

REPORT TITLE: ESTABLISHING THE WINCHESTER HOUSING COMPANY

CABINET (HOUSING) COMMITTEE - 20 MARCH 2019

CABINET – 25 MARCH 2019

REPORT OF PORTFOLIO HOLDER: Leader with Portfolio for Housing Services –
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WARD(S): ALL

PURPOSE

This report proposes the establishment of a wholly owned housing company to deliver units for sub-market rent on non-secure tenancies and provide shared ownership accommodation, initially through the partnered home purchase scheme (PHP).. The company will function as an ethical landlord, providing a more secure offer than the private rented sector currently delivers.

In accordance with CAB2990(HSG) 22 November 2017, the proposal is supported by a detailed five-year business plan.

RECOMMENDATIONS:

That Cabinet (Housing) Committee support the following recommendations to Cabinet:

1. That the proposal to establish a company limited by shares and wholly owned by the Council to deliver and manage sub market rented and shared ownership accommodation, including the partnered home purchase scheme (PHP) be approved. A further report will be made to Cabinet and Council before a final decision is made to establish the company and start trading.

2. That a combined loan facility & equity shareholding of £10m from the General Fund be approved to support the company's development activity.. This was previously approved in CAB2990 (HSG) 22 November 2017 as a £10m loan facility only.
3. That the five year business plan be approved.
4. That the Corporate Head of Housing in consultation with the Corporate Head of Resources, the Leader with Portfolio for Housing Services and the Portfolio Holder for Finance be authorised to:
 - a) Determine the balance of commercial and other loans to equity with due regard to state aid regulations.
 - b) Determine the terms of all loans.
5. That the proposed governance structure be approved, and:
 - a) Full Council assumes the role of shareholder of the company.
 - b) A Shareholder Advisory Group of three elected members of the Cabinet Housing Committee be established to advise the Council in its capacity as shareholder with senior officers to attend as required.
 - c) That the appointment of one elected member and two senior officers to the board of directors, namely The Chair of the relevant Policy Committee, The Corporate Head of Housing and the Head of New Homes Delivery, be approved.
6. That delegated authority be given to the Chief Executive in consultation with the Leader with Portfolio for Housing Services to appoint additional independent directors at a future date should the need arise.
7. That authority to finalise the articles of association and shareholder agreement be delegated to the Corporate Head of Housing in consultation with the Legal Services Manager, the Leader with Portfolio for Housing Services and external legal advisors.
8. To ensure that the company is able to commence trading from October 2019, that authority to undertake all remaining steps detailed at table 5 be delegated to the Corporate Head of Housing in consultation with the Legal Services Manager and Leader with Portfolio for Housing Services.

9. That delegated authority be given to the Corporate Head of Housing in consultation with the Corporate Head of Resources, the Leader with Portfolio for Housing Services and Portfolio Holder for Finance to:
 - a) Determine allocation of capital funds to be released for Partnered Home Purchase scheme (PHP) subject to the review of the first 10 properties included within the PHP pilot scheme

IMPLICATIONS:1 COUNCIL STRATEGY OUTCOME

- 1.1 The provision of good quality housing with a range of tenures is a strategic priority for the Council. Whilst it can deliver new housing for rent & shared ownership through the Housing Revenue Account (HRA), other options such as sub-market private rent can only be provided through a company structure.
- 1.2 Establishing a housing company to deliver housing tenures not permitted through HRA regulations is also a key priority for the Housing Strategy 2017-18 to 2022-23, and it will support priorities in the emerging Preventing Homelessness and Rough Sleeping Strategy 2019-24.
- 1.3 This report sets out proposals for establishing a housing company to address this issue. It should be noted that the core focus of the Council's development programme will remain on affordable/social rented units through the HRA. There are significant efficiencies achieved by building through the HRA and any housing company development will always make up less than 10% of the overall programme. However, the fact that it allows properties to be let on alternative tenures will help to establish mixed and sustainable communities and to address key aspirations of the Council's Housing Strategy.

2 FINANCIAL IMPLICATIONSFunding

- 2.1 CAB2990(HSG) approved the inclusion of a £10m loan facility from the general fund to support the housing company development in the capital strategy. Legal advice has stated that the intention of providing 100% debt funding to the housing company would be in breach of state aid rules and that any funding should be a mix of debt & equity. This is on the basis that external lenders rarely provide 100% debt funding, allowing for headroom on the value of loans issued.
- 2.2 Legal advice has suggested that the mix of debt to equity could range from 65% to 80%. For the purposes of the business plan I have assumed a level of 75% debt to 25% equity, resulting in a £7.5m loan facility and a £2.5m equity shareholding from the General Fund.

The housing company will be required to consider annual dividend payments out of retained profits to the General Fund as a return on the equity shareholding. This will be subject to profits being available for distribution.

- 2.3 If the creation of the housing company is approved, the intention is for the equity shareholding from the General Fund to be made available at the point the housing company begins trading. This would provide an injection of working capital to cover any initial up front costs, and fund the first housing development, potentially at Rowlings Road.

Partnered Home Purchase Scheme (PHP)

- 2.4 The PHP scheme was created by the Council in 2018 to provide the option of open market shared ownership to homebuyers. The scheme was initially launched as a pilot with funding to provide up to 10 homes. To date there have been 3 property completions.
- 2.5 The PHP scheme is currently administered as a General Fund activity and the proposal is to move the scheme into the housing company once the company has commenced trading. The funding has already been made available in the General Fund, so it will require a transfer of the existing properties to the housing company once it commences trading. Further transfers will then follow once the purchase price of future properties has been determined.
- 2.6 Each PHP proposal is individually appraised, with its suitability and financial viability assessed before a purchase is considered.

Tax

- 2.7 Trowers & Hamlins have provided tax advice on the implications for the housing company (**see exempt Appendix B**) covering corporation tax (including chargeable gains), VAT, SDLT, Construction Industry Scheme (CIS), PAYE and tax on enveloped dwellings (ATED).
- 2.8 Corporation tax will be payable at 17% from April 2020 on any taxable profits arising in the housing company, subject to available reliefs. The intention is for the housing company to return a small taxable profit each year, sufficient to cover all operational expenditure and a dividend payment on the equity shareholding provided by the General Fund. Sub market rents and the letting of shared ownership properties would be treated as trading activities. The staircasing on future shared ownership properties would be also be treated as a trading activity, with any profits arising being chargeable to corporation tax.
- 2.9 Chargeable gains could arise on future property sales within the housing company (selling value less original acquisition price). This would normally result in a taxable receipt for corporation tax purposes. It is however possible to create a chargeable gains group between two or more entities, in this case the Council and the housing company. The effect of having a chargeable gains group is that for tax purposes the selling price of the property is deemed to be the same as the original acquisition price resulting in no gain or loss. The true gain would still be recognised as an accounting profit but there will be no corporation tax arising.
- 2.10 VAT will be an additional cost for the housing company on operational costs including internal recharges and external supplies. Where the Council provides services to the housing company, including management costs & maintenance costs, it will need to charge 20% VAT on all standard rated

supplies. It may be possible to reduce the VAT charge on internal management costs from the Council by having joint contracts for employees who provide the services to the housing company.

- 2.11 Provided that land has not been opted to tax for VAT purposes, the transfer of land would be an exempt supply with no VAT being charged on the transfer. If land has been opted to tax it means that 20% VAT will be added to the land price on purchase which could impact on the financial viability of a scheme. There are mitigations available to recover any VAT incurred on options to tax (see tax advice section 4.7)
- 2.12 If the housing company enters into a design and build contract either with the HRA or an external contractor, the supply of completed dwellings can be zero rated for VAT purposes. This means that the resulting price to the housing company will not include any VAT cost.
- 2.13 Tax advice has suggested that it would be preferable for the housing company to have a separate VAT registration from the Council. The Council is generally able to recover VAT in full on expenditure incurred provided that it meets the de-minimus test on exempt supplies as outlined in section 4.5 of the tax advice. If the housing company was included within the existing Council VAT registration it could have an adverse impact on the recovery of VAT as the de-minimus limit could be exceeded. This will require more specialist advice before the housing company commences trading to ensure that the correct VAT structure is in place.
- 2.14 Stamp Duty Land Tax (SDLT) will be applicable on purchases of land from external developers, although there are some reliefs available to mitigate this cost. (See section 5.5 of the tax advice). Similar to the rules on chargeable gains, it is possible to create an SDLT group between two or more entities. On this basis any transfers of land between the Council and the housing company will be free of any SDLT. There is however a clawback of the relief claimed if the land leaves the SDLT group within three years of the original transfer.
- 2.15 The housing company needs to register for the Construction Industry Scheme (CIS), as outlined in section 6 of the tax advice. If the housing company contracts directly with the Council for construction services no CIS payments will be payable, but if it contracts externally it may need to account for CIS deductions.
- 2.16 PAYE will not be applicable to the housing company whilst it has no employees or paid directors.
- 2.17 Tax on enveloped dwellings (ATED), as outlined in section 7 of the tax advice is not applicable to local authorities or companies that are wholly owned by the local authority.

Business Plan

- 2.18 A summary of the business plan is shown at **exempt Appendix A1**. The business case demonstrates that the housing company can generate a small annual profit over the first 5 years of trading with the acquisition of 48 units for sub market rent and 10 properties for partnered home purchase.. In year 1 the housing company generates a profit after corporation tax & dividends of £13k, this increases to £58k by year 5.
- 2.19 The plan assumes acquiring land at market value, although the intention will be to acquire land at less than market value from the HRA whenever possible.
- 2.20 The plan also assumes the housing company contracts with the HRA to carry out the build phase of new developments.
- 2.21 The intention is for the Council to provide the management and maintenance support at an agreed price plus VAT at the standard 20%.
- 2.22 The plan proposes a £7.5m loan and £2.5m equity shareholding from the General Fund. The assumed cost of borrowing on a fixed rate loan is 5.19%. The actual cost of borrowing in the General Fund is lower, but as the loan needs to be an “arms length” commercial transaction the rate needs to be at market rate.
- 2.23 Dividend payments to the General Fund in relation to the £2.5m equity shareholding will be considered by the Board of Directors each year. The annual dividend payment of £28k per annum is assumed to be 1.10% of the £2.5m equity shareholding.
- 2.24 The graph at **Exempt Appendix A2** demonstrates that the equity investment of £2.5m is more than matched by the accumulated surplus of £2.7m over the same period. The intention will be to repay the equity shareholding by year 20 either from retained profits or the surplus arising from the sale of partnered home purchase properties.
- 2.25 Properties are assumed to increase in value by 3.00% per annum but this could fluctuate dependent on market conditions.
- 2.26 Key assumptions are listed below:

	Assumptions	Comments
Land	Market Value (MV)	Acquire HRA land at less than MV when possible.
Build Costs	Development Cost	Build contract with HRA
Rental Income	90% of Market Rent	
Management Costs	£300 per unit	Including VAT
Maintenance Costs	£563 per unit	Including VAT (Response & Voids)

Voids & Bad Debts	2.10%	For the plan duration
RPI	3.00%	For the plan duration
CPI	3.00% (CPI plus 1.00%)	For the plan duration
Market Value appreciation	3.00%	For the plan duration
Interest Costs	5.19%	Including debt management costs
Depreciation	Nil	Properties held for investment purposes
Dividends	1.10% of the £2.5m equity shareholding annually until repaid	Board of Directors to consider approval each year from retained profits.

- 2.27 The plan assumes acquiring 58 units over the first 5 years of trading, commencing with a 7 unit scheme at Rowlings Road.
- 2.28 The balance sheet demonstrates a gradual increase in the revaluation reserve to £1,555k by year 5. Net current assets include an operational cash balance at the end of each year.

3 LEGAL AND PROCUREMENT IMPLICATIONS

Legal

- 3.1 The Council has commissioned specific legal advice from Trowers & Hamlins to ensure any vehicle it establishes is in accordance with its legal powers; and that any future operation is compliant with those powers. The advice is included within **exempt Appendix C**.
- 3.2 The Council's power to set up and use a company or similar structure to support housing delivery depends on whether it is reasonable to use section 1 of the Localism Act 2011 and not section 9 of the Housing Act 1985.
- 3.3 Legal advice has confirmed that since flexibility of tenure cannot be provided within the HRA, the establishment of a company is justifiable and that the Council is entitled to rely on section 1 of the Localism Act.
- 3.4 Section 1 of the Localism Act provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the general power of competence. A local authority may exercise the "general power of competence" for its own purpose, for a commercial purpose and/or for the benefit of others. In exercising this power, it is still subject to its general duties (such as the fiduciary duties it owes to its rate and local tax payers) and to the public law requirements to exercise its powers for a proper purpose.

- 3.5 Legal advice has been obtained on the powers to transfer land to the company, powers to fund the company and state aid compliance.
- 3.6 Further legal guidance will be required to finalise the memorandum and articles of association, shareholder agreement, loan facility agreement and service level agreement. These requirements are addressed further at section 13 of this paper under "Governance arrangements", and also at table 5.

Land acquisition

- 3.7 The housing company can acquire land from the HRA, General Fund or externally from a land owner or property developer. Legal advice has been obtained on the statutory implications on the transfer of land, particularly general consents and the impact of state aid.
- 3.8 The legal advice also outlines whether it is possible to transfer land from the HRA or General Fund at less than market value, identified as being at an "undervalue".
- 3.9 Land acquired externally will be at market rate and subject to stamp duty land tax (SDLT), although some reliefs are available to negate the tax impact.
- 3.10 Land acquired from the General Fund will generally be at market value, as under Section 123 of the Local Government Act 1972, land transfers must be at "best consideration". There is however a general consent available where the value of any "discount" is £2 million or less and the disposal is likely to contribute to the achievement of well-being.
- 3.11 Land acquired from the HRA at market value is not deemed to provide financial assistance and will not therefore contravene state aid rules.
- 3.12 It is however possible, under Section 32 of the Housing Act 1985 to transfer vacant HRA land at any price and to any body, permitting transfers at an undervalue. However, for a transfer to be at an undervalue it must meet the conditions outlined in Section 25 of the 1988 Housing Act or have specific Secretary of State approval.

The conditions outlined in Section 25 of the Act are as follows:

- a) Any accommodation on the land must be vacant and to be demolished.
 - b) The disposal must be by way of freehold or a lease of at least 99 years.
 - c) The terms of the disposal must require the development to complete within 3 years of the disposal.
 - d) The Council may not be entitled under an arrangement made on or before the disposal to manage or maintain the completed units.
- 3.13 Under Section 32 of the 1985 Act, a transfer of habitable dwellings from the HRA to the housing company must be at market value and is limited to five dwellings in any financial year.

- 3.14 For any HRA land transfer where Secretary of State approval is sought, the application can take a minimum of 2-3 weeks but there is little evidence of councils seeking this approval.

Construction of properties

- 3.15 Given that each land transfer needs to be considered individually from a legal and tax perspective and that the transfer of completed properties from the HRA is limited to five units in every financial year, the construction element of each property needs to be separated from the land element.
- 3.16 As it would be considered to be a “connected company” under EU procurement rules, the housing company is able to contract directly with the Council without the need for a tender process. The housing company would be able to contract directly with an external contractor, but this would require a tender process subject to the public contract regulations 2015. Given that the housing company will have no trading history for at least the first year, it may need to seek a parent guarantee from the Council (see Section 6.3 of the legal advice). As the intended accommodation is sub-market rent and shared ownership a full parent guarantee is possible.
- 3.17 Contracting directly with the HRA would allow mixed or single tenure developments to be procured through the HRA with the price paid by the housing company being at “development cost”. Build contracts could be structured to allow for an initial deposit and stage payments, or a final payment on completion.

Procurement

- 3.18 Legal advice has confirmed that since the purpose of establishing the company is to deliver sub-market accommodation with some shared ownership rather than generate a financial return, it will be a contracting authority and will therefore fall outside the scope of EU procurement rules.
- 3.19 This being so, it will also be a “Teckal” subsidiary, allowing land to be transferred from the Council without breaching EU procurement regulations.
- 3.20 A “Teckal” subsidiary is a wholly owned company that benefits from contracts for works and services as a contracting authority with a public sector organisation, in this case the Council. As the housing company is being created to provide sub-market & shared ownership accommodation to meet the needs of the community, it is not deemed to have a commercial character and therefore qualifies as a “Teckal” subsidiary.

4 WORKFORCE IMPLICATIONS

- 4.1 Once established, it is proposed that the marginal capacity of existing teams is utilised to support company activity, charged on a cost recovery contractual basis at “arms length”, thus generating additional income for the Council.
- 4.2 As development activity will initially be marginal to the Council’s overall development programme, no additional resource requirements are anticipated at this stage.
- 4.3 Additional resources may be required as the housing company development activity increases over time. This may include employing direct staff to support the delivery of new properties and housing company administration
- 4.4 It is proposed that one member and two senior officers be appointed to the Board of Directors of the company, although these positions will not be subject to any additional remuneration. It is also proposed that there be flexibility to appoint additional independent (and possibly remunerated) directors to the Board should the need arise at a future date. These proposals are outlined in further detail at table 4.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The preferred option would be for the housing company to acquire land from the HRA or General Fund and have a separate build contract with the HRA to construct the properties. The housing company could acquire land from external developers, but there could be SDLT and VAT issues associated with the final cost. When appropriate, the housing company could lease properties from both the General Fund and the HRA for short to medium term use, and potentially purchase properties on the open market.

6 CONSULTATION AND COMMUNICATION

- 6.1 Officers have liaised with other local authorities who have established housing companies for a range of purposes.
- 6.2 A draft of this report was presented to TACT on 13 March 2019. A verbal summary of the feedback received will be provided for Cabinet (HSG) on 20 March 2019.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 As with all new build developments, properties will be built to a high standard and take into consideration the impact of the carbon footprint.

8 EQUALITY IMPACT ASSESSMENT

- 8.1 All policies & procedures (for example lettings policies and rental agreements) will be subject to a full equality impact assessment.

9 DATA PROTECTION IMPACT ASSESSMENT

9.1 None required.

10 RISK MANAGEMENT

10.1 Key risks and opportunities are outlined below.

Risk	Mitigation	Opportunities
<p><i>Property</i></p> <p>High and increasing development costs</p> <p>Property values fall</p> <p>Insufficient demand</p>	<p>Detailed financial modelling based on current building costs and stress-testing for price increases</p> <p>The business plan recognises that short-term fluctuations in the market are inevitable but the outturn is positive over the length of the plan</p> <p>Evidence shows that there is a consistent demand for both sub and market rented housing</p>	<p>Property values increase</p> <p>Flexibility and control of the portfolio</p>
<p><i>Community Support</i></p>		<p>Capacity to meet housing need that cannot be met by the HRA.</p> <p>Raising standards in the private rented sector.</p> <p>Create different private rented sector opportunities.</p>
<p><i>Timescales</i></p> <p>Company not established in time to support specific initiatives</p>	<p>Resources are in place to ensure that the company is established in time to commence trading from October 2019. This reflects the expected availability of new units</p>	

Risk	Mitigation	Opportunities
	and maintains consistency between Council and company accounting periods.	
<i>Project capacity N/A</i>		
<i>Financial / VfM</i>		
<p>Investment doesn't achieve projected return</p> <p>Tax rules/HMRC requirements impacting on viability</p> <p>Future Government restrictions on prudential borrowing rules to limit allowable public sector debt</p> <p>Brexit - worst case scenario: shortage of labour and materials; house price downturn; rising demand for affordable housing as a result of rising unemployment; rising cost of loan finance</p>	<p>Detailed financial modelling Careful selection of investment option Sensitivity analysis completed</p> <p>Additional tax advice is detailed at exempt Appendix B</p> <p>All developments will be viable individually and not dependent upon profits from future developments</p> <p>Potential development is continually appraised before contracts are agreed and any loan finance is based on fixed rates</p>	<p>Generation of profit on disposal</p> <p>Maximise available tax relief where possible</p>
<i>Legal</i>		
<p>Council acting outside of relevant powers</p>	<p>External specialist legal advice on company governance is detailed at exempt Appendix C</p>	
<i>Innovation N/A</i>		
<i>Reputation</i>		
<p>Reputational impact of the company on the council</p>	<p>A marketing and communications plan will be developed to ensure</p>	

Risk	Mitigation	Opportunities
Reputational damage in the event of the company's failure	that the branding and image of the company contribute to a positive view of the Council's services. Risks reviewed and evaluated on a regular basis as part of corporate risk management process	
<i>Other N/A</i>		

11 SUPPORTING INFORMATION:

Background

- 11.1 There are currently circa 150 housing companies in England, with numbers expected to reach 200 by 2020. The majority are wholly Council owned and provide affordable housing as well as market housing for rent and sale.
- 11.2 The development of new affordable housing is a key priority in the Council strategy and the new build programme has been extended following the removal of the HRA debt cap in October 2018. In addition, the Council continues to work closely with its housing association partners to maximise their development activity within the district.
- 11.3 However, the Council Strategy 2018-2020 also recognises the need for a range of affordable housing products such as sub-market rent, which can only be delivered through a company structure.
- 11.4 In March 2017 CAB2911 (HSG) set out an initial proposal to establish a dual structure with a development company for commercial activity, a subsidiary charitable arm to deliver some affordable housing with affordable rented units being purchased by the Council through the HRA. However, financial modelling demonstrated that this would be significantly more expensive (as a result of commercial borrowing costs, land transfer costs and tax implications) than the current approach where the HRA directly funds development on Council land.
- 11.5 In November 2017 CAB2990 (HSG) proposed the creation of a single company limited by shares to focus specifically on the delivery of sub-market rent. Since these proposals were approved, costs have changed and it has been necessary to revisit the original financial modelling.
- 11.6 This exercise has shown that the single company model remains the most appropriate way to deliver what will always be a marginal element of the Council's development programme.,

12 LOCAL CONTEXT

- 12.1 Demand for affordable housing in the Winchester district is considerable. As at 31 January 2019, 1,352 households were registered for affordable housing in the district. The numbers of bedrooms required is illustrated below, at table 1.

Table 1: Housing register by bedroom

1 bedroom	2 bedroom	3 bedroom	4 bedroom
845	338	132	37

- 12.2 With the demand for affordable housing continuing to rise, for many households accommodation in the private rented sector is the only option. Whilst the Council's duty to homeless applicants can be discharged by identifying suitable private rented housing, there is little available accommodation within Local Housing Allowance rates. Consequently, very few homeless households and those facing homelessness have secured private rented accommodation (see table 2, below). Deposits and letting fees add to the cost of this option, making it unaffordable for many.

Table 2: Homelessness and the private rented sector

	2016-17	2017-18
Advice & prevention – total households	841	743
Households securing private rented accommodation (with and without landlord incentives)	41	55
Homelessness duties discharged – total households	43	39
Households securing private rented accommodation	4	6

- 12.3 The Council's "City Lets" initiative works with private landlords by offering a lettings and management service. It has been successful, with 33 participating landlords currently providing 42 tenancies. However, many landlords are unwilling to let properties at or near local housing allowance levels and so it will be challenging to expand the scheme much further.
- 12.4 Not only does Winchester's private rented sector present significant challenges for both low income and vulnerable households, landlords are struggling too. A 2018 study by Gatehouse Bank¹ concluded that the city's buy-to-let landlords are the most vulnerable in Britain comparing affordability with available property lettings.
- 12.5 The study considered 122 cities and towns, taking into account how long available rentals had been on the market and the affordability ratio between average salaries and rents. Table 3 illustrates the top five locations where landlords were found to be most at risk to these issues..

¹ <https://gatehousebank.com/news/467-62404-winchester-is-home-to-the-most-vulnerable-landlord>

Table 3: L Ratio of lettings to affordability

Rank	City/town	Average property price	Average time on market (days)	Annual yield (%)	Rent as a % of earnings
1	Winchester	£549,706	248	3.1	56.2
2	Cambridge	£446,938	251	2.9	45.6
3	Chichester	£413,343	269	3.3	45.8
4	Warwick	£353,197	254	3.0	40
5	Reading	£415,192	230	3.4	46.7

- 12.6 The company will function as a flexible and ethical landlord offering accommodation to households who are or threatened with homelessness, and those who may be unknown to the Housing service thus far but nonetheless struggle to access suitable private sector accommodation.
- 12.7 There are also those households who would be owner occupiers but lack the capital required for a deposit. They too are confined to the private rented sector for the foreseeable future, and depend upon longer-term sub and market rented properties. A 2017 study by Savills² found that to ensure 40% of households could afford a home in the south-east, the property must cost no more than £250,000. However, according to property web site Rightmove, in 2018 the average detached property in Winchester sold for £808,015, with attached properties and flats selling for £498,643 and £319,751 respectively.
- 12.8 As a landlord, the company will also have flexibility to waive letting fees and deposits, potentially letting longer assured shorthold tenancies than the six months that are routinely offered by letting agents.

13 GOVERNANCE ARRANGEMENTS

- 13.1 A proposal for the company name will be included within the final report seeking approval to set the company up.
- 13.2 A number of governance structures have been considered and the structure outline below in table 4 is considered to be the most appropriate. This view is underpinned by legal advice.

Table 4: Proposed governance structure

Function:	
Sole Shareholder	Full Council taking decisions reserved for the shareholder in the company's articles of association and shareholder agreement. This would include approval of the annual company budget and business plan.
Shareholder advisory group	Three elected members, appointed to oversee company activity, provide strategic guidance and

² <https://www.theguardian.com/business/2017/oct/04/affordable-homes-south-east-england-savills-report>

	advise full council in its capacity as shareholder. Senior officers to attend the group meetings as required. A draft Terms of Reference for this group is attached at Appendix D .
Board of directors	For the management of the day to day affairs of the company. One elected member and two senior officers appointed by the Chief Executive in consultation with the Leader with flexibility to appoint additional independent directors at a future date should the need arise. The elected member and senior officers will not receive any additional remuneration for this responsibility.
Operational management team	For the discharge of any duties and responsibilities delegated by the Board of Directors.

- 13.3 In addition to the Council's role as shareholder, it will oversee company activity as both a funder (decisions around loans to the company and the terms thereof); and as a land and property owner (decisions around making land and/or properties available to the company).
- 13.4 All limited companies must have articles of association. "Model" articles of association are the standard default article a company can use, and are prescribed by the Companies (Model Articles) Regulations 2008. It is proposed that the example attached at **Appendix E**, which is the current model articles for companies incorporated on or after 28 April 2013, be used as a base template for further discussion with legal advisors.
- 13.5 Although not required by company law, a shareholder agreement will be put in place to identify how the Council and the company will interact. It will establish the balance between the company's ethical commercial flexibility and the council's strategic oversight as sole owner. Unlike the articles of association the shareholder agreement is a private contract between the Council and the company and it will not be registered at Companies House.
- 14 NEXT STEPS
- 14.1 A summary of next steps is set out below, at table 5. It is envisaged that the company will commence trading from October 2019.

Table 5: Next steps

Action
Finalise governance agreements: <ul style="list-style-type: none"> ▪ Memorandum and articles of association ▪ Shareholder agreement ▪ Shareholder advisory group Terms of Reference ▪ Service level agreement for services provided by the General Fund and HRA ▪ Funding agreements (loan facility and equity)

Additional legal work: <ul style="list-style-type: none"> ▪ Development agreement with HRA – Likely to be a standard JCT contract (so only if required) ▪ Application for Secretary of State consent (if required)
Appointment of: <ul style="list-style-type: none"> ▪ Shareholder Advisory Group ▪ Board of directors/operational management team ▪ Company secretary ▪ External auditor
Agree company name, branding and logo
HMRC registration for all relevant taxes
Directors' insurance
Company bank account
Revisit business plan prior to commencement of trading
Develop operational policies: <ul style="list-style-type: none"> ▪ Allocations and lettings ▪ Housing management ▪ Property services ▪ Procurement procedures ▪ Accounting
Accounting, systems and schemes of delegation

15 OTHER OPTIONS CONSIDERED AND REJECTED

15.1 CAB2911 (HSG) considered the more complex option of dual company structures, one a company limited by guarantee and one in the form of a community benefit society. Whilst the business case for the dual structure was marginally more positive than the single company structure, set up, management and governance would be more complex and with little or no immediate benefits to the Council.

15.2 As a result, CAB2990 (HSG) recommended that initially the Council establish a single company structure. This would not preclude the establishment of a subsidiary charitable company at a later date to exploit potential tax advantages.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB2990 (HSG) 22 November 2017 – Establishing Local Housing Companies to Support New Homes Development

CAB 2911 (HSG) 22 March 2017 – Establishing Local Housing Companies to Support New Homes Development

CAB 2626 (HSG) 1 October 2014 – Options for Increasing the Supply of Affordable Housing

Other Background Documents:-

None.

APPENDICES:

Exempt Appendix A1 – Housing Company Business Plan Report March 2019

Exempt Appendix A2 – Housing Company Business Plan - Graphs

Exempt Appendix B – Tax Advice Note (22 February 2019)

Exempt Appendix C –Legal Advice Note (22 February 2019)

Appendix D – Draft Terms of Reference for Shareholder Advisory Group

Appendix E – Template for model Articles of Association