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**COCKERTON REGENERATION – DEVELOPMENT AGREEMENT**

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**Responsible Cabinet Member – Councillor Veronica Copeland,  
Adult Social Care and Housing Portfolio and  
Councillor Chris McEwan, Economy and Regeneration Portfolio**

**Responsible Director – Richard Alty, Director of Place**

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**SUMMARY REPORT**

**Purpose of the Report**

1. To outline, and, seek approval for the proposed delivery approach for the Cockerton Regeneration programme.
2. To seek approval from Members to delegate authority to the Director of Resources to agree formal contracts for the delivery of the Cockerton regeneration programme with the Esh Group and agree the terms of a tri-partite agreement to own and manage the new affordable homes for rent with a Registered Provider (usually a Housing Association).

**Summary**

3. On 13<sup>th</sup> September 2011, Officers gave a commitment to Cabinet to bring a further report to Cabinet to outline the way in which the affordable housing and market sale elements of the proposed Cockerton Regeneration programme will be delivered. This report focuses on these two elements ((b) and (c) below) of the Cockerton Regeneration programme and seeks Member approval for the delivery of each element. The three elements are;
  - (a) The improvement of existing and retained Council housing funded by the release of £3.13M of funding as part of the Housing Capital programme 2012-14. The release of these funds, were approved by Cabinet on 13<sup>th</sup> September 2011. This work has already commenced and is due to be completed in 2014.
  - (b) The demolition of 20 houses and 57 flats to facilitate the development of 60 new affordable homes for rent.
  - (c) The delivery of up to 24 private market sale properties on Council land including existing public open space.

4. It is recommended that the 60 new affordable homes for rent should be procured through the Esh Group which has secured £900k of Homes and Communities Agency (HCA) grant funding, as part of the National Affordable Homes Programme (NAHP) 2011-2015. The Esh Group also entered the Two Castles Housing Association Framework Agreement for such works so the Council is able to procure the development through this Framework Agreement. The Esh Group are proposing to lead on the construction of the new dwellings and, the Council will be required to transfer the ownership and management of the new affordable homes for rent to a Registered Provider (usually a Housing Association) through a tri-partite agreement.
5. It is recommended that the private market sale dwellings be delivered through a land transaction with the Esh Group as a Special Purchaser in relation to the land on which the private market sales dwellings would be built. The Council would dispose of this land for £1 to the Esh Group with the value being the Council's contribution to the overall scheme.
6. The Esh Group will be required to finance a feasibility study to examine appropriate options for the improvement or redevelopment of the existing Nickstream Lane shopping parade. This element of the Cockerton Regeneration programme will be the subject of a future Cabinet report following completion of the feasibility work and further community engagement. The estimated cost of this feasibility work is expected to be in the region of £10-£20k.

## **Recommendations**

7. It is recommended that:-
  - (a) Members agree that the Council procures the provision of the affordable homes for rent and associated public benefits with the Esh Group utilising the Two Castles Framework Agreement.
  - (b) Members agree to dispose of the Council land identified for the provision of private market sale properties (**See Appendix 1**) to the Esh Group for the nominal value of a £1 as a Special Purchaser.
  - (c) Members delegate authority to the Director of Resources to agree and enter into formal contracts with the Esh Group and an appropriate Registered Provider (usually a Housing Association) to ensure the new affordable homes for rent are owned and managed by the Registered Provider on completion and the land for private market sale properties is disposed of to the Esh Group for private sale, having regard to the principles under the Heads of Terms set out in **Appendix 2, Table 1**.

## **Reasons**

8. The recommendations are supported by the following reasons:-
- (a) Procuring with the Esh Group secures the HCA grant funding of £900k for Darlington, and, provides the most effective and coordinated means of delivering the affordable homes for rent and associated public benefits (open spaces, provision of play equipment, possible traffic calming and pathway resurfacing) through the approved Two Castles Housing Association Framework. The Esh Group will be required to enter into a tri-partite agreement to dispose of the completed new affordable homes for rent to a Registered Provider (usually a Housing Association) in accordance with the terms of the Two Castles Housing Association Framework Agreement.
  - (b) The private market sale properties can be delivered through a Special Purchaser arrangement providing greater control of delivery, continuity of regeneration works through one approved private developer, and, the consequent reduction of risk to the Council.

**Richard Alty**  
**Director of Place**

## **Background Papers**

- (i) Cabinet 13<sup>th</sup> September 2011 – Cockerton Regeneration 2012-2014.

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S17 Crime and Disorder	The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is considered that some of the improvement works identified in this report will be beneficial in reducing crime.
Health and Well Being	The Cockerton regeneration programme will create new quality open space with play equipment and safe accessible routes to influence behavioural change towards more sustainable modes of transport.
Carbon Impact	The 84 new homes will be built to Code for Sustainable Homes (CSH) Level 3 in accordance with Homes and Communities Agency quality and design standards reducing carbon waste.
Diversity	The programme will diversify the housing offer, creating affordable and market sale housing to meet identified local housing need, and, reducing the density and over supply of single person accommodation in the locality.
Wards Affected	Cockerton East and Cockerton West.
Groups Affected	Residents in Cockerton.
Budget and Policy Framework	This report does not recommend any changes to the policy framework. The MTFP has already approved the release of £3.13M of Housing capital funding to help finance the programme.
Key Decision	Yes.
Urgent Decision	No.
One Darlington: Perfectly Placed	The completion of the Cockerton regeneration programme will provide a safe, attractive environment where people will seek to access a broad quality housing offer.
Efficiency	The Cockerton regeneration programme will be delivered through an approved Framework Agreement.

## MAIN REPORT

### Information and Analysis

9. Members may recall that the Cockerton Regeneration scheme has three core elements. These are the (a) the refurbishment of the Council housing stock on the estate, (b) the provision of new affordable dwellings for rent and (c) the provision of new dwellings for private market sales. The key deliverables are a stock of dwellings in excellent condition in an improved environment and a rebalancing of tenures to deliver a more sustainable neighbourhood. In association with these three elements the regeneration programme seeks to secure appropriate and well designed open space and play facilities. The Council has also committed to consider the future of the building that contains the Nickstream Lane shops either in the way of improvements to the existing building or its redevelopment for similar local facilities to compliment the overall estate improvements.
10. The latest plan showing these elements is attached at **Appendix 1**. This is subject to future consultation with the local community before final proposals are prepared for a planning application. An explanation of each element is given below.

### Council House Investment

11. Members agreed the Council's 2011/12 Capital Medium Term Financial Plan on 3 March 2011, including the Housing Capital Investment Programme 2011-2015. The commitment of £3.13M over the 2 year period 2012-2014 is programmed for Cockerton within this period.
12. The £3.13M capital investment will provide the required finance to;
  - a) Undertake internal planned maintenance (retained Council properties).
  - b) Cover any disturbance or relocation costs.
  - c) Purchase any retained leases for shops (should feasibility work for the Nickstream Lane shops determine that the best option is to redevelop the existing site).
  - d) Improve the external environment within individual Council property boundaries.
13. The improvements to existing retained Council housing in Cockerton have already commenced and are due to be completed in 2014.

### Provision of New Affordable Homes

14. Following Cabinet approval on 13<sup>th</sup> September 2011 to demolish and clear 20 houses and 57 flats owned by the Council, the Council have examined options to re-provide a better balance and greater choice of new affordable homes for rent on the land identified for clearance. The Council have also examined opportunities to improve existing open space and re-provide any "lost" open space due to the proposed development of 24 new market sale properties on existing open space.

15. On 3<sup>rd</sup> May 2011, a “one off” opportunity arose to bid for grant funding from the Homes and Communities Agency (HCA) to support the delivery of new affordable homes for rent for the period 2011-2015. The Esh Group, with the support of the Council, applied for grant funding under the HCA’s programme to deliver new affordable homes for rent in Cockerton. The Homes and Communities Agency announced in August 2011 their support for the Cockerton regeneration programme, confirming grant funding of £900k towards the delivery of 60 new affordable homes for rent. It is expected that the 60 new affordable homes for rent will be owned and managed on completion by an approved Registered Provider (likely to be a local Housing Association).

### **Provision of New Private Market Sale Properties**

16. Under used and poor quality open space in Cockerton will provide the core of the required area to develop up to 24 new private market sale properties (**See Appendix 1**). By developing this area for private market sale properties it will improve the sense of safety and well being of households adjacent to the area by providing natural surveillance for existing households to reduce the incidence and potential for anti-social behaviour. Any “lost” open space will be re-provided in accordance with Planning policy within the existing Cockerton area, and, improvements to re-provided quality open space will be funded through the private market sale properties element of the Cockerton Regeneration programme. To facilitate the associated public benefits including the new quality open space, this report recommends the disposal of the land identified in **Appendix 1** for the sum of £1.

### **Affordable Homes Procurement**

17. It is proposed that the 60 new affordable homes for rent are delivered through an approved Two Castles Housing Association Framework Agreement with the Esh Group being the approved private developer on the Framework. The Framework Agreement allows for the demolition, clearance, delivery of associated public benefits, and construction elements of the programme to be delivered by the Esh Group. Work will be undertaken under licence and the disposal of the land, with the completed 60 new affordable homes for rent, will be subject to a tri-partite agreement between the Council (as land owner), the Esh Group (as approved private developer), and an appointed approved Registered Provider (likely to be a Housing Association, who will own and manage the 60 new affordable homes for rent). This is because the Esh Group recognise that they do not have the relevant expertise to both own and manage the 60 new affordable homes so are looking to dispose of them to a Registered Provider.
18. In preparation for the completion of the 60 new affordable homes, the Esh Group have engaged in discussions with local approved Registered Providers in connection with the transfer of the 60 new affordable homes for rent. The Esh Group have indicated that they have reached a successful conclusion to these discussions, are ready to move forward, and, have an agreement with a preferred local Registered Provider.
19. In order to protect the Council’s interests and mitigate risks a contract(s) would need to be negotiated with the Esh Group and probably the Registered Provider (usually a Housing Association) incorporating the principles set out in the Heads of Terms in **Appendix 2 Table 1**.

## **Delivery of Private Market Sale Homes**

20. It is proposed that the private market sale dwellings are delivered through a Special Purchaser arrangement with the Esh Group. This ensures continuity of improvement work between the two phases, certainty of delivery within agreed timeframes, reduced development risks, and, the delivery of wider associated public benefits. The land would be sold for £1 but Esh Group would utilise the land value to deliver the overall scheme and would be responsible for the development of the private market sale housing that would be controlled through the planning system.
21. The Esh Group will operate on site under licence until the construction phase of the regeneration works is complete and new properties are ready for handover. The transfer of private market sale properties will be completed in phases in accordance with a timetable agreed in the Heads of Terms. At the point of completion of the private market sale properties, the Council are proposing to dispose of the land occupied by the new 24 private market sale properties (**See Appendix 1**) for a £1 to the Esh Group.
22. A sale of surplus Council land at less than best consideration is permitted by general disposal consent under S.123 of the Local Government Act 1972 and the Council will seek to deliver associated public benefits to compensate for the lost capital receipt.
23. It is recommended that the appropriate land be sold subject to the Heads of Terms set out **Appendix 2 Table 1**.

## **Local Employment and Training Benefits**

24. The Esh Group have committed to working closely with the Council to maximise the opportunities for local employment and training within the construction process. The Esh Group have secured HCA grant funding for two further sites in Darlington at Melland Street and Feethams which should provide continuity and longevity of employment and training opportunities for local people. The Esh Group have demonstrated to the Council a successful track record in delivering local training and employment opportunities through previous development programmes, and, this is a key indicator for the Homes and Communities Agency in their selection and award process for grant funding.

## **Nickstream Lane Shops**

25. The Esh Group will be required as part of the financial model to finance the feasibility works which will examine future options for the Nickstream Lane shopping parade. A number of options will be explored and be subject to further community engagement. The outcome of the feasibility work will be the subject of a future Cabinet report. The estimated cost of this piece of work is expected to be £10-£20k.

## **Financial Implications**

26. The broad financial implications of the Cockerton Regeneration programme are clearly outlined in the Cabinet report dated 13<sup>th</sup> September 2011. This report focuses on the financial implications of delivering the Cockerton Regeneration programme through the two preferred formal contract arrangements (the Two Castles Housing Association Framework Agreement and a Special Purchaser arrangement).

27. The phasing of any demolitions and the construction of new properties will be carefully managed to ensure that the maximum opportunities are made from any net gain of housing, and, the subsequent eligibility for additional New Homes Bonus revenue over a six year period. All of the affordable homes for rent have to be completed no later than March 2015. Any net additional homes developed will be eligible for New Homes Bonus which equates to approximately £8,000 per property on average over a six year period. The Cockerton Regeneration programme is expected to generate a net increase of 7 properties which equates to £56,000 of additional revenue for the Council over a six year period.

### **Financial Implications Affordable Homes**

28. The HCA grant funding of £900k is exclusively available to finance the delivery of the 60 new affordable homes for rent. As part of the conditions on the award of the HCA grant funding, there is an expectation that public sector bodies act as facilitators to new housing development and provide developable land for disposal at nominal rates (usually nil value or disposal for £1). The HCA grant award has conditions relating to the delivery of new dwellings by March 2015. It is important that the programme is adhered to and the Council is not exposed to risks associated with failure of the Esh Group to comply with the HCA funding conditions.
29. The Esh Group had made a proposal to work in partnership with the Council on the delivery of the private market sale housing. Such an arrangement would put development risk/ risk of non sale of housing onto the Council. As an alternative the Council is able to transfer the land to the Esh Group at an undervalue if it is satisfied that the undervalue will provide for associated public benefits including the following benefits:
- (a) more cohesive development,
  - (b) the reduction of risk to the Council both in terms of the development process and the risk of non sale.
  - (c) the delivery of housing to complement the adjoining new affordable housing for rent
30. The current space is in a poor and unmaintained condition, subject to vandalism and causing anti social behaviour. The re- use of this land will release the Council of the burden to maintain the area. The Council will then maintain the new fit for purpose high quality open space.

### **Financial Implications Private Market Sale Homes**

31. The land proposed to be developed for the market sale properties has been valued by surveyors (being members of the RICS) from the Council's Estates section in the region of £120- £240k and disposal under a Special Purchaser arrangement is recommended at a value of a £1 strictly in order to achieve the joint benefits referred to above. The Council is able to consider such disposal under its general power of competence under the Localism Act 2011 and the disposal will transfer the risk from the Council to the Esh Group.

## Legal Implications Land Disposal

32. The relevant statutory powers for disposal of land referred to in this report are:
- (a) section 123 of the Local Government Act 1972 which enables the Council to dispose of land using whatever method it chooses as long as it meets its overriding duty to obtain the best consideration that can be reasonably obtained for the land;
  - (b) section 32 of the Housing Act 1985 (as amended) to dispose of land held for the purposes of Part II of that Act;
- subject to exceptions that are set out in The General Disposal Consent 2003 and The General Housing Consent 2012 respectively.
33. Under section 32 of the Housing Act 1985, the Council has powers for the disposal of its property assets held under the Housing Act 1985.
- (a) s.32(1) "*... a local authority have power by this section, and not otherwise, to dispose of land held by them for the purposes of this Part.*"
  - (b) s.33(1) "*On disposal under section 32, the local authority may impose covenants and conditions as they think fit*".
34. As from 18th May 2012 the Secretary of State gave to all local authorities in England "A. The General Consent for the Disposal of Land held for the purposes of Part II of the Housing Act 1985 - 2012" ("the General Consent").
35. Clause 3.2 of the General Consent provides that a local authority may dispose of vacant land at any price it shall determine to be reasonable. It does not require the sale to be at market value. The land this report relates to is vacant land for the purposes of the General Consent.
36. The land concerned is held by the Council for the purposes of the Housing Act 1985. The two disposals may be treated as disposals of vacant land and therefore in accordance with the guidance to the 2012 order may be disposed of at an undervalue.
37. It is relevant for the decision to record and justify the reasons for the sale at an undervalue as set out in this report.
38. The land subject to disposal contains an element of open space and it is therefore prudent to undertake further community engagement and consultation for the purposes of the Open Spaces Act 1906. The new open space provision has not been defined in detail and this Cabinet report therefore seeks that members delegate to the Director of Resources the authority to advertise the proposed disposal and consider objections thereto prior to completion of the disposals / contract documentation.

## Risk Analysis

39. **Appendix 2, Table 1** outlines the key issues which will be governed by the 2 formal contracts and captured within agreed Heads of Terms to minimise and mitigate the Council's exposure to risk.

## **Design and Quality Standards – Affordable Homes for Rent**

40. The design and quality standards of the 60 new affordable homes for rent are managed and controlled through the grant agreement between the Esh Group and the Homes and Communities Agency. All new affordable homes for rent will meet Code for Sustainable Homes (CSH) Level 3 which is a condition of the HCA grant agreement.

## **Formal Contracts**

41. The Heads of Terms of the agreement between the Council and the Esh Group will stipulate the development longstop dates for the market sale properties to be completed, and, the requirement for the delivery of other associated public benefits.
42. The Council will seek appropriate guarantees through any agreed Heads of Terms to ensure the whole proposed regeneration programme at Cockerton is delivered, and, that appropriate safeguards are in place to protect the Council from any additional costs and risks identified throughout the regeneration programme.

## **Outcome of Consultation**

43. Outline discussions have been completed between the Esh Group and Planning Policy in respect of the re-provision of quality open space and its respective area. The Esh Group will be seeking to commence its community involvement process and discussions on a planning application submission as soon as it can to meet its timetable commitments to the HCA.
44. The Council have undertaken a number of consultation events with the local community and circulated newsletters to those households affected who were unable to attend the scheduled open meetings. The Council are committed to taking further draft plans to a voluntary Focus Group made up of interested households from the Cockerton community to illustrate how public views have been captured in the remodelling work. It is expected that this could be undertaken in July / August 2012 following Cabinet approval.

Table 1

<b>Element of Cockerton Regeneration Programme</b>	<b>Heads of Terms</b>
<b>Affordable homes for rent</b>	<ul style="list-style-type: none"> <li>• Performance re the HCA grant agreement that stipulates the number of affordable homes for rent to be delivered within a prescribed time not beyond March 2015.</li> <li>• The rental level of the new homes.</li> <li>• New homes will be allocated in accordance with the agreed Tees Valley Choice Based Lettings Policy called COMPASS.</li> <li>• Preference to new homes will be given to displaced Cockerton residents as part of the demolition / clearance element of the programme.</li> <li>• The Esh Group will be required under licence to demolish, clear, and reconstruct all new dwellings and deal with all issues connected to utility services.</li> <li>• The associated public benefits will be delivered in tandem with the affordable homes for rent and be subject to longstop dates to ensure delivery.</li> <li>• Any cost overrun on the development will be entirely at the risk of the Esh Group.</li> <li>• Appropriate clauses will be negotiated between the Council, the Esh Group and the appointed approved Registered Provider to ensure that the Council does not incur any unreasonable additional development costs.</li> <li>• All development partners will be liable for their own legal costs for the land transfer.</li> <li>• Delivery of public benefits to agreed specifications within agreed timescales.</li> <li>• Provisions in the context of failure to comply with agreed timescales and longstop dates.</li> <li>• The Council will seek guarantees that an approved Registered Provider is appointed and that they offer a local responsive management service.</li> <li>• If appropriate contractual arrangements with an RSL to ensure all matters above in this table are either delivered or mitigated.</li> <li>• The development will be subject to a satisfactory planning application being submitted.</li> </ul>

**Table 1 (continued)**

<b>Element of Cockerton Regeneration Programme</b>	<b>Heads of Terms</b>
<b>Private Market sale properties</b>	<ul style="list-style-type: none"><li>• The land identified for the 24 new private market sale homes will be subject to a covenant which stipulates that the land can only be developed for housing.</li><li>• Appropriate clauses will be negotiated between the Council and the Esh Group to ensure a smooth transfer of the land on completion of the private market sale properties and protect the Council from any potential overrun of development costs.</li><li>• The Council and the Esh Group will be responsible for their own legal costs in connection with the land transfer.</li><li>• Appropriate mechanisms to protect the Council in circumstances of contractor failure such as a bond or parent company guarantee.</li><li>• The Council will transfer land to be occupied by private market sale homes on a phased basis in accordance with an agreed timetable.</li><li>• The development will be subject to a satisfactory planning application being submitted.</li></ul>