

REPORT TITLE: ESTABLISHING LOCAL HOUSING COMPANIES TO SUPPORT
NEW HOMES DEVELOPMENT

22 MARCH 2017

REPORT OF PORTFOLIO HOLDER: COUNCILLOR CAROLINE HERRILL

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WARD(S): ALL

PURPOSE

This report proposes the establishment of two special purpose vehicles to support both investment in property and to support the Council's affordable housing development programme.

Initial legal advice on company structures has supported the establishment of a model to meet the Council's investment and housing aspirations. This model does require more detailed testing and analysis and it is recommended that additional resources be approved to support the provision of additional finance and legal advice as well as project management capacity.

RECOMMENDATIONS:

1. That the Assistant Director (Chief Housing Officer) be authorised to prepare a detailed financial appraisal of the model proposed in the report and to commission finance detailed legal advice to support this as set out in the report.
2. That a part time Project Manager be recruited to support this work and provide additional capacity/skills
3. That a Direction be made under Rule 2.4 a) of the Contracts Procedure Rules and the Assistant Director (Chief Housing Officer), in consultation with the Head of Legal and Democratic Services and the Head of Finance, be authorised to negotiate terms and enter into contracts with Trowers and

Hammins LLP for the provision of additional detailed legal advice to support the preparation of the relevant contract and legal documentation for establishing a Housing Company and a Community Benefit Society as detailed in the model and as set out in the report..

4. That authority be given to fund the financial and legal advice as set out in the report up to £100,000 , funded from the Housing Revenue Account (HRA) "Unallocated Sites" provision (50%) and from General Fund (Homelessness Prevention Earmarked reserve - 50%).
5. That a further report be brought to this Committee, setting out the detailed business case and draft governance agreements for each element of the proposed model.

IMPLICATIONS:1 COUNCIL STRATEGY OUTCOME

- 1.1 Providing new homes is a strategic priority for the Council and doubling the existing programme 2020 is a key outcome the Council Strategy is seeking to achieve. Whilst the Council is able to deliver new homes for rent through its Housing Revenue Account, debt cap rules mean that scope for this is limited. The Council also recognises the need for a range of affordable housing products to meet housing need and alternative vehicles will be required to support this.
- 1.2 The Council Strategy also places priority on a more “entrepreneurial” approach and in particular to identify investment opportunities. Market housing and in particular the private rented sector provides significant investment opportunities and it is proposed to establish a development company to support the delivery of this priority.

2 FINANCIAL IMPLICATIONS

- 2.1 Any investment through housing companies will rely on prudential borrowing. Initial modelling based on existing Council developments indicates that a company delivering market sales and market rented units can achieve a 6% return, in addition to loan repayments at a “commercial rate” (Council borrows at PWLB rates and on lends at a commercial rate). The Council will need to determine to what degree it is prepared to borrow to fund development in order for a detailed business case to be prepared.
- 2.2 Initial modelling has also indicated that developing subsidised affordable housing through the model is also viable on similar borrowing terms. However, more work is required on determining the implications of charitable status and also on the potential risks that could arise with regard to new fixed term tenancies rules for social housing tenants and also the White Paper announcement regarding Right to Buy being extended to properties delivered through housing companies.
- 2.3 Work to support the establishment of delivery vehicles will require additional external support and it is proposed to allocate £100,000 (funded 50% from the HRA and 50% from the General Fund) to fund this work, including:
- | | | |
|----|--|---------|
| a) | Additional legal on model/structures - | £20,000 |
| b) | Finance/tax advice - | £20,000 |
| c) | Part time Project Manager - | £20,000 |
- Then, subject to approval of detailed business case/financial modelling:
- | | | |
|----|---|-----------|
| d) | Legal support re documentation/agreements | £40,000 . |
|----|---|-----------|

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Council has commissioned specific legal advice from Trowers and Hamlins LLP to provide initial legal advice to ensure any vehicle it establishes to support development is in accordance with the Council's legal powers and that any future operation is compliant with those powers. Additional support will be required to prepare contractual and other documentation, such as articles, shareholder/Intra-Group agreement and loan facility agreements for on-lending.
- 3.2 The advice is summarised in this report. The detailed advice is available to members on request.
- 3.3 The advice received has confirmed that the Council has a power to invest as set out in section 12 of the Local Government Act 2003. A council can invest for any purpose relevant to its statutory functions or for the better management of its financial affairs. There is no requirement to use a company but, on the other hand, it is not precluded. The Council can also potentially act within the general power of competence in section 1 of the Localism Act 2011 (the 2011 Act). If the Council relies on section 1 and carries out anything for a commercial purpose it must do so through a company.
- 3.4 The Council's power to set up and use a company or similar structure to support affordable housing delivery depends on whether it is reasonable to use section 1 of the 2011 Act and not section 9 of the Housing Act 1985. This will be subject to why the Council's affordable housing objectives cannot be achieved by the Council itself, within the HRA.
- 3.5 It is unlikely that the Council can rely on section 1 simply to mimic the provision of accommodation through the HRA by delivering additional affordable rented housing that cannot be funded through the HRA as a result of the HRA debt cap. However, in line with the Council Strategy, the Council is aiming to deliver a range of affordable products to respond to a variety of housing needs. It would not have the powers to manage these through the HRA and a company could support this part of the Council's strategy.
- 3.6 A comparison with the Council's current tenancy policy will be important, bearing in mind the revised regime for fixed term secure tenancies introduced by the recent Housing and Planning Act, with regulations expected later this year.
- 3.7 Additional detailed legal advice on the proposed model will be required. Trowers are very experienced and have advised a number of councils establishing similar structures. It is recommended that the Council continue to work with Trowers to procure the more detailed advice now required.

4 WORKFORCE IMPLICATIONS

- 4.1 As stated above, additional capacity to support the delivery of this project will be required and it is proposed to appoint a part time project manager (over

and above existing Project team capacity) to lead on this work. In addition, provision is required for additional financial support (modelling/business planning, tax advice etc) and legal support (legal documentation, charities advice etc).

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 No immediate implications, although additional vehicles as set out in this report are likely to be essential to support the delivery of new Council housing, both in relation to market and affordable tenures.

6 CONSULTATION AND COMMUNICATION

- 6.1 Officers have liaised with other authorities who have established a range of vehicles relating to property development.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 None.

8 EQUALITY IMPACT ASSESSEMENT

- 8.1 None.

9 RISK MANAGEMENT

Risk	Mitigation	Opportunities
<i>Property</i>		
<i>High and increasing development costs in south east</i>	<i>Detailed financial modelling to be commissioned</i>	
<i>Community Support</i>		
<i>Timescales</i>		
<i>Project capacity</i>		
<i>Capacity to establish company in time to support specific development projects</i>	<i>External support commissioned to assist establishing company</i>	
<i>Financial / VfM</i> <i>Investment doesn't achieve projected return</i> <i>Right to Buy rules impact on viability</i>	<i>Detailed financial modelling</i> <i>Careful selection of investment option</i> <i>Sensitivity analysis to be completed.</i>	

<i>Tax rules/HMRC requirements impacting on viability</i>	<i>Additional tax advice to be commissioned</i>	
<i>Future Govt restrictions on prudential borrowing (similar to HRA debt cap) to limit growing public sector debt</i>	<i>All developments to be viable individually and not reliant on profits from future developments</i>	
<i>Legal Council acting outside of relevant powers</i>	<i>Legal advice commissioned</i>	
<i>New tenancy rules could mean any fixed term agreement for affordable rented being restricted to HRA development</i>	<i>Additional legal advice required</i>	
<i>Innovation</i>		
<i>Reputation</i>		
<i>Other</i>		

10 SUPPORTING INFORMATION:

10.1 Background

10.2 As part of the recent Housing White Paper, the Government highlighted the importance of local authority housing companies to support the delivery of affordable housing.

10.3 Many councils have established vehicles, both to support affordable housing and to generate income. In each case, it's important that the purpose of the vehicle and the powers under which it operates is clear.

10.4 It is unlikely that the Council could deliver additional social/affordable rented units through another vehicle, as it has powers to do that through the Housing Act and it is the purpose of its HRA. However, it has a desire as articulated through the Council Strategy to deliver other forms of affordable housing (Starter homes, discounted market sales, affordable private rented housing and intermediate housing) and will require a company for this.

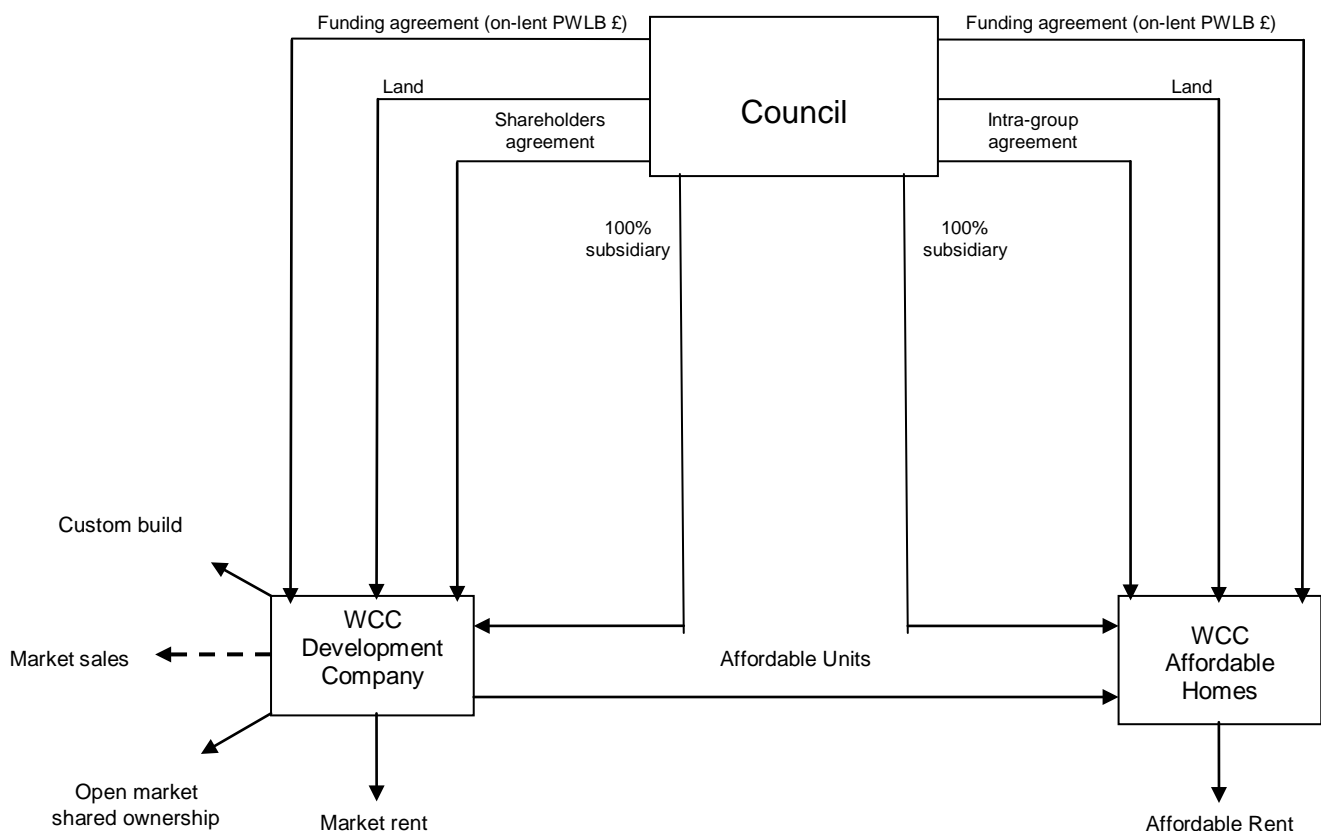
10.5 In order to meet the dual aspirations for exploiting investment opportunities and also promoting a range of affordable housing, it is considered that two vehicles would be required, one a development company focussing on market

housing as a means of generating income and another focussing on affordable housing.

10.6 It is therefore proposed to establish a Development Company (**WCC DevCo**), limited by shares wholly controlled by the Council. This company would be used for developing units, including the affordable units "destined" for an Affordable Homes company (**WCC AH**) (see below) and also any market-facing products, whether for sale or renting.

10.7 Available HRA land is transferred for development to WCC DevCo unless it is decided to transfer the land for the sub-market units directly to WCC AH.

10.8 The Model:



10.9 A shareholders agreement would regulate the relationship between the Council and WCC DevCo, providing reassurance for the Council but with sufficient flexibility to help ensure that WCC DevCo can respond to market opportunities and has a "commercial character" for the purposes of the Public Contracts Regulations 2015.

10.10 WCC AH is a community benefit society (**CBS**) with (exempt) charitable status, controlled by the Council. It would either take transfers of affordable

units developed by WCC DevCo or it could contract with WCC DevCo to construct those units for it.

10.11 Next Steps

10.12 Provided members support the model proposed, it will be necessary to commission additional advice in areas such as tax implications and the charitable status of WCC AH and to incorporate this into a detailed business planning and financial modelling for each company. Additional support would also be required to assist with preparing contractual and other documentation for each vehicle including:

- a) articles for WCC DevCo and rules for WCC AH;
- b) shareholder/Intra-group Agreement; and
- c) loan facility agreement (for on lending).

10.13 Establishing WCC AH as a charitable CBS, with Council-appointed board members, may take six months but it would be prudent to allow nine (including HMRC clearance).

10.14 The establishment of WCC DevCo as a CLS should be a good deal more straightforward and it should be possible to achieve this (subject to a satisfactory business case) within 6 months.

10.15 There will also be a need for business planning and financial modelling to establish that the model 'works' in relation to specific sites and anticipated rental levels and sales receipts.

10.16 Conclusion

10.17 Whilst additional support and advice is required, the model set out in this report would support the Council to meet its aspirational development and investment priorities as articulated in the Council Strategy.

10.18 As the model above is unlikely to support the provision of affordable rented properties (Council's powers determine this should be through HRA), the model will not support arguably the most significant aspect of the New Homes programme. It is proposed to continue to work with Government officials to identify additional ways to fund development of affordable housing (lifting debt cap, HCA grant, Local Growth Fund etc).

11 OTHER OPTIONS CONSIDERED AND REJECTED

11.1 Consideration has been given to seeking a development partner. However, any investor is likely to require an existing substantial site or sites to be available and in the absence of such sites at this stage, a model that will support developments on smaller HRA land is proposed. However, this option will be considered if and when a large site is identified. Consideration

has also been given to establishing WCC AH as a company structured similarly to WCC DevCo or as a wholly independent body and this will continue to be tested through the development of the business case..

BACKGROUND DOCUMENTS:

Previous Committee Reports:

None

Other Background Documents:

None

APPENDICES:

None