



**Council**

**Tuesday, 23 May  
2017**

**Matter for  
Information and  
Decision**

**Title:                                   Housing and Property Development within the Borough**

**Author:                               Stephen Glazebrook (Interim Head of Community Services)**

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## **1. Introduction**

- 1.1. A briefing paper was circulated to all Members in October 2016 regarding the proposal to establish a Local Housing Company for the purpose of building new homes and property development within the Borough.
- 1.2. At its meeting on 01 November 2016, the Policy, Finance and Development (PFD) Committee resolved that:
  - a. Authority be given for officers to develop an implementation plan and Business Case for approval by this Committee
  - b. That initial legal costs associated with this proposal be capped at £10,000 up to the formation stage of the Company.
- 1.3. To give the Local Housing Company a separate identity from the Council, it proposed to call the company Bushloe Developments Limited ("the Company").

## **2. Recommendations**

- 2.1. That a Council-owned housing and property development company is created to build Houses for rent and for sale and other property development.
- 2.2. That the Articles of Association of Bushloe Developments Limited be approved.
- 2.3. That final approval of the Business Plan is delegated to the Section 151 Officer.
- 2.4. Two Officers of the Council - Anne Court (Director of Services / Monitoring Officer) and Christopher Raymakers (Interim Finance and Accountancy Manager) be appointed as Directors of the Company.
- 2.5. That Stephen Glazebrook (Interim Head of Community Services) be appointed as an Independent Executive Director and will also perform the role as Company Secretary.
- 2.6. That the land at Bennett Way, South Wigston is sold to the Housing Company at market value.
- 2.7. That £100k is vired from existing budgets to provide an initial loan to the Company to cover its operating costs for 2017/18 and any contingencies that may arise.

## **3. Information**

- 3.1. The Articles of Association Company govern how the Company will be run and are attached at **Appendix 3** and should be read in conjunction with this report.

- 3.2. A 5-year Business Plan for the new Company has been prepared and is attached at **Appendix 2**. The Company is scheduled to make a small loss in the first year moving into profit in the second year and as completed properties come on stream, income will steadily increase year on year.
- 3.3. The number of Directors to manage the Company shall not be less than 3. For as long as the Company is a controlled company, the Officer Director's shall not be paid but may be paid reasonable expenses in connection with attendance at meetings.
- 3.4. Whilst other options were considered in the presentation to Members in October 2016, it was generally felt that a Council-owned Housing Company is the most suitable option for Oadby and Wigston to help finance housing regeneration and contribute to the delivery of the Council's housing target. Additionally, this approach has the potential to generate additional revenue for the General Fund.
- 3.5. The Council has initially identified a number of key sites that it wishes to develop
  - Bennett Way, South Wigston
  - Churchill Close, Oadby
  - Various garage sites across the Borough

In addition it is intended to purchase a number of properties advertised for sale on the open market. In the first year it is intended to concentrate on the Bennett Way site in South Wigston. In addition there may be other Council owned sites that could be made available for development. Later on in the process there may be the opportunity for the Company to acquire sites on the open market.

- 3.6. The waiting list for social housing is a vital source of information which currently stands at around 500 applicants and the incidence of homelessness has increased by over 50% in the past 12 months.
- 3.7. The evidence clearly shows that there is a general shortage of housing to rent in Oadby, Wigston and South Wigston.
- 3.8. The Company would finance the construction by borrowing money from the Council on a commercial basis.
- 3.9. The properties would be let at either affordable or market rent and any properties developed for sale would be sold at market value. Any profits would be payable to the Council as dividends.
- 3.10. At the time of writing, the Council is able to obtain fixed rate funding from the Public Works Loans board at c2.7% for 40 year borrowing. Unless a compelling business case is presented at a future date, the intention of the Council would be to ensure all transactions with the wholly-owned Company would be based on fixed rates of interest in order to mitigate any financial risks due to future adjustments to variable rates over the loan/investment period. At the same time, the Council would look to fund the Company from other sources (e.g. capital receipts) to avoid the costs of borrowing and thus to increase net income from investments in the Company.
- 3.11. The Company although owned by the Council would be a separate entity, have its own identity and Board of Directors. However it could have its registered office as Bushloe House to keep costs down and use Council support services although the Company might choose to procure services from elsewhere.

- 3.12. The most appropriate legal structure is a company limited by shares as this will enable it to trade and generate surpluses from trading activity and distribute proceeds back to the Council as the only shareholder. This type of structure is widely accepted as most commercially appropriate and would be more valuable if it were successful and sold as a going concern in the future by the Council
- 3.13. The Council could transfer or provide land by way of a building licence into the Company on commercial terms. As the new Company will have no credit rating or track record it is unlikely to be able to borrow funds from traditional lending institutions. Therefore, the Council would need to act as the Company's funder and lend money to it in the short to medium term. The Council will need to have a legal charge over the Company's assets and an appropriate loan agreement and debenture in place to safeguard the Council. The Company will use the proceeds from rents and any sales to repay the loan. As it develops a track record it could then borrow from financial institutions in the future. The land and financial resources would then be used to build homes for rent, shared ownership or for sale. A Risk Assessment has been carried out and is attached at **Appendix 1**.
- 3.14. Legal advice has been sought from the law firm Sharpe and Prichard who have confirmed that the Council has the power to set up a commercial company to trade and provide a financial return to the Council. This includes transferring land to the Company to the Company so long as it is for the best consideration or at a price which achieves identifiable well being objectives. The Company does not have to pay for the land at the point of transfer. If the Council chooses to defer the receipt until the properties are built the issue of state aid would have to be considered at that time.
- 3.15. In terms of providing finance to the Company, so long as the Council lends the funds on a commercial basis as outlined above, it can do so from its own resources by way of internal borrowing or from borrowing from other sources itself and charging the Company an appropriate level of interest. In order to safeguard the Council's investment, it will also need to ensure that the Company's Business Plan is viable and that it can afford to repay the loan.
- 3.16. The Company will need to competitively procure and appoint a developer to build the properties and comply with European Union procurement requirements as appropriate. As the Council would be exercising control of the Company, there may be a need for it to provide guarantees under any contract entered with a developer due to the lack of any trading history of the Company at the beginning of its life. However, such guarantees would not extend to the Company's liabilities and indebtedness in the future unless the Council chose to provide such guarantees.
- 3.17. If approval is given to set up the Company, the Council will continue to receive ongoing external legal and financial advice on issues such as:
- setting up and training directors on the Company's board;
  - tax and financial accounting and audit advice;
  - advice on whether the Company's activities have any implications for Council tax setting;
  - drafting of loan funding agreements, debentures , standing orders and other associated legal documentation;
  - advice on land transfer / appropriation and stamp duty;
  - Right to Buy / Right to Acquire implications ( if any);

- State aid; and
  - Business Plan sensitivity analysis and financial appraisal and cash flow projections.
- 3.18. With regard to the governance arrangements, it is proposed that a Council Advisory 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 Advisory Board consisting of the Leader of the Council, 2 Councillors together with the Chief Executive and the Section 151 officer will also be responsible for approving any variations to the delivery of the Business Plan.
- 3.19. The Council as the only shareholder would appoint all 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 following:
- to act with powers;
  - to promote the success of the Company;
  - to exercise judgment;
  - to exercise reasonable care, skill and diligence;
  - to avoid conflicts of interest;
  - not to accept benefits from third parties; and
  - to declare interest in proposed transaction or arrangement
- 3.20. From a practical perspective, they will be charged with the responsibility of:
- ensuring the Business Plan that is approved by the Council is delivered;
  - submission of the annual return to Companies House;
  - production and submission of annual accounts to Companies House and HM Revenue and Customs;
  - notification of any changes in the Company's Officers or in their personal interests;
  - notification of a change to the companies registered office;
  - allotment of shares; and
  - registration of charges.
- 3.21. The same Act also governs the liability of the Directors and in order to avoid conflicts they should not be involved in the Council's decision making process for lending money, transferring land or planning process. It is important that the Council's representatives nominated to serve as Directors have the necessary skills to discharge these duties and responsibilities. It is therefore proposed that up to two Officers of the Council - Director of Services / Monitoring Officer and the Interim Finance and Accountancy Manager - are appointed to act as Directors of the Company who have the experience and capability to make decisions in relation to the management of housing development schemes and large scale financial and project management experience.

#### **4. Conclusion**

This report sets out how new house building in Oadby and Wigston can be achieved. This approach will enable the Council to achieve its house building objectives and provide it with the overall control as the sole shareholder and any surpluses will be returned to the Council.

## Background Documents:-

- a. Report entitled 'Housing Development in the Borough' of the Interim Head of Community Services presented at the Policy, Finance and Development Committee Meeting on 01 November 2016;
- b. Appendix 1 - Risk Assessment
- c. Appendix 2 - Business Plan
- d. Appendix 3 - Articles of Association
- e. Appendix 4 - Equality Assessment (Initial Screening)

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Implications	
<b>Financial</b> (CR)	<b><i>CR1 In/Decreasing Financial Resources</i></b> - The Local Housing Company will generate additional income for the general fund.
<b>Legal</b> (AC)	Our Legal advisors have confirmed the Council has the necessary powers to set up a commercial company.
<b>Risk</b> (SG)	Please see risk assessment attached at <b><i>Appendix 1.</i></b>
<b>Corporate Priorities</b> (SG)	The new Housing Company will seek to address the Council's Corporate Priorities by using modern methods of construction including the highest levels of energy conservation, providing green and safe places for people to live.
<b>Vision and Values</b> (SG)	The new Housing Company will seek to work within the Council's chosen Vision and Values and will adopt innovative solutions to provide new housing in the Borough.
<b>Equalities</b> (SG)	An Initial Screening is attached at <b><i>Appendix 4.</i></b>
	Equality Assessment:- <input checked="" type="checkbox"/> Initial Screening <input type="checkbox"/> Full Assessment <input type="checkbox"/> Not Applicable