

REPORT

To: GENERAL PURPOSES, HOUSING AND POLICY AND RESOURCES COMMITTEES	Subject: CUMBERNAULD DEVELOPMENT CORPORATION WIND-UP ACQUISITION OF HOUSING STOCK AND OF AREAS OF OPEN SPACE	
From: HEAD OF LEGAL SERVICES		
Date: 31 JULY 1996	Ref: WBK/CK	

Introduction

In August 1995, Cumbernauld and Kilsyth District Council submitted a Bid to Cumbernauld Development Corporation to purchase the whole of the Corporation's housing stock. The housing stock was divided into five Bid Areas and a Bid Price was given for each area.

The Bid Prices, after adjustment, were acceptable in two of the Bid Areas, namely (i) Abronhill and (ii) Balloch, Eastfield, Westfield and Condorrat. A ballot of tenants will take place on 10 August 1996, and it is considered likely that the outcome will be in favour of the Council. The remaining three Bid Areas will be transferred to Scottish Homes as residuary landlord. On the assumption that the Council is successful, it will be acquiring around 1500 houses at a total cost of £16 million. The proposed date of settlement will be 1 October 1996.

As part of the winding-up process of the Corporation, and in return for the Asset Balancing Package transferred to the District Council, it was agreed that the Corporation would transfer to the Council its "Liabilities" or areas of "Open Space". This includes hard and soft landscaping, common areas adjacent to housing, unadopted footpaths, grazing land and, (since they are considered to be "liabilities") various community meeting rooms. The Corporation and the District Council entered into a Minute of Agreement in March 1996, in respect of the transfer of these areas.

It was originally envisaged that prior to transfer, the Development Corporation would Register its titles in the Land Register. This would have simplified the conveyancing and on that basis the District Council estimated that the legal work could be accommodated in-house at an additional estimated cost of £10,000.

Recent discussions between North Lanarkshire Council Legal Services, the Corporation, Scottish Homes and Register House staff have identified major complications with the title transfers. This has necessitated a major re-appraisal of the legal transfer process which is explained in more detail later in this Report.

Both transactions will now involve a considerable volume of legal work. The purpose of this report is to set out, with estimates of time and cost, the anticipated workload, and to provide various options as to how the transactions may be effected either within or outwith the Department.

Increase in Estimated Volume of Work

In 1995, the Corporation agreed to effect the registration of all its land interests to the housing areas in the Land Register a process which was expected to take over a year. It was considered that this process (later referred to in this Report as the Voluntary Registration Exercise) would allow the Corporation's title to be presented in a very simplified form. It was envisaged that a few Land Certificates would be issued detailing, in a succinct format, the Corporation's remaining interests to the housing in each registration area. It was thought that each Land Certificate would have been in such form so as to enable the Council's solicitors to satisfy themselves as to its terms from only a brief examination and the transfer of such Land Certificate into the Council's name would have required a brief standard form of disposition.

It was also anticipated that a period of at least six months would be available to complete the conveyancing, as was the case with most of the other New Town Authorities. It was therefore reasonable to suppose that the requisite conveyancing could be carried out "in house" utilising the Legal Department's existing staff resources.

The Land Register staff have found the Voluntary Registration Exercise to have been considerably more demanding than they originally anticipated. It is thought the problems have arisen largely from the state of the existing title deeds and the insufficiency of the information supplied to the Land Register both by way of plans and of definition of the rights transferring the properties already conveyed. The Land Register have divided the housing areas into approximately 180 registration areas (90 of which comprise the housing in the 2 Bid Areas). It has only very recently been established that the information contained in each Land Certificate, far from being simple and capable of brief examination, will require thorough investigation, particularly with regard to properties previously sold and the common rights and liabilities pertaining to each property. Additionally, the Keeper of the Land Register will require from the Council a separate application for registration for each registration area, with detailed information as to what the Council is seeking to register. Thus, for the housing areas alone, 90 separate Dispositions will be required with accurate descriptions of each remaining property, particularly in regard to the location and common rights pertaining to the flatted dwelling houses which cannot be clearly shown on the Land Certificate Plans.

The proposed completion date for the conveyancing is 1 October 1996, with the result that a period of less than two months will be available to carry out what has become both a complicated and time-consuming transaction. The Legal Department, with existing staff resources, could not absorb a transaction of this nature.

Housing Stock Acquisitions

Appendix 1 to this report gives a breakdown of what is anticipated will be required to carry through the housing transaction. An estimate of the number of hours required for each activity is shown. It will be noted that a considerable amount of time has been allocated to the preparation and conclusion of the missives, which, it will be appreciated, will form a complex and high value commercial contract. The conveyancing itself will be of a very high volume.

As discussed above, the Land Register have divided the interests registered into approximately 180 areas. A Land Certificate will be issued and a separate Application for Registration of the Council's interest will be required for each area. In approximately 90 of these areas, the Council will acquire the Corporation's whole interest, including the Superiorities of the houses already sold. The figures given in Appendix 1 are based on there being 90 conveyances to the Council and 90 separate applications for registration.

In addition to the conveyancing work, each tenancy agreement will require to be checked for its validity and terms, ongoing disputes and court actions, whether by or against the Corporation will require investigation and, where necessary, resolution, and any continuing contracts (repairs, maintenance etc) will require examination and where necessary terminations. There will be a transfer of the Corporation's housing management function and an assignation of the rents. As the Council will acquire the superiority interests of the houses sold off, all consents, waivers and licences granted by the Corporation will require to be checked and assimilated.

"Liabilities" or "Open Space" Transaction

As indicated previously, a Minute of Agreement has been entered into providing for the transfer of those areas and only the conveyancing requires to be completed. The transaction is linked to the Housing Stock Acquisition transaction as the 90 or so areas covering the housing stock will also include areas of "open space". There are in addition another 90 registration areas covering both "open spaces" and the houses to be transferred to Scottish Homes. As discussed earlier, Scottish Homes' solicitors have highlighted difficulties with the last mentioned registration areas, one of the problems being the lack of definition of rights to common areas in previous dispositions by the Corporation. I am therefore of the view that the examination of each of the additional 90 Land Certificates will be fairly time consuming and will require much discussion with Scottish Homes' solicitors.

Appendix 2 gives a breakdown of what is anticipated will be required to carry through the "Liabilities"/"Open Space" transaction. For the 90 registration areas which are included in the housing transaction, a smaller amount of time has been allocated in respect of the conveyancing element.

It is considered that the expenses attributable to the "Liabilities"/"Open Space" transaction should be borne by Leisure Services. I have discussed this issue in the final paragraph of this Report.

Approach Adopted by Other Authorities

I have contacted various other Authorities who have or have had involvement in Development Corporation housing stock transactions:-

(i) West Lothian Council

The result of Livingston Development Corporation's ballot of tenants was made available at the beginning of July 1996. The Council have been successful in seven out of the ten Bid Areas. The Council's Legal Department have had no direct involvement as yet but it is almost certain that one of the large Edinburgh firms (possibly Shepherd and Wedderburn) will be instructed, as the Council has no available staff resources.

(ii) Fife Council (Kirkcaldy District/Glenrothes)

The transaction was completed last year. A solicitor formerly with the Development Corporation and now with Fife Council advised that the District Council's Legal Department had very little involvement in the transaction, although both Housing Departments were very active. Most of the legal work, including the preparation of the dispositions was carried out by the Development Corporation solicitor who worked for 12 months almost exclusively on the transaction. Kirkcaldy District Council purchased a large number of houses (15 Bid Areas), but the registration areas were large and the Keeper required only 15 applications for registration.

(iii) Scottish Homes

As indicated previously, Scottish Homes are involved in the acquisition of three out of the five housing Bid Areas in Cumbernauld, covering approximately 90 registration areas. They do not intend to enter into missives with the Development Corporation (they are in rather a different position from the Council and would prefer not to be acquiring the housing). Scottish Homes have had three full-time solicitors involved in the transaction for the last two months.

It is intended that the transaction be completed by October 1996. The solicitors working on the transaction are already spending a substantial proportion of their time on the transaction, and as the transaction nears completion, it is anticipated that they will devote their whole attention to it.

(iv) South Lanarkshire Council (East Kilbride District Council)

East Kilbride District Council employed one full-time and one part-time solicitor 18 months prior to Development Corporation wind-up to deal with both the housing transaction, the transfer of assets and any other conveyancing related to wind-up. These solicitors worked on the Development Corporation conveyancing exclusively.

Options for Effecting the Transactions

The Department does not, at present, have sufficient staff resources to carry through the transactions. The options which have been considered are:-

(i) Private Sector

As the work is unique, complex and of high value, I do not consider that it would be inappropriate for a private firm of solicitors to be instructed. The nature of the transactions are such that they would require to be dealt with by one of the large city centre firms where there would be considerable commercial and conveyancing expertise. This would seem the most preferable option, although clearly the costs could be fairly substantial. It is thought that a reasonable fee on the basis of the estimated hours might be at least £100,000.

(ii) In-house

As the Department does not have available staff resources, additional solicitors would require to be employed on a temporary basis either to carry out or assist with the transactions, or alternatively to deal with the existing workloads of the permanent solicitors, in order that they might be free to deal with the transactions. The high volume of paperwork would require additional secretarial resources. The time estimate of 1162 hours would involve 3-4 solicitors for a 3 month period. While this, on the face of it, might seem a feasible option, I am concerned that there may be a difficulty in recruiting quickly, temporary solicitors with relevant experience.

(iii) Both Private Sector and In-house

In theory it should be possible for sections of the work to be carried out in-house, while farming out the remainder to the private sector. For example, consideration has been given to the missives being dealt with separately to the conveyancing. In practice, however, it may not be feasible to split the workload in this manner, and it would seem preferable that the transactions should be co-ordinated within one place of work.

Funding

It is recommended that the work is carried out by private agents. This is so particularly in view of the tight timescale faced by this Authority for completing the transactions. In this connection it should be noted that some of the other authorities contacted had considerably more time at their disposal prior to the break up of the Development Corporation due to being placed at the start of the rolling programme of disposals. A specification could be drawn up and issued to a number of large firms.

A private solicitor's fee could be as much as £100,000 possibly more depending on the nature of any unforeseen difficulties. It is appreciated that now that the full extent of the workload is known, the likely costs far exceed previous indications given by Cumbernauld and Kilsyth District Council.

It should be further noted that approximately one third of the legal fees will relate to the Asset Package transfer with the balance relating to the acquisition of part of the Corporation's housing stock. It is considered appropriate that, in the unique circumstances, the legal fees be capitalised by charging one third to the Composite Capital Programme and the balance to the Housing Revenue Account Capital Programme.

Recommendation

- 1) To approve in principle the externalisation of this legal work.
- 2) To remit the matter to the Housing and Policy and Resources Committees for their interests.

Walter B. Kelgoz

APPENDIX 1HOUSING STOCK ACQUISITIONS

1	<u>Pre Missives</u>	Hours
	Obtaining initial instructions, discussions with Housing Department, CDC, Scottish Homes and Land Register.	28*
2	<u>Missives</u>	
	a) Drafting and checking offer (including clarifying instructions and research, if necessary).	35
	b) Negotiations with CDC leading to conclusion of missives (including meetings with Housing Department and CDC to obtain further instructions, clarify matters etc).	<u>35</u> 70
3	<u>Conveyancing</u>	
	a) Examining land certificates, Form 12/13 reports, drafting dispositions and applications for registration, reporting to Housing Department. (Say 4 hours per reg. area).	360
	b) Raising observations, resolving difficulties and reporting on same.	35
	c) Routine correspondence.	3
	d) Completing dispositions (checking signatures, testing clauses, arranging for Deeds to be stamped and registered). (Say 20 minutes per Deed).	<u>30</u> 428
4	<u>Tenancies</u>	
	a) Checking leases (5 minutes per lease)	125
	b) Reporting to Housing Department re leases.	7
	c) Raising observations, resolving any difficulties re leases.	14
	d) Liaising with CDC and Litigation Department re:-	14
	i) Outstanding court actions raised by CDC for arrears of rent, recovery of possession etc.	
	ii) Disputes by tenants against CDC	
	e) Liaising with Housing Department/Finance/CDC re assignation of rents etc.	<u>7</u> 167

5	<u>Miscellaneous</u>		
	a) Superiorities:- checking consents, minutes of waiver etc, reporting and raising observations.	7	
	b) Transfer and completion of ongoing Right to Buy Transactions.	3	
	c) Contracts etc relating to properties (e.g. repairs and maintenance) - examining documentation, reporting and raising observations.	<u>10</u>	20
6	Post Settlement Matters		<u>14</u>
		Total	<u>727</u> ===

*This is a projected estimate and does not take into account time expended to date.

(N.B. Although time has been allocated to raising observations on title difficulties, resolving disputes etc, no allowance has been made for any major unforeseen difficulties).

APPENDIX 2"OPEN SPACES"/"LIABILITIES" TRANSACTION

	Hours
a) Examining Land Certificates, drafting dispositions and applications for registration, examining Form 12/13 reports, reporting to Planning and Development and Leisure Services Departments. (Say 3 hours for each "non-housing" area and 1 hour for each "housing" area).	360
b) Raising observations, resolving difficulties and reporting on same.	35
c) Routine correspondence.	3
d) Completing dispositions, checking signatures, testing clauses etc, arranging for Deeds to be stamped and registered (20 minutes per Deed).	30
e) Post settlement matters	7
Total	435 ===

Total for both transactions = 1162 hours

33 full working weeks

Allowing for holidays, sickness, contingencies - 3/4 solicitors would be required to work over a 3 month period.