

WIRRAL COUNCIL

CABINET - 5 FEBRUARY 2009

REPORT OF THE DIRECTOR OF FINANCE

**WIRRAL COUNCIL AND WIRRAL PARTNERSHIP HOMES - COMMUNITY FUND**

**1. EXECUTIVE SUMMARY**

- 1.1 This report updates Cabinet on the arrangements to administer the Community Fund with Wirral Partnership Homes. It details the previously agreed use, and requests Cabinet to agree to the future use, of the Fund.

**2. BACKGROUND**

- 2.1 The Community Fund was established as a consequence of the transfer of the bulk of the Council housing stock to Wirral Partnership Homes (WPH) in February 2005. As is usual in large-scale voluntary transfers (LSVTs) a Development Agreement was entered into at the time of transfer. This enabled the VAT payable on certain works carried out as part of the WPH improvement programme to be recovered and it was agreed that this money should be paid into a Community Fund to be used for specific objectives. The Fund also contains the balance on the Housing Revenue Account at the time it was closed, VAT money arising from a similar Development Agreement between the Council and Beechwood and Ballantyne Community Housing Association (BBCHA) and any interest earned on Fund balances.
- 2.2 The Council in transferring the stock retained a number of risks in the form of warranties given to the Registered Social Landlord (RSL) to which the stock was transferred and the banks who financed the RSL. The setting up of the Community Fund in effect self-insured the Council against the risk of any claims being made under these warranties and was one of the main reasons for the Fund being established.
- 2.3 A report setting out the arrangements for operating the Community Fund in accordance with the terms of the legally binding Community Fund Deed was considered and agreed by Cabinet on 21 September 2006. The Deed sets out the framework of the purposes for which the Fund can be used and states that the Fund would be overseen by a Joint Working Group consisting of equal membership from WPH and Wirral Council. The Fund is administered by WPH and any expenditure has to be agreed by both WPH and the Council.

- 2.4 Cabinet on 16 August 2007 was advised of developments with the Fund including the ring-fencing of £2.5 million to cover any potential warranty claims and using a further £500,000 per annum for the Your Wirral scheme. It was proposed that the remainder of the Fund be divided between WPH and the Council which would require the rewriting of the Community Deed created as part of the transfer arrangements.
- 2.5 The resources available to the Fund from the VAT recovered on housing improvement works undertaken by WPH and BBCHA are entirely dependent on the programmes of works taken forward by these organisations. Both WPH and BBCHA have seven year improvement programmes to meet the Decent Homes Standard and the transfer of resources into the Fund is projected to reduce year on year in line with these programmes.

### **3. DEVELOPING THE COMMUNITY FUND ARRANGEMENTS**

- 3.1 In progressing the proposals agreed on 16 August 2007 a number of issues arose from discussion with H.M. Revenues & Customs and the Audit Commission including:
- potential difficulties agreeing with Revenues & Customs the revision of the complex agreement that allowed the VAT shelter to be created.
  - concerns that the tax shelter may be viewed by Revenues & Customs as a device to avoid proper tax liabilities and for the Council to unjustly gain from the revised arrangements.
  - concerns about the accounting arrangements, in particular, whether the revised arrangements would require the VAT receipts to the Fund to be defined as a capital receipt resulting in their use being restricted for capital purposes only.
  - concerns raised over the issue of 'additionality' i.e. requiring proof that the Fund would be used for added value to Wirral residents rather than substituting existing Council funding.
  - the potential issue that changing the Fund arrangements might be perceived as breaking stock transfer promises or at least the spirit of the agreement.
- 3.2 Officers have undertaken further work to address the above. Advice has been sought from H.M. Revenues & Customs, from the legal and financial consultants involved in drawing up the original stock transfer agreements, and from liaison with other authorities who have undertaken stock transfers.
- 3.3 Revenues & Customs have agreed that an approach by which the Council receives money via a grant submission to the Fund would satisfy its requirements. To meet the complex tax shelter requirements such payments must be treated as a grant. The use must be for the benefit of the Council and wider community and must not involve the supply of any goods or services to WPH. Revenues & Customs also stated that this arrangement would involve no restriction in use for capital or revenue purposes.

- 3.4 If receipts to the Community Fund are deemed to be consideration for the sale of Council assets either through direct or indirect means they would be deemed as a capital receipt and their use restricted to capital purposes. The continuation of the existing Fund arrangements maintains a distinct separation from the original stock transfer. Officers maintain that the VAT receipts are not consideration for the transfer of the housing stock and are merely a product of effective tax reclamation procedures. Continuation of the arrangement provides additional reassurance that any VAT recovered by WPH for development works would not be classed as a capital receipt.
- 3.5 Advisors have provided details of another authority, audited by the Audit Commission, which for a number of years has used the VAT shelter receipts for revenue purposes and this has been accepted by the auditor. However, the unique nature of the Community Fund arrangement which affects separate organisations has made it difficult to obtain a definitive response. The Audit Commission is in the process of obtaining specialist technical advice for the Council and they will be on site during January 2009.
- 3.6 Retaining the existing arrangements with the Fund being overseen by a Joint Working Group consisting of equal membership from WPH and Wirral Council and administered by WPH is recommended. This provides a clear trail as to how resources have been utilised and how their use is in line with the agreed terms of the Community Fund Deed. The arrangements do not prevent Fund resources being used equally by the Council and WPH. This can be achieved through each partner submitting grant applications in order to secure the appropriate level of funding within the terms of the Community Fund deed.

#### **4. RESOURCES WITHIN AND USE OF THE COMMUNITY FUND**

- 4.1 The balance in the Community Fund at 1 April 2008 was £13.1 million. This represented the total VAT shelter receipts received to date, plus interest, and the value of transferred Housing Revenue Account balances. Further receipts will be received as the modernisation programme continues and VAT is reclaimed. After setting aside £2.5 million to cover any potential warranties this left £10.6 million to be allocated between WPH and the Council. Cabinet has agreed the use of £500,000 per annum for the Your Wirral scheme for community based projects.
- 4.2 As the stock transfer took place in 2005 and the subsequent improvement programme has been underway for a similar time officers are now in a better position to assess the position regarding warranty claims. Investigation will take place as to the costs of obtaining insurance against warranty claims given the low claims history to date. The cost of an annual insurance premium may provide benefit in releasing the £2.5 million set aside for warranties.

4.3 Cabinet has also agreed a number of commitments against the Fund many of which are on-going. The Fund was expected to generate in the region of £45 million over its lifetime but this is dependent upon the value of works undertaken by WPH and BBCHA, the VAT involved and the timing of the work. Recent indications from WPH are that the planned works programme may be refined reducing the potential receipts to around £30 million.

4.4 Commitments made against the Fund comprise the following:-

Description	2008/09 £	2009/10 £	Cabinet Decision
Your Wirral	500,000	500,000	16 Aug 07
Your Wirral Support	30,000	30,000	01 Nov 07
Regeneration Delivery Team	521,500	521,500	16 Aug 07
Investment Strategy Team	220,000	220,000	16 Aug 07
Investment Strategy consultants	200,000	200,000	16 Aug 07
Homelessness & Advice Service	219,000	403,000	24 Jun 08

4.5 Based upon an equal division of the resources which could be available at 31 March 2009 there could be a maximum of up to £5 million presently unallocated for use by the Council. The use of these resources would need to be in accordance with the aims of the Community Fund Deed and Cabinet is advised that the resources available are finite and effectively 'one-off' becoming available as the works programme progresses.

4.6. It is recommended that £120,000 be made available from 2009/10 for additional legal support. The Investment Strategy is a key element of the Corporate Plan and the delivery of major projects requires significant legal support. There is a lack of capacity within the Department of Law, HR and Asset Management which has led to the use of external solicitors to assist on major projects such as Hoylake Golf Resort; Europa Boulevard and New Brighton. The continued support for such projects is unsustainable without additional funding and it is recommended that this funding be made available to increase capacity, initially through the procurement of external solicitors.

4.7 It is suggested that, due to funding changes, £75,000 of annual support be provided for the Corporate Services Forward Planning Team from 2009/10 onwards. The Team is supporting the development of the Council's Investment Strategy. In addition to the continuing need to support NewHeartlands (Government's first priority for development in Wirral), the Council is embarking on a long process of support to Wirral Waters (potentially one of the biggest regeneration schemes in the UK) and the Growth Point bid, which integrates Wirral Waters with NewHeartlands.

- 4.8. It was agreed by Cabinet on 15 January 2009 that a number of facilities be transferred to community management, where the community expresses an interest, within a two year period. These included community centres, Beechwood Recreation and Community Centre and the Wirral Transport Museum for which the cost of retaining the facilities is £550,000 per year. The options of using the Community Fund for supporting the transfer to the community are being explored. The transfer of facilities to community management is to be progressed as soon as possible and the cost of retaining the facilities identified for 2009/10 as £550,000 is to be met from a provision.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 If allocated equally between the Council and WPH the Community Fund is likely to provide between £15-£20 million of resources for the Council to allocate over its lifetime. This can be used to enhance services to Wirral residents in accordance with the aims of the Community Fund Deed but the Fund is finite and funding time limited. To achieve maximum flexibility in its use the Fund arrangements must meet legal, accounting and taxation requirements.
- 5.2 Cabinet has approved commitments to date totalling £1.7 million for 2008/09 and £1.9 million for 2009/10 and subsequent years. If approved the support for the Forward Planning Team would add £75,000 from 2009/10 and the support for Legal Services would add £120,000 from 2009-10.

## **6. STAFFING IMPLICATIONS**

- 6.1 These are none arising directly from this report.

## **7. EQUAL OPPORTUNITIES IMPLICATIONS**

- 7.1 There are none arising directly from this report.

## **8. COMMUNITY SAFETY IMPLICATIONS**

- 8.1 There are none arising directly from this report.

## **9. LOCAL AGENDA 21 IMPLICATIONS**

- 9.1 There are none arising directly from this report. However, projects funded through the Community Fund may have beneficial impacts for the environment and the well being of people in Wirral.

## **10. PLANNING IMPLICATIONS**

- 10.1 There are none arising directly from this report.

**11. ANTI-POVERTY IMPLICATIONS**

- 11.1 The use of the Fund to develop and enhance the Investment Strategy and homelessness and housing advice will have benefits for this area.

**12. SOCIAL INCLUSION IMPLICATIONS**

- 12.1 The use of the Fund to develop and enhance the Investment Strategy and homelessness and housing advice will have benefits for this area.

**13. LOCAL MEMBER SUPPORT IMPLICATIONS**

- 13.1 This report will be of interest to all Members.

**14. BACKGROUND PAPERS**

- 14.1 Community Fund Report to Cabinet – 21 September 2006 & 16 August 2007

**15. RECOMMENDATIONS**

That

- (1) the administration of the Community Fund and allocation of resources continue, as previously reported, through the Joint Working Group;
- (2) the use of £75,000 per annum from 2009-10 to fund the Corporate Services Forward Planning Team be submitted to the Joint Working Group for funding;
- (3) the use of £120,000 per annum from 2009-10 to fund additional legal capacity be submitted to the Joint Working Group for funding; and
- (4) a provision of £550,000 be established to meet the ongoing cost of community centres prior to transfer to community management.

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