

REPORT TITLE: ESTABLISHING A LOCAL HOUSING COMPANY

16 MARCH 2023

REPORT OF CABINET MEMBER: Councillor Paula Ferguson (Deputy Leader and Cabinet Member for Community and Housing)

Contact Officer: Gillian Knight Tel No: 01962 848 577

Email gknight@winchester.gov.uk

WARD(S): ALL

PURPOSE

This report proposes the establishment of a wholly owned local housing company for the purposes set out and agreed in CAB3366 (14 December 2022), namely to:

- Lease from the council and manage suitable residential council properties held in the Housing Revenue Account (HRA) and the General Fund as identified on a case-by-case basis, subject to a supportive business case.
- Provide high quality energy efficient council owned housing as an alternative to the council's current housing offer to households who struggle to rent privately and access council and other affordable housing options.
- Take advantage of an early opportunity to lease from the council and manage one block of 41 units of accommodation currently being developed at Winnall.

It recommends agreeing the next steps that are necessary at this stage so that the project can progress in a timely, well managed manner. The report precedes the development of detailed proposals set out in CAB3366 which are scheduled for presentation to Cabinet Committee: Housing for decision in July 2023 (when the final strategic business and financial cases will be considered); and makes recommendations in respect of the company name, model articles of association, shareholder agreement and appointment of directors.

The company will remain dormant until detailed proposals have been considered and approved, but early establishment will provide company directors with the flexibility to take key decisions on company business which would otherwise be deferred to later in the year.

**RECOMMENDATIONS:**

1. Agree proposed draft shareholder agreement as at Appendix A.
2. Agree proposed draft memorandum of articles as at Appendix B.
3. Subject to agreeing the shareholder agreement and memorandum of articles agree that in consultation with the Strategic Director: Resources (Monitoring Officer), Corporate Head of Asset Management and the Corporate Head of Finance (S.151 Officer), to authorise the Strategic Director (with housing responsibility) to establish a council owned housing company for the purposes set out in CAB3366.
4. Approve the company name as Venta Living.
5. Appoint the following as company directors:
  - a) Strategic Director (non-housing responsibility).
  - b) Two councillors with nominations to be reviewed after one year.
6. Agree to authorise the Corporate Head of Housing to advertise and recruit up to two independent and remunerated directors with the requisite skills to the board of the company.
7. Authorise the Strategic Director (with housing responsibility) to enter into a resourcing contract with the local housing company subject to an agreed business plan to provide services to the company.
8. Authorise the Strategic Director (with housing responsibility) in consultation with the Strategic Director: Resources (Monitoring Officer) and the Deputy Leader and Cabinet Member for Community and Housing to finalise details of the draft articles of association, and shareholder agreement.
9. Note that full Council will consider and agree the reserved matters in the shareholder agreement.

## IMPLICATIONS:

### 1 COUNCIL PLAN OUTCOME

- 1.1 The establishment of a local housing company supports the following Council Plan priorities:
- a) Tackling the climate change and creating a greener district – the proposal provides the opportunity to provide sustainable homes close to employment and services. The Winnall flats are designed to be highly sustainable. Their convenient location within the city supports the Council Plan objectives to promote walking, cycling and use of public transport.
  - b) Homes for all – meeting local need through a wider range of tenures.
  - c) Vibrant local economy – supporting working households to live and work in the district.
  - d) Your service, your voice – better options for renting in response to survey feedback<sup>1</sup> from younger households.

### 2 FINANCIAL IMPLICATIONS

- 2.1 A full financial business case will be brought back to members before the housing company becomes active. The financial implications of this report are limited to set up costs which can be managed within existing budgets. It is expected that the two independent company directors will require remuneration. The final financial business case will need to allow for this.
- 2.2 The establishment of a local housing company will lead to an increase in the audit fees of the council. At present this is unquantifiable, but the increase in audit risk created by the need to produce group accounts (consolidating the company within the council's financial statements) will lead to an increase in the current audit fee, which is currently approximately £70k per annum.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The legal implications were set out in the previous Cabinet report CAB3366. In particular that paper clarified:
- a) That the council has the power to establish the local housing company pursuant to the general power of competence under Section 1 of the Localism Act 2011.
  - b) An investment of £300k in the local housing company would fall within the limit of "minimal financial assistance" under the subsidy control regulations.

---

<sup>1</sup> Young Persons survey – WCC, 2022

- c) The grant of a lease on the 41 dwellings at Winnall would comprise a single "disposal" under the 2013 General Consent and the transfer of dwellings from the HRA has to be transferred at market value and the transfer of assets held in the General Fund must be at best consideration.
  - d) As the sole shareholder the council could direct the company to provide the accommodation at specific rent levels, which in turn would be a consideration which a valuer in an arm's length transaction would consider.
  - e) The council can provide staff and services to the local housing company under a resourcing contract and charge a margin for the services it provides. As the local housing company will be established in compliance with the criteria necessary for a 'Teckal' company, the council can provide it with services in compliance with the Public Contract Regulations 2015 by taking advantage of the Teckal or "in-house" exemption.
- 3.2 The next legal step in the process is the incorporation of the company. Once incorporated, the local housing company will become a separate legal entity and will have a board of directors, appointed by the council.
- 3.3 The company will have its own shareholder agreement (Appendix A) and articles of association (Appendix B). The shareholder agreement will identify a list of "reserved matters" which will require the council's authorisation before proceeding, thereby providing a mechanism for the council to control the activities of the company. Trowers and Hamlin solicitors have been appointed to provide legal advice and assistance with the drafting of the documentation.
- 3.4 The fourth schedule of the shareholder agreement sets out the role of Cabinet Committee: Housing and Council in relation to the council's governance. In essence, Cabinet Committee: Housing provides advice on the business plan and company operations which are then considered at full Council.
- 3.5 Work has also begun on a draft lease for the Winnall properties. It is currently envisaged that it will be a lease for 15 years with an option for a new lease for 15 years. Lease costs to the local housing company will be agreed following a valuation review closer to the time that the development is due to complete. Further reviews based on the increase in the Consumer Price Index will be undertaken every five years, with a minimum and maximum rise.
- 3.6 The local housing company will be responsible for repairs in accordance with the terms of the lease, which, is proposed, for the first 15 years will be an internally repairing lease, and the second 15 years, a fully repairing lease. In the period that the city council constructor warranties, guarantees and insurances, it will use these to put right any damage covered by those, after which the local housing company will be responsible.

- 3.7 The local housing company will also be responsible for all white goods and any other items provided by the council and will have to replace them during the life of the lease. The council will insure the building and recharge the local housing company for the costs.
- 3.8 The lease will provide for use solely for Assured Shorthold Tenancies and selling the lease, or subletting the whole, will not be allowed.
- 3.9 The lease will not have the protection of the Landlord and Tenant Act 1954. The lease will end in 15 years and if the local housing company exercises its right under the agreement, it will get a new lease. The new lease will also be outside the protection of the Landlord and Tenant Act 1954 and at the end of the lease the local housing company will not automatically be entitled to a new lease. It will only get a new lease if the city council decides to enter a new lease with it.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 CAB3366 noted that the units transferred to the local housing company will be managed by existing teams within the council's Housing Service. Governance (including company secretary) and financial services will also be provided to the company by the council. To do this it will be necessary for the council to enter into a resourcing contract with the company.
- 4.2 It was previously agreed by members that three senior council officers be appointed to the Board of Directors (CAB3160, September 2019). It is important that there is no conflict between staff roles as council employees and directors, so the original proposals have been reviewed. At this point in time, it is recommended that the nominations from the council for directors of the company include unremunerated councillors with nominations reviewed after one year. This reflects external legal guidance and is set out in the articles of association. As the company matures and develops it would be good practice for the council's nominated directors to change, with councillors being replaced by independent directors.
- 4.3 The nature and extent of work undertaken by council officers means that staff will not work for the company on a dedicated basis. Consequently, although contracts of employment will be reviewed, it is not anticipated that there will be a need for changes.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 Each potential asset transfer will need to be considered on its own merits supported by a business case. The council will need to be a "willing seller" and the local housing company a "willing purchaser" of homes proposed for lease. The revised financial business model for Winnall flats presented to Cabinet in December 2022 (CAB3366) supports the transfer of those existing assets to the housing company. A final financial business case for Winnall will be presented to members for decision before any leasing arrangements are entered into. The company will remain dormant until that point.

## **6 CONSULTATION AND COMMUNICATION**

- 6.1 In addition to extensive consultation already undertaken (CAB3366 refers), officers are continuing to liaise with councils and other registered providers who have established housing companies. This is proving invaluable as work progresses to address operational priorities and embed relevant processes.

## **7 ENVIRONMENTAL CONSIDERATIONS**

- 7.1 As with all new homes provided by the council, properties leased to the housing company will be energy efficient, have lower carbon emissions and be resilient to climate change. In particular, overheating, flood risk and extreme weather events. They will also provide an opportunity for residents to live and work in closer proximity to jobs and services, thereby reducing the need to travel.

## **8 PUBLIC SECTOR EQUALITY DUTY**

- 8.1 The proposals in this report are consistent with the current Housing Strategy, which was subject to an Equality Impact Assessment. The proposals expand the housing offer to the community and compliment the council's current offer which includes social and affordable rented housing and shared ownership homes. This supports the *Homes for All* priority.
- 8.2 A panel of officers and the Cabinet Member for Inclusion and Engagement has been established to further review compliance with the Duty in March 2023.

## **9 DATA PROTECTION IMPACT ASSESSMENT**

- 9.1 Not required at this stage but will be addressed as the operational model develops.

## **10 RISK MANAGEMENT**

- 10.1 Key risks and opportunities are outlined below.

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
Financial Exposure  Set up costs e.g., staff time and professional fees.	Costs incurred ahead of future Cabinet consideration will be limited to those necessary to ensure the local housing company can be in place and operational before the Winnall flats are due for completion.  The process of setting the	Establishing the local housing company at this stage will mitigate against additional costs that may be incurred should it be necessary to undertake urgent set up activities at a later stage and ensure that existing staff are not diverted

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
	<p>company up involves the production of articles and memorandum of association, the registration of the company name at companies house and the identification of the directors and company secretary. All these activities can be contained within the remaining budget provision. The registration with HMRC and the setting up of a bank account either at the same time or subsequently will not involve material costs.</p> <p>The company will be dormant until members consider detailed proposals.</p>	<p>from their substantive day to day service delivery activities.</p>
Exposure to challenge	<p>The council has the power to establish a local housing company as set out in section 3 of this paper. The EqIA within the current Housing Strategy applies. A specific EqIA will be undertaken in March 2023.</p>	
<p>Innovation</p> <p>Establishing a new local housing company and control of that company by the council.</p>	<p>The council's role as sole shareholder will ensure control over the local housing company. The shareholder agreement (including reserved matters) and memorandum articles of association require agreement.</p> <p>Due diligence carried out including external legal advice, intelligence gathering and discussions with local authorities and other register providers.</p>	<p>An innovative approach that enables homes to be offered to a vehicle that has freedoms to deliver to a broader market than the council can through its current housing stock/options, thereby supporting the council's Homes for All priority.</p>
Reputation	Complete necessary actions	

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
Delay in local housing company set up may compromise delivery of project objective for Winnall and scheme occupation with consequent reputational risk	in a timely manner that recognises the risks associated with the local housing company not being operational by the time that the Winnall flats are completed. The recommendations set out in the paper are intended to facilitate this.	
Achievement of outcome  A delay would compromise the delivery of the outcome for Winnall flats set out in CAB3366	Complete necessary actions in a timely manner that recognises the risks associated with the local housing company not being operational by the time that the Winnall flats are completed. The recommendations set out in the paper are intended to facilitate this.	
Property	No formal agreements to lease properties to the local housing company will be made without further member approval (it is intended to bring a detailed paper to Cabinet in July 2023).	
Community Support  A delay would compromise the delivery of the community supported outcomes of tenure diversification for Winnall flats set out in CAB3366	Complete necessary actions in a timely manner that recognises the risks associated with the local housing company not being operational by the time that the Winnall flats are completed. The recommendations set out in the paper are intended to facilitate this.	
Timescales  A delay would compromise the delivery of the outcome for	Complete necessary actions in a timely manner that recognises the risks associated with the local housing company not being	

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
Winnall flats set out in CAB3366	operational by the time that the Winnall flats are completed. The recommendations set out in the paper are intended to facilitate this.	
Project capacity	Staff time is allocated as part of the service and project planning process. Ahead of future Cabinet consideration activities are limited to those necessary to ensure the local housing company can be in place and operational before the Winnall flats are due for completion.	Establishing the local housing company at this stage will mitigate against any need to re-deploy staff should it be necessary to undertake urgent set up activities at a later stage. This will ensure that existing staff are not diverted from their substantive day to day service delivery activities.

## 11 SUPPORTING INFORMATION:

### Background

- 11.1 CAB3366 set out the extensive background to this proposal, noting in particular that:
- a) The need for good quality private rented housing in the district is well documented.
  - b) A wholly owned company would be well placed to broaden the council's current housing offer as a landlord with a long-term commitment to the provision of housing, but that traditional council housing would remain the "core product."
  - c) The "institutional grade" purpose built, well designed, energy efficient homes at Winnall would be attractive to those seeking a private rental, as would management by a landlord committed to providing homes for rent in the longer-term.
  - d) The units at Winnall were likely to be affordable to single person households earning around median level incomes including health professionals, teachers, skilled tradespersons as well as younger people in the early stages of their careers.

- e) Potentially, there would be additional benefits from the short-term transfer to the company of existing assets from both the HRA and General Fund.
  - f) To function effectively within a tight and constrained operating budget, the company would need to be run commercially, with rents set at levels which reflect local market conditions.
  - g) As with any commercial venture, this approach carries risks and that the financial business case remains marginal.
- 11.2 Since the Cabinet decision in December 2022, considerable progress has been made to set up the company and develop the approach to leasing the new Winnall flats. Standard procedures and clear service standards are being developed to ensure effective day to day operation. Staff training on Assured Shorthold Tenancy management is being developed and a review of IT systems is underway.
- 11.3 A stakeholder analysis has been undertaken and a marketing strategy is being developed for Winnall to ensure the new homes are let without undue delay, and that there is a high level of awareness amongst those groups often regarded as key workers. This includes working closely with the NHS Integrated Care Board housing advice hub recently established to support staff across the area, including those working for the Southern Health Foundation NHS Trust and at the Royal Hampshire County Hospital.
- 11.4 In addition, as an outcome from a Cabinet Office sponsored One Public Estate key worker housing initiative, discussions are underway about an option of sub-leasing a small number of Winnall flats to NHS organisations in the locality, to house health professionals to support workforce planning and the delivery of health services to the community. If these discussions progress further, the company may include this as part of their business plan for the council to consider.
- 11.5 Agreement has now been reached with the Local Planning Authority (LPA) that phosphate mitigation at Winnall is not required as pre-commencement conditions have been discharged and there is positive engagement with both the LPA and landowners regarding nitrate mitigation.

#### Proposal

- 11.6 It is proposed that the local housing company be established in advance of Cabinet consideration of detailed proposals. This will enable directors to take early decisions on company business and avoid the risk that the company be non-operational when the development at Winnall completes.
- 11.7 As outlined in December 2022 (CAB3366) it is intended that the council will be the sole shareholder. Model articles of association and shareholders agreement are appended, and as previously agreed, (CAB3139 March 2019) it is recommended authorisation to finalise the articles of association and

shareholder agreement are delegated to the Strategic Director (with housing responsibility) in consultation with the Strategic Director: Resources (Monitoring Officer) and Cabinet Member for Community and Housing.

- 11.8 As previously noted, the shareholder agreement will identify a list of reserved matters which will serve as a mechanism for the council to control the activities of the company. The reserved matters will be presented to Cabinet for decision in July. Common reserved matters include:
  - a) The appointment and/or removal of any directors.
  - b) Agreeing the annual business plan.
  - c) Changing the company's name.
- 11.9 The council must nominate directors to the company board. Care should be taken to avoid any conflict of interest due to nominees' positions as both council officers and company directors. The model articles allow for five directors. It is recommended that the following are nomination to the Board as Directors:
  - a) Strategic Director (non-housing responsibility).
  - b) Two councillors with nomination to be reviewed after one year.
- 11.10 Given the nature of the company it is recommended that the council seek to recruit up to two independent and remunerated directors with the relevant skills required for the company.
- 11.11 The model articles provide the shareholder with the ability to appoint and remove directors. The model articles allow for remuneration of directors as approved by the shareholder.
- 11.12 Selecting a name for the company at this stage is essential to allow the company to be registered. The choice of Venta Living represents the name for Winchester (Venta Belgarum) in Roman times. It is important that the company name has its own identity and branding to provide a clear distinction between the business of the company and the council. Should the company wish to change its name in the future or adopt a "trading as" brand this will be possible within the shareholder agreement.
- 11.13 As noted in CAB3366 it is proposed that the council also perform the company secretary role. To do this there will need to be a resourcing contract between the council and the local housing company.
- Conclusion**
- 11.14 Providing *Homes for All* is a key priority identified within the Council Plan. This includes the need to address the limited supply of housing for residents who

may not qualify for social housing but struggle to access affordable longer-term housing.

- 11.15 To support the *Homes for All* priority Cabinet have agreed to the principle of establishing a wholly owned local housing company to lease properties from the council (CAB3366).
- 11.16 The company would be able to offer Assured Shorthold Tenancies to those in employment, including those regarded as key workers. As sole shareholder, the council will retain a high degree of control. As a landlord with a long-term commitment to the local community, it could offer tenants greater security of occupation. Tenants would benefit from well-designed, energy-efficient homes, high-quality property management and maintenance services, as well as the security of democratically accountable governance arrangements.
- 11.17 This wider housing offer to the community would not only provide increased opportunities for housing for those in employment, it would also support the local economy and essential service provision, increase Winchester town-based accommodation, reduce commuting, and promote sustainable travel choices.
- 11.18 Final details will be presented to Cabinet in July 2023, including strategic and financial business cases, and the reserved matters to be included in the shareholders agreement.
- 11.19 In order to ensure that the project progresses without delay, members are asked to agree the essential preliminary steps outlined in the recommendations above. As previously noted, the company will be dormant until final approval to proceed is given by Cabinet.

## **12 OTHER OPTIONS CONSIDERED AND REJECTED**

- 12.1 Establishment of the company could be deferred until detailed proposals, including the strategic and financial business case, are submitted to Cabinet for decision in July. However, this would risk failure to meet project milestones and threaten project objectives. If established sooner, directors can take early decisions on company business. This will help to ensure that the company is well placed to take responsibility for the development at Winnall in late 2023.

### **BACKGROUND DOCUMENTS: -**

#### **Previous Committee Reports: -**

CAB3366: *Housing Company – Revised Options and Business Case*  
Cabinet, 14 December 2022

BHP022: *New Homes Programme Update*  
Business and Housing Policy Committee, 21 September 2021

Presentation: *Housing Development Strategy*

Business & Housing Policy Committee 1 December 2020

CAB3160: *Establishing the Winchester Housing Company*  
Cabinet, 18 September 2019, and Council 25 September 2019

Presentation: *Housing Company*  
Business and Housing Policy Committee 18 June 2019

CAB3139(HSG): *Establishing the Winchester Housing Company*  
Cabinet (Housing) Committee 20 March 2019 and Cabinet 25 March 2019

CAB2990(HSG): *Establishing Local Housing Companies to Support New Homes Development*  
Cabinet (Housing) Committee 22 November 2017 and Cabinet 6 December 2017

CAB2911(HSG) – *Establishing Local Housing Companies to Support New Homes Development*  
Cabinet (Housing) Committee 22 March 2017

CAB2616(HSG): *Options for Increasing the Supply of Affordable Housing*  
Cabinet (Housing) Committee 1 October 2014

Other Background Documents: -

None.

APPENDICES:

Appendix A – Draft Shareholder Agreement

Appendix B – Draft Memorandum of Articles