

WELWYN HATFIELD BOROUGH COUNCIL
SPECIAL CABINET 24 JANUARY 2017
REPORT OF THE EXECUTIVE DIRECTOR (RESOURCES, ENVIRONMENT AND
CULTURAL SERVICES)

PROPERTY COMPANY – OUTLINE BUSINESS CASE

1 Executive Summary

- 1.1 The recently published Medium Term Financial Strategy clearly highlights the financial challenges which the council is facing over the coming years. Reductions in Government grant, pressures to sustain and improve frontline services, along with restrictions on increases in Council Tax are all contributing factors which mean many councils are looking to operate more commercially in order to improve the financial resilience of the council in the longer term.
- 1.2 The Council has historically acquired properties to provide for future service requirements or to contribute to the regeneration of a particular area (e.g. Hatfield Town Centre). It should be noted that investments undertaken purely for income return could only be made through a company in order to comply with the requirements of the Localism Act 2011.
- 1.3 The purpose of this report is to present an outline business case to create a property company for Welwyn Hatfield Borough Council in order to enable commercial trading for property related investments. It should be noted that if Members agree with the outline business case to establish a company, a further report will be submitted to a future Cabinet meeting setting out the operational and governance structure of the company as well as a business plan detailing its potential activities with a view that it will become operational during the 2017/18 financial year.
- 1.4 The proposals set out below in relation to the creation of the property company have been developed with the assistance of independent specialist advisors including consultants from East of England Local Government Association (EELGA) and Pinsent Masons for legal advice as they have a wealth of experience supporting a number of local authorities setting up various trading companies.

2 Recommendations

- 2.1 Cabinet agrees in principle to the establishment of a company which would be limited by shares and owned wholly by the council.
- 2.2 Cabinet notes that a further report will be submitted to a future meeting setting out the operational and governance structure as well as the business plan for the company, before any trading activity commences.

3 Explanation

Background

- 3.1 The council currently owns and manages a wide range of assets in its estate portfolio, for example, neighbourhood shopping parades, industrial units, garages, residential flats and retail space in Hatfield Town Centre. These are partially held for a mixture of social and urban town centre regeneration purposes rather than purely for delivering significant commercial benefits. These assets are in the main directly managed by the Council's existing Corporate Property team who have built up considerable expertise and skills in this area.
- 3.2 The establishment of a Council owned Property Company is proposed as an income generating investment vehicle. Its aims is to make significant annual contributions to the Council's General Fund in the face of funding shortfalls, and by doing so, put services on a more sustainable footing to support local people.
- 3.3 It should be noted that the Council has considerable experience in managing property assets and as the owner of nearly 9,000 housing stock in the Borough, the Council has a sound knowledge base to ensure that there would be reasonable returns on the investment portfolio of the new Company.
- 3.4 The main objectives of the company are summarised below:
- Invest in a portfolio of income generating assets that deliver returns to the Council; The MTFs assumes revenue income equating to £250k per annum will need to be achieved for 2018/19 and £500k per annum from 2019/20 onwards;
 - Develop a portfolio approach that balances risk and reward across a spectrum of assets; and
 - Reduce long term costs and risks to the Council tax payers
- 3.5 It is important to note that if the Council does not set up a separate Property Company, it could not undertake any property investments purely for income return. It could, however, continue to invest in Property Funds as part of our treasury management activities, but the Council has no control of the property portfolio and has no influence over how the assets are managed.

Property Company structure

- 3.6 There are a number of different types of corporate vehicle available. The advice received by Pinsent Masons has indicated that a company limited by shares is most appropriate as it tends to be used for those operations which have a commercial character, whereas a company limited by guarantee or industrial & provident society are more relevant for those which are set up to deliver community purposes or are set up for charitable purposes. Indeed, during the passage of the Localism Act through Parliament as a bill, it was understood that the Department for Communities and Local Government was referring to a company limited by shares as the company structure within the application of the Localism Act. It is therefore recommended that the council's property company structure would be set up as a company limited by shares wholly owned by the council.
- 3.7 In order to leave sufficient flexibility for the council to include wider commercial investment opportunities in the future, it is intended that a group structure would apply where a series of separate subsidiaries could be set up to undertake ring-

fenced activities or partner with a private sector partner on a project by project basis, for example, a subsidiary can be set up to deliver affordable housing in the Borough. The advantage of a group structure is that different funding packages could be developed for each subsidiary and more importantly if any discrete venture were to fail, it would not cross contaminate any other ring-fenced activities or serve to collapse the overall structure.

Project team

- 3.8 An officer project team has been created to look at the possible operational and governance structure, as well as the potential investment opportunities available to the property company, this team is working alongside specialist consultants from EELGA and Pinsent Masons. It should be noted that once this outline business case is approved, further workshops will be held with the project team looking at the details about the operational and governance structure of the property company as well as the business plan for the company which will determine the type of investment opportunities that the property company should invest in.

Funding for the property company

- 3.9 The precise funding mechanism for the Company will be considered as part of the development of the full business plan. However, such a mechanism is likely to include a loan or series of loans from the Council to the Company to enable it to invest in accordance with the business plan. Under such circumstances, borrowing costs would be met by the Company. Loans would be made available to the Company on a basis which is compliant with the terms of funding which are similar to those which would be achievable by a private funder given the importance of Competition law and State Aid rules. It should be noted that £5m in each of the next two years have been set aside on the capital programme as a source of funding from the council to the property company.

Implications

4 Legal Implication(s)

- 4.1 The council has power to establish a property company under the “general power of competence” introduced by Section 1 of the Localism Act 2011, which indicates that a local authority can do anything that a private individual is entitled to do, subject to certain statutory limitations. However, it should be noted that if a local authority wishes to do something for a commercial purpose, it must be done through a company under Section 4 of the same Act.

5 Financial Implication(s)

- 5.1 The set up costs for the property company will come from existing budgets.
- 5.2 The capital programme for 2018/19 and 2019/20 includes the provision of a loan of £5m per annum from the council to the property company.
- 5.3 The Medium Term Financial Plan assumes £250k of net revenue income will be returned to the council from the property company to support the General Fund in 2018/19 and that this will increase to £500k per annum from 2019/20 onwards.

6 Risk Management Implications

- 6.1 Failure to set up trading arrangement in strict compliance with legislation – Likelihood Low, Impact Medium. It should be noted that officers have engaged with specialists from EELGA and Pinsent Masons who have worked with a number of local authorities to establish a property company.
- 6.2 Delay in setting up the property company due to lack of capacity to manage additional work – Likelihood Low, Impact Medium.
- 6.3 Outline business case not agreed – Likelihood Low, Impact High
- 6.4 Insufficient Council expertise in managing commercial investments – Likelihood Low, Impact High.

7 Security & Terrorism Implication(s)

- 7.1 There are no known security and terrorism implications associated with this recommendation.

8 Procurement Implication(s)

- 8.1 The appointments of EELGA and Pinsent Masons have been made in line with Council's procurement rules.

9 Climate Change Implication(s)

- 9.1 There are no known climate change implications associated with this recommendation.

10 Link to Corporate Priorities

- 10.1 The subject of this report is linked to the following Council's Corporate Priorities:
- Engage with our Communities and Provide Value for Money.

11 Equality and Diversity

- 11.1 There are no Equalities implications arising from this report.

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Background papers to be listed (if applicable)