

Report to: Cabinet

Date of Meeting: 11 September 2017

Report Title: Hastings Borough Council Housing Company

Report By: Andrew Palmer, Assistant Director Housing and Built Environment

Purpose of Report

To recommend that the council establishes a wholly owned Housing Company limited by shares. To consider and agree the company's initial Business Plan including the basis on which the council will loan and invest in the company.

To agree the Articles and Memorandum of Association and the Shareholders agreement.

The appropriate delegations and operational policies will be implemented in support of the new company, in accordance with the business plan.

Recommendation(s)

1. That the council establishes a wholly-owned Housing Company limited by shares
2. That the council delegates authority to Chief Financial Officer in consultation with the lead member, the Chief Legal Officer and Director of Operational Services to establish further companies should separate vehicles (companies) be advantageous for related purposes.
3. That the council delegates authority to the Chief Financial Officer to provide a working capital loan to the company of £120,000.
4. That the council approves the Articles of Association attached at Appendix B
5. That the Shareholder and Loan Agreement attached at Appendix C is approved
6. That the council agrees the Business Plan attached at Appendix A
7. That the Housing Company's delegations to officers set out in the report and appendices are agreed.
8. That officers put in place the necessary operational policies covering such matters as rent setting, letting policy, rent arrears and debt recovery in advance of the company acquiring its first property.
9. That delegated authority is given to the Directors of the Company, in agreement with the Council's Chief Legal Officer to make minor amendments to the constitutional documents of the company, as required.

Reasons for Recommendations

Cabinet agreed in principle to the establishment of a Local Housing Company in December 2016. This report sets out details of the proposed governance arrangements, the initial Business Plan and outlines the funding being made available from the council to the company. Cabinet are asked to recommend these to council.

Introduction

1. At Cabinet on 5 December 2016, Members considered and agreed a proposal to create a Housing Company wholly-owned by the council. The company would be designed to initially acquire and provide housing for rent in the Borough with the potential to undertake development in the future. Members resolved that a detailed Company Business Plan and governance arrangements be developed for a wholly-owned Local Authority Housing Company, subject to final approval by Full Council. Funding for the company would follow the production of a viable Business Plan.
2. Members are referred to the original report which outlines the rationale for establishing the Company and the key legal and financial requirements.
3. The Housing Company to be known as 'The Hastings Housing Company Ltd.' (HHC) will be a company limited by share. The council will be the sole shareholder.

Business Plan

4. This sets out the aspirations for the company and contains specific proposals for initial lending by the council.
5. The Company will undertake trading in three areas:
 - Investment of up to £5m per annum for three years for the purchase and provision of housing on the open market for private sector rent.
 - The acquisition of residential property for rent from developers in lieu of capital receipts it would receive as part of wider regeneration proposals.
 - Development or the receipt of housing on land owned or purchased by the council, for sale or rent.
6. The Housing Company's Business Plan objectives for the first three years are to invest up to £5m per annum for three years into the residential property market, acquiring properties for private let. In addition to the above, the company may also receive properties from HBC or others in exchange for equity. Full details of the initial purchases can be found in the attached Business Plan. The company will primarily focus on acquiring post 1980's, 2 and 3 bedroom freehold houses. These are considered the easiest to let; in significant demand; and would be the least problematic to maintain. When all these factors are combined they will provide the company with the safest long term return on its investments.

7. Attention is drawn to the section of the business plan that deals with Houses in Multiple Occupation (HMO). HMOs provide an excellent investment opportunity but they are in short supply. Current planning policy makes the creation of new HMOs difficult and the business plan has not included them, although the company will further consider opportunities to acquire them, should they become available.

The company has no stated intention to dispose of its investments, but will have the option of disposing of assets in the future and realising a capital receipt, which can be returned to the council if considered desirable or necessary.

As sole shareholder, the council will exercise control of the company.

8. The shareholders and loan agreement sets out the role of the council as a sole shareholder and provides parameters for what the company can and cannot do without the council's consent. It details how the company will conduct its business and how it will report back to the council. A number of references are made to the Business Plan.
9. Subject to these Articles, the Directors are responsible for the management of the Company's business and may exercise all the powers of the Company. The Council, as sole shareholder, may by special resolution direct the directors to take or refrain from taking specified actions.
10. It is proposed that initially there will be four directors, who will take decisions collectively. The quorum for the transaction of the business will be three directors. The four directors will be the chair of the Charity Committee, the Assistant Director of Housing & Built Environment, Income Generation Manager and the Chief Accountant. The directors will appoint a chair for company meetings. The council will retain the power to appoint and remove Directors. For the avoidance of doubt, directors of the company will not receive a salary under the approved business plan.

Council Investment in the Company

11. It is important that a distinction is drawn between the operating profit/loss of HHC and the returns available on the council's investment. In essence HHC will be making a limited operational profit as, in common with all property investment companies the bulk of its assets are counted in the balance sheets for the company. This is standard practice for companies of this type. Many of HHC's costs appear as receipts for HBC, e.g. the recharges for staff time. The company will, where it is getting market value, buy in professional services from HBC.
12. Although the company makes a limited operating profit it is over time reducing the debt held against its assets. This situation is reflected with the council's investment as, over time its debt to the PWLB is reduced. The council will need to extend working capital to HHC Ltd in the form of a loan or equity.
13. HBC's return on investment is materially affected by the amount of reserves committed to financing the company. The starting position is that HBC will borrow the entire amount from the Public Works Loan Board (PWLB) and capitalise the company through a mix of debt and equity. The terms of the council's loan to the company are largely dictated by the requirement to comply with the rules regarding

State Aid. Following the European Commission guidelines the debt/equity split should be 60/40% and the indicative rate of interest that the council can charge is 4.78% (although this will need recalculating at the time the loan is made). For planning purposes it is assumed that the rate of interest on the council's loan from the PWLB will be 3%.

14. The council will need to ensure that it complies with its Treasury Management Policy and make a Minimum Revenue Provision (MRP) for the loan/s that it takes from the PWLB.

15. A headline summary of the council's investment position is seen in the following table:

Amount of reserves (per £5m investment)	Council's return on investment @ year 4 (first steady state year)	Council's return on investment @ year 15
£0	£228,635	£301,068

Notes

1. Steady state year is when the full proposed investment is deployed and steady rents are being received.
2. ROI includes decreasing debt/ownership of equity.
3. Cash flow is the HBC position after MRP is deducted from net receipts
4. The return increases year-on-year as the loan amortises and the principal decreases exponentially.

Memorandum and Articles of Association

16. The attached Memorandum and Articles of Association sets out how the company will operate and details how decisions will be reached.

Operational Policies

17. In advance of the first purchase a range of operational polices will be finalised covering:

- Rent and lettings policy
- Sales policy
- Debt recovery policies
- Conflict of interest policy

The assumption is that where properties are retained by the company they will be let on Assured Shorthold. It will be important that the Company adopt a fully commercial approach to both letting and debt recovery.

Given that directors of the company will also be employees of the council a clear and unambiguous conflict of interest policy will be drawn up which makes clear the respective roles and responsibilities. Such a policy will also need to cover instances where other officers are providing services to the company.

Policy Implications

Equalities & Community Cohesion

18. Increasing the supply of good quality housing for rent or sale will extend housing options for a range of income levels and enable more people to establish roots in their desired neighbourhoods. This should therefore make a positive contribution toward community cohesion.

Crime & Fear of Crime

19. Empty buildings and derelict building land can be targets for a range of anti-social behaviour and provide opportunities for criminal behaviour. Bringing property back into use and possibly redeveloping land can therefore make a positive contribution to community safety.

Risk Management

20. The purpose in commissioning external legal and financial advice in respect of the options available to the council has been to assist in the early identification of the key risks. A risk assessment is attached at Appendix D covering the company business plan and governance arrangements.
21. The main risk is that relating to the repayment of loans to the company from the council. As a 100% council owned company, the council will be responsible for any shortfall and repayment of the loan where the income of the company is less than its outgoings. The council will carry the risk where all or some of the company's investments generate a loss rather than a surplus. However, each property purchase or project progressed will be subject to a strict financial viability assessments. In the event market conditions change radically the company model allows for the company to dispose of some, or all, of its housing assets to another provider or organisation at in the future, should it wish to exit from the initiative.
22. The Income Generation Board will expect to receive quarterly financial reports which will be referred to Cabinet, as appropriate.

All risks associated with the formation and operation of HHC will, in accordance with the draft Income Generation Strategy, be entered into the project or corporate risk registers, where appropriate

Environmental

23. Nothing specific at this stage.

Economic & Financial Implications

24. The financial implications are set out in the body of the report and the attached business plan.
25. In addition to any operating profits the council will lend to the company at market rates thereby deriving a further income from its lending. The council would be

recompensed for any services provided to the company, and would need to do so to avoid State Aid issues.

Organisation Consequence

26. The company will start with no permanent full-time staff. Hastings Borough Council will provide services to the company as and when required, for which it will receive remuneration. Existing council staff will be recharged to provide services to the new company, making use of skills already available. There will be the need to buy in additional expertise and advice from time to time and this has been factored into the business plan.

Anti-Poverty

27. Increasing the supply of housing will contribute towards meeting local housing needs, particularly in respect of good quality housing for rent. Demand for all forms of housing outstrips supply. Regenerating neighbourhoods and improving the local housing offer would provide a catalyst for further inward investment and can help generate new employment opportunities. More homes and employment in Hastings is the only sustainable way of ensuring that low income households, often least able to secure or retain suitable housing, are able to escape poverty.

Wards Affected

All Wards.

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	Yes
Risk Management	Yes
Environmental Issues	Yes
Economic/Financial Implications	Yes
Human Rights Act	No
Organisational Consequences	Yes
Local People's Views	
Anti-Poverty	Yes

Additional Information

Appendix A – Business Plan

Appendix B – Memorandum and Articles of Association

Appendix C – Shareholders' Agreement

Officer to Contact

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