

Report To:	CABINET	Date:	21 JANUARY 2019
Heading:	ESTABLISHMENT OF HOUSING COMPANY		
Portfolio Holder:	CABINET MEMBER (OUTWARD FOCUS), COUNCILLOR JOHN WILLMOTT		
Ward/s:	ALL		
Key Decision:	YES		
Subject to Call-In:	YES		

Purpose of Report

To commence the establishment and incorporation of a limited company for the purposes of market housing delivery and rental within Ashfield District and surrounding area in line with the objectives listed within the draft business case at Appendix A. The company is set up purely on the basis to be a commercial entity and return capital and revenue funding to the Council. Equally it has no involvement with social or affordable letting or build and in these respects it is a wholly different entity to the Council's previous Arm's Length Management Organisation (Ashfield Homes Limited).

Recommendations

Cabinet is recommended:

- 1. To delegate the necessary authority to the Director of Housing and Assets and Director of Legal and Governance to take the necessary steps to incorporate a company limited by shares for the purposes of housing delivery within Ashfield and surrounding area.**
- 2. To delegate authority to the Leader of the Council in conjunction with the Chief Executive to name the limited company.**
- 3. To delegate authority to the Director of Legal and Governance to produce the Memorandum and Articles for the Housing Company and the Shareholder Agreement in conjunction with the relevant Portfolio Holder.**
- 4. To indemnify any officer or Member appointed as Directors of the Company and to approve that the Company obtains suitable insurance cover for its Directors.**

Reasons for Recommendations

Further work is required to finalise the company structure and its constitution before the Company is established. The company shall not be named until such time as registration/incorporation is imminent.

Alternative Options Considered

The Council does not need to form a Housing Company at this juncture, nor possibly at all if once a programme of development is established the Council neither wishes to form a joint venture company or manage properties for market rent.

The decision to progress with the formation of the company at this point in time is to capitalise on investigative work already undertaken in this area and the relative low cost of incorporating a shell company for future use. It also means the company is already set up should the need for urgent company intervention, action or opportunity is required e.g. the rescue of a stalled building development and/or a commercial opportunity to buy a medium to large rental portfolio within the district.

Detailed Information

The Council through the Nottinghamshire Predevelopment Fund in 2016/17 undertook a study of its land holdings. It estimated that across 30 sites a total of 263 units (both General Fund and Housing Revenue Account) could be built on land owned by the Council. The number of units has subsequently increased with the acquisition of further land in the Huthwaite area by the General Fund in 2017.

Alongside this the Council has a corporate aspiration to provide much needed housing within the area as well as lead by example in terms of quality of housing build and landlord services, whilst equally wishing to contribute to the regeneration of the district.

In the face of reduced Central Government funding to Local Government and the need to both provide and maintain much needed services, many Local Authorities have set up Housing Companies as a way of fulfilling local housing objectives as well as provide both capital and revenue receipts into the Council. The District Council's Network suggested that during the first part of 2018 Local Housing Companies were being set up by Local Authorities at the rate of one a week. Nearby Local Authorities who have already set up Housing Companies include Mansfield, Bassetlaw and the District of Bolsover.

A working group was established within the Council to explore the concept of housing development and landlord functions within the General Fund, with advice and comment sought from other Authorities and developers involved in such schemes. This, together with two significant pieces of land being identified within the district as being likely contenders for market build by the Council, has led to a point where sufficient knowledge was ascertained to establish a housing company, should the Council wish to do so, and the appropriate outline business case was written accordingly.

It is understood the Council does not need to undertake this action at this point in time since, firstly the production of any new residential properties will be some years away, and secondly the Council could theoretically build houses for sale without the need to establish a limited company to do so

(though it should be noted this is untested as it is understood all LA residential housing developments to date have taken place under the banner of some form of Housing Company).

The Council would however need such a company if it wished to enter into a joint venture with a developer to share risk/rewards of developments and/or should it wish to let properties itself (outside of the Housing Revenue Account) as either a commercial activity and/or as a risk mitigation in the event that the houses which were built for sale were not purchased within a reasonable timeframe. It should also be noted that such mitigation would be essential at this point in time due to post Brexit uncertainty and the potential effect on the housing market.

The attached business case (Appendix A) provides the detail and background required to give Members sufficient detail in forming an opinion on the proposed venture and whether to approve the recommendations but in summary Members should note that the vision, mission and objectives are as follows;

Vision

(The company name) Limited will be a recognised developer and supplier of quality homes for rent and sale within North Nottinghamshire, through sustainable schemes and exemplar landlord services.

Mission

To deliver a range of flexible housing solutions, which supports the Council's housing and regeneration ambitions in a profitable and customer focussed way; utilising existing resources and assets where possible, maximising local corporate responsibility opportunities and being recognised as a beacon developer and landlord in the process.

Strategic Objectives

- As a Council to build 300 units of mixed tenure (market and social) units by 2025.
- Utilise existing land holdings within Ashfield to develop homes for market rent and sale in a balance that delivers sustainable communities and maximises the return for the Council and its residents in terms of revenue, capital, existing capacity and added social value.
- Assists the Council in its aspiration to offer a range of housing options to existing and future residents and set the standard for housing services within the District and surrounding area.
- Act as a catalyst for the improvement of the District through taking a pragmatic approach to new and existing developments, areas requiring regeneration and/or quality uplift.
- Increase the overall supply of new housing within the district.
- Seek opportunities within a broader operating area to potentially offer a commercial return for the Council.

It should also be noted that the Limited Company will require a Board of Directors to oversee its activities. Advice taken from legal entities and other similar companies is that this Board would not have elected Members on it (since their overview and assurance of accountability will be achieved through the Cabinet/Council process). Officers employed by the Council will make up the majority of the Board with Independent Non-Executive Directors brought in as various expertise is required. Board Directors will also need to be suitably indemnified for their responsibilities and liabilities.

For the absolute avoidance of doubt the Housing Company will not undertake any form of affordable or submarket sales or letting which will be wholly the domain of the Housing Revenue Account. There is however an ability for the company and the Housing Revenue Account to work side by side on individual housing developments in order to improve tenure mix and/or enhance the viability of sites.

Implications

Corporate Plan:

Influence housing provision to ensure that there is sufficient housing available in the district of the right size, type and quality, ensuring an adequate supply of affordable housing

Review existing Council land and sites for mixed tenure development

Progress the regeneration of the properties and land in the Warwick Close area of Kirkby

Ensure that new housing is sustainable and fuel efficient

Ensure that when new housing is built that the right infrastructure is in place to create great places to live

Become a more enterprising, productive and commercial organisation, exploring and delivering income generation and business development opportunities

Legal:

External specialist legal advice has been obtained from Trowers and Hamblins LLP in respect of the legal issues associated with establishing a local development company.

Statutory powers to set up a Company

The Council has two statutory powers which it can use in order to set up the Company. These are 'the general power of competence' contained within section 1 Localism Act 2011 (the 2011 Act) and the power to trade contained within section 95 Local Government Act 2003 (the 2003 Act).

Local Authorities have the power to do anything that an individual may do in accordance with section 1 of the 2011 Act. This is referred to as the general power of competence, and a local authority may use this power for its own purpose, a commercial purpose or/and for the benefit of others. This power is however subject to a number of limitations, including pre-commencement limitations. Section 2 of the 2011 Act limits the general power of competence where it 'overlaps' with a power which predates it. This means that where the Council relies on the general power of competence and there is a power which pre-dates it and is subject to restrictions, then the general power of competence will be subject to these restrictions. An example of this is section 95 of the 2003 Act, which gives the Council the power to trade, but is subject to restrictions contained within regulation 2 Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the 2009 Order). Section 4(2) of the 2011 Act states that where a local authority wants to do anything for a commercial purpose, they must only use the general power through a company. The external lawyers suggest that the Council could use the power under section 1 of the 2011 Act to set up the Company for the purposes of providing, developing or acquiring housing for rent or sale and that it is prudent to prepare a business case in accordance with the 2009 Order to ensure the Council has given due regard to its duties.

Form of Company and Object

The Council has discretion as to the appropriate form of vehicle for the Company it wishes to set up. The external lawyers have proposed the most appropriate model is a Company Limited by Shares as this is the most tried and tested model and is less likely to fall foul of State Aid law.

Trowers and Hamblins have recommended that the Company is established with a broad commercial object to enable the most flexibility but that the broad objects are curtailed as necessary by a

Shareholder Agreement. This agreement will regulate the relationship between the Company and the Council.

Fiduciary Duties and Funding

The Council also has fiduciary duties which can be summarised as acting as a trustee of tax and public sector income on behalf of its rates and tax payers. In the future, if the Council considers making any investments and loans to the Company it must, on each occasion, act efficiently and undertake funding (and related) decisions after proper consideration of the risks and rewards of it doing so. There are powers which would enable the Council to provide funding to the Company and these would be considered at the point the Council is minded to take such a decision.

Land Disposal

In the future the Council may also consider disposing of land to the Company for development purposes. The powers and restrictions should be considered for each specific site at the point the Council is minded to take such a decision.

Indemnities

Local Authorities are permitted to offer an indemnity to its officers and Members under s265 Public Health Act 1875, sections 39 and 44 Local Government (Miscellaneous Provisions) Act 1976 and Local Authorities (Indemnities for Members and Officers) Order 2004.

Finance:

Budget Area	Implication
General Fund – Revenue Budget	GF cost is estimated to be circa £3k at the point of incorporation. To be funded from the Economic Place and Development Reserve.
General Fund – Capital Programme	None
Housing Revenue Account – Revenue Budget	None
Housing Revenue Account – Capital Programme	None

Risk:

Risk	Mitigation
Outline business case insufficient	Legal assurance sought from Trower and Hamblins who have extensive experience in Housing Company establishment
Post Brexit mitigation	Housing company will allow for sale or rental option depending on market conditions at the time of completion
Company name taken/disputed	Adequate checks of Companies House and Web domains will be undertaken and secured before the company is publicly named
There is a potential risk that a hostile party may seek to challenge, delay or frustrate the formation or operation of a local delivery company by raising an	The Council's purpose is primarily one of delivering market rented and market sale accommodation, and/or to make a profit for distribution to the Council rather than a "traditional" affordable/Council housing offer which would ordinarily be delivered through the

<p>argument that the Council has deliberately mis-applied the powers they are relying upon to form the local delivery company. They may argue that as a local housing authority the Council should have relied upon its powers under the Housing Act 1985 (as opposed to the 2011 Act).</p>	<p>Housing Revenue Account, as such it would be easier for the Council to repel a challenge on the basis that the general power of competence was being exercised for a proper purpose and not as a means of undermining Government imposed financial restrictions (e.g. the Housing Revenue Account regime) and/or seeking to avoid the imposition of the RTB. The risk is further mitigated by the Council being clear that the LHC's purpose is to operate as a commercial business to deliver homes for a range of rents/markets and not for general needs allocation (which would ordinarily be led through the Council's Housing Revenue Account).</p>

Human Resources:

Board Directors will require the appropriate indemnity insurance against personal liability. Impact of the additional work and responsibilities undertaken by employees who are also Board Directors will need to be considered.

Equalities:

None

Other Implications:

None

Reason(s) for Urgency

None

Reason(s) for Exemption

None

Background Papers

Outline Business Case attached - Appendix A (Exempt by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

Report Author and Contact Officer

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