

<b>CABINET</b>	<b>AGENDA ITEM No. 5</b>
<b>15 JANUARY 2018</b>	<b>PUBLIC REPORT</b>

Report of:	Adrian Chapman, Service Director for Communities and Safety	
Cabinet Member(s) responsible:	Cllr John Holdich, Leader of the Council	
Contact Officer(s):	Adrian Chapman, Service Director for Communities and Safety	Tel: 863887

## **ACQUISITION OF ACCOMMODATION TO REDUCE HOMELESSNESS**

R E C O M M E N D A T I O N S	
<b>FROM:</b> <i>CMT</i>	<b>Deadline date:</b> <i>N/A</i>
<p>It is recommended that:</p> <ol style="list-style-type: none"> <li>1. Cabinet approves in principle the funding mechanisms and processes discussed in this report for managing the investment of previously agreed funding into Medesham Homes LLP for the purposes of increasing the supply of housing, helping address the demand for accommodation created as a result of the increase in homelessness;</li> <li>2. In respect of the specific proposal in relation to Midland Road properties Cabinet delegates to the Corporate Director for Growth and Regeneration and the Service Director for Communities and Safety (in consultation with the Corporate Director of Resources) the authority to approve funding of up to £4m to Medesham Homes LLP subject to the submission of an acceptable business case by Medesham Homes LLP through the process defined in this report;</li> <li>3. In respect of the specific proposal in relation to providing funding for Midland Road, Cabinet delegates to the Director of Law and Governance the authority to finalise and put in place any agreements and legal documentation necessary to give effect to these proposals, in consultation with the Corporate Director of Growth and Regeneration and the Corporate Director, Resources.</li> </ol>	

### **1. ORIGIN OF REPORT**

1.1 This report is submitted to Cabinet following a referral from CMT on 29 November 2017.

### **2. PURPOSE AND REASON FOR REPORT**

2.1 In July 2016, Cabinet approved the creation of a new Housing Joint Venture between the Council and Cross Keys Homes, now established and named Medesham Homes LLP ("Medesham"). It will deliver new housing of all types and tenures at a range of scales as circumstances dictate. The report explained that Full Council has allocated, through the 16/17 budget process, £20m of Invest to Save funding to the Housing JV, and it noted that Full Council had also reallocated the Right to Buy receipts to it as well. This finance represents a significant commitment to both Medesham and tackling various housing needs in Peterborough.

- 2.2 Though this money was allocated to Medesham, the July 2016 report noted its actual investment would be a separate matter, subject to the Council’s decision-making process in the usual way. This report addresses that, and is the result of work to make clear the process and mechanisms by which this funding can be released.
- 2.3 The purpose of this report is to set out and obtain approval for the above funding mechanisms, which in the earliest instances will see the increase in the number of properties to help alleviate homelessness in Peterborough, and to reduce the financial pressure being experienced as a result of higher than normal volumes of households being accommodated in bed and breakfast or hotel accommodation.
- 2.4 This report is for Cabinet to consider under its Terms of Reference No. 3.2.1, ‘To take collective responsibility for the delivery of all strategic Executive functions within the Council’s Major Policy and Budget Framework and lead the Council’s overall improvement programmes to deliver excellent services.’

### 3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If yes, date for Cabinet meeting	<b>N/A</b>
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### 4. **BACKGROUND AND KEY ISSUES**

#### 4.1 **Background to Medesham Homes**

- 4.1.1 In July 2016, Cabinet approved the creation of a new Housing Joint Venture between the Council and Cross Keys Homes. It would deliver new housing of all types and tenures (including affordable rent, starter homes, shared equity, market sale, private rented, student accommodation and housing solutions for vulnerable groups including the elderly, disabled and ex-armed forces personnel) at a range of scales as circumstances dictate.
- 4.1.2 The recommendations to Cabinet in July 2016 followed the work of the cross-party task and finish group in the previous year to assess the Council’s housing strategy, in light of changes to the economy and city since the housing stock transfer to Cross Keys Homes in 2004. The Housing JV – now known as Medesham Homes – was the mechanism by which that group’s conclusion that the Council should finance and build new homes would be implemented.
- 4.1.3 To recap, Medesham Homes is a 50:50 Limited Liability Partnership between the Council and Cross Keys Homes’ wholly-owned development subsidiary. As with the Peterborough Investment Partnership (PIP), which has spear-headed the delivery of Fletton Quays, Medesham Homes is governed by a small board where decision making is – in all matters – by consensus. This has worked well with PIP, and creates a collaborative working partnership where both parties need to agree on decisions for progress to take place.
- 4.1.4 The July 2016 report explained that Full Council has allocated, through the 16/17 budget process, £20m of Invest to Save funding to the Housing JV, and it noted that Full Council had also reallocated the Right to Buy receipts to it as well. Combined, this gave a funding facility of c£35m to drive the delivery of housing in the city, and represents a significant commitment to both Medesham and tackling various housing needs in Peterborough.
- 4.1.5 The July 2016 report also noted that, though this money was allocated to Medesham, its actual investment would be a separate matter, subject to the Council’s decision-making process in the usual way. This report addresses that, and is the result of work to make clear the process and mechanisms by which this funding can be released.

#### 4.2 **Homelessness**

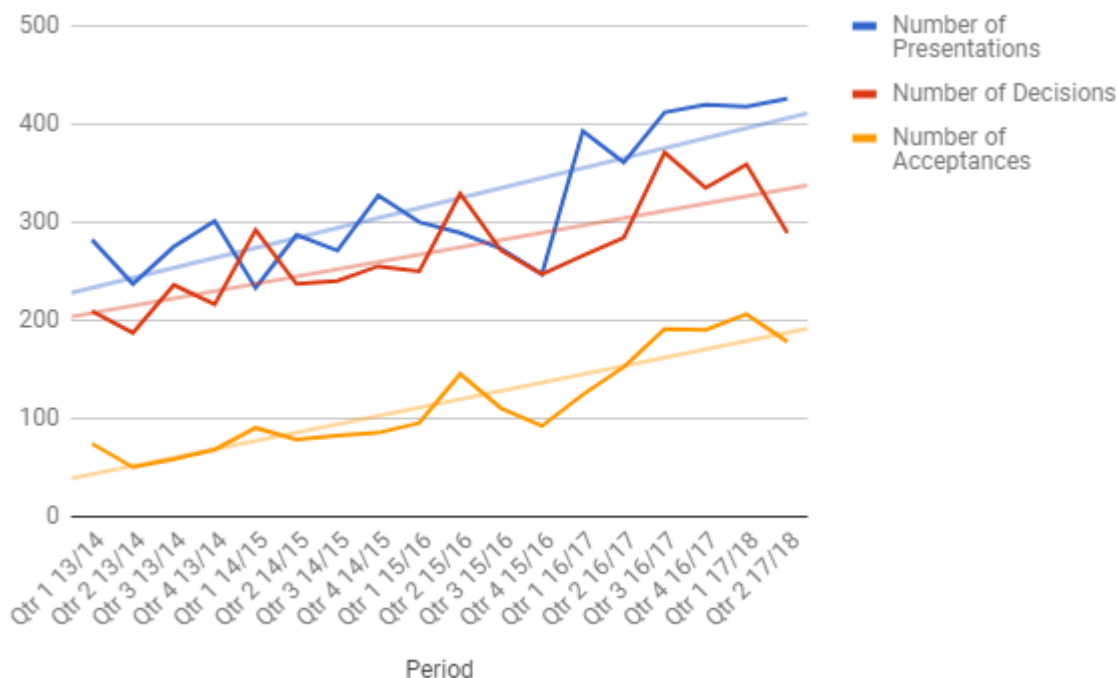
- 4.2.1 The current homelessness challenge in the city helps characterise part of the rationale for the creation of Medesham in the first place. Peterborough, like many other towns and cities across

the country, has experienced an unprecedented increase in households approaching the council for support as they are at risk of becoming homeless or are already homeless. This has led to a sharp increase in the number of households needing to be accommodated in temporary accommodation, including bed and breakfast and hotel accommodation.

4.2.2 During 2016/17 the Council experienced a 43% increase in homelessness presentations, although so far during 2017/18 the increase in demand has reduced to around 10%. This increase has resulted in around 350 households being accommodated in temporary accommodation, comprising:

- 75 hostel rooms
- 80 homes at St Michael's Gate
- 53 homes at Elizabeth Court
- The remainder in bed and breakfast/hotel accommodation

4.2.3 The graph below shows the number of homelessness presentations (i.e. the number of households formally approaching the Council as homeless or at risk of becoming homeless), the number of decisions made, and the number of households accepted as homeless. The trend is obvious and likely to continue.



4.2.4 There are a number of possible reasons why we, and many other Councils, are experiencing this increase in demand. In Peterborough however, the primary reason for homelessness is as a result of shorthold tenancies in the private rented sector ending, with around 33% of all homelessness presentations falling into this category.

4.2.5 We are also predicting a further increase in demand as a result of the roll-out of full service Universal Credit (other councils who have already implemented this have seen an average increase in eviction action within the private rented sector of 12%), and the introduction of the new Homelessness Reduction Act in April 2018 (the government has estimated an average increase in demand of 26%).

4.2.6 Aside from the challenges faced by households being accommodated in temporary accommodation, the result of this increase in its use is a significant financial pressure for the council. For example, the costs for bed and breakfast or hotel accommodation is around £390 per week per room. The maximum that the council can recover from Housing Benefit subsidy for this type of temporary accommodation is £92 per week leaving a shortfall of £298. The forecast pressure assuming demand continues to increase and if the council did nothing to

manage this demand is as follows:

- 2018/19: £1.605m
- 2019/20: £2.595m
- 2020/21: £5.764m

4.2.7 The Council is actively delivering or preparing to deliver a wide range of preventative measures to continue to help manage and reduce demand. However, the most impactful way we can achieve this is to combine this preventative activity with an increase in the supply of suitable accommodation, an action that Medesham Homes is ideally placed to help take forward and, as noted in 4.2.1. above, part of its rationale for creation.

### 4.3 Funding mechanisms

4.3.1 The Council has a variety of funding mechanisms available to it for the money it has allocated to Medesham Homes, some of which it has used before. Cabinet will be aware that the Council has previously provided grants to support affordable housing, for example, and the Council has used interest-bearing loans on a number of occasions to different organisations.

4.3.2 Different funding mechanisms have different characteristics that will shape their suitability for different schemes. Some schemes Medesham develop will be more suited to one type of funding mechanism than another, and so it is in both the Council's and Medesham's interest that it is clear what mechanisms the Council will consider as it can influence how schemes are developed, and ultimately the number of houses delivered. The initial focus and schemes for Medesham will be wholly affordable, providing direct support to address the homelessness challenge explored above.

4.3.3 To maximise the delivery of housing through the joint venture, a broad range of funding mechanisms are proposed as being supported. The mechanisms are grant (which is how, traditionally, the Council previously used the Right to Buy monies), loan (with market, reduced or zero interest rates all possible), and equity or quasi-equity options (where the Council's return relates to future profits).

4.3.4 These mechanisms may be used in isolation or in conjunction with one another; this would depend on the scheme proposed in question, and this again provides flexibility to both parties. For example, a hypothetical housing scheme might provide 50% affordable and 50% for sale. The affordable element would, because of the proportion, be likely to need grant support, whereas the Council might use a loan for the housing being built for sale. This is, of course, just a simple example, but it highlights the flexibility intended by the approach being taken.

4.3.5 It is important to note that the Invest to Save monies and the Right to Buy receipts have different constraints, and need to be and will be used differently. Right to Buy receipts must be used to facilitate affordable housing within the Peterborough area. This is in order to comply with the original legal agreements with Cross Keys Homes relating to the stock transfer in 2004 that governs how Right to Buy receipts could be used in the future. The Invest to Save funding has greater flexibility.

4.3.6 Security is an important consideration in any funding arrangement as it is one of the mechanisms that can protect the Council's investment and position. However, security over an asset is not the only protection: it is inherent in Medesham's decision-making-by-consensus design that the Council's position (and how its funding, once inside the JV, is used) provides an additional protection not normally available to it.

4.3.7 Where security forms part of the proposal it is important to note that this will not always necessarily cover the full funding being provided for a project, which is not unusual for development. As a simplified example, a house being bought for £200k can provide security for that £200k, but there are additional costs (stamp duty, legal and valuation fees) that mean the project cost might need funding to £225k. It is right for the Council to look to secure funding it provides, but it also recognises that it does not intend to fully secure every element of funding it provides or secure in every circumstance.

4.3.8 Finally, it is worth noting that there are a number of other investment options to increase the supply of housing in Peterborough, and these will continue to be separately pursued. For example, the Council's Section 106 receipts can be used to support housing growth with Medesham Homes or any other provider, and we are working closely with the Combined Authority to access some of the £170m allocation they have secured for housing growth. Where required, decisions relating to these and any other options would be subject to appropriate separate approvals in the usual way

#### 4.4 **The funding process**

4.4.1 It is proposed that the Council's investment into Medesham Homes be determined on a case by case basis, although it is acknowledged that for schemes with any significant affordable housing a grant will be the only viable option to use as affordable housing is loss-making to developers. Additionally, a grant is likely to enable schemes with only limited affordable units within them to increase the numbers of affordable homes to help further meet our increasing demand. This is especially relevant to the current situation because, as noted above, Medesham's initial work is focussed on alleviating the homelessness issue by providing wholly affordable schemes.

4.4.2 The July 2016 Cabinet report described the process in outline for the development and delivery of projects through Medesham Homes. The process below will be used to determine investment into Medesham Homes, and is summarised as follows:

- (i) The Council identifies a housing need and discusses this need with Medesham Homes who seek development opportunities that meet this need OR Medesham Homes identify a development opportunity and discusses this with the Council
- (ii) Medesham prepares a scheme outline, including what is intended to be delivered in terms of the scope and mix of a scheme, the funding required, the extent of security if applicable, the expected source (funding mechanism(s)) for that, key risks and (if appropriate) the returns and profile. The Council, through a review group detailed below, assess this and indicate either the project is likely to be acceptable in broad terms or not.
- (iii) A business case for funding will be co-produced between Medesham Homes and the Council for schemes that reach this stage. This business case will expand on the scheme outline, and likely involve Medesham committing finance to develop a suitable appraisal and full development outline.
- (iv) The business case will be assessed by the review group, and if considered acceptable a report following the Council's usual governance process (likely a Cabinet Member Decision Notice) would be prepared to summarise the proposal and seek formal Member approval to enter into arrangements through the relevant funding mechanism(s).

4.4.3 Stage ii above is an important step because it allows the Council to, in effect, provide an 'in-principle' agreement to funding the scheme. This is not a guarantee to fund, but it means that neither party expends significant resource developing or assessing a detailed business case that is unlikely to be taken forward in practice.

4.4.4 It is proposed that, under the leadership of the Corporate Director of Growth and Regeneration, a review group is established that can assess the scheme outlines and business cases put together in the process above. This group would draw in skills as necessary but likely include senior finance, legal, growth and housing needs professionals.

#### 4.5 **Midland Road**

4.5.1 There is an immediate opportunity to secure 29 units of accommodation in an off-plan agreement at Midland Road in Peterborough. Discussions have been held by Medesham Homes with the vendor and a price has been provisionally agreed. In order to secure the accommodation at this price contracts need to be exchanged and completed in January 2018.

4.5.2 It is therefore recommended that in respect of the specific proposal for the Midland Road development that Cabinet delegates to the Corporate Director for Growth and the Service Director for Communities and Safety, in consultation with the Director of Resources, the authority to approve a grant of up to £4m to Medesham Homes subject to the submission of an acceptable business case by Medesham Homes.

4.5.3 Properties delivered by Medesham Homes will be leased to the Council for our exclusive use, and the lease will include a housing management service. In most cases it is anticipated that the rental levels set by Medesham Homes will be capped at Local Housing Allowance rate meaning that the majority of these costs can be reclaimed by the Council through Housing Benefit Subsidy (where the tenant is in receipt of Housing Benefit). The full financial implications, including revenue savings to the Council will be incorporated into each business case to demonstrate the full financial implications of each investment.

## **5. CONSULTATION**

5.1 The decisions to invest Right to Buy receipts and Invest to Save funding were previously made in 2016/17 as part of the Council's budget process, and the decision to create Medesham Homes was subject to a previous Cabinet Report and decision open to scrutiny in the usual way.

5.2 The issues associated with homelessness in Peterborough have been subject to significant discussion in various forums, including the Council's Adults and Communities Scrutiny Committee, Cabinet and Full Council.

## **6. ANTICIPATED OUTCOMES OR IMPACT**

6.1 It is anticipated that the investment described in this report, coupled with the preventative activities being delivered by the Housing Needs service, will result in the significant reduction in the use of temporary accommodation (particularly bed and breakfast and hotel accommodation), resulting in improved outcomes for homeless households and significant reductions in costs for the Council.

6.2 It is difficult to forecast the financial benefits to the Council as a result of this investment given the number of variables including the price paid for properties. However, acquiring around 250 properties and preventing the homelessness of two households per week reduces our current forecast pressure of £5.764m in 2020/21 to £1.709m.

## **7. REASON FOR THE RECOMMENDATION**

7.1 The Cabinet Report that established Medesham Homes specifically did not deal with the mechanisms and processes associated with investment into the joint venture; these were reserved for a future – indeed, this – paper.

7.2 Continuing to provide temporary accommodation at the current rates is not sustainable for the Council nor is it sustainable for homeless households. These proposals seek to enable the Council to take greater control over the provision of accommodation for homeless households.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

8.1 Doing nothing – this option was discounted as the previous Cabinet Report that established Medesham Homes required funding mechanisms to be put forward through the Council's governance. These mechanisms and approach will also help reduce the continued use of temporary accommodation that, coupled with the continued increase in demand, is not sustainable.

## **9. IMPLICATIONS**

### **9.1 Financial Implications**

9.1.1 This report confirms details of options and funding mechanisms that may be utilised to create additional housing provision to meet demand for homelessness accommodation. Funding for this overall programme can be met from two main sources, £14.6m Right to Buy Receipts and £20m Invest to Save capital budget. Regardless of the selected funding source for this and subsequent projects, it should be noted that the Council will need to borrow to make grants or fund loans for this purpose (this applies if funding is made through either the Invest to Save or Right to Buy funding route.)

9.1.2 This report also references s106 resources as a potential funding source for this type of housing project. It is noted that the Council is currently holding circa £3.2m of unallocated s106 monies under the Affordable Homes category.

9.1.3 Each project will be considered under the governance arrangements outlined in section 4.4 of this report, requiring the creation and consideration of a full business case, presenting a financial evaluation incorporating any ongoing impact on Council budgets. Due diligence processes will include evaluation of the business case and key financial risks associated with each project. Advice received from the Council's external legal advisers suggests that careful consideration will be required to ensure that State Aid, Right to Buy Funding and Procurement regulations are fully assessed and complied with. The recommended funding source, method and delivery vehicle for each business case will be based upon consideration of legal and regulatory guidance to ensure the solution is lawful and appropriate to the Council's needs.

9.1.4 Grants or loans provided by the Council will be treated as Capital Expenditure within the Council's accounts. Within the definition of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (the "Regulations") section 25 states that expenditure of a local authority will be treated as capital expenditure if 'the giving of a loan, grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure which would, if incurred by the authority, be capital expenditure'. As the funds will be used for the provision of housing, the Council will need to class any grant or loan as Capital Expenditure.

9.1.5 Subject to the recommended method and source of funding, any final funding agreement will need to provide robust security to protect the use of Council resources during the construction, operation and any future divestment phases.

9.1.6 The requirement to charge Minimum Revenue Provision (MRP) on any loan provided by the Council will be determined by the final terms agreed in each business case. The process for managing MRP is set out in the Council's Treasury Management Strategy. The Treasury Management Strategy is approved by Council to reflect its investment requirements. On 11 October 2017 Council Agenda item 13(d) approved the use of loans as a form of Investment to organisations delivering services for the Council.

### **9.2 Legal Implications**

9.2.1 This Report anticipates that the Council may pursue the delivery of housing projects through the Council's Housing Joint Venture, Medesham Homes LLP. In each case, where projects meet the requirements of and are intended to be funded by the Council they will be considered in accordance with the Council's project evaluation process set out above, which will include appropriate and tailored due diligence. The advice of external legal advisers will be sought in order to ensure the lawfulness of each project which the Council intends to recommend, including taking into account the particular legal considerations set out below.

#### **9.2.2 Medesham Homes LLP**

Legal advice has previously been sought from the Council's external legal advisers Pinsent Masons LLP and summarised in Cabinet Report: Creating a Housing Delivery Company and

- 9.2.3 Pinsent Masons' advice concluded that the Council has the power to utilise a Limited Liability Partnership for the Housing Joint Venture. This advice took account of the socio-economic nature of initial projects under consideration, (a focus on affordable housing and meeting needs of the community for new housing and related development) which enabled the Council to enter into a LLP structure, as opposed to a company limited by shares, given that the primary purpose of the Housing Joint Venture for the Council is not a commercial purpose.
- 9.2.4 s a clear socio-economic purpose which PCC may look to in order to have vires, recognising that the Housing Joint Venture may utilise elements of third party sales/commercial activity to underpin the broader purpose and deliver the primary objectives. As such, it can be demonstrated that the Housing Joint Venture is not acting with a primary commercial purpose to trade and so the Council could enter into an LLP arrangement.
- 9.2.5 It was recommended that the corporate structure of the Housing Joint Venture be kept under review should the primary purpose of the JV change and it became commercial in nature. To be clear, this does not prevent the Council supporting projects that are commercial in nature as long as those projects do not become the primary activities of Medesham (although it is understood that initial projects will be primarily entirely socio-economic in characteristic, being focussed on affordable housing delivery to alleviate homelessness).
- 9.2.6 The advice given by Pinsent Masons in JUL16/CAB/43 also concluded that on balance the Housing Joint Venture will not be subject to the Procurement Regulations 2015 as a 'body governed by public law'. This was on the basis that the Housing Joint Venture, whilst 'meeting needs in the general interest' (i.e. provision of housing and associated benefits within the Peterborough area, initially at least), will operate on a commercial basis, compete alongside other affordable housing providers and developers on the market, seek to make a profit in order to deliver on these objectives and bear the risks of its own activities. These aspects have been reflected in the incorporation and operational documentation associated with the Housing Joint Venture.
- 9.2.7 Pinsent Masons also considered the applicability of state aid legislation to the Housing JV. Unlawful state aid occurs where a benefit is granted from a public resource for free or on favourable terms which distorts or has the potential to distort competition. The Housing JV scheme structure followed market principles and as such there was no unlawful state aid implication. However again, the Council will keep this under review as projects are advanced through Medesham.
- 9.2.8 **The Council's powers**  
Pinsent Masons extensively reviewed the powers of the Council when the JV was established and concluded that both that the Council has the power to lend to the JV and that entry into a housing development joint venture vehicle that is a LLP and financing the JV by way of a loan would be a proper exercise of those power(s) within general public law constraints (e.g. acting reasonably, taking into account all relevant considerations and disregarding irrelevant considerations) and in accordance with its general fiduciary duty).
- 9.2.9 In making any such investment the Council is required to give regard to the Government's commentary to the Guidance on Local Government Investment, as well as the statutory guidance issued by the Secretary of State and specific guidance published by the Chartered Institute of Public Finance and Accountancy. Furthermore, any such investment must be consistent with the Council's Annual Investment Policy.
- 9.2.10 The Council may also rely upon a number of other powers including the general power of competence contained in Section 1 of the Localism Act 2011, Section 123 of the Local Government Act 1972 (land disposal), Section 111 of the Local Government Act 1972 (incidental power), and the power to borrow in Section 1 of the Local Government Act 2003
- 9.2.11 The Council's power to lend to the JV and the need for the Council to exercise that power in a



proper manner within general public law restraints is applicable to any lending made by the Council in respect of housing projects anticipated in this Report and the Council will need to consider any project funding accordingly. In addition, any request for funding from the Invest to Save budget will be made in accordance with the Council's Constitution and applicable Contract Rules. The Council will, of course, seek to protect use of its resources for the agreed purpose, within the framework outlined above. Grants provided by the Council will be protected by relevant agreements about the delivery of the agreed housing units and loans from the Council will be secured as appropriate security as discussed above.

#### 9.2.12 **Public Procurement Implications and State Aid**

In respect of each proposed new housing project, advice will be sought on whether it has the potential to contravene the 2015 Public Contracts Regulations or amounts to unlawful state aid. The provision of a loan, taking equity or quasi-equity and entering into a lease are all types of contract which do not fall within the scope of the Public Contracts Regulations 2015. The Council must have regard to the fact that it should not construct any contract in such a way as to exclude the application of the Regulations or of artificially narrowing competition. As the Council progresses and structures each housing project it will keep this under review.

9.2.13 As noted above, state aid is any advantage or benefit provided by a public body or using state resources which can include (but is not limited to) grants, loans, financial guarantees, the provision of goods or services on preferential terms, subsidies, consultancy advice and infrastructure projects benefiting specific users. The Council must have regard to whether any funding to be provided by it to Medesham could amount to state aid and ensure that it does not act unlawfully in providing such funding. The Council will review each funding opportunity individually to ensure compliance.

#### 9.3 **Equalities Implications**

9.3.1 There are no negative equality implications. Instead, the provision of self-contained temporary and permanent accommodation instead of bed and breakfast and hotel accommodation is likely to address existing inequalities in terms of access to services.

### 10. **BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

10.1 Council Medium Term Financial Strategy 2016/17

### 11. **APPENDICES**

11.1 None

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