



Classification	Item No.
Open	

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>30<sup>th</sup> June 2021</b>
<b>Title of report:</b>	<b>Approval of accumulated sums monies (s.106) for returning empties homes back into use</b>
<b>Report by:</b>	<b>Councillor Claire Cummins</b>
<b>Decision Type:</b>	<b>Cabinet KEY DECISION</b>
<b>Ward(s) to which report relates</b>	<b>All</b>

### **Executive Summary:**

This report seeks the approval of £1m of accumulated commuted sums to bring empty homes back into use across the borough. The commuted sums were secured through Section 106 Planning Agreements as a result of the Council's Affordable Housing Planning Policy and must be spent on the provision of affordable housing within the borough in accordance with the terms of the legal agreements.

Bringing empty properties back into use for affordable housing is a good fit with the rules governing the use of the ring-fenced commuted sums and will contribute significantly to delivering the objectives within both the Council's Housing and Regeneration Strategies.

Commuted sums have previously been allocated in this way. In 2016, £617,000 of commuted sums was allocated by Cabinet for the purpose of bringing empty properties back into use as affordable housing. To date, 10 properties across the borough have been brought back into use as affordable housing. There is approximately £172,000 from the original allocation, however these funds are earmarked for a further 3 properties.

It is intended that The Council will voluntarily acquire empty homes across the borough using the commuted sums monies, and return them back into use as affordable housing. The Council will work with Six Town Housing on repair scheme and as per the previous project and any homes acquired by the Council will be managed through Six Town Housing and rent will be paid into the housing revenue account.

### **Recommendation(s)**

That Cabinet approve to:

- a) Allocate £1m of accumulated Affordable Housing commuted sums to fund bringing empty properties across the borough back into use as affordable housing, in line with housing and planning policies and the rules governing affordable housing and the use of commuted sums.
- b) Delegate agreement and approval of relevant detailed matters to The Director of Economic Regeneration and Capital Growth and Chief Finance Officer / S151 Officer in consultation with the Cabinet Member for Housing Services. Detailed matters include the financial appraisal per property and other relevant detailed agreements between the Council and Six Town Housing.

## **1. Key considerations**

### **1.1 Background**

Empty property is a prominent issue both nationally and locally – not just because of the visual impact they can have in an area but the fact they are a wasted resource. Houses are lying empty whilst housing waiting lists are rising and demand for affordable housing is high. Data available from Council Tax indicates there are over 1000 properties that have been left empty for 6 months and over 500 properties that have been vacant for a period of 2 or more years.

The Council has recently appointed an Empty Homes Officer. Their primary role is to undertake a full range of duties within private sector housing team in relation to empty homes. The post holder is responsible for monitoring and mapping empty homes across the borough to identify clusters and hotspots, to liaise and work in partnership with other Council departments with an interest in empty homes for example council tax, to establish legal ownership, and return them into use through negotiation and engagement with the owner and/or enforcement. Alongside proactive work, the Empty Homes Officer is responsible for taking necessary enforcement action to ensure the property is not causing a statutory nuisance and is secure against unauthorised access.

The Council has accumulated commuted sums from the Council's Planning Policy on Affordable Housing, as set out in the Unitary Development Plan and supplemented by Development Control Policy Guidance Note 5 – Affordable Housing in New Housing Developments (DCPGN5). These monies have been secured where affordable properties are sold at market value, which is allowed for in certain circumstances in accordance with the terms of the S106 Agreements, resulting in a commuted sum (usually 25% of the market value of

the property) being paid to the Council. They can also result from overage contributions within legal agreements. It is important to note that these monies are ring-fenced and can only be used to deliver affordable housing within the Borough, in accordance with planning regulations and under the terms of each individual s106.

## **1.2 The proposal**

To use £1m of accumulated commuted sums in conjunction with grant funding through scheme by scheme bidding through Homes England Affordable Homes Programme, to return empty properties back to use as affordable housing across the borough.

The monies will be used to return empties back into use, using the following models:

- Purchase, repair and affordable rent - where the Council works jointly with its partners to purchase and repair the property then offer as affordable rent.
- Purchase, repair and shared ownership – where the Council would purchase and repair the property and place on the affordable market through the current Councils shared ownership framework.

The approach taken to bring the property back into use through route above will be tailored to the needs of individual properties, considering factors such as property location.

The Council has already sought expressions of interest from Registered Providers across the Greater Manchester region to be a delivery partner for this project. Due to other ongoing commitments Six Town Housing were the only provider able to commit to the project. Therefore, the Empty Homes Officer will work with Six Town Housing to facilitate the project and properties that have been acquired will be managed by Six Town Housing, through existing frameworks for managing Council Stock with rent paid into the housing revenue account.

## **1.3 How many properties would be returned into use?**

At present, the Council has not identified the specific properties it will target as it is in the early stages of engaging with empty property owners across the borough. However, based on the previous project that returned 10 empties back into use across the borough, it is anticipated that funding will allow for the acquisition of 20 empty properties which equates to a spend of £50,000 per property ( Based on previous allocation of funds.)

There is a caveat to this as each property will likely be in a different state of repair, this figure is an assumption and each property will not be purchased until it has undergone a financial appraisal and operational decision which has been approved and signed off by the Director of Business Growth and Infrastructure and The Executive Director of Finance in consultation with the

elected member for housing services.

As the properties will have been empty for some time, it could take a variable amount of time to establish ownership and bring the property back into use. Although there is no specific timeframe to bring back into use, as that is dependent on nature of the property, the commuted sums have to be spent or committed for expenditure within 10 years of receipt otherwise they have to be repaid with interest.

The monies can only be used to deliver affordable housing and cannot be used to bring back empty properties for market sale or rent. It is anticipated that the Empty Homes Officer will also offer various options to encourage owners to bring properties back into use including informal advice, referral to the Ethical lettings Agency and the use of selective enforcement.

It would not be possible to use the monies to return the properties back to private use as this could result in a successful legal challenge to the use of the monies being used for something for what they were not intended.

It is expected that from the work of the Empty Homes Officer through engagement and enforcement that there will be a number of properties brought back into use alongside the acquisitions using the commuted sums monies. It is expected that some will enter the market as owners are encouraged to place their property on the open market as a result of engaging with the Empty Homes Officer.

Once acquired and repaired, ready for let, the use of nomination agreements and other mechanisms will ensure that, as far as possible, the outcomes fit within the Council's Housing Strategy and in particular meet housing need, demand for affordable housing and create mixed sustainable communities.

#### **1.4 How will the properties be selected?**

As outlined above, the Empty Homes Officer will work proactively on bringing empty properties back into use by various methods. They will have access to the latest data from Council tax and will be driven by this, and other information held on council systems, such as complaints received by Environmental Health to prioritise problematic empty properties.

It will supplement rather than replace the housing market such that it will not intervene where properties are for sale or are already being offered for let; the focus will be on properties where no action is being taken or previous attempts have failed.

Data gathered and analysed by the Empty Homes Officer will also be used in developing housing action plans for each township.

Once a property has been identified as one that the Council would look to purchase, a thorough due diligence exercise would be carried out on the

property to ensure it is a viable purchase and there is a full financial appraisal will be undertaken to ensure that the Council will recoup the costs of acquisition and repair. No property would be purchased until this has been completed and approved by the Executive Director of Finance and The Director of Economic Regeneration and Capital Growth.

### **1.5 The case for using the commuted sums monies to tackle empty properties**

Providing that the empty properties are brought back into use in line with the definitions of affordable housing in relevant planning policy and legal requirements (namely social or affordable rent or discounted markets sale housing in perpetuity) this is a legitimate use of the commuted sums monies.

Any receipts resulting from the future sale of any of the affordable properties provided through the S106 commuted sums should be recycled for alternative affordable housing provision. The housing strategy clearly recognises the role that empty property work can have in increasing affordable housing in the borough.

Once £1m of the commuted sums has been committed to bringing empty properties back into use, there will be a remaining balance of £675,000 available commuted sums which will be targeted at bringing forward additional affordable homes, which may continue to include empties.

This proposal is considered to provide an effective use of the commuted sums for the following reasons:

- The solutions are good value for money;
- The commuted sums will act as a catalyst to bring more empty properties back into use, through the use of additional options alongside those made available through the commuted sums monies, making a greater impact;
- The problems and detriment to the surrounding area caused by empty properties will be tackled and there will be a distinguishable positive impact in the area and
- The Council will receive additional Council Tax and New Homes Bonus (depending on future scheme rules) for bringing the empty properties back into use and increasing the affordable homes supply

The Empty Homes Officer has an initial target on returning 20 homes back into use. In order to ensure the target is met, operational meetings are held on a bi weekly basis for progress updates specific to this project and properties will be monitored over time to ensure that works are undertaken as stated by the owner and to ascertain where further intervention is needed.

In addition, affordable housing contributions are paid into a designated account as required by the s106 Agreements and are rigorously monitored to ensure that they are spent in accordance with the terms of each individual Agreement.

Annual reports are presented to the Council's Planning Control Committee setting out income and expenditure of s106 contributions to ensure transparency and accountability. To effectively monitor progress, an annual report will be prepared to present the Committee to update progress on the expenditure.

### **Other alternative options considered**

1) Do nothing

The terms of the S106 Agreements require the contributions to be spent or committed within 10 years of receipt. Doing nothing could result in contributions having to be refunded.

By not taking any action to bring the empty properties back into use, it is likely that they will deteriorate further and generate an increase in complaints to the Council.

It is also a missed opportunity to the ever increasing demand for affordable housing across the borough.

2) Do not allocate the commuted sums monies to be used to bring empty homes back into use as affordable housing.

Cabinet pledged to tackle empty homes across Bury by ensuring a specific post for an empty homes officer was made available. If no money is attributed to a project to return empties back into use, the post holder will only be able to pursue enforcement options to bring properties back into use. This can often be a very lengthy and costly process which, on its own would return few properties back into use over time. By allocating the £1m, the Council can proactively target empty properties and enter into meaningful negotiations with owners to bring their property back into use.

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### **Community impact/links with Community Strategy**

The Council's Housing Strategy outlines its aims for housing across the Borough over the next 10 years. Amongst others, some of the aims of the strategy are;

- to increase homes in the borough,
- to increase the affordable supply, to provide good quality, healthy homes and places, and;
- work towards individual township housing strategies shaped to support the future of each town.

Bringing empty homes back into use through a variety of means, including voluntary acquisition using section 106 commuted sums monies contributes towards the Council achieving the aims within the housing strategy.

Homes lying empty across the Borough are a wasted resource, especially considering the demand for affordable housing. Empties present a variety of issues often impacting directly on the local community, such as crime, anti-social behaviour and in some circumstances, they can de value the local area and adjoining properties.

Through the acquisition of empty properties, the Council will be able to increase the number of affordable homes across the borough and refurbish them to a standard that provides good quality healthy homes and improve the quality of the local neighbourhood by removing a nuisance, eyesore property.

The Let's Do It strategy also sets our key themes to support Bury it recovers from the impact of Covid – 19 pandemic to ensure that the Council builds a better and brighter future for the population, communities and businesses. Returning empty properties back into use as affordable housing supports the delivery of this strategy.

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### **Equality Impact and considerations:**

*Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:*

*A public authority must, in the exercise of its functions, have due regard to the need to -*

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

*The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.*

<b>Equality Analysis</b>	<i>Please provide a written explanation of the outcome(s) of either conducting an initial or full EA.</i>
There are no issues or recommendations	

*\*Please note: Approval of a cabinet report is paused when the 'Equality/Diversity implications' section is left blank and approval will only be considered when this section is completed.*

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### Assessment of Risk:

The following risks apply to the decision:

Risk / opportunity	Mitigation
That there will be a challenge from developers or others on the Council's expenditure of the commuted sums:	Commuted sums are ring-fenced for initiatives that support the delivery of additional affordable housing; governed by planning legislation and the respective s106 agreements. This has been carefully considered in the context of this proposal and has been piloted successfully using previously committed contributions. The options being developed with registered provider partners are firmly in line with the associated requirements. The exact details of how these will operate will be further developed in consultation with planning colleagues to ensure the appropriate use of the commuted sums whatever detail and circumstances later arise. In this respect the risk of any developer or others having a successful challenge on the Council's use of the commuted sums via this proposal is minimal. In relation to the appetite for a challenge, given the rationale of the approach and its root in the housing strategy, this risk is considered to be small.
That there are more appropriate options for expenditure/competing priorities for the commuted sums monies:	There are no current identified projects for the use of this money and the delivery of empty properties for affordable housing is recognised as an important aspect within the housing strategy. There remains a balance of £675,000 of affordable housing s106 contributions that will remain available for alternative options should they emerge.
That best value will not be achieved in using the commuted sums in delivering empty properties:	The options associated with the commuted sums will be delivered with registered provider partners as they can deliver both the repair and ongoing housing management



	required to satisfy the rules governing the use of commuted sums. Registered providers also offer advantages in that they bring resources to the table, including financial input.
The acquisition of the property is not financially viable as cannot get a valuation within the circa £50,000 of allocated funds per property	The due diligence provided by each individual property undergoing a full financial appraisal, including purchase and acquisition costs and refurbishment costs will ensure that any property that is acquired is financially viable and will generate over the course of time a return on the investment.

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### **Consultation:**

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### **Legal Implications:**

The proposed use of the s106 commuted sums is lawful but further legal and financial advice will be required at each stage of the process.

Legal services will work with the service once properties have been identified to bring them within the ownership of the Council. The current contractual arrangements with Six Town Housing do make provision for management of such properties as part of the Council's housing portfolio, as properties come forward to be managed our contractual arrangements will be updated to reflect this.

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### **Financial Implications:**

This aligns with the Council's Affordable Housing Planning Policy and is in line with the ring fenced constraints on the use of S106 commuted sums. There is currently £1.7m of uncommitted funds within the Section 106 reserve therefore the release of £1m for this purpose would still leave a balance for future developments.

This is the second time the Council has undertaken such an approach, the first being back in 2016 when an allocation of £617k was identified for the same purpose. All of the properties purchased under the first tranche were subsequently let as affordable rental properties. This paper identifies for the second tranche of monies consideration will be given with each property as to whether it best lends itself to becoming an affordable rental property or one to be sold as affordable housing potentially through joint ownership. A number of factors such as location will be considered in determining which is the best option along with a detailed financial appraisal for each property

It is the intention that these monies will be used to purchase the properties and as with the 2016 scheme a grant application will be made to Homes England for the costs of refurbishment, but this cannot be done until the properties are purchased. Should the grant application be unsuccessful a business case would be made for support from the Housing Revenue Account or alternatively refurbishment costs would need to be met from these funds. Therefore, consideration must be made when purchasing each property not only to the purchase price but also to the potential refurbishment costs. This may ultimately impact upon the number of properties that can be purchased against the target of 20 identified within the paper. It is acknowledged that at this point in time there is not a pipeline of properties to purchase but that work is required as a priority to do this once the agreement to the release of these funds has been made.

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**Background papers:**

**Please include a glossary of terms, abbreviations and acronyms used in this report.**

Term	Meaning
BGI	Department for Business Growth and Infrastructure
Commuted Sum	An Affordable Housing Commuted Sum is a financial contribution made by developers, on residential sites either as a replacement for not providing on-site affordable housing or as the fractional element of the affordable housing due