

Executive Decision Report

Homes England Affordable Homes Programme Funding
Contract Agreement

Decision to be taken by: City Mayor

Decision to be taken on: 13 December 2023

Lead director(s): Chris Burgin

Useful information

- Ward(s) affected: All
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- Report version number: FINAL

1. Summary

- 1.1 In order to access funds from Homes England, the City Mayor's approval is sought, via this report, to enter into a contract with Homes England for the Affordable Homes Programme 2021/2026. This will enable officers to apply for grant funding for various projects which include The Zip Building (seeking HE funds toward the 30 self-contained out of a total 58 units), 20 Acquisitions and any other further bids for funding that LCC would like to pursue within this programme. The contract with Homes England is non-negotiable and the council would be required to accept its terms and conditions.
- 1.2 The contract with Homes England must be entered into before the council can claim any grant that has been allocated to it. Homes England confirmed its approval of the bid submitted for The Zip Building on 9th November 20203. The Housing Development Team is working towards collating information for the submission of the acquisitions bid by the end of December 2023.
- 1.3 The Council has an ambitious target to deliver 1,500 new affordable homes during the manifesto period and being able to apply for funding towards the purchase of acquisitions, both single large buildings, off the shelf new build and multiple open market individual family homes helps the council finance these additional homes.
- 1.4 This report seeks approval to enter into the Homes England contract for the period of the current funding programme, that being 2021-2026. A new contract would be required for any subsequent Homes England funding programmes.

2. Recommendation

- 2.1 It is recommended that the City Mayor approves the Council entering into the HE AHP contract 2021-2026 to enable to Council to apply for and draw down grant funding, acknowledging HE terms and conditions and associated risks. This grant funding will contribute towards the acquisition and works costs for The Zip Building (30 self-contained units of the 58 units), 20 Acquisitions and any future proposed schemes bid which will assist in the funding of increasing the supply of new Affordable Housing within the HRA.

3. Supporting information including options considered:

3.1 Background

The City Mayor approved the purchase of The Zip Building on 19th October 2022.

For the 20 Acquisitions, to date the focus has been on utilising Right to Buy Receipts (RTB) to fund the new supply of housing; as RTB receipts reduce, Homes England funding will become an increasingly important alternative.

3.2 Housing Need

Leicester has evidenced need for 1,117 new units of affordable housing each year (Leicester City Local Housing Need Assessment 2022). To seek to address this need, the Council has an ambitious target of achieving an additional 1,500 new council, social and extra care/supported living homes by 2027. Seeking and securing Homes England funding should help the council to finance this ambition.

The city council has declared a Housing Crisis (November 2022) because of the extent of need in the city and the constraints/difficulties being faced in attempting to meet these needs. The additional supply of homes via these acquisitions will assist in meeting demand and will contribute towards addressing some of the pressures on the Housing Register and Temporary Accommodation.

3.3 Funding and Duration of Contract

Acquisitions such as this are typically part-funded using Right to Buy receipts. However, to encourage Councils to focus on new-build supply, the government have introduced a cap on the number of acquisitions which took effect from April 2022. The maximum number of acquisitions that can be funded via RTBR is directly linked to the number of new-build starts on sites funded from RTBR. Current forecasts for 2023/24 indicate that RTB-funded acquisitions will be limited to 122 for the year.

The funding approved by Homes England to date is as follows:
The Zip Building £979,544.65 (32% of total capital scheme costs).

The currently known funding bids to be submitted to Homes England are as follows:
The 20 x Acquisitions 2023/24 approximately £1,526,000.00 (35% of total scheme costs).

The duration of the contract is for the existing Affordable Homes Programme period 2021/2026. Future programmes will require new contracts.

4. Contract Terms and Conditions

4.1 General comments

Officers are in receipt of the contract from Homes England. Home England has advised that the contract is non-negotiable and must be entered into before any grant claims for the recently approved Zip allocation can be made and before any further bids can be submitted, including the proposed bid for 20 x acquisitions.

As regards the Grant Agreement, and that the terms and conditions cannot be amended, Legal advise this is usual for agreements of this type. From a legal perspective Legal advise the terms and conditions are suitable for the Council to enter into provided that we are happy that the Council can comply with the specific grant funding requirements.

The comments contained in Appendix A attached are based upon the agreement provided by Homes England. Legal have advised that whilst they do not have any particular legal issues to flag which would prevent the Council from signing the agreement, it is a very lengthy document and has extremely robust and complex provisions in relation to the use of the grant funding. It is therefore essential that the funding is only used as detailed in the Council's bid, that any project is carried out in accordance with Homes England requirements and that the Council follows all the processes in relation to payments and other procedural aspects.

In addition to the agreement, the agreement states that it is subject to the
the
Capital Funding Guide and the Recovery Determination, which officers will need to ensure they follow.

4. Details of Scrutiny

Close liaison and support with Homes England representatives.
Liaison with Finance and Legal.

Please see 'other implications' below

5. Financial, legal and other implications

5.1 Financial implications

The financing of the Affordable Homes programme is closely monitored with the intention of maximising the number of units which can be added to the housing stock. To date the focus has been on utilising Right to Buy Receipts (RTB) to fund the new supply of housing; as RTB receipts reduce, Homes England funding will become an increasingly important alternative.

Since November 2019, £215m has been added to the Affordable Homes capital programme. Once the funding is confirmed, further additions to the budget will be required for the Homes England funded schemes referred to in this report.

To avoid any risk of repaying grant, it is important that transactions are accurately recorded, and grant conditions are complied with.

Stuart McAvoy - Head of Finance

5.2 Legal implications

Legal advice has been sought on the subsidy control issues relating to the receipt and spending of the grant funding from Homes England. The advice concluded that on the information given, the Programme does meet the requirements of the Subsidy Control Act 2022.

Further advice has been sought on the terms and conditions of the Homes England Grant Funding Agreement and the legal advice has been summarised at Appendix A. As stated above the grant funding agreement is non-negotiable.

5.3 Climate Change and Carbon Reduction implications

None required as these are covered within the individual project executive decision reports.

5.4 Equalities Implications

None required as these are covered within the individual project executive decision reports.

5.5 Other Implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

Background information and other papers:

Homes England Affordable Homes Programme Capital Funding Guide 2012-2026

Homes England example Contract

Homes England Affordable Homes Programme 2021-2026 Guidance

Homes England IMS Guidance

6. Summary of appendices:

Appendix A – Legal Comments Received

8. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?

Yes

9. Is this a “key decision”?

10. If a key decision, please explain reason

APPENDIX A

Initial Legal Comments Received

Legal advise, that in particular, Officers read clauses 4 to 11, these deal with specific grant obligations such as reporting, changes, delivery obligations and operational obligations which are more related to the running of the project rather than purely legal.

Clause 4 Indicative Schemes

Clause 4 states that the details of the Indicative Scheme must be uploaded onto IMS by the date of this Agreement. The rest of clause 4 deals with the administrative details of working up Indicative Schemes Officers to review to ensure aware of the details and complying with the obligations of the Indicative Scheme.

Clause 5 Firm Schemes

This clause deals with all the requirement of a Firm Scheme and covers issues such as possessing a secure legal interest in the site, obtaining necessary consents and complying with the Government's Capital Funding Guide.

Clause 11 Operational Obligations

Clause 11 details some specific requirements in relation to the operating of the scheme once the Firm Scheme Completion has taken place. The obligations include issues such as rent, requirements in relation to right to buy and seek possession.

Clause 12 Review, Monitoring and Reporting

This clause requires the Council to comply fully with contract management and reporting obligations. There is a list of scenarios in clause 12.2 where the Council would have to report back to HE (e.g. Default Event, impact on ability to deliver a Firm Scheme). In such an event the Council may request a review meeting and there is a procedure to follow in order to hold such a meeting.

Clause 12.14 requires the Council to hold all documents for a period of 10 years from receipt of the Final Tranche. This is different to the Council's usual retention periods.

Clause 14 Grant Claim Procedures

This clause contained further information about claiming the grant. Clause 14.3.2 contains warranties which the Council is making when it submits a claim. Officers to review these as they are quite specific to the project and will need to be certain that of compliance.

Clause 15 Payment of Grant

The grant will be paid within 15 days of receipt of a relevant satisfactory application. There is a process for HE to follow if they are not satisfied with the application for payment.

Clause 17 Withholding of Grant

There are lengthy provisions giving HE the right to withhold the grant in different situations, these mainly relate to not complying with the Grant Agreement. Therefore, it is important that the Council does fully comply with its provisions.

Clause 18 Repayment of Grant

HE reserves the right to recover the grant funding or any part of the grant funding, if a Prohibited Act has occurred which relates to the Bribery legislation, there has been a misrepresentation, overpayment, the Council fails to deliver the Firm Scheme, breaches its obligations under the grant agreement, the grant exceeds the cost of the project or a Scheme Termination Event occurs.

Clause 19 Termination

HE can terminate if in certain circumstances where the Council commit a default. There are processes that HE must follow depending on the severity of the Default. The Council does not have any termination rights.

Schedule 1 Agreed Principles

This schedule details the principles that the Council must comply with when using the funding. Schedule 1 details requirements in relation to social housing assistance and repayment of the grant if the Council fails to comply with the terms of the Agreement, where there is a Default Event or Withholding Event (see below) and other important requirements in relation to the use of the grant. There are also requirements in relation to reporting and aggregation of the grant. There are detailed calculations for working out what must be repaid.

Schedule 2 Empty Homes Scheme

If the Empty Homes Scheme applies, Schedule 3 should be checked by Officers to ensure that the Council can comply with its requirements.

Schedule 3 HOLD and OPSO Scheme

If these schemes apply, Officers to check this schedule.

Schedule 4 Development Costs

Schedule 4 details the costs that can and cannot be recovered.

Schedule 8 Data Protection

Schedule 8 contains a controller agreement and describes each party as an independent controller in relation to the Data Protection Legislation. The provisions of this agreement are fine, but please be aware that there is an indemnity contained in this agreement which requires the Council to indemnify HE in the event of the Council breaching the Data Protection Legislation which incurs lost for HE.

Schedule 9 Intellectual Property Rights

The Council shall wherever possible grant HE a royalty free licence to use any Intellectual Property Rights provided by the Council to relating to Firm Schemes and the grant agreement. The Council is further required to indemnify HE if there is any breach of a third party's intellectual property rights caused by the Council relating to the grant agreement.