

Bath & North East Somerset Council

MEETING/ DECISION MAKER:	Cabinet	
MEETING DATE:	2nd December 2015	EXECUTIVE FORWARD PLAN REFERENCE:
		E 2785
TITLE:	Establishment of a Local Property and Development Company	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix 1 Summary Outline Business Case Appendix 2 Property Company Flow Diagram		

1 THE ISSUE

- 1.1 The establishment by the Council of a local authority wholly owned company (the Company) to develop, deliver, own and manage property as well as new development on a case by case basis using either Public Works Loan Board (PWLB) funding or external financing dependent which is the most viable option.
- 1.2 The company will initially focus on the refurbishment of existing properties suitable for residential lettings. Consideration will also be given, on a case by case basis to the delivery of new build property developments, if deemed financially viable.

2 RECOMMENDATION

The Cabinet agrees to the:

- 2.1 Approval of the Outline Business Case for the establishment of the Company
- 2.2 Establishment of a Company limited by shares, for this purpose, to be wholly owned by the Council in line with the proposed structure set out in sections 5.31 to 5.39
- 2.3 Approval of the composition of the Company's Board as set out at para 5.32.
- 2.4 Utilisation of appropriate investment to deliver, own and manage residential and property developments on a case by case basis.

- 2.5 Transfer the relevant Title of the existing residential properties to the Company, subject to approval of the terms of such transfer by the Corporate Property Officer in accordance with S123 of the Local Government Act.
- 2.6 Delegate to the Leader the exercising of all Council functions as sole shareholder of the Company, with the exception of any changes regarding ownership of the Company.
- 2.7 Delegation to the Chief Executive and Strategic Director of Resources, in consultation with the Leader and the Cabinet Member for Homes & Planning, of the approval of Council investment in the Company within approved budgetary provisions, including but not limited to the:
- terms of Council investment
 - business cases for future development proposals to be undertaken by the Company.
 - terms of any guarantee to be provided to support the provisions of the investment
 - terms of any loan or equity agreement between the Council and the Company
 - such others matters as are regarded as necessary to enable the provision of the investment, progress of the developments and their subsequent sale, lettings and on-going management.
- 2.8 Delegation to the Strategic Director (Resources) in consultation with the Leader to finalise and agree the and Articles of the Company and other such matters necessary to (i) incorporate and register the Company and (ii) facilitate the objectives identified in this report.
- 2.9 Full Approval of the existing Capital funding provision of £6.536M to support investment in the Company in accordance with 2.6 above.
- 2.10 Note that all further decisions regarding the future level of Capital Funding for potential investment in the Company will be subject to the approval of the Full Council and form part of the Budget process for 2016/17.
- 2.11 Agree that an annual report will be provided by the Company to the Council setting out its activities, performance and accounts.
- 2.12 The Strategic Director (Resources) is given delegated authority to finalise the service provision arrangements between the Council and the Company for all required support services, including officer support.
- 2.13 Indemnification, to the full extent permissible under the Local Authorities (Indemnities for Officers and Members) Order 2004, of the Council officers and Members identified in paragraph 5.32 in respect of any personal liability arising as a result of their appointment as directors of the Company.

3 FINANCIAL IMPLICATIONS

- 3.1 This proposal supports the delivery of the Council's Medium Term Financial Plan for the period 2016/17 to 2019/20, with an additional £600K of recurring income targeted by the end of this period.
- 3.2 The Company would require loan funding from the Council at an appropriate market rate of interest (in order to comply with State Aid rules) to support refurbishment and development activity. Such loans would facilitate the purchase of the relevant title of the existing residential properties from the Council and be subject to the approval of a detailed business case on all proposed future developments.
- 3.3 All disposals of land and property to the Company will be based on the appropriate market value as assessed by the Corporate Property Officer in accordance with S123 of Local Government Act. Provided the disposal represents the best consideration that can reasonably be obtained (or otherwise falls within the General Disposal Consent for undervalue disposal contained in Circular 06/03) no specific consent of the Secretary of State would be needed for the disposals from the Council to the Company. Capital receipts from such disposals will be used to support the generation of additional commercial estate income.
- 3.4 A capital sum of £6.536M has been provided within the existing capital programme to support the future revenue generation from the Commercial Estate. It is proposed that this sum (in full or in part) be made available to the Company in the form of loans on market terms to support the purchase of land and property from the Council. Any further capital funding for investment in the Company will be subject to the approval of Full Council, as part of the 2016/17 Budget process.
- 3.5 All costs, fees and charges payable by the Company, including the reimbursement of appropriate costs incurred by the Council to support the Company, would be charged against the Company's income. The Council will continue to meet its own incurred usual costs for land and property disposals, including such works and outline planning permissions as deemed appropriate by the Corporate Property Officer, to maximise market value.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 This proposal will support the delivery of the Medium Term Financial Plan and Strategic Objectives.
- 4.2 The Company will be established in accordance with the powers set out under S1 of the Localism Act 2011 (the general power of competence).

- 4.3 Legal advice has been sought confirming that on the face of it, the renting of housing at market rents would be pursuing a "commercial purpose" even if the Council's ultimate purpose was to create mixed, economically active communities. Further, on the understanding that it is the Council's intention to seek a commercial return from its participation in the Company, for example through dividend distribution, the Council has been advised that such action would be likely to be deemed a commercial purpose. Indeed this view has been borne out by the authorities that have set up such companies to date.
- 4.4 Under Section 4 of the Localism Act 2011 Act a Council exercising its general power of competence for a commercial purpose must do so through a company or a (Community Benefit Society). Therefore the "commercial" nature of the enterprise would justify the Council's establishment of, and participation in, the Company.
- 4.5 All land and property transactions between the Council and the Company must comply with S123 of the Local Government Act 1972.

5 THE REPORT

Context – The Financial Challenge

- 5.1 In autumn 2014 the Council identified that the likely financial impact on its funding for the 4 year period to 2016/17 indicated a potential budget gap of circa £38m.
- 5.2 A number of further key challenges were also identified that the Council has had to respond to including: population growth, a slowing of post-recession growth and economic productivity; and a range of service reforms.
- 5.3 A Strategic Review process was established to manage the issues and in particular identify options to address funding the budget gap. The outcomes of the review were based on the following four themes.
- ➔ **A strong economy and growth**
 - ➔ **A focus on prevention**
 - ➔ **A new relationship with customers and communities**
 - ➔ **An efficient business**
- 5.4 The Strategic Review process and corresponding themes were reported to, and agreed upon, by all Group Leaders prior to the May 2015 elections.
- 5.5 As part of the theme for “an efficient business” this included the consideration of ideas for generating additional income for the Council.

Generating Additional Income

- 5.6 The idea of establishing a Local Property and Development Company was a very early proposal identified in the Strategic Review process and reflected the growing activity and interest by other local authorities to establish similar vehicles.

- 5.7 Following a review of initial projects, in early 2015, this project was agreed for Outline Business Case development.
- 5.8 The Outline Business Case identified the potential to deliver £600K of recurring Revenue Income by 2019 and over £1.5M within 10 years (see summary at Appendix 1). This could potentially be delivered earlier if the development programme were accelerated.
- 5.9 The diagram at Appendix 2, sets out the potential for a Local Property and Development Company to both generate capital receipts for use by the Council's commercial estate, but also to deliver additional income via market property rentals and sales. The Council retains 100% ownership of the Company itself.

Government Housing Policy

- 5.10 There is a shortage of housing nationally and the Government has identified a need to build 200,000 houses per year, in total 1million homes by the year 2020. Locally as identified in the B&NES Core Strategy our target is to provide an additional 12,956 homes by the year 2029.
- 5.11 On the 13th November the Government published the "Housing & Planning Bill". The Bill, which is currently going through committee stages, aims to put many of Governments recent housing announcements into statute. Importantly it recognizes, and supports, the Government's desire to increase homeownership through a significant expansion of the starter home initiative, a tenure type that could prove attractive to the Company on potential future developments whilst meeting an element of local demand. In addition the Bill provides the legal basis for the voluntary extension of Right to Buy for Housing Association tenants and the forced sale of high value Council housing.
- 5.12 The Bill relies heavily on secondary legislation, and as such without this detail it is impossible to assess the impacts on the Council.

Existing Residential Property Assets

- 5.13 The Council does not hold any Social Housing properties as these were all transferred as part of the Large Scale Voluntary Transfer to Curo (then Somer Community Housing Trust) on 1st April 1999. This led to the closure of the Council's Housing Revenue Account.
- 5.14 Within the Council's ownership however, there are around 68 residential property assets located within the City centre and surrounding areas, mainly above existing commercial estate properties. Many of these properties were leased to Curo and will be transferred back to the Council, only once the leases have ended.
- 5.15 Approximately 20 properties have already been returned to the Council from Curo and now require an appropriate action by the Council. Through the use of a Local Property Development Company, the Council can secure a revenue return for the Commercial estate, and benefit from an ongoing income stream.

Supporting Housing Delivery

- 5.16 The SHMA has identified a need for 12,956 new homes to be delivered over 2011-2029, including 3,290 affordable homes. The delivery of this target requires a significant and sustained uplift in the historic housing delivery within B&NES.
- 5.17 Alongside the 68+ properties identified above, there are a number of B&NES owned sites whose use could be maximised for the development of Housing Delivery.
- 5.18 A detailed analysis will be undertaken of all Council owned sites to identify those which may be appropriate for housing delivery. A Local Property Development Company could then, on a case by case basis, bring forward development proposals for these sites. This will include innovative proposals not often considered by developers.
- 5.19 This approach would proactively assist the delivery of Core Strategy housing targets and advance delivery where private developers are moving slowly , through an ability to provide targeted housing solutions, for example:
- Smaller family accommodation; shared living; high density “lifestyle” housing for young professionals/graduate retention etc.
 - Various tenure options, such as, discounted home ownership (equity stake); high quality market or sub-market rent or market purchase including starter homes.
 - Providing “added value”
 - Utilising local training schemes, apprenticeships and worklessness programmes.
 - Providing a future funding stream to be used as appropriate, potentially on other housing schemes.
 - Utilise local private sector experts to manage residential lettings
- 5.20 B&NES is one of the most expensive areas in the South West with an average house price of £336,718 and annual house inflation rising 13.4% over the last 12 months.

The Proposal to Establish a Local Property and Development Company

- 5.21 The establishment of a Council owned Property and Development Company is proposed as an income generating investment and development vehicle. It would manage the Council’s private residential property assets and deliver new housing for both private ownership and the private rented sector.
- 5.22 The company would move forwards in two stages:
- **Stage 1** – transfer title of existing properties for private residential letting or sale with a capital receipt and revenue income generated for the Council.
 - **Stage 2** – based on a commercial business case, opt to deliver approved housing developments either directly or as part of a joint venture. Each business case will be subject to approval by the Council’s delegated process and the Company's Board.

Key Objectives & Benefits

5.23 The proposed objectives of the company are set out below:

- To generate revenue income and maximise revenues for the Council
- To deliver approved property developments
- To acquire and sell private market property
- To hold, manage and operate high quality private lettings.
- To be fully policy compliant in terms of Affordable Housing.
- To support the Council's ambition to help create an ongoing supply of modern energy efficient and sustainable homes.
- To stimulate and accelerate property and development delivery for the Council.
- To improve supply, quality and quantity of private rented housing.
- To act as a responsible and equitable landlord.
- To deliver long term capital appreciation.
- To support the Council's strategic vision and objectives.

5.24 The benefits to the Council in taking this approach are:

- The potential to generate significant returns on Capital Invested
- The potential for tax efficiency through an arrangement that recognises the grouping of the Council and the Company.
- The investment /support by the Council can be structured in a State Aid compliant manner.
- The Council meets EU procurement rules including "Teckal" (or group control) compliance which is now set out in regulation 12 of the public contracts regulations 2015.
- A vehicle to manage Council market housing assets.
- Improve the supply and delivery of market and affordable housing.
- Council controls the Company but the Company has a Board of directors acting in the best interests of the Company (Council Ownership).
- Provide the ability to utilise public finance / borrowing subject to market rates of interest (and market loan terms) being payable by the Company to the Council.
- Provide a flexible structure for future needs and potential development.
- An entity that could be disposed of / sold in the future.
- Helps address the financial challenge and protect frontline services.
- Generate additional Council Tax and New Homes Bonus.
- Support Manifesto Commitments.
- Support the Core Strategy and Placemaking Plan.

Management of Lettings

5.25 B&NES has a long history of managing commercial properties using its in-house team of surveyors and lettings specialists. This team manages 480 commercial properties valued at over £230M, generating around £15M of commercial income.

- 5.26 Recognising that the Private Rental market is different in nature to the commercial retail market the proposed Company would employ the services of a residential lettings agent. These services would be procured from private sector practices that operate in Bath ensuring relevant specialists manage the entire letting and tenant customer process.
- 5.27 This is in line with other private rented landlords with large estates which operate using this model. St John's Hospital has over 80 residential investment properties which are managed by a Bath residential letting agent.

Commercial Approach to Developments

- 5.28 The Council's Project Delivery team is made up of a small core of construction professionals with a wealth of private sector construction experience including relevant property developments.
- 5.29 The model developed by Project Delivery over the last 8 years has been to draw in specialist Project Management support to supplement the core team to deliver the capital programme. The Project Management support has been supplied by a number of framework consultants. Each appointment is selected on the relevant experience required for the specific project.
- 5.30 It is proposed to use this model of delivery for any refurbishment or development undertaken by the Property Company. The experience of the core team of construction professionals will be supplemented by the appropriate private sector specialist.

Governance

- 5.31 Based on independent expert legal advice, it is recommended that the Company should be formed as a Company Limited by Shares, with 100% of the share capital retained by the Council. As sole shareholder, the Council would retain control of the Company, including the flexibility to change aspects of its purpose and operation or even cease, transfer or dispose of the Company in the future. The Council in its corporate capacity would be the sole shareholder of the Company.
- 5.32 A Board of directors will be put in place to oversee and manage the Company in accordance with the objectives set by the Council. The proposed Board Structure is set out below:
- Councillor Chair – Cabinet Member for Resources & Efficiency
 - Councillor Member – to be confirmed
 - Officer, Managing Director – Divisional Director (Business Support)
 - Officer, Operations Director – Divisional Director (Project Delivery)
 - Officer, Executive Director – Strategic Director, Director or Service Lead – to be confirmed
 - 2 x Non Exec independent experts – to be externally appointed and likely to include private sector development, housing and property experts.

- 5.33 The Company would be 100% Council-owned at shareholder level. It would operate through its Board. The Directors would have a duty to act in the best interests of the Company. In a commercial company the best interest of the company is usually to maximize the return for the shareholders - in this case - the Council. In those circumstances there is unlikely to be any inherent conflict of interest between the role of Council officers and members in those capacities and in their capacity as Board directors but it is nonetheless something that needs to be kept under review.
- 5.34 The Councillor and Officer roles would be unpaid although expenses to attend Board meetings would be in line with normal Council policy.
- 5.35 Non-Executive Directors will be paid an appropriate fee and will be appointed, following an external process (as advised by the Monitoring Officer), with the approval of the Leader and the Chair of the Board.
- 5.36 It is intended that the Company will operate on a “thin” basis, drawing appropriate support directly from the Council, with the exception of specialist services which would be separately contracted by the Company. This would keep operational expenses to a minimum albeit all resources provided by the Council would be charged to the Company. These arrangements would be reviewed on a regular basis to ensure overall value for money and efficiency.
- 5.37 Following the initial transfer of the title of the current Council residential properties set out in Paragraphs 5.13 to 5.15 above, all future proposals for development of Council sites would be subject to a site specific Business Case. This would include as a minimum:
- Site details and proposals
 - Delivery options, including direct delivery or joint venture
 - Financial returns
 - Legal advice
 - Planning advice and requirements
 - Project delivery proposals
 - Delivery of affordable housing provisions
- 5.38 All such Business Cases would require approval by both the Council’s delegated decision makers and the Company’s Board.
- 5.39 The relevant Policy Development and Scrutiny Panel will also be able to review the activities of the Company as appropriate.

Timetable

- 5.40 Subject to Cabinet approval the provisional timetable for the establishment and operation of the Company is broadly as follows:
- Detailed Financial Modelling and Company Business Plan – Jan 16
 - Agreement of Legal documentation – Feb 16
 - Establish LPDV Board including “expert” Non-Execs –Feb/Mar 2016
 - Establish and incorporate LPDV Company – Feb/Mar 2016

- Transfer title of initial properties – Feb 2016 onwards
- Website and branding – Mar 2016 onwards
- Site by Site Business Case approvals – commencing April 2016
- Progress planning, design etc., for identified sites – ongoing
- First site delivery commences during 2016/17 financial year

6 OPTIONS CONSIDERED

- 6.1 **Do nothing** - Council continues piecemeal disposal of surplus land and properties. This would provide capital receipts to the Council for which alternative commercial investment could be sought, although the overall yields for the Council would be less. There would also be no guarantee over the use of the disposed site or speed of development.
- 6.2 **Prioritise Sales land for Market Housing Development** – Similar to option in 6.1 above with a more proactive approach to disposal of surplus land and properties. Similar issues to the do-nothing approach, although the capital receipts could be generated more quickly.
- 6.3 **Joint Venture Options between the Council and Private Developers** – This option provides the potential to secure market capital and capacity but is likely to increase overall costs and reduce the overall revenue benefit to Council. This option will be considered further as part of business case approach to each development.

7 CONSULTATION

- 7.1 All proposals have been drawn up with support from internal and external experts together with the experience of other local authorities who have, or are in the process of, establishing similar companies.
- 7.2 Consultation has been undertaken with relevant Cabinet Portfolio Holders and Group Members. The relevant statutory officers have also been consulted.
- 7.3 All future development proposals will be subject to the normal planning process and consultation.

8 RISK MANAGEMENT

- 8.1 A risk assessment of the issue and recommendations has been undertaken and a full risk register has been maintained in accordance with the Council's decision making risk management guidance. Copies of the risk register are available.

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Background papers	
Please contact the report author if you need to access this report in an alternative format	