

AFFORDABLE HOUSING COMPANY

Cabinet - 9 November 2017

Report of	Chief Officer Corporate Services and Chief Officer Communities & Business
Status	For Decision
Also considered by	Legal and Democratic Services Committee - 17 October 2017 Council - 21 November 2017
Key Decision	No

Executive Summary: This report seeks authority to progress the proposal to set up an Affordable Housing Company. It sets out the need for such a company, explains the requirement for a sound business case to be developed and the likely company structure should a sound business case be proved.

Portfolio Holders Cllr Anna Firth and Cllr Michelle Lowe

Contact Officers Martin Goodman, Ext. 7245 and Lesley Bowles, Ext. 7335

Recommendation to Legal and Democratic Services Advisory Committee: To note and make any comments on the recommendations to Cabinet

Recommendations to Cabinet: That it be recommended to Council that

- (a) it is noted that expert external advice to develop a comprehensive business case to deliver Members ambition for the Council to develop its own affordable housing within the District has been commissioned;
 - (b) subject to a sound business case being established, the Head of Legal and Democratic Services is authorised to incorporate a standalone Affordable Housing Company first taking detailed advice and assistance from specialist external lawyers on the delivery model and set-up process;
 - (c) the broad governance and funding arrangements set out in this report are noted;
 - (d) delegated authority be given to the Portfolio Holders for Finance, Housing & Health and Legal and Democratic Services in consultation with the Chief Executive, Chief Finance Officer and Head of Legal and Democratic Services to settle the detailed arrangements for the establishment of the company; and
 - (e) in the event that a sound business case to deliver affordable housing through
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an affordable housing company cannot be established Officers report back to Members setting out further options to deliver on Members ambition to develop its own affordable housing within the District.

Recommendations to Council: That

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- (b) subject to a sound business case being established, the Head of Legal and Democratic Services be authorised to incorporate a standalone Affordable Housing Company first taking detailed advice and assistance from specialist external lawyers on the delivery model and set-up process;
- (c) the broad governance and funding arrangements set out in this report are approved;
- (d) delegated authority is given to the Portfolio Holders for Finance, Housing & Health and Legal and Democratic Services in consultation with the Chief Executive, Chief Finance Officer and Head of Legal and Democratic Services to settle the detailed arrangements for the establishment of the company; and
- (e) in the event that a sound business case to deliver affordable housing through an affordable housing company cannot be established Officers report back to Members setting out further options to deliver on Members ambition to develop its own affordable housing within the District.

Reason for recommendations: To authorise that Officers pursue Members' ambition for the Council to develop its own affordable housing within the District through an Affordable Housing Company.

Introduction and Background

- 1 Members have expressed an ambition for the Council to develop its own affordable housing. As Members will be aware the Council transferred its social housing stock to West Kent Housing Association in 1989 and since that date has not had its own housing revenue account. This means that the Council is not in a position to provide affordable housing or act as a social landlord in its own right.
- 2 As this is not an option open to the Council, Members have expressed a desire to incorporate its own company for the purpose of providing affordable housing within the District.

Affordable housing

- 3 Affordable housing can be defined as the housing required for households who are unable to access suitable housing without financial assistance. Affordable housing includes social rented, affordable rented and intermediate housing.
- 4 Social rented housing is that provided by West Kent Housing resulting from the stock transfer from this Council. Affordable rented housing is let by local authorities or private Registered Providers of social housing to households who are eligible for Social Rented housing. Affordable rented housing is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).
- 5 Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.
- 6 The Council's recent Local Housing Needs Study (May 2017) demonstrated that there is an "annual net imbalance of 604 affordable dwellings across Sevenoaks" district. This means that when the current level of affordable housing units being provided across the District is taken into account to meet the needs of current and future residents an extra 604 affordable homes need to be provided each year to 2021.
- 7 The Local Housing Needs Study also tells us that the greatest need is for one and two bedroom homes and the areas with the greatest need in the District (measured by number of affordable homes required) are 'Sevenoaks urban area and surrounds' and North East, which covers Ash and New Ash Green, Farningham, Horton Kirby and South Darenth, Fawkham and West Kingsdown and Hartley and Hodsoll Street.
- 8 A potential funding source for the Company, and an assumption used within this report, is section 106 (S106) funding. These are financial contributions sought from developers towards the costs of providing community and social infrastructure, the need for which has arisen as a result of a new development taking place.
- 9 The Council's Affordable Housing Supplementary Planning Document (Policy SP3) includes a set of approved criteria for the spending of affordable housing planning gains (S106 funding) and amongst other things this includes provision of new affordable housing in the District normally via a Registered Provider of social housing. This would include including adding to provision on development sites, new stand-alone schemes and existing property purchase.
- 10 Whilst the building costs of new affordable homes would be an appropriate and lawful use of the S106 funds the ongoing management costs of the affordable housing company and its set-up costs would be required to be found from elsewhere.

- 11 As at 30 August 2017 the District Council had £3.6m of unallocated S106 contributions. It is noted that there will be alternative proposed uses for that money and the opportunity cost of choosing to grant money to the affordable housing company over progressing other opportunities would need to be evaluated on a case by case basis. Appendix A provides an overview of the current position of S106 funding and examples of projects previously funded.
- 12 Members should also be aware that there is some risk that a right to buy could apply to any affordable housing provided through the Company. This would be dependent on the type of housing provided and other factors that will be explored by seeking further specialist advice. This will be incorporated in the determination of governance structures for the Company and the implications considered further through the business planning process.

Affordable Housing Company

- 13 Officers' work to date has been focussed on the feasibility of incorporating an affordable housing company, how that could be structured and therefore whether it would be a route the Council could pursue. Professional, expert advice has been sought to assist this process.
- 14 It is concluded that the Council can incorporate its own affordable housing company and that this could be a subsidiary of the Council's existing trading company, through a holding company (to sit between the Council and the Affordable Housing Company) or as a 'standalone' company separate to Quercus 7.
- 15 The Council has been advised that the most suitable model would be to set up a 'standalone' company. This could be most cost-effectively set up following the model of Quercus 7, including the appointment of the same Trading Board, Board of Directors and Secretary and follow the structures, policies and systems Quercus 7 has established.
- 16 There is no legal reason why the same people could not be directors of both Quercus 7 and the Affordable Housing Company, or why they could not be entirely different. As with Quercus 7 Council staff will cost the newly-incorporated company a recharge based upon officer time. Non-executive Directors, even if the Affordable Housing Company uses the same as those paid by Quercus 7, would be paid a further fee.
- 17 The Affordable Housing Company would be established as a company limited by guarantee and is likely to be classified as a 'body governed by public law' and therefore subject to the Public Contracts Regulations 2015. Members should be aware that other options exist and it could be established in a different corporate form such as a company limited by shares or a community benefit society if considered preferable. The wider governance of the company is an issue upon which guidance is required from experts, given the sensitivities surrounding the use of public funds and regulations surrounding State Aid.

- 18 The Council would be the sole shareholder of the Affordable Housing Company as it is with Quercus 7. The shareholding in the Affordable Housing Company would be entirely separate to the shareholding in Quercus 7.

Shareholder agreement

- 19 The Affordable Housing Company would require a Shareholder Agreement with the Council, a grant agreement (in respect of section 106 funding to be used as working capital) and Articles of Association which would be different in character to those for Quercus 7.
- 20 As the grant of section 106 funding is likely to amount to State Aid it is necessary for the grant arrangements between the Council and the Company to be correctly structured so that a relevant exemption from the requirement to notify the European Commission of the existence of State Aid is met.
- 21 Making the section 106 funding available for the provision of affordable housing is likely to render it in accordance with the State Aid exemption of Services in the General Economic Interest. This exemption applies where an economic activity delivers ‘outcomes in the overall public good’ that would not be supplied by the market without public intervention, or would be supplied under different conditions as to affordability. The scope of this exemption includes social housing.
- 22 As with Quercus 7, the primary purpose of the necessary shareholder agreement would be to regulate the relationship between the Council and its Company. Ordinarily, other than where reserved to the shareholder, a company’s Board of Directors is free to act as it thinks is in the best interests of that company. The shareholder agreement would include instructions on those actions.
- 23 The proposal in this report is that the broad governance and funding arrangements set out above be approved and officers in consultation with relevant Portfolio Holders be given delegated authority to settle the detailed arrangements. This would extend to the naming of the company and to the exact constitution of the Board of Directors.

Business Case

- 24 It has been established that the creation of an Affordable Housing Company is feasible and there is a broad understanding of the sound reasons for seeking to develop affordable housing in the District to contribute to meeting local housing need as established through the Councils Local Housing Needs Study.
- 25 However, as with Quercus 7, it is essential that a full business case is developed to ensure that the company can deliver on its main objective in an effective and sustainable manner without detriment to the Council and its unique, self-sufficient, financial position.

- 26 Officers have undertaken a risk assessment of the proposals within this report which is documented within the Key Implications below.
- 27 Delivering affordable housing units would yield significant social benefits. However through the business case process it is essential that it is understood how those affordable units could be managed successfully with no access to revenue funding from S106 contributions. Accurate financial modelling and scenario testing is required to understand in detail likely rental incomes, potential default rates, maintenance and management costs and how these could be met from the ongoing activity of the affordable housing company.
- 28 It is for these reasons that detailed consideration of the business case is a pre-requisite for the incorporation of the Company. Members are reminded that Quercus 7 was set up pursuant to a business case as set out in reports.
- 29 It is Officers' view that specialist external advice will be required to enable the business case to be developed. The Council does not hold its own expertise in the provision and management of affordable housing. A bid has been made to the Local Government Association for funding and the provision of an appropriately skilled and experienced adviser. If this bid is unsuccessful the required budget to develop the business case will be met from existing budgets.
- 30 It is intended that the business case will be completed by 30 November 2017, and if found to be sound, an affordable housing company would be set up by 31 December 2017.

Other Options Considered and/or Rejected

- 31 Retaining the S106 funding and seeking to secure affordable housing through an existing provider. This has been rejected as current experience shows market failure in the provision of sufficient affordable housing units across the District.
- 32 Seeking to provide housing within the General Fund without using a corporate vehicle or establishing a separate charitable vehicle wholly owned by the Council. These have been rejected as less effective models to achieve the Council's ambition.
- 33 Endeavouring to provide affordable and market rate housing using Quercus 7 while seeking to retain the benefits of an organisation with a commercial character. This adversely affects the Quercus 7 business model and is unlikely to be met with approval by the Trading Board.

Key Implications

Financial

Financial implications are set out throughout this report. Specialist external advice and the costs to set up the company will be met from within existing budgets. For the avoidance of doubt this includes the creation and analysis of a business case.

Once in operation it will be necessary for the new Affordable Housing Company to pay the Council for the use of its resources (including officers) and to pay the non-executive directors. These costs would need to be met through the trading activities of the Company.

Legal Implications and Risk Assessment Statement

Legal implications are set out throughout this report.

Risk Assessment Statement. The following risks have been assessed with the knowledge and detail available to the Council at the time of writing this report. The risk assessment will be reviewed and reassessed through the business planning process.

Risks are scored from 1 (a low impact / likelihood) to 5 (a high impact / likelihood)

Risk	Likeli-hood	Impact	Total	Comments and controls
Failure to set up a company in strict compliance with legislation	1	4	4 Low	Extensive consultation with other authorities and appropriate external advice on governance arrangements
Acting ultra vires	1	2	2 Low	Every new activity via the company to consider statutory obligations
Failure to comply with taxation laws - corporation tax & VAT	2	3	6 Medium	External advice sought in relation to taxation
Possibility of challenge to state aid	1	2	2 Low	Obtain full cost recovery and any loan given to the Company to be set at commercial lending rates, subject to expert advice

Risk	Likelihood	Impact	Total	Comments and controls
Available funding to incorporate an affordable housing company	2	3	6 Medium	Report to Members requests approval of a budget to enable the company to be incorporated
Available expertise to incorporate an affordable housing company	3	4	12 Medium	Plans in place to procure the expert advice required to incorporate the company
Availability of land to enable the construction of affordable housing	4	4	16 High	The Council has limited land in its ownership for the delivery of affordable housing. Business case proposed to evaluate maximising potential of existing sites.
Availability of finance to invest in the construction of affordable housing	4	4	16 High	Current assumptions are limited to the use of S106 contributions to enable affordable housing development. Business case proposed to assess financial sources and implications.
Inability to meet revenue costs of managing affordable housing from trading activity	4	4	16 High	Providing affordable housing is not a profit making activity and the Council does not have in-house expertise to manage housing stock. Business case proposed to assess and evaluate costs and models of management.
Failure to deliver community benefit from the trading activities	2	2	4 Low	The provision of affordable housing in the District will address a proven need and benefit low income families seeking to live in the District.
Adverse impact on the local housing market	2	2	4 Low	Current projections of housing delivery not expected to have a detrimental impact on the local housing market

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Conclusions

Members have expressed an ambition for the Council to develop its own affordable housing through a Company, which is wholly owned by this Council.

Initial work by Officers concluded that the Council can incorporate its own affordable housing company and this would most suitably structured as a 'standalone' organisation, unrelated to the activities of Quercus 7.

The Local Housing Needs Study tell us that there is a need for more affordable homes in the District and the incorporation of a Company would provide an opportunity to access S106 contributions in order to deliver affordable housing in the District.

It is proposed that business case will be developed and completed by 30 November 2017, and if found to be sound, an affordable housing company would be set up by 31 December 2017.

Appendices Appendix A - Information on S106 funding

Background Papers Local Housing Needs Study

www.sevenoaks.gov.uk/downloads/file/945/local_housing_needs_study_may_2017

Jim Carrington-West
Chief Officer Corporate Services

Lesley Bowles
Chief Officer Communities & Business