

NORTH YORKSHIRE COUNTY COUNCIL

PENSION FUND COMMITTEE

10 September 2021

Request from Hambleton District Council to admit Broadacres Housing Association into the North Yorkshire Pension Fund

Report of the Treasurer

1.0 Purpose of Report

- 1.1 Broadacres Housing Association wish to join the North Yorkshire Pension Fund (NYPF) and for their assets and liabilities to be covered by a transfer agreement with Hambleton District Council. Broadacres are currently members of the London Pension Fund Authority (LPFA).
- 1.2 Such a proposal requires the agreement of the Board of Broadacres Housing Association; Hambleton District Council; the North Yorkshire Pension Fund Committee; and then the Secretary of State for Housing, Communities & Local Government (in that order). This report seeks to determine whether NYPF wish to support the proposal.

2.0 Background

- 2.1 In 1993, around 80 employees from Hambleton District Council were transferred to the body that subsequently became Broadacres Housing Association. These employees were entitled to be active members of the LPFA within the Local Government Pension Scheme (LGPS). It is not clear why employees were members of the LPFA as opposed to NYPF given the geography of the housing stock etc.
- 2.2 Broadacres closed access to the LGPS for new entrants in 2005 and, at the time of writing, they have eight active employees within the LPFA. A cessation debt will become due to the LPFA at the point when the last active employee leaves employment (including retirement). This debt will need to be met from Broadacres and is likely to be a large enough sum (estimated at £7.2m) to hamper their ambitions for delivering housing in their areas.
- 2.3 As a result, Broadacres have been seeking to find an alternative way to provide for their pension liabilities whilst mitigating any cessation debt. This has culminated in a request to “swap” membership of the LPFA for membership of NYPF and more details are set out below as to how this could be constructed.

3.0 The Request from Hambleton District Council on behalf of Broadacres

- 3.1 Broadacres’ proposal is:
 - that they close the LPFA and all of its assets and liabilities in relation to their participation in the LPFA are transferred instead to the NYPF;
 - those assets and liabilities are added to Hambleton District Council's own assets and liabilities in the NYPF and as the LPFA liabilities are transferred out, when Broadacres Housing Association’s cessation debt is calculated, it will be zero;
 - that arrangements are made between Broadacres and Hambleton District Council to provide adequate funding for the liabilities that transfer and an agreement is concluded between Hambleton District Council and Broadacres.

3.2 Such transfer agreements are not uncommon. This case and proposal from Broadacres / Hambleton District Council is somewhat different, however, in that it involves the transfer of a closed scheme – i.e. new starters within Broadacres are no longer able to join the LGPS. We are not familiar with similar closed schemes being transferred into other Pension Funds but a discussion has taken place with officials from the Ministry of Housing, Communities and Local Government (MHCLG) and we have been assured that there have been similar examples which have received the support of the Secretary of State. Officials advised that any request for this transfer to be processed required the approval of NYPF and that MHCLG would then consult with any affected bodies (effectively the NYPF and Hambleton District Council) before any direction is made by the Secretary of State.

4.0 Alternatives Available to Broadacres

4.1 In September 2020 a change to LGPS legislation (Regulation 64) allowed admitted bodies to negotiate deferred debt agreements. This is a new ability to defer an exit valuation. The employer becomes a “deferred employer” and its assets, liabilities and secondary contributions are reassessed at each valuation. No primary contributions are payable as accrual of benefits has ceased. Alternatively, a new provision (Regulation 64B) has been introduced enabling exit payments to be spread over a reasonable period (subject to this being in the Fund’s Funding Strategy Statement / Admissions and Terminations Policy).

4.2 The Broadacres view is that Regulation 64 still leaves them open to ongoing liabilities ad infinitum whilst Regulation 64B means that the debt still becomes crystallised. The view of Broadacres is that they would rather not tie up their own resources in this manner at the expense of investment on social housing in their locality.

4.3 **Appendix A** sets out the case submitted by Broadacres to secure the support from Hambleton District Council. **Appendix B** is the report which was subsequently considered and approved by Hambleton District Council.

5.0 Proposed Financial Arrangements between Broadacres and Hambleton District Council

5.1 Based on financial information provided at 30 September 2020, Broadacres had a surplus of £0.3m (or £1.0m as per the report in Appendix B) on the LPFA's ongoing funding basis. Following actuarial assessments of a transfer agreement with HDC the expectation is closer to a break-even position for the former Broadacres liabilities alone (circa 15% of Hambleton District Council’s liabilities in any NYPF post transfer).

5.2 The LPFA has provided an anticipated cessation debt for BHA’s element of the LGPS managed by the LPFA. This has been calculated as £7.2m.

5.3 Broadacres acknowledges that Hambleton District Council will be taking on greater risk associated with these additional liabilities in the NYPF. A financial arrangement has therefore been proposed between Broadacres and Hambleton District Council.

5.4 Broadacres proposes to provide £2m to Hambleton District Council to support the increased employers pension contribution. This is approximately sufficient to cover the remaining years of contributions relating to the LPFA actives plus anticipated movements in the fund. Additionally, they will provide a long term agreement for seven years, from the transfer date, where a maximum of £3m will be made available in the event that potential risks occur that could not have been foreseen - these assumptions have been detailed by AON acting as actuarial advisers to Hambleton District Council.

5.5 BHA have further agreed that on the day of any transfer, should there be a deficit position on their element of the LGPS fund, then this will be addressed so there is a ‘breakeven’ position from the very start.

5.6 The approach proposed by Broadacres and Hambleton District Council effectively allows Broadacres to enjoy the Hambleton District Council strength of covenant. The proposed sums paid from Broadacres to Hambleton District Council, and the further arrangements set out in paragraph 5.4 above, help to mitigate some of the additional risk that Hambleton District

Council will be taking on but the value of the liabilities will only be truly known when no further LGPS pension payments are due to former Broadacres employees.

- 5.7 Whilst a sum of £7.2m is significant, the impact on the overall position of NYPF will be negligible given the overall assets and liabilities of the NYPF.
- 5.8 From a NYPF perspective the additional risk is met entirely by Hambleton District Council so the Committee can take some comfort from that but the Committee should:-
- seek to assure itself that Hambleton District Council were sufficiently clear about the additional risks inherited as part of the transfer agreement – see Appendix B.
 - appreciate that there may be an adverse financial impact upon the overall position for NYPF which would then impact Hambleton District Council directly.
 - be clear on the basis by which it is prepared to grant the request, should that be the case.
 - recognise that Hambleton District Council as a sovereign body can support this request but the outcome will be binding upon the successor unitary council for North Yorkshire should local government reorganisation take place as set out by the Secretary of State on 21 July 2021.

6.0 Legal Implications

- 6.1 The Fund's external legal advisers have stated that they are unaware of any similar arrangements having been carried out. They were not able to offer assurance that the proposal was clearly in line with the Regulations and noted that the proposal does give rise to substantial financial risks to which HDC would be exposed to. MHCLG officials have, on the contrary, advised that they have permitted similar arrangements, albeit principally with colleges rather than with councils / admission bodies.
- 6.2 It is also noted that NYPF and LPFA would need to negotiate and enter an agreement as to the assets and liabilities that would transfer in the event the proposal is accepted (to avoid being "short changed" in any negotiation after the direction order, or entering into a dispute). NYPF and HDC would also have to negotiate and enter an agreement in relation to the Broadacres liabilities being "subsumed" by HDC following transfer. It has been suggested that these details are satisfactorily negotiated prior to any application to the Secretary of State should the Committee agree to proceed. This is suggested as the Fund would lose control after the application and may not secure the level of protections deemed appropriate.
- 6.3 Given the issues raised in paragraphs 6.1 and 6.2 it is recommended that, in the event that the proposal is approved, authority is delegated to the Treasurer of the Pension Fund to further test out the approach with MHCLG (to ensure any wasted time is minimised if issues are then identified) and to carry out negotiations with both LPFA and HDC as required (to protect the interests of NYPF).

7.0 Recommendation

7.1 The Committee is requested to:-

7.1.1 consider whether or not it supports admittance of Broadacres into the NYPF; and

7.1.2 should the Committee agree to the request, delegate authority to the Treasurer of NYPF to:

- i. further test out the approach with MHCLG; and
- ii. conclude negotiations with the LPFA and HDC in order to protect the interests of the NYPF; and
- iii. in the event of satisfactory progress to make the transfer request to the Secretary of State and respond to any subsequent consultation.

Gary Fielding
Treasurer to North Yorkshire Pension Fund
NYCC
County Hall
Northallerton
10 September 2021