

Item No.	Classification: Open	Date: 1 April 2015	Decision Taker: Leader of the Council
Report title:		Formation of Housing Company	
Ward(s) or groups affected:		Borough wide	
From:		Gerri Scott	

RECOMMENDATIONS

1. That the Leader of the Council agrees officers set up a company limited by shares with a £1 share issued to the council for the purpose of delivering new homes. The proposed name of the company is Southwark Housing Company Ltd.
2. That the Leader of the Council agrees to the appointment of three initial directors for the company: Strategic Director of Housing and Community Services, Strategic Director of Finance and Corporate Services and Director of Legal Services.

BACKGROUND INFORMATION

3. In July Cabinet 2014, the Strategic Director of Housing and Community Services was instructed to establish a wholly owned and controlled council 'vehicle' to secure future funding capacity for the programme of delivering 11,000 new homes.

KEY ISSUES FOR CONSIDERATION

Southwark Council owned and controlled delivery vehicle

4. The establishment of a wholly owned and controlled funding vehicle, as instructed by July 2014 cabinet, is in progress, with the vehicle to be in place for any appropriate operations from April 2015.
5. In the past a number of financial, legal and regulatory issues have resulted in Registered Providers ("RPs") taking a lead in delivering new social housing, even where this is on council owned land. The main reason for this is that, prior to the Localism Act 2011, HRA reform and grant reductions from the Homes and Communities Agency, councils were in a less favourable position than RPs to both build and maintain large scale stock, as borrowing levels were limited and restrictions applied to the amount of income that could be retained from council housing.
6. This position has evolved over recent years. Due to a combination of changes in the Localism Act, HRA reform, HCA grant reduction, and interest from institutional investors, councils are in a similar or better position as RPs in terms of the opportunities available to them to deliver new social housing. Councils

also have land holdings both within the HRA and general fund which can be used for new council housing.

7. It is anticipated that the vehicle will be used on a case-by-case basis as befits the particular circumstances of any given specific development opportunity, in order to maximise the council's overall development capacity.
8. Officers are currently working on which schemes are appropriate for development in the company. Legal advice is that land should be transferred from the Council to the company and that the company should then let the build contracts. As such it is assumed that schemes completed or on site will remain within the HRA. The initial view is that mixed tenure schemes currently being worked up would be appropriate for detailed appraisal. In these cases, delivery through the company may be more efficient and would likely reduce the risk of limiting the Council's capacity to undertake direct delivery elsewhere.
9. In consultation with the council's external legal advisors, Trowers & Hamblins, and the Council solicitor it has been recommended that it will be a company limited by shares with on incorporation a single £1 share issued to the Council. This will allow a company to be registered in April initially with Model Articles. A cross council project team has been formed to look at the best specific Articles for the company and also to set up the necessary governance and operating structures.
10. It is proposed that the initial directors are: Strategic Director of Housing and Community Services, Strategic Director of Finance and Corporate Services and Director of Legal Services. The proposed name of the company is Southwark Housing Company Ltd.

Policy implications

11. The council plan confirmed our ten Fairer Future promises, a set of key commitments to the residents and businesses of Southwark that outline the key objectives we will be working towards as an organisation to create a fairer future for all. The updated promises were approved by cabinet on 2 July 2014.
12. The establishment of the wholly owned subsidiary vehicle will impact on two of these promises in particular through providing an alternative route for creating investment in the social housing for the borough. Such investment decisions may be investment in our properties but may also be to improve the conditions of local area for all of Southwark residents.
 - **Promise 1 – Value for Money**

We will continue to keep council tax low by delivering value for money across all our high quality services. The structured asset investment approach will look at priority estates and set out the options for each estate to ensure that Value for Money is achieved from the investment being made.
 - **Promise 3 – Quality Affordable Homes**

We will improve housing standards and build more homes of every kind including 11,000 new council homes with 1,500 by 2018. We will make all council homes warm, dry and safe and start the roll out of our quality kitchen and bathroom guarantee. This approach will enable priorities for financial resources to be balanced between existing stock and the delivery of the new homes programme.

Community impact statement

13. Improving housing in Southwark is central to the council's wider plans to create a fairer future for all. Access to appropriate, good quality, genuinely affordable homes is important not just for residents but also to the wider economy and essential to shaping a borough that all residents can be proud of and which is truly sustainable into the future.
14. Consultation and engagement on the future of council housing has been an integral part of the approach that the council has taken. Local residents continue to be engaged through a number of mechanisms. The engagement process has comprised wide ranging community conversations, consultation through formal mechanisms, including Tenant council and Homeowners' council and the establishment of a sounding board, the Futures Steering Board (FSB) made up of tenants and homeowners. Further outcomes of the on going community engagement were reported to cabinet in November 2014. This engagement has been wide ranging and designed to be inclusive to all of the borough's diverse communities providing a range of mechanisms to provide all residents with the opportunity to engage.
15. Community Impact Assessments have been carried out as the engagement has been planned and taken place and formed an integral part of the consultation project plans. The impact assessment validates the community engagement process by acting as a quality assurance mechanism to ensure the engagement plan takes into account all of the protected characteristics set out in the Equality Act 2010 (pregnancy/maternity, age, disability, gender and gender reassignment, marriage or civil partnerships, race, religion or belief, sex and sexual orientation) and any adjustments that are necessary in respect of these groups.

Resource implications

Financial issues

16. There are minimal financial implications at this stage of the formation of the wholly owned subsidiary company. These are limited to registration costs with Companies House and internet service providers to protect the domain names associated with the company. These costs will be met from within existing Housing Budgets.
17. As the role of the company is established the operational and governance details such as establishing the relationship between the company and the council; procurement arrangements and taxation will need to be worked through.

Staffing issues

18. There are no staffing implications at this stage of the formation of the company.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

19. Cabinet on 22 July 2014 resolved that strategic director of housing and community services be instructed to:

- put in place the necessary capacity to oversee further programme delivery
 - undertake a comprehensive appraisal of the overall performance of current Housing Revenue Account (HRA) assets and report back the outcome of this analysis to cabinet in December 2014
 - bring a further report to cabinet in December 2014, setting out the proposed pipeline for the delivery of 1500 new council homes by 2018
 - establish a wholly owned and controlled council 'vehicle' to secure future funding capacity for the programme.
20. Paragraph 4 to 9 of the report details the formation of a company limited by share as a wholly owned and controlled council 'vehicle' to secure future funding capacity for the programme.
21. The report emphasises that this will be owned and controlled by the council. This can be achieved under powers conferred by local government legislation that include the general powers of competence under Section 1 of the Localism Act 2011, which effectively gives local authorities the powers of an individual of full capacity. However this is subject to any pre-existing restriction.
22. Further, the power to trade is contained within section 95, Local Government Act 2003 which allows a council to do for a commercial purpose anything which it is authorised to do for the purpose of carrying on any of its ordinary functions. The power conferred by section 95 may only be exercised after a business case has been prepared and approved.
23. The report also seeks to appoint senior officers as Directors of the Company; these officers will initially be responsible for undertaking the administrative tasks to establish the Company which will include when formed amending the Articles. Whilst the Company is not trading, the appointment of senior managers as directors of the Company does not present the officers with any immediate conflict of interest. However should the council decide to start trading via the Company, alternative directors will need to be appointed to avoid conflicts of interests for officers.
24. Paragraph 15 rightly concludes that in making any decision the authority it was necessary to conduct a consultation with secure tenants under section 105, Housing Act 1985 before any final decision is taken concerning the site. The law required that such consultation must be undertaken when proposals are still at a formative stage; it must include sufficient reasons for the proposals to allow interested parties the opportunity to consider the proposal and formulate a response; it must allow adequate time for interested parties to consider proposals and formulate their response and the outcome of it must be conscientiously taken into account when the ultimate decision is taken. Similarly due regard must be had to the impact a proposal in relation to any site may have on persons with protected the power to trade characteristics under the Equality Act 2010.

Strategic Director of Finance and Corporate Services (SDFCS) HSC15/002

25. The SDFCS notes the recommendation to establish a limited company in order to maximise the council's overall development capacity. Further, as set out in paragraph 17, it is noted that the operational and governance details are to be determined.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Next Steps on Developing Long Term Plans for the Delivery of New Council Homes http://moderngov.southwark.gov.uk/ie/DecisionDetails.aspx?ID=4746	Corporate Strategy	Stephen Gaskell, Head of Strategy and Partnerships

APPENDICES

No.	Title
n/a	

AUDIT TRAIL

Lead Officer	Gerri Scott, Strategic Director of Housing Community Services		
Report Author	Paul Langford, Head of Operations		
Version	Final		
Dated	1 April 2015		
Key Decision?	Yes		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments Sought	Comments Included
Director of Legal Services		Yes	Yes
Strategic Director of Finance and Corporate Services		Yes	Yes
Cabinet Member		Yes	Yes
Date final report sent to Constitutional Team			1 April 2015