

## AGENDA ITEM No. 7

CABINET  
7 FEBRUARY 2017

HEAD OF ENVIRONMENTAL HEALTH AND HOUSING

REPORT NO. EHH1704

KEY DECISION: YES

### PRIVATE SECTOR RENT HOUSING COMPANY

#### SUMMARY AND RECOMMENDATIONS:

Officers have been investigating the role of a housing company in helping the Council to meet the Borough's housing needs. This report describes the housing delivery vehicle that most closely suits the Council's purpose and sets out the steps needed to establish a wholly owned housing company for the purpose of developing or purchasing property for letting for private rent.

The Cabinet is recommended that:

- Approval in principle be given to setting up a wholly owned housing company initially to develop and/or purchase property for private rent lettings.
- The Head of Environmental Health and Housing, in conjunction with the Solicitor to the Council and the Head of Financial Services
  - prepare a brief and seek quotes for external advice on housing market demand, legal, financial, insurance and tax issues arising from setting up a company; and
  - progress the detailed arrangements for setting up the housing company, in consultation with the Cabinet Members for Health and Housing and Corporate Services, as required.

#### 1. INTRODUCTION

- 1.1 The purpose of this report is to seek approval to a programme of work to set up a wholly owned housing company that can meet identified housing needs, initially to be focussed on developing or purchasing properties to provide private rent accommodation let on assured shorthold tenancies.

## 2. **BACKGROUND**

### **Demand for Private Rent**

- 2.1 The Brough is an area of high housing demand. The Council is already active in housing by planning for the delivery of its Core Strategy housing targets and, in partnership with registered providers of social housing (RPs); by securing provision of new social housing.
- 2.2 There is a case for taking a more direct role in the housing market in particular to meet the need for private sector rent properties to help meet a demand that has increased significantly since the financial crash in 2008. The key driver of demand for this type of housing is linked to the fact that homeownership has become unattainable for those on average incomes due to high prices and stricter lending criteria applied by mortgage lenders. Many of those who previously would have become homeowners are now renting in the private sector.
- 2.3 Other sources of demand for this tenure include young professionals who like the flexibility offered by privately rented properties, recent migrants and those supported in the sector by housing benefit.
- 2.4 This level of demand has led to rising rents, indicating supply is not matching demand. The Council recognises the need to intervene by increasing the supply of homes in this tenure and also by seeking to raise standards and improve the quality of accommodation. In addition to these benefits the Council could create an income stream.

### **Council Housing in Rushmoor**

- 2.5 In 1995 the Council transferred its Stock to Rushmoor Housing Association (now First Wessex). Following the transfer the Council closed its Housing Revenue Account (HRA): the account through which all council house income and expenditure was recorded. Since that date any direct participation in the provision of housing requires the Council to reopen an HRA. The financial and administrative burdens that come with an HRA are a disincentive to direct involvement in housing provision. An alternative approach is to use a company to deliver housing.

### **The 8 Point Plan**

- 2.6 In response to its increasingly challenging financial position the Council has put in place the 8 Point Plan to reach a position where the Council is less dependent on government Revenue Support Grant.
- 2.7 The Council is seeking to take a more entrepreneurial approach to the way it does business. This is not separate from the Council's more traditional statutory functions but is complimentary. Key projects in the 8PP include housing initiatives that might generate an income.

## **Council Priorities**

The creation of a housing company to provide private rented homes will contribute to the Council's priorities, principally

- Sustaining a thriving economy and boosting local business.
- Supporting and empowering our communities and meeting local needs.
- Cleaner, greener and more cultural Rushmoor
- Financial Sound and Services fit for the future

## **Options for a Housing Company**

2.8 Officers have researched the options for setting up a company by:

- Taking advice from our Treasury Advisors: Arlingclose
- Considering the approach taken by other local authorities (Woking, Eastleigh and Test Valley)
- An initial discussion with Bevan Brittain, Solicitors.

2.9 Following consideration of the information gathered (See appendix 1 for a summary of the advantages and disadvantages of different models), officers recommend that a wholly owned company would be the most appropriate model for the Council to pursue at this time. This will be able to respond quickly to housing opportunities while still providing the Council with adequate control.

## **3. DETAILS OF THE PROPOSAL**

3.1 The proposal is to take steps to set up a wholly owned company; whose purpose will be initially to purchase or develop properties to let for private rent. The proposal will affect the whole of the Borough.

### **Power to set up a company for this purpose**

3.2 S95 (1) of the Local Government Act 2003 permit a local authority to do for a commercial purpose anything it is authorised to do for the purpose of carrying out its ordinary functions.

3.3 S24-26 of the Local Government Act 1988 gives local authorities the power to provide financial assistance to a person providing housing that will be privately let where the occupiers' immediate landlord is not a local authority i.e. the immediate landlord will be the company not the Council.

3.4 S2 of the Local Authorities (Land) Act 1963 grants local authorities the power to develop land.

### **What needs to be in place?**

- 3.5 Evidence of the need for private rented housing. We have evidence that there is a shortage of private rent properties from our work with private sector landlords and on homelessness prevention. High demand and rising rents has led to poorer quality property being brought into the sector with consequences for the work of our Private Sector Housing Team.
- 3.6 A clear purpose for the company – Initially this will be for the development and/ or purchase of property to be let in the private rental market, although the Council will want to build in sufficient flexibility to allow expansion into other areas at some future date. This may include setting up other companies for other housing purposes.
- 3.7 A Memorandum of Association - a statement of the intention to form a company' and Articles of Association - the rules by which the company will operate. These are needed before the company can be registered.
- 3.8 A Business Plan to set out the purpose and activities of the company.
- 3.9 An Operational Agreement that establishes the relationship between the council and the company, identifying the circumstances when the company will require approval by the Council for its activities, and monitoring and reporting arrangements. The Council will exercise strategic control of the company through the terms of this document.
- 3.10 A board of directors will need to be established to run the day-to-day business of the company. The structure and arrangements for the board will be considered in detail as part of the work to set up the company and a specific recommendation will be brought back on this once the necessary information and advice has been obtained.
- 3.11 A plan for funding the company and how the Council will finance this. Consideration needs to be given to grant funding, loan funding, investment options and issues of state aid. Planning for tax liabilities will also be required.

### **Advice**

- 3.12 Throughout the process the Council will need housing market, legal, finance, insurance and tax advice.
- 3.13 The Head of Environmental Health and Housing will need authority to prepare a brief, seek quotes and appoint consultants as necessary. It is anticipated that costs will be in the region of £12,000.

### **Alternative Options and Consultation**

- 3.14 An officer group has considered the alternative options and has consulted other local authorities and advisors. The principle features of the options

are summarised in appendix One. Establishing a company is a proposed action in the draft Council Plan.

#### **4. IMPLICATIONS (of proposed course of action)**

##### **Risks**

4.1 Seeking to deliver private sector rented housing to meet local needs from which the Council will receive an income, is a step change in the way the Council delivers services. This will present risks both financial and reputational. In order to mitigate these risks the Council will need to make sure that

- the Business Plan is robust, is monitored regularly to make sure that it aligns lawfully with the interests of the Council
- The Operational Agreement provides sufficient control over the operation of the company and robust financial procedures.
- The Council develops and exit strategy
- Competent legal, financial, insurance and tax advice is procured

##### **Legal Implications**

4.2 There is a risk that the government's approach to Council owned companies could change. The Council could be challenged on the purpose of the company. The Council will need to be clear that its primary purpose is to provide private sector rented housing to meet a local need not to provide "Council Housing" and therefore no need to set up a housing revenue account.

##### **Financial and Resource Implications**

4.3 Initially the costs will relate to procurement of advice but in the long term decisions will need to be made on providing capital to the company both as working capital and for investment in property. Staff resources will be needed to bring the company into existence and some administrative support from Council officers is likely to be necessary once the company is operating, although this would be on a fee basis.

4.4 The Council will need to borrow to finance investment into the wholly owned company. Current quoted long term borrowing rates are around 2.5%. Minimum Revenue Provision may also be progressively incurred. The wholly owned company will be required to pay a rate of return on the Council's investment at commercial rates which may be sufficient to wholly or partly meet the Council's borrowing costs.

##### **Equalities Impact Implications**

4.5 A preliminary Equalities Impact Assessment has been prepared and there are no equalities issues arising from this report.

## **Other**

- 4.6 Managing public perceptions to make sure that this is not seen as a return to Council Housing.

## **5. CONCLUSIONS**

- 5.1 Setting up a wholly owned company is being proposed to enable the Council to engage in the housing market to increase the supply of private rented property. This will help meet the demand for private rent, provide good quality homes and provide an income stream to the Council.
- 5.2 This proposal clearly reflects the Council's stated ambition to act directly in the private sector housing market as expressed in the draft Council Plan.
- 5.3 Setting up a company in the manner suggested will be an important contributor to developing a more commercial approach to the delivery of services and will contribute to the future financial sustainability of the Council.

## **BACKGROUND DOCUMENTS:**

Housing Strategy and Enabling New Housing Initiatives file  
Advice from Arlingclose  
Presentation from Judith Barnes of Bevan Brittan

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## APPENDIX 1

<b>Wholly Owned Company (WOC)</b>	
A wholly owned company using a company limited by shares. Control would be through a Board of Directors appointed by the Council and the Council is the majority shareholder	
<b>Advantages</b>	<b>Disadvantages</b>
Profits can be paid as dividends	Taxation – liable for corporation tax on its profits and VAT will need to be charged
Can sell shares in the future	Funding – the WOC will have no resources and will require the Council to lend monies to develop or acquire properties as well as working capital requirements. Will need to comply with State Aid restrictions.
Stamp Duty Land Tax Relief – Group relief on land transfers into the company	HRA and Right to Buy – model could be challenged leading to accounting via an HRA and tenants having the right to buy.
The company is clearly identified with the Council	The WOC could be subject to procurement rules depending upon the extent to which it is operating as a genuine commercial entity.
The Council could use its existing resources to administer the company, subject to sufficient skilled resource being available	The Council may not have the expertise to support the company with accounting and tax matters.
<b>Special Purpose Vehicle</b>	
A company wholly owned by a third party but contractually bound to deliver the housing objectives of the Council	
<b>Advantages</b>	<b>Disadvantages</b>
The potential concerns around a Council owned company being viewed as a device to avoid controls might be addressed more robustly.	The Council would not be a shareholder and would have no representation on the Board.
May not be bound by EU procurement rules due to “Sole Supplier exception”.	May be more costly and take longer to set up.
The Council would not be directly responsible for the corporate accounting and tax affairs of the Company and would not need to be involved in the administration of the company on an ongoing basis.	There may be concerns about the degree of control the Council has and its ability to enforce any contractual obligations. May be some perceptual and reputational issues with the general public
<b>Joint Venture</b>	
The Council enters into a partnership with another organisation to form a delivery vehicle and jointly deliver the Council’s housing objectives	
<b>Advantages</b>	<b>Disadvantages</b>
The Council would own a stake in the	The Council would share any gain made

delivery vehicle	by the Delivery Vehicle.
The potential concerns around a Council owned company being viewed as a device to avoid controls might be addressed more robustly.	Partnership arrangements could be complicated to negotiate and certain decisions could require full agreement of both parties causing delay.
The Council could be seen as one step removed from the Delivery Vehicle if the objectives are not realised.	Costs are likely to be higher than will a wholly owned company.
<b>Direct Council investment in Housing</b>	
There is an understanding that low numbers of housing units can be owned and let by Councils without the need for a Housing Revenue Account, therefore, the Council could own and manage a limited number of properties	
<b>Advantages</b>	<b>Disadvantages</b>
The Council has control	It is unclear what number of units would require an HRA. Could be any number between 50 and 250. An HRA would bring with it a number of accounting restrictions and financing requirements.
The Council benefits from all of the income but bears all the risk.	The Council may not have all the skills necessary to invest and manage directly. These would need to be procured
No liability for Corporation Tax	Could be vulnerable to the Right to Buy