

COMMUNITY SCRUTINY COMMITTEE

DATE: 24TH NOVEMBER, 2017

SUBJECT: THE ESTABLISHMENT OF A COUNCIL OWNED HOUSING COMPANY

RECOMMENDATIONS/KEY DECISIONS REQUIRED:

1. That a wholly council owned Housing Company ('the Company') is created to build homes for sale and rent and act as a catalyst for further regeneration activities.
2. That the Company is incorporated as a limited company with the Council as the sole shareholder.
3. That the Articles of Association and Shareholder consent for the Company be approved.
4. That the Company's Business Plan is prepared and agreed by the Board of the Company and submitted for formal approval by the Executive Board of the Authority prior to its implementation.
5. Any loan from the Council, as agreed in the Company's business plan, be repaid at a commercial rate of interest as agreed by the Director of Corporate Services.
6. That the set up costs of the Company (estimated to be £100,000 in 2017/8), be recovered by way of a loan arrangement (at a commercial rate set by the Director of Corporate Services) with the duration to be agreed within the detailed business plan. In the event that the Company is not established, then the costs of implementation will be met from reserves.
7. That the board of directors comprises one member of the Council, two officers and two external appointments.

Reasons

1. Deliver the commitment in the affordable housing plan by introducing innovative ways to deliver additional housing.
2. Provide housing over and above the Council's general needs offer via the Housing Revenue Account. The Company will act as an additional development vehicle focussing on the provision of additional housing for rent and sale.
3. Increase investment and stimulate the housing market by providing competition.
4. Meet recognised and identified housing need and assist in ensuring the right type and size of homes are delivered where need is greatest.
5. Offer other types of tenure to meet expectations, such as low cost home ownership, to help secure housing for local people wishing to remain in the county.
6. Complement existing and planned regeneration initiatives.
7. Act as a vehicle to receive community planning benefits.
8. Support wider Council objectives in terms of health and the well-being of future generations, providing more jobs and training opportunities for local people and ensuring that homes are targeted to those in need.
9. Support the supply chain.
10. Develop innovative models of housing design and specification.
11. Increase inward investment by securing additional grant funding.

To be referred to the Executive Board / Council for decision:

Exec Board Decision Required YES – 27th November, 2017

Council Decision Required NO

EXECUTIVE BOARD MEMBER PORTFOLIO HOLDER:-

Cllr. Linda Davies Evans (Housing Portfolio Holder)

Directorate:

Communities

Head of Service/ Report Author

Robin Staines

Designations:

Head of Housing and Public
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EXECUTIVE SUMMARY
COMMUNITY SCRUTINY COMMITTEE
24TH NOVEMBER, 2017

THE ESTABLISHMENT OF A COUNCIL OWNED HOUSING COMPANY

1. This Executive Summary sets out the reasoning behind, and practicalities of, setting up a wholly owned council local housing company. It explains the need for accelerating house building in Carmarthenshire to supply the much needed additional homes as well as create local jobs; training and apprenticeship opportunities; support the supply chain and deliver the regeneration ambitions of the Council. The full report can be found attached.
2. This approach should be complemented by the continuing use of Housing Revenue Account (HRA) resources to commission new homes (where it is appropriate and prudent to do so). The HRA's main focus must remain to ensure we meet our statutory duty of maintaining the existing council owned homes to the Carmarthenshire Homes Standard.
3. The Council's affordable housing commitment of March 2016 states that alternative housing delivery options would be assessed to increase the number of homes in the county. Following this, work was undertaken on developing a draft business case on the option of establishing a local housing company. This was presented to the Executive Board in February 2017, which agreed:
 - To confirm that the business case for establishing a Local Housing Company (LHC) is a viable option and would significantly add to the delivery of our Affordable Homes Commitment in providing more homes for sale and rent.
 - To confirm officers be delegated to establish the LHC, its governance structures and detailed five year business plan.
 - To confirm officers can commission expert external assistance in establishing the LHC, developing the governance structures and detailed business plan in terms of the legal, financial and technical issues.
4. The Company will not involve the transfer of existing Council housing or a TUPE of existing staff. The council owned existing housing stock will continue to be managed and maintained directly by the Council.
5. The rationale for accelerating and stimulating house building stems from the Local Development Plan which identifies a need for 1,620 new homes a year. However, in the year to April 2017, only 426 new homes were completed on large sites. Furthermore, like most parts of Wales, we have seen a dramatic reduction in the number of active construction firms involved in new house building. We also know that average household income is below the Welsh average, and in some parts of the county the income to house price ratio is over 5:1. Our Housing Choice Register also records a significant amount of unmet housing need. This is no more so than in rural areas where values are high and supply very limited.

6. The Council's affordable housing programme includes a commitment to meet both needs and aspirations. The Plan commits to increasing the number of affordable homes by 1,000 over five years. This delivery has already started through a range of projects. Whilst this is ambitious, it is also believed that we would need to look at new ways of delivery to significantly exceed the 1,000 home target. As a result, the Delivery Plan also confirmed that additional delivery vehicles would be assessed and evaluated.
7. An expert in the field was commissioned in October 2016 to look at the high level options available and a draft business case for the preferred option (establishment of a local housing company) was developed. It was agreed to proceed to undertake the detailed work required to establish a 100% council owned Local Housing Company. Following the Executive Board's decision on the 17th February 2017, and to get the Company to legal incorporation with a sound and financially sustainable business plan, a steering group of senior officers was established. Consideration was given too:
- Accelerating more house building to meet housing need, stimulate economic growth and job creation
 - Creating new sources of revenue to support the Council's Medium Term Financial Strategy and continue to invest in services;
 - Attracting investor interest in an area with low house values and/or a lack of competition (sales and rental)
- The group has been supported by specialist external legal advice.
8. The group found that there are a number of development vehicles and company structures open to the Council to meet strategic objectives. Furthermore it considered critical success factors when evaluating available options (such as control, flexibility and innovation, and deliverability). These were applied to potential vehicles and company status options.
9. The Group evaluated a number of different delivery models (as outlined in the attached report). These included the Housing Revenue Account, Housing Associations, joint ventures, LHC direct acquisition and a LHC as a development vehicle. The group found that a wholly owned local housing company was the most advantageous way of meeting strategic objectives. This confirmed the position outlined in the draft business case. Following this, the Steering Group assessed the options regarding its legal status. There are a number of corporate vehicles that the Council could consider when establishing the Housing Company. Given the primary rationale is to make a profit by providing rent and sale properties, which would suggest that the for profit company limited by shares is the best option.
10. The legal powers for the Council to set up a Company are well established. These are generally around the general powers that a Local Authority has to set up companies to deliver the services it has a duty to supply, in addition to its general powers of Well Being. The Local Government Act 2003 gives local authorities the express power to trade and to establish a company for the purposes of doing so. However we are subject to restrictions within regulation 2 Local Government (Best Value Authorities) (Power to Trade) (Wales) 2006 with regard to this.

The statutory guidance emphasises that when local authorities consider the use of the well-being power, they must also have regard to their fiduciary duty to council tax payers.

11. Section 24 Local Government Act 1988 provides the Council, as a housing authority, the power to provide any person with financial assistance for the provision of rental housing accommodation. The powers concerning the disposal of land from the Council to the Housing Company are complex and involve a consideration of powers to dispose (in turn dependant on whether the land is held in the Council's general fund or its HRA), the issues connected with financial assistance under the 1988 Act and the issue of State Aid. As such site specific advice will be sought for each disposal (or type of disposal) considered.
12. A Company Limited by Shares is the preferred model being adopted by authorities when setting up new companies to deliver new services. The share structure enables the Council to receive dividends, to trade shares and to sell assets/undertakings thereby maximising future flexibility. The Council should ensure that proposed funding for the Housing Company is within its strategic budgets and approval as part of its capital programme. There will need to be co-ordination between the company's business plan and ensuring items the Council is expected to fund/lend are included within the council's budget process.
13. The Company, although owned by the Council, will have a separate entity, have its own identity, staff and Board of directors. However, it could have its registered office address as County Hall to keep costs down as well as utilise existing Council support services (although the Company could chose to procure such services from elsewhere).
14. The Company would be governed by its Articles of Association (Appendix One). The Company must trade on a stand-alone basis from day one, and account for its income and expenditure under the terms of the various Companies Acts accounting conventions.
15. These stipulate that the Company would be a separate Company with a separate Board – and therefore under separate regulation arrangements to the rest of the Council. It is essential that all stakeholders recognise that the Company structure is intended to be independent and the relationship between the Council and the Company is one of sole shareholder. This must be explicit to shareholders, directors and employees who have a relationship with both organisations.
16. The Council will influence the strategic direction of the Company through appointment of Directors and agreement of the annual business plan.
17. The shareholders agreement (Appendix Two) sets out the boundaries where the Company cannot make decisions without referring back to the Council. The consent also defines the boundary between Council influence and day to day operations as managed by the Board of Directors.
18. With regard to the governance arrangements, the Council's Executive Board would be responsible for ensuring the Company delivered housing development in accordance with the agreed business plan and would receive performance reports at regular intervals. The Executive will also be responsible for approving any variations to the delivery of the business plan.

19. The Council, as the only shareholder, would appoint the Directors of the Company (who would be under a duty to ensure that all their decisions were in the interests of the Company and not the Council, as required to do so by the Companies Act 2006). These duties include the duty to promote the success of the Company and to avoid conflicts of interest. The Companies Act also governs the liability of the Directors and in order to avoid conflicts of interest, they should not be involved in the Council's decision making process for lending money, transferring land or the planning process. It is important that all directors have the necessary skills to discharge these duties and responsibilities and have the requisite skills, experience and knowledge. The Company will also require employees who will be responsible for the day to day operational management of the Company. As the company will not initially require full time staff it is proposed to second existing staff whose time will be recharged to the Company.
20. The basis for the Company is that it will be financially supported by the Council. This will include start-up costs as well as long term lending. The Company's initial operations will be funded through the Council Fund, and this financial support could include working capital and up-front resources as well as staffing support. It will also include on lending from the Council to the Company – to support the development and/or acquisition of housing – under an explicit and agreed lending framework or agreement. Typically, though not always, funds on-lent to the Company can be provided from the Council at a premium compared to the rates borrowed: this can also provide a risk buffer to the Council against future increases in financing costs.
21. Specialist tax advice will be taken on both the detailed business plan and on each development – this includes for Corporation tax, VAT, and Stamp Duty Land Tax (SDLT). Generally the company will be liable for such general taxation.
22. Any financial assistance to the Housing Company by way of providing below market rate funding or transferring land at an under-value may constitute State Aid. Therefore funding arrangements between the Council and the Housing Company must be correctly structured so that State Aid, as defined above, does not arise. However there is an exemption to State Aid for service of a general economic interest and therefore if the properties are developed or acquired for letting as social/affordable or intermediate housing.
23. The Council will need to determine whether the Company is a "body governed by public law" for the purposes of the 2015 Procurement Regulations.
24. The Housing Company must have a "commercial character" if it is to not be governed by the Regulations. The Housing Company cannot be said to have a "commercial character" unless it is free to operate as a commercial company would do so and without significant intrusive Council controls.
25. A full and complete five year business plan will be complete by February 2018 which will include the detailed activities of the company, the financial projections and assumptions as well a risk register. Key company policies will need to be developed (such as The Welsh language, Board and officer appointments including remuneration and expenses, and Housing standards). It is envisaged most of these will replicate existing policies of the Council (where applicable).

26. It is anticipated that the company will be free to provide a range of products to help meet both need and aspirations. This will potentially include:
- Homes for rent at various levels
 - Homes for sale at a range of values
 - Intermediate type products such as shared ownership, leasehold schemes for the elderly and rent to buy.
27. Unlike the Council, the Company will not be bound by the suspension of the Right to Buy. The company would not be in a position to offer secure tenancies. Management and maintenance of the portfolio will be undertaken by way of a Service Level Agreement with the Council.
28. A number of risks and potential liabilities have been identified which are rehearsed in the full report.

DETAILED REPORT ATTACHED ?

YES – Report and Appendix 1 - 2

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed Robin Staines

Head of Housing and Public Protection

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
YES	YES	YES	NONE	YES	YES	YES

1. Policy, Crime & Disorder and Equalities

The aim of the Company is to assist in the delivery of the Council's wider wellbeing objectives and affordable housing commitments.

2. Legal

The legal powers to establish the company are detailed in the accompanying reports. The Council will be the sole shareholder of a subsidiary body. Any members acting as directors of the company should avoid any conflict of interests and adhere to the 7 principles of company directorship as defined in the 2006 Companies Act.

The relationship between the Council and Company will be directed by the Shareholder Agreement.

3. Finance

The company will be a separate legal entity, limited by Shares which will enable the Council to receive dividends, and to have the flexibility to trade shares and to sell assets/undertakings should it wish to do so.

The Housing Company will require financial support by the Council, both in the form of loans to cover start-up costs as well as long term lending to support its activities. The 5 year Business Plan which is to be developed by February 2018 will detail the financial projections and funding requirements of the Company, and the Council will need to properly consider:

- Whether the business case for a Housing Company is viable;
- The risks and rewards of investing/lending;
- The wider (possibly alternative) interests of local tax payers

The Council will need to ensure that any proposed funding for the Company is within its strategic budgets and approved as part of its capital programme.

Specialist tax advice in relation to Corporation tax, VAT, and Stamp Duty Land Tax (SDLT) will be taken on the detailed business plan and on each proposed development undertaken.

4. Risk Management Issues

Risk management issues and mitigation are addressed in the attached report.

5. Physical Assets

The company will rely, initially, on the Council making available access to physical assets and financial resources. These will be detailed in the Company's annual approved business plan.

6. Staffing Implications

The company will, at least initially, utilise Council officers and services. The cost of these will be fully recharged to the Company.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: Robin Staines

Head of Housing and Public Protection

1. Scrutiny Committee

Members of the Community Scrutiny Committee were consulted on the 24th November. A verbal update on the comments made will be provided to Executive Board on the day.

2. Local Member(s)

3. Community / Town Council

4. Relevant Partners

5. Staff Side Representatives and other Organisations

Section 100D Local Government Act, 1972 – Access to Information

List of Background Papers used in the preparation of this report:

THESE ARE LISTED BELOW.

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Exempt Report to Executive Board on 27 th February, 2017 - Carmarthenshire Local Housing Company – The Business Case	Agenda Item 13	http://democracy.carmarthenshire.gov.wales/ieListDocuments.aspx?CId=131&MId=679&Ver=4