and removing asbestos from its homes. The report corresponded with the background information as outlined above in relation to the Agreement between Erimus Housing and Middlesbrough Council.

It was confirmed that following the stock transfer Erimus Housing had spent in the region of £150 million in upgrading homes to meet the Government's Decent Homes Standard carrying out day to day repairs, converting some unsustainable homes and demolishing unpopular homes.

The Board was advised that Erimus Housing regularly attracted 40,000 to 45,000 reactive repairs each year from residents and processed around 900 void homes when tenancies were terminated and further property repairs were carried out. Owing to the disruptive nature of such work and to ensure the health and wellbeing of tenants, staff and contractors specialist asbestos surveys had been commissioned to identify asbestos containing materials that could be disturbed as a result of the improvements. In line with asbestos regulations, any asbestos containing materials in the vicinity of the works and in danger of being disturbed were removed prior to improvements commencing and all survey information stored on a specific database that was shared with staff, tenants and contractors.

It was reported that since stock transfer Erimus Housing had also employed two specialist consultants/survey companies namely: MIS Limited (2004 to 2010) and Environtec Limited (2010 onwards) who had also provided advice and tendering services for the appointment of asbestos removal companies to ensure value for money.

Since the transfer Erimus Housing had spent £3,941,602 to date on carrying out asbestos home surveys and the specialist removal of asbestos containing material shown as follows:-

November 2004 to November 2005	£553,085
November 2005 to March 2007	£763,555
April 2007 to March 2008	£511,802
April 2008 to March 2009	£572,982
April 2009 to March 2010	£857,129
April 2010 to March 2011	£387,150
April 2010 to September 2011	£295,897.

The report concluded that the agreed financial ceiling of £13,129,233 was extremely unlikely to be exceeded as current average annual expenditure stood currently at approximately £563,000.

Whilst Erimus Housing was expecting another increase in asbestos removal costs over the next 12 months future asbestos expenditure based on the above average rate would be in the region of an additional £1.5 million to £2 million bringing a total expenditure to approximately £6 million by 2014/2015.

The Board considered the information provided in terms of risks, if any, to the residents and financial consequences to the Council. Members supported the continued action to be taken by Officers as outlined in the conclusions of the report submitted including the proposal to seek further legal advice to consider the indemnities offered under the Stock Transfer Document in order to analyse the risks, if any, to the Council.

A concern was expressed that only £3.6 million had been spent equating to less than 30% of the allocation with only three years remaining. In response to Members' clarification regarding the agreement between Erimus Housing and the Council it was confirmed that notwithstanding the 10 year period stated for the removal of asbestos it would still remain the responsibility of Erimus Housing if the agreed sum of £13.1 million remained unspent which was considered likely to be the case.

Following Member's questions regarding the position when structural work was carried out at properties an assurance was given that Erimus Housing had appropriate policies and procedures in place in accordance with the prevailing legislation and guidance and that there were independent audit measures in place. Reference was also made to the availability of information leaflets to tenants.

A view was expressed that further clarification was required regarding the terms of the Agreement between Erimus Housing and the Council in respect of the managing or removal of asbestos from properties; adequacy of the information given to tenants including the leaflet provided; and the impact of increasing costs of the removal of asbestos.

ORDERED as follows:-

1. That the representatives be thanked for the information provided which was noted.
2. That a further report be submitted to a future meeting of the Overview and Scrutiny Board in early 2012 in order to clarify the respective responsibilities of both Erimus Housing and the Council with regard to the Agreement between both parties in respect of the removal of asbestos.

SCRUTINY REQUESTS - AFFORDABLE HOUSING

As part of the background papers a report of the Director of Regeneration was presented which described the Council's Affordable Housing Policy and in particular considered issues relating to the Council's approach to working with developers to determine the economic viability of such provision and the circumstances in which developer contributions might be waived.

The report outlined the requirements of the Affordable Housing Supplementary Planning Document (SPD) adopted by the Council in September 2010. Reference was made to the Tees Valley Local Housing Assessment Update and Strategic Housing Market Assessment Report (SHMA) which had been completed in January 2009. The SHMA which was currently being updated identified an annual affordable housing requirement for 506 dwellings between 2007/2008 to 2011/2012 which exceeded the overall target for all types of new housing of 465 dwellings per annum. Both the SHMA and the Affordable Housing SPD recognised that it would be neither possible nor desirable for such numbers of new affordable dwellings to be delivered as it would not assist with the objective of reversing population decline and creating sustainable communities. The Council's approach had been therefore to deliver new affordable homes at a level which would contribute to the creation of mixed, sustainable communities and was likely to be economically viable in normal housing market conditions.

It was pointed out that Middlesbrough had the highest percentage of social rented housing in the Tees Valley and was well above the national average. Middlesbrough also had the lowest percentage of owner-occupation in the Tees Valley. It was stated that more than 87% of dwellings in Middlesbrough were in Council Tax band A-C; the highest proportion in Tees Valley being considerably higher than the national average.

In arriving at an affordable housing target of 10-15% regard had been given to the findings of the Economic Viability of Affordable Housing Requirements (EVAHR) report prepared in 2008 before

the main impact of the housing market recession. At that time it had been found that for most sites the 10-15% requirement was viable although sites in North and East Middlesbrough where there were already very high proportions of affordable housing such an element would make development unviable.

The EVAHR also assessed the impact that a 10% reduction in property sales values would have indicating that the provision of affordable housing would become unviable on two thirds of the assessed site. It was confirmed that since December 2007 the economic downturn had led to a reduction in property sales values of at least 10% making it extremely challenging to deliver affordable housing as part of open market housing throughout Middlesbrough.

Reference was made to the Affordable Housing SPD which advised that if an applicant proposed a lower level of affordable housing on the grounds that the development would otherwise be economically unviable they would be advised and that this should be demonstrated through the submission of a confidential economic viability development appraisal which should set out a fully itemised list of expected costs and values. It was pointed that negotiations were undertaken using internal resources where possible but consultants would be utilised if required.

In normal economic circumstances for the purpose of assessing the financial viability of providing affordable housing on site a developer's profit of 15% on gross development value was considered reasonable. In the current economic climate housebuilders were increasingly being required to demonstrate profits of 20% before banks would finance development due to higher risks involved.

It was confirmed that since the adoption of the Affordable Housing SPD only one economic viability assessment had been submitted to justify the waiving of the requirement for affordable housing on sites where planning permission had subsequently been granted. In such a case, at the Swedish Mission Field at Acklam, the viability assessment demonstrated that there were abnormal costs due to ground conditions and that these combined with the depressed state of the housing market would make the provision of affordable housing unviable.

The Board was advised that given that housebuilders required a certain level of profit before they would build, the main impact of the Council's affordable housing requirement was actually upon the value of the land to the owner. As the level of affordable housing was raised this increased build costs and consequently land values. If affordable housing levels were set too high it was suggested that it would discourage land owners from selling to housebuilders and prevent development coming forward. Similarly, the Board was advised that without a sensible and pragmatic approach to determining economic viability there was a concern that fewer homes would be built in Middlesbrough.

It was pointed out that the Council was also looking to develop off site contributions from Section 106 commitments to meet affordable housing needs as a potential to make better use of the scarce resources to meet more needs than the traditional on site provision provided by Registered Social Landlords.

Reference was made to off site contributions which were being sought from some allocated sites that were subject to ongoing negotiation. The Board was advised that the Council was looking to develop an Affordable Homeownership service which would assist buyers onto the housing ladder through targeted equity loans on key regeneration sites. As well as assisting those on low incomes to access the home ownership market it would also stimulate progress on the Council's key regeneration sites that had stalled. The Section 106 contributions would then be recycled when buyers either staircase up and buy out the Council's equity share or they moved homes and the Council was able to realise its equity investment from the sale. By recycling the fund instead of using the resources once on site to build for Registered Social Landlords it was envisaged that this would increase the number of people who could be assisted.

In response to Member's questions regarding the likely extent of affordable housing provided in the next five years Officers indicated that this was largely dependent upon the applications submitted and that there was greater likelihood for this to occur at easier to develop sites in South Middlesbrough. An indication was given of impending planning applications and the proposed elements of affordable housing in each case. The major planning applications referred

to included Grey Towers, Nunthorpe, Rose Cottage, Stainton, Hemlington Grange, Ladgate Lane and Stainsby Hall Farm, Low Lane.

In overall terms reference was made to the review of the Local Development Framework which hopefully would be completed in the New Year with particular regard as to how affordable housing would be delivered in ways which would meet future needs of the Town. In terms of accountability an indication was given of the role of the Local Development Framework and working with neighbouring authorities in this regard.

In commenting on the present housing market reference was made to aspirations for more executive housing in the Town which it was felt should be considered in the context of achieving affordable housing where considered viable or where it could assist in the regeneration of other areas. Whilst there was a desire for other sites which afforded opportunities for mixed tenure and better integration such as Coulby Newham a careful balance had to be achieved as to how elements of affordable housing could be achieved not necessarily on site so as not to jeopardise the overall viability of a development given the present difficult economic circumstances.

ORDERED as follows:-

1. That the Officers be thanked for the information provided.
2. That the Council's current approach to working with developers to determine the economic viability in providing affordable housing and the circumstances in which developer contributions might be waived be noted.
3. That the proposals to develop an Affordable Homeownership service as agreed in principle by the Corporate Management Team be supported.