

CABINET

Annex 2 – Further legal advice on the Homes England Bournemouth, Christchurch and Poole Council (5069) - AHP 21 - 26 Grant Agreement (LA)



Pursuant to Homes England's Affordable Homes Programme 2021-2026, Homes England has agreed to advance grant funding to the Council in an initial amount of £1,050,000 in accordance with the terms of a grant agreement (the "Agreement"), in order to facilitate the delivery of certain affordable housing schemes. Further grant funding may be made available to the Council to facilitate the delivery of further affordable housing schemes.

The Council has the power to enter into the Agreement with Homes England under the general power of competence provided for in the Localism Act. Full Council approval must be given for the Council to enter into the Agreement and a Council solicitor needs to sign a legal opinion in the form set out in Schedule 10.

The Agreement is detailed and complex and in order to fully appreciate its terms extensive reference must be made to the glossary in Clause 1. The terms of the "Capital Funding Guide", published on the government's website at <https://www.gov.uk/guidance/capital-funding-guide>, are incorporated within the Agreement and must therefore be consulted in conjunction with the Agreement.

The Agreement contains many terms which place a burden on the Council to comply with stringent conditions. These include under Clauses 10 to 13, delivery, operational, review, monitoring, reporting and transparency obligations. There are additional requirements to make extensive warranties to Homes England throughout the duration of the Agreement. Under Clause 19 there are detailed provisions entitling Homes England to terminate the Agreement, to withhold payments under Clause 17 and to require the Council to repay the grant monies to Homes England under Clause 18.

In the event that the decision is made to enter into the Agreement it will be important to ensure that at an operational level there is detailed knowledge and understanding of the obligations imposed by its terms. Particular attention should be paid to Clause 18.2 pursuant to which Homes England reserves the right to recover the grant monies in the circumstances detailed in that Clause. It is important to note that under Clause 18.2.6 such circumstances include breaches of the extensive provisions contained in Clauses 10, 11 and 12 as referred to above.

It is understood that there is no scope to negotiate the terms of the Agreement with Homes England. Whilst the Agreement places a number of burdens on the Council its value in supporting the Council to achieve the delivery of affordable housing schemes is recognised.