

**ESTABLISHMENT OF A DEVELOPMENT COMPANY**

**1.0 Purpose of Report**

- 1.1 To consider the business case for establishing the Council's wholly owned development company and to seek approval from Committee to incorporate the company with Companies House. A further report is included the confidential part of the agenda.

**2.0 Background Information**

- 2.1 The Council has set out its vision in the Commercial Strategy, approved by Council on 21 September 2017:

**“Our vision is to be an innovative and entrepreneurial Council that continually achieves positive annual financial contributions; by generating new revenue and delivering cost reductions, through trading and business improvements”**

- 2.2 The overarching aim of the Commercial Strategy is to deliver positive financial returns to the Council's General Fund. The Strategy also sets out the following aims and objectives:

- Deliver a financial contribution in order to re-invest in current services where at present we cannot recover adequate, or any, income;
- Invest in new projects that will save costs, increase revenue, or both;
- Help enable non-statutory services to at least cover all their costs including overheads (and potential opportunity cost) in order to reduce risk of closure and be profit generating where possible.
- Actively engage in market development and market shaping where no such market currently exists and using insight to manage specification and demand;
- Apply our financial strength to invest in order to deliver on going positive returns;
- Ensure that outcomes in the local community are delivered on a sustainable basis;
- Strengthen our reputation with residents, local businesses, the Local Government sector, staff, other customers, partners, and stakeholders in general;
- Become a services provider to new and existing customers both from within the local authority environment and beyond, particularly where we are uniquely placed to do so;
- Develop and cultivate our commercial/transformational knowledge.

One of the key branches to delivering the objective above (as well as direct investments, shared and traded services), is the establishment of a limited company, wholly owned by the Council, that will undertake residential and commercial developments to generate revenue returns back to the Council and thereby contribute towards meeting the anticipated funding gap by the year 2020/21.

- 2.3 Central Government Funding for Newark and Sherwood has reduced from £8.5m in 2013/14 to £5.9m in 2016/17. This represents a reduction in core funding of 30.5% over this 3 year period. In response to this reduction in funding, the Council has reduced its net service expenditure over this same period from £12m to £10.8m.
- 2.4 Further reductions in government funding are anticipated to the year 2020, when Revenue Support Grant (RSG) will be fully withdrawn by government and may be replaced by 100% business rates retention. It is very unlikely that this anticipated change will mean retention of 100% business rate billed and collected in Newark and Sherwood as there will certainly be a national system of equalisation to accompany the new funding regime. Furthermore, government have already stated that new responsibilities will be passed on to Local Government resulting in additional funding pressures. The deficits in funding, that Local Government has, by now, become accustomed to, will therefore continue.
- 2.5 The Council has already recognised in approving the Medium Term Financial Plan (approved 29 June 2017), the Commercial Strategy (approved 21 September 2017) and the Investment Plan (approved 21 September 2017) the need to generate new revenue streams by 2020/21 in order to safeguard the delivery of front line services, by bridging the anticipated funding gap by 2020/21.
- 2.6 Committee Members have received a number of presentations (as have all elected Members) on establishing a development company and at its meeting of 6 April 2017, Policy & Finance Committee Members agreed to support, in principal, the setting up of a development company, subject to a business case that demonstrated the benefits and financial viability of establishing a company.
- 2.7 This business case has been developed and is included as **Appendix 1** to the report on the confidential part of the agenda. The business case has been developed and has been informed by expert market research and financial appraisal carried out on the existing, Council owned site on Bowbridge Road. The market research has been carried out by URBED (Urbanism Environment and Design) Ltd. and the financial appraisal has been carried out by Aspinall Verdi Ltd. The study establishes the viability of this site for residential development. The study also establishes the density, character and overall strategy appropriate for the site and location.
- 2.8 The financial appraisal based on the market research demonstrates that developing the site on Bowbridge Road through the limited company would generate positive net commercial returns to the Council.

The estimated total return to the Council for the two options would be 36.76% of total development cost and 41.32% of total development cost respectively. This, however, includes land value which, arguably, would be receivable by the Council anyway, irrespective, of whether the development was undertaken by the LATCo or an unrelated independent developer (albeit it may be accelerated if developed by LATCo). If, therefore, the land value is disregarded for the purposes of this appraisal then the Return on Investment (ROI), assuming direct development or partnership/joint venture development, would be between 21.21% and 10.6% depending on the development option chosen.

2.9 The method of development (direct or partnership) will need to be explored further once the company has been incorporated, however, the viability report demonstrates that in both cases, the estimated return on the investment cost exceeds the target return of 6% that is set out in the Council's Investment Strategy and has been approved by Full Council.

2.10 The business case, **(see the Confidential item on the Agenda)** sets out in detail, the benefits of operating through a limited company, the estimated cost of setting up the company, the estimated operational cost of the company for the first 3 years, the funding structure of the company and the financial appraisal for the development on Bowbridge Road, together with a SWOT analyses and risk appraisal.

2.11 The business case also sets out the proposed governance structure, as follows:

#### 2.11.1 The Council

- Establish and appoint members to the Shareholders Committee
- Agree all consequential changes to the constitution of the Council
- Approve funding for the company as part of the annual budget setting process
- Approve any additional in-year funding exceeding the approved budget

#### 2.11.2 Policy & Finance Committee

- To receive and review reports from the Shareholders Committee
- To review the outcomes of the LATCo in the context of the Council's strategy
- To consider and approve requests for funding within the approved budget.

#### 2.11.3 Shareholder Committee

The Shareholder Committee will be appointed by full Council and will have full delegated authority within its remit. . The Committee will be **politically balanced** and comprise of **5 elected Members** who will be advised by the Council's Monitoring Officer. The Chair of the Board of Directors will report to the Shareholder's Committee at each meeting, unless specifically asked not to attend.

The role of the Shareholder Committee will be strategic. The Shareholder Committee will not, therefore, have powers to make operational decisions on behalf of the Council or the LATCo. It shall:

- Agree the Company's Articles of Association;
- Agree the Management/Shareholders agreement between the Council and the Board of Directors; setting out the objectives including the economic, social and ethical considerations which the Council expects the company to address;
- Agree the constitution of the Board of Directors and to approve the appointment of directors to the Board and to have the power to remove directors of the Board and approve best practice policies in relation to such appointments;
- Receive, review and approve the company's annual report and the annual business plan;
- Review the performance of the LATCo; and

- Determine on behalf of the Council how it should exercise the functions flowing from its ownership of shares, including decisions on payment of dividends from the company's profit after taxation.

The Shareholder Committee shall meet at least quarterly to consider and review the matters identified above and, where necessary, call extraordinary meetings to accommodate the business identified above.

Full details of the role of the Shareholder Committee will be provided in the Shareholder Agreement.

#### 2.11.4 LATCo Board of Directors

Directors of a company have a fiduciary duty to act in the best interest of the Company and therefore need to have suitable qualifications and experience and must avoid conflicts of interest.

The LATCo Board of Directors shall initially (during set up) comprise:

- One Elected Member
- The Chief Executive
- The Deputy Chief Executive/Director - Resources
- Two Officers of the Council

In addition, an Officer of the Council will be appointed as Company Secretary. This is not a Board position and therefore carries no voting rights

The legal advice is that the three statutory officers of the Council should not all be Board Directors at the same time and, in particular, the s151 Officer and the Monitoring Officer should not both be on the Board of Directors at the same time. This is to ensure that the Council continues to receive independent advice from a statutory officer. If, therefore, there was to be a change in the senior management structure of the Council, then the designation of officers to the proposed Board structure above will be reviewed by the Shareholders' Board who would, in turn, make recommendations to the Policy & Finance Committee for compliant changes.

The quorum for board meetings shall be three and at Board meetings each director will have one vote.

Board meetings shall be held monthly for the first 6 months and at least quarterly thereafter, on such dates as the directors may agree (where there is failure to reach agreement, the Chairman will have a casting vote).

Minutes of Board meetings will be provided to the Shareholder Committee for noting.

Full details of the role of the Board of Directors will be set out in the Shareholder Agreement.

### **3.0 Proposals**

- 3.1 The business case (**see the confidential item on the Agenda**) makes a compelling case for establishing and operating a Council owned Development Company.
- 3.2 The proposal, therefore, is to seek Committee approval to establish the company and to commence preparation for developing the first site on Bowbridge Road.
- 3.3 The intention will be to replicate, if suitable, the development and funding model, for the initial development on Bowbridge Road, to all future sites.

### **4.0 Equalities Implications**

- 4.1 There are no equality implications in establishing a development company.

### **5.0 Finance**

- 5.1 The Council has approved £120,000 to fund the company's initial set up costs. No further funding requirement is envisaged until after the end of this financial year.
- 5.2 As set out in the business case, the company will require seed funding and a loan to fund the development of the first site on Bowbridge Road. Assuming that the scheme approved is for 103 units then the total amount of funding required is set out in the business case. It is proposed that 25% is provided as equity funding and 75%, as loan funding. The phasing of this funding provision will need to be determined and therefore a report will need to be brought later for approval by Policy & Finance Committee.

### **6.0 RECOMMENDATIONS**

**It is recommended that, subject to the detailed consideration of the exempt business case, Policy & Finance Committee:**

- (a) approves the establishment of the development company; and**
- (b) approves the management and governance arrangements, as set out in section 2.5 above.**

#### **Reason for Recommendations**

**The establishment of a wholly owned development company supports the Council's Commercial and Investment Plans which in turn support the Council's Corporate Plan and Medium Term Financial Plan; all of which have been supported and approved by full Council.**

**The business case, to be considered in detail as a confidential item, supports the establishment of the development company.**

#### **Background Papers**

Elphicke House Report - From statutory provider to Housing Delivery Enabler:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398829/150126\\_LA\\_Housing\\_Review\\_Report\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398829/150126_LA_Housing_Review_Report_FINAL.pdf)

Commercial Strategy  
Investment Plan  
Medium Term Financial Plan

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