

WELSH BUILDING SAFETY DEVELOPER LOAN SCHEME

HOUSING & COMMUNITIES (COUNCILLOR LYNDA THORNE)

AGENDA ITEM: 3

Reason for this Report

1. To recommend that, in principle, Cardiff Council develops, operates, and administers a Welsh Building Safety Developer Loan scheme, to provide interest free loans for a period of up to 5 years, to eligible private developers in Wales to undertake fire remediation works in buildings of 11 metres or over.

Background

2. Following the tragedy at Grenfell Tower there has been significant activity undertaken by Welsh Government to identify fire safety issues in Welsh residential medium and high-rise buildings.
3. Work has focussed specifically to identify all residential buildings of 11 metres and over in height that: require remediation and/or mitigation work to address life-critical fire-safety defects. These properties have been categorised in 3 groups:
 - a) Social Rented Buildings owned and managed by Registered Social Landlords.
 - b) Buildings where no original developer can be traced or where such a developer has been identified but has ceased operation.
 - c) Buildings which have been built or refurbished in the 30 years prior to 5 April 2022 by a Participant Developer in Wales.
4. Welsh Government have agreed a Welsh Building Safety Developer Loan Scheme in relation to the third group:

Where it is known who the participant private developers are and where they have developed or refurbished relevant buildings, whether on its own behalf or on behalf of others. (Excludes work carried out solely as a contractor where the nature of the profit is contract rather than development profit).

Issues

5. The Welsh Government Minister for Climate Change wrote to over 50 private developers who had either signed up to the UK Government's Developer Pledge, or who operated at scale in Wales. The majority confirmed that they had no developments of 11 metres or over in Wales.
6. However, there are 11 participant developers who are deemed to be within scope and each of these have either agreed to a Developers' Pact already or have stated their intention to do so whilst due diligence is undertaken. The Pact represents a public commitment of participant developers:
 - to enter legally binding documentation that underpins the Pact which sets out Welsh Government expectations in detail.
 - commit to fund and undertake or, procure at its own cost and as quickly as reasonably possible, all necessary remediation and/or mitigation work to address life-critical fire-safety defects.
 - to undertake works to identified standards.
 - to demonstrate on an ongoing basis that such funding or remediation and/or mitigation work is being progressed as quickly as reasonably possible.
 - To engage leaseholders, building owners/responsible parties, residents and/or residents' management companies of relevant buildings.
7. The commitment by participant developers in Wales to address such issues is welcome, particularly as the Welsh Government Pact aims to address wider life critical safety issues in relevant buildings such as compartmentalisation, fire breaks and fire doors rather than just cladding risks.
8. The approach in Wales has and will continue to be one of collaboration with participant developers and on 21 March 2023, the Welsh Government Minister for Climate Change announced the availability of £20 million to support the Welsh Building Safety Developer Loan Scheme. As part of a range of measures, this additional tool could, where needed, support participant developers with loans over a period of up to 5 years to:
 - Reduce the number of medium and high-rise residential buildings blighted by fire safety issues and do so at pace.
 - Be a tool available to support cash flow because of wider national obligations and incentivise the completion of agreed actions in Wales.
 - Provide assurance to leaseholders that works will be undertaken as swiftly as possible.
 - Enable reductions in service charges and insurance costs.
 - Remove barriers so leaseholders can access financial products such as mortgages.

The proposition of the Welsh Government scheme is that these remediation or mitigation works, potentially of high value, may face delays

even for some of the larger developers while financing is arranged. The high cost of the fire safety works could potentially mean that work may have to be programmed over several years to align with available funding or alternatively that private sector loan financing may need to be secured to undertake the work more swiftly. With increasing interest rates any private sector loan financing could add significant cost to the works and slow down the programme.

9. To help offset this risk and encourage developers to move forward with these critical works as quickly as possible, the Welsh Building Safety Developer Loan scheme will offer this interest and fee free loan funding to support developers of all sizes to meet their responsibility, as quickly as possible.

Cardiff Council Role

10. The Welsh Government has discussed the principle of the loan scheme with Cardiff Council and has suggested that the Council takes responsibility for inviting and assessing developer loan applications, undertaking due diligence checks, agreeing the terms of the loan and for monitoring, and reporting on the performance of the loan fund to the Welsh Government.
11. Cardiff Council is deemed best placed to undertake this role given that a significant number of the buildings likely to be in scope are within the city. It is also felt by Welsh Government that it is preferable for developers to deal with one loan provider rather than dealing with multiple local authorities.
12. The Council is in receipt of a zero-interest loan from Welsh Government of £20 million scheduled to be repaid by the Council in full in April 2028. This will increase the Council's overall loan portfolio and liabilities to pay for capital expenditure (Loans). The loan received can be repaid earlier if required with no penalty. A separate grant agreement would be entered into between the Council and Welsh Government to cover the revenue costs of developing and managing any loan scheme by the Council over a five-year period. It is initially assumed that up to £1 million may be available over the period for eligible costs (5% of the Loan Fund).
13. It should be noted that the Council would be responsible for administering the provision of the loan fund **only**, including compliance with loan terms.
14. Cardiff Council would **not** be responsible for the detailed requirements of the Pact agreed between Welsh Government and the participating developers, or for the underpinning legal agreement, or for any role in determining whether works have been completed to required standards. There would not be any ongoing Cardiff Council liability in respect of any building and fire safety works undertaken with loan funding through the scheme.
15. However, it is also important to note that the Welsh Government loan, as currently conceived, must be repaid by the Council in full, irrespective of

whether loans given by the Council to Participating developers are recoverable.

16. As part of the request from Welsh Government the Council is required to confirm in principle the taking forward of this role, and to develop a loan scheme consistent to meeting the outcomes of the Pact.
17. The Council shares the outcomes intended by Welsh Government and Participant Developers to ensure residents feel safe and secure in their own homes. If the Council is to agree to take on the administrative role to support the loan scheme a range of actions would be required including:
 - Developing the detail of how an effective loan scheme could operate in consultation with developers.
 - Understanding public subsidy implications and seeking relevant advice on registering a loan scheme where relevant.
 - Understanding and mitigating risks to the Council of non-repayment.
 - Developing loan agreements.
 - Setting out a streamlined process for the Council's own governance process for approving any loans to be provided and ongoing monitoring requirements of loan performance.
 - Treasury Management, Accounting and wider financial reporting implications, to confirm and mitigate against unintended consequential impacts on the Council's own performance.
18. The Council's approved Capital Strategy includes a line item that supports the passporting of loan from Welsh Government given to Cardiff Council towards the CCRC Housing SME Fund or other projects approved by Cardiff Cabinet, Regional Cabinet and Welsh Government. Such funds to be recycled into projects until required to be repaid to the Council to return to Welsh Government.

Reason for Recommendations

19. Cardiff Council is considered the most appropriate authority by the Welsh Government to undertake the role to consider develop, operate, and administer a loan scheme, over a period of up to 5 years. The loan fund would need to be repaid to the local authority by the end of Year 5 and returned to the Welsh Government.
20. The loan funding is to support only those participating developers who have committed to undertake remediation works in line with a Welsh Government Pact. It is the loan scheme will encourage developers to move forward with safety critical works as quickly as possible which is an outcome agreed as highly beneficial for impacted residents.

Financial Implications

21. This report recommends that the Council works with the Welsh Government to develop, operate and administer a loan scheme for the purpose of delivering the Welsh Building Safety Developer Loan Scheme.

22. Under the proposed scheme, interest free loans are to be provided to private developers to support fire safety remediation works. These loans are only in relation to buildings identified previously in the Expression of Interest process conducted by the Welsh Government or where a developer has signed the legally binding documentation underpinning the Welsh Government's Developers Pact. Funding of £20 million has been made available by the Welsh Government and any loans provided to developers must be supported by adequate records evidencing compliance with key performance indicators and other conditions and targets as set out in the loan agreement.
23. Use of the loan and the delivery of the scheme must be compatible with the Subsidy Control Act 2022 and its associated statutory guidance.
24. The loan is fully repayable on 3rd April 2028 but can be repaid in whole or in part on an earlier date subject to agreement with the Welsh Government. Decision makers should note the risk that the full loan must be repaid by the Council irrespective of whether loans given by the Council to developers are recoverable. This risk will need to be mitigated; reviewed on an ongoing basis through the operation of the scheme, and appropriate provisions made within the accounts for any impairment of loans over the scheme period, were any residual risk to be a potential cost to the Council.
25. It will be necessary to develop detailed processes and resource requirements for the approval, monitoring and reporting and recovery of loans and for the detailed scheme operation. It is proposed that a separate grant agreement for the revenue administrative costs of developing and managing the 5-year scheme is entered into between the Council and the Welsh Government, with up to £1 million assumed to be available over the period for eligible costs.

Legal Implications

26. The Council has a general power of competence pursuant to Part 2 of the Local Government and Elections (Wales) Act 2021 which is a broad power enabling an authority to do anything an individual person may do. This may include but is not limited to the provision of financial assistance by way of loan or grant funding.
27. In implementing a new loan scheme, the Council will need to have regard to and comply with all requirements under the Subsidy Control Act 2022 in so far as it applies to subsidies defined under that Act and also have regard to statutory guidance issued under it.
28. It is noted that this report seeks an in principle decision and it is anticipated that further decision will be required under the proposed delegation in relation to the detail of the loan scheme, including the development of loan documents, upon which further specific legal advice can be provided.

Equality

29. The decision about these recommendations has to be made in the context of the Council's public sector equality duties. The Council also has to satisfy its public sector duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The Protected characteristics are age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief.
30. When taking strategic decisions, the Council also has a statutory duty to have due regard to the need to reduce inequalities of outcome resulting from socio-economic disadvantage ('the Socio-Economic Duty' imposed under section 1 of the Equality Act 2010). In considering this, the Council must take into account the statutory guidance issued by the Welsh Ministers ([WG42004 A More Equal Wales The Socio-economic Duty Equality Act 2010 \(gov.wales\)](#)) and must be able to demonstrate how it has discharged its duty.
31. An Equalities Impact Assessment aims to identify the equalities implications of the proposed decision, including inequalities arising from socio-economic disadvantage, and due regard should be given to the outcomes of the Equalities Impact Assessment.

Well-Being of Future Generations

32. The Well-Being of Future Generations (Wales) Act 2015 ("the Act") places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales – a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
33. In discharging its duties under the Act, the Council has set, and published wellbeing objectives designed to maximise its contribution to achieving the national wellbeing goals. The wellbeing objectives are set out in Cardiff's Corporate Plan 2018-21: <http://cmsprd.cardiff.gov.uk/ENG/Your-Council/Strategies-plans-and-policies/Corporate-Plan/Documents/Corporate%20Plan%202018-21.pdf>
34. The wellbeing duty also requires the Council to act in accordance with 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without comprising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
 - Look to the long term.

- Focus on prevention by understanding the root causes of problems. Deliver an integrates approach to achieving the 7 national well-being goals.
 - Work in collaboration with others to find shared sustainable solutions.
 - Involve people from all sections of the community in the decisions which affect them.
35. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below:
<http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

Welsh Language

36. The Council has to be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards when making any policy decisions and consider the impact upon the Welsh language, the report and Equality Impact Assessment deals with all these obligations. The Council has to consider the Well-being of Future Guidance (Wales) Act 2015 and how this strategy may improve the social, economic, environmental and cultural well-being of Wales.

HR Implications

37. There are no HR implications currently anticipated for this report.

Property Implications

38. There are no property implications anticipated for this report.

RECOMMENDATIONS

Cabinet is recommended to

1. approve in principle that Cardiff Council will develop, operate, and administer a scheme, to provide interest free loans for a period of up to 5 years, to private developers in Wales, to undertake fire safety remediation work subject to satisfactory mitigation of any potential financial risk to Cardiff Council.
2. authorise the Corporate Director, People & Communities to agree any details terms and conditions with Welsh Government in respect to the Scheme.
3. grant delegated authority to the Corporate Director, People & Communities, in consultation with the Corporate Director Resources (S151 Officer), and the Cabinet Members for Finance, Modernisation & Performance and for Housing & Communities to undertake due diligence to fully develop, implement and report on a loan scheme.

SENIOR RESPONSIBLE OFFICER	Sarah McGill Corporate Director (People & Communities)
	12 May 2023