

Allerdale Borough Council

Executive – 25 February 2019

Proposal to Develop a Business Case to Support the Establishment of a Council Owned Housing Company

The Reason for the Decision	The creation of a council owned housing company will provide the council with a delivery mechanism to develop new homes that will support the Councils drive to meet housing need across the borough.
Summary of options considered	<ol style="list-style-type: none">1. Agree to progress with the development of a business plan to support the establishment of a council owned housing company2. Not to approve the proposal.
Recommendations	<ol style="list-style-type: none">1. To approve the proposal to develop a business plan to support the creation of a council owned housing company2. To receive a further report to approve the business plan and to incorporate the housing company.
Financial/Resource Implications	Appropriate staffing resources are in place and have been accounted for in the 19/20 budget. Operational financial implications will be addressed as part of the development of a Business Plan.
Legal/Governance Implications	<p>The Council can rely upon the general power of competence within the Localism Act 2011 to form a housing company for operating a business to let homes at market rent or to provide homes at market value.</p> <p>The councils powers to set up a company to provide homes for private letting are set out in sections 24-26 of the Local Government Act 1988.</p>
Community Safety Implications	N/A
Health and Safety and Risk Management Implications	N/A
Equality Duty considered/Impact Assessment completed	Creation of the company is considered to have a neutral impact from an equality perspective.
Wards Affected	All

The contribution this decision would make to the Council's priorities

The proposal will support the following council priority themes: strengthening our economy, tackling inequality, enhancing our towns, improving health and wellbeing and creating a sustainable business.

Is this a Key Decision

No

Portfolio Holder

Councillor Carni McCarron Holmes – Housing

Lead Officer

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Report Implications (Please delete where applicable)

Community Safety	N	Employment (external to the Council)	Y
Financial	Y	Employment (internal)	Y
Legal	Y	Partnership	Y
Social Inclusion	N	Asset Management	Y
Equality Duty	N	Health and Safety	Y

1.0 Introduction

- 1.1 This report sets out the proposal to develop a business case to support the creation of a housing company which will be wholly owned by the Council.

2.0 Background

- 2.1 Whilst the ownership, management and maintenance of our former stock was transferred to Derwent and Solway Housing Association in 1999, we have retained our core strategic functions covering Housing Options and Homelessness, Housing Strategy, Disabled Facilities Grants, Private Sector Housing Enforcement, Housing Needs and Affordable Warmth.
- 2.2 Planning future delivery around austerity measures is a significant challenge and as a strategic housing authority the Council must consider how best to meet future housing demand. We recognise the need to ensure work we do with other partners, developers, agencies and registered providers of social housing adds value and is an excellent service.
- 2.3 The housing situation in parts of Allerdale is similar to many other places in the country; there are simply an insufficient number of homes for the increasing number of people who need them. In particular, the lack of affordable homes in certain areas of the borough has hit many families hard; families made homeless as a direct result of high housing costs, and families unable to afford to rent or buy a secure home of a decent standard, have no alternative but to remain in unsuitable accommodation.

- 2.4 The evidence from the 2016 Housing Study tells us that the population of Allerdale overall is relatively unchanged. However, by 2037 it will see a predicted shift in the age profile with 33.3% of all residents being aged 65 and over. Corresponding with a population decline in the 15-64 age group. This will undoubtedly affect supply and demand across the borough.
- 2.5 The Council has facilitated 404 affordable homes over the past five years, but there has been under-delivery against the local plan housing target. Action is required to ensure that more homes are developed. Delivering new homes will be challenging, but is a key priority for the Council.
- 2.6 Most recently the Council has seen an increase in the number of homeless and existing resources are being stretched with Bed and Breakfast accommodation having to be used on a more frequent basis. This is unsettling and disruptive for homeless households and is unsuitable for long periods of time. Furthermore, the use of B&B accommodation is very expensive for the Council.
- 2.7 Over recent years there has been a gradual increase in the number of long term empty homes across Allerdale. They encourage vandalism, anti social behaviour and degradation, as well as providing an eyesore for surrounding residents and communities. The housing company will be well placed to support the council to reduce the numbers further.
- 2.8 The majority of new build housing in Allerdale is delivered by private house developers. On larger sites this includes an element of affordable housing which is subsequently purchased and managed by Registered Providers.
- 2.9 As the private sector leads delivery the strength of the housing market and sales are the biggest factors that determine where and the rate at which housing is delivered. Certain areas such as Workington (Stainburn and Harrington), Seaton, Cockermouth, Wigton, Dearham and Great Broughton are seeing strong delivery whilst other areas such as Maryport, Aspatria, Silloth, Abbeytown, Broughton Moor, Kirkbride and Prospect are seeing weaker delivery.
- 2.10 Developers raise concerns of viability in these areas and slower build out rates that increase risk. Therefore, while the market will largely take care of itself in certain areas there is a need to take a different approach in areas that private house builders are currently not active.

3.0 Proposal

- 3.1 Establishing a wholly owned housing company would provide a delivery mechanism for developing new homes in Allerdale to complement a range of other housing developments currently being undertaken or proposed by Registered Providers and private developers to meet the housing needs of the area.

- 3.2 Many other councils have already established such companies and in preparing this paper examples of good practice have been reviewed and where appropriate used to support the proposal.
- 3.3 The company will be flexible and able to provide housing at an affordable rent or sale whilst also developing housing for the open market either independently or via joint venture arrangements with other partners. In addition, a proportion of properties developed may be retained for private sector market rents subject to the market interest.
- 3.4 Creating a company could:
- Increase the supply of homes in Allerdale and meet wider housing demand
 - Increase investment in regeneration
 - Bring empty homes back into use
 - Support the drive to reduce homelessness
 - Create realisable capital assets for the Council
 - Support the Council to control the housing mix through the planning process and design standards
 - Enable the Council to retain full control of the development and construction process, including the marketing
 - Generate long term revenue for the Council

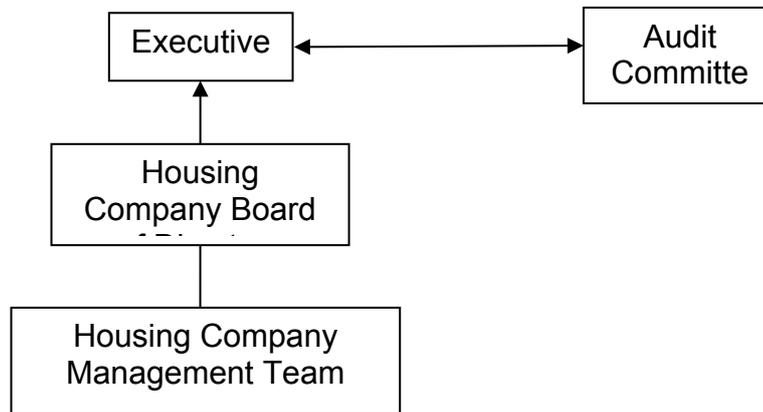
4.0 Financial Implications

- 4.1 Whilst the establishment of a council owned housing company can be achieved with minimal expenditure delivering homes cannot be achieved without financial support from the Council.
- 4.2 Prior to the creation of a housing company and subsequent acquisitions, asset transfers and associated developments taking place a comprehensive business plan will be developed which demonstrates financial viability and the way in which it will deliver the Councils strategic objectives. The business plan will also cover its development and operational activities and resources, as well as its funding arrangements.
- 4.3 In relation to rental properties a proportion will be let at a discounted rent and, in order to support the growth of the company, a proportion will be let at full market rent. Should the need for discounted market rent properties reduce in the future, then the housing company will have the potential to return a profit to the Councils General Fund from letting a greater number of properties at full market rent.

5.0 Governance Arrangements

- 5.1 The Council will hold 100% of the shares in the housing company and as such will have full ownership. This enables the Council to retain control of the company.
- 5.2 As a company wholly owned by the Council it is imperative that an appropriate

governance structure is put in place to ensure the sound and robust management of the company alongside protection of the Council's financial and reputational investment in the company. However, the governance must not hinder the company and must allow it to act swiftly and pro-actively which is essential if it is to compete in acquiring properties on the open market. As sole shareholder, the Council would appoint (and can change) the directors to the company and would approve key decisions and the Company's business plan.



6.0 Shareholder Function

6.1 It is proposed that the Shareholder function of the Council is primarily executed through the Council's Executive, and that Directors of the Board would be initially appointed at the Council AGM and member representatives will be confirmed at the AGM each subsequent year. The appointment of all other Directors will need to be agreed through Executive. Additionally, Audit Committee could provide oversight of governance arrangements and the overall financial position in relation to the company. Regular reports on company performance, finance and activity will be submitted to Executive.

7.0 Housing Company Board of Directors

7.1 The Board of Directors will be responsible for providing strategic direction and setting operational parameters, as well as overseeing and scrutinising operational and financial performance to ensure that business plan targets are met, within the parameters agreed with the Shareholder. To ensure accountability, a clear decision making framework will be required that sets out matters which will be determined by the Board of Directors and delegated authority which will allow decisions in relation to the day to day activities of the company to be made. In particular, this must allow the company to act swiftly and pro-actively in property acquisition within an agreed purchasing strategy in order that the company can compete in the open market. A performance and financial management framework with clear targets and milestones will also need to be developed.

7.2 To ensure that the housing company can operate efficiently and effectively it will be important to have the appropriate balance of skills and experience and,

in particular, the right business and commercial financial acumen. The company will be engaged in both property acquisition and ensuring that landlord responsibilities are fulfilled in the management of the stock and provision of services to tenants.

- 7.3 It is proposed that the Housing Company Board of Directors will consist of a minimum of the following:
- Two elected members
 - The Chief Operating Officer (COO) of the housing company
 - Two senior officers of the Council, and
 - One independent Non-Executive Director.
- 7.4 The Non-Executive Director will be recruited to bring commercial housing and finance experience to the Board of Directors (and they would be expected to attend Board meetings). The Board of Directors would delegate some functions to an operational management team that would include the COO and officer representatives on the board.
- 7.5 At least one director needs to be appointed in order to enable the company to be registered and basics to be established (such as setting up banking arrangements).
- 7.6 Consideration will need to be given to ensuring that key expertise (such as financial and legal advice) is available to advise both the Council, as shareholder, and the company.

8.0 Company Resources

- 8.1 As the company develops it is anticipated that many of the services which will be required will be contracted out with housing management, repairs and maintenance, legal services for property acquisition and accounting services provided by local authority staff (and re-charged to the company). On this basis it is proposed that the Programme Director and Manager will manage the company alongside existing duties relating to Maryport regeneration, with some additional resources from internal departments. As the property portfolio grows then additional staffing may be required.
- 8.2 To avoid the burden and costs of setting up systems for the company to employ staff directly (for example payroll, pension etc.), it is proposed that initially the Council will employ the Programme Director and Manager (and any other staff required) and second them to the housing company initially until the company is more established.

9.0 The process in establishing the housing company

- 9.1 The development of a robust business plan will be key to establishing how the company will be set up. This will include: identifying projects for delivery; timescales; costs; resource requirement; financial projections and the preferred company model.

9.2 The plan will be developed to cover a rolling 5-year period of investment activity and will outline the company's planned operations. The Business Plan will be reviewed and agreed annually and cover the following:

- Company objectives (as established in the Shareholder Agreement)
- Governance arrangements
- Operational plans
- Financial model and assumptions
- Rents, sales and development assumptions
- Fees, on-costs and tax
- Funding profile and sensitivity analysis

9.3 Prior to commencement of the company the business plan will be presented to Executive for approval.

9.4 The following documentation is required as part of the development of a business case and the subsequent establishment of the housing company and associated governance arrangements

9.4.1 *Memorandum of Association and Articles* – setting out the remit and rules governing the running of the company.

9.4.2 *Shareholder Agreement* – this will be a key document as it will capture how the Council as Shareholder will exercise its control over the housing company.

9.4.3 *Loan Agreements* – these set out the details of the funding arrangements between the Council and the housing company.

9.4.4 *Director Appointments* – the identity and role of the council officers who will be appointed as directors to the housing company will need to be agreed. Non-Executive Directors with the appropriate skills will need to be recruited.

9.4.5 *Appointment of Company Secretary and (if necessary) External Auditor.*

9.4.6 *Operational Policies* including:

- Rent setting
- Letting policy
- Rent arrears and debt recovery
- Other general policies e.g. Health and Safety, data protection

9.4.7 *Insurances* including:

- Buildings insurance
- Directors insurance

9.4.8 *Property Purchasing Strategy* – this sets out the specific criteria for the purchase of property.

10.0 Property Management

10.1 The Housing Company will need to provide housing management and property maintenance services to its tenants. The Board will need to keep under review if it would be cost-effective for the Housing Company to employ

its own staff. Consideration has also been given to the company contracting with an external provider (using an established private lettings agency service) or using the services of the Council's housing and property management teams.

10.2 Taking into account a range of factors including quality of service, costs, ability to deliver and knowledge of tenant requirements it is currently proposed that the company will initially contract with the Council to provide these services. As detailed in the legal section of this report, the Housing Company is subject to the Public Contract Regulations in relation to procurement. However, as a wholly owned subsidiary of the Council, the housing company would be able to apply the 'Teckal' exemption in terms of any contracts between the Council and the housing company, therefore these contracts would not be subject to the EU procurement regime.

10.3 In terms of housing management, it is currently intended that the Council will initially provide the following functions to the company:

10.3.1 *Lettings and allocations* including:

- Devising a lettings and rent policy
- Advertising of property
- Vetting of potential tenants
- Allocating properties and deposit management

10.3.2 *Housing Management* including:

- Property inspections
- Day to day management of the properties
- Tenancy sustainment support
- Management of anti-social behaviour cases
- Enforcement action and possession proceedings for breach of tenancy

10.3.3 *Property Services* including:

- Advice on property condition before purchase
- Reactive day to day repairs
- Planned and cyclical programmes of maintenance
- Works between lets

10.3.4 *Rent Recovery* including:

- Setting up of rent accounts
- Tenancy Sign up
- Payment options for rent payments
- Recovery of rent arrears
- Debt and money advice
- Possession proceedings for issues including rent arrears

11.0 Tenancy Agreement – terms

11.1 Tenants of the housing company would be given an Assured Shorthold Tenancy. An assured shorthold tenancy is equivalent to the terms of occupation offered in the private sector.

11.2 The properties to be let at LHA rent levels will be utilised to support families most in need and in particular to help prevent homelessness.

12.0 Post Decision Implementation

12.1 It is important to ensure that the company is established based on a sound business case. As a Local Housing Authority, the council has both a duty to consider housing conditions and the needs in their area, with respect to the provision of housing accommodation and has the power to provide housing accommodation (sections 8 and 9 respectively of the Housing Act 1985).

12.2 In developing the company officers will work with specialist advisers in designing the best legal and operational structure for the company to maximise financial benefits, undertake financial modelling and prepare the business plan.

13.0 Legal Implications and Risk

13.1 The Council has the power to form a company under section 1 of the Localism Act 2011. The councils powers to set up a company to provide homes for private letting are set out in sections 24-26 of the Local Government Act 1988.

13.2 The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 states that before exercising the power (to trade) the authority shall:

- (a) Prepare a business case in support of the proposed exercise of that power
- (b) Approve that business case

13.3 Legal implications arising in relation to State Aid, the duty to obtain best consideration for land transfers, the so called *Teckal* exemption, which exempts contracts between the Council and the company from following a regulated competitive procurement process will be considered in more detail through the development of the full business case.

13.4 The table below identifies the key risks associated with the proposed housing company. These risks only emerge once the company commences trading. Up until this point the risks are limited to those associated with the development of the business case.

Failure of company	A slim, low cost structure is proposed, which the Council would control; the company could be wound up relatively easily if necessary.
Suitable land sites cannot be identified and / or planning approval is not granted	A number of initial sites have been identified and work is underway to review other options.
Creating an appropriate delivery vehicle to understand and minimise tax implications	Expert tax and legal advice will be sought to minimise this risk.

Perception and reputation	The role of a house builder will need to be considered in the context of ensuring the correct branding vehicle and marketing strategy is adopted.
Business Plan is not viable	Financial modelling will be undertaken regularly with the support of appropriate advice to ensure that proposals are viable and robust.
Homes prove difficult to let/sell and impact on the financial projections	Thorough market research will be undertaken to inform the financial projections and external expertise will be commissioned to support the development of a robust marketing plan.
Government intervention	The creation of housing development vehicles is still a relatively new concept and there are different views and opinions about the legal options – none of which have been challenged. Therefore, there is no legal precedent. Where local authorities are seeking to innovate there is always an element of risk through legal challenge and/or government intervention in the future.

13.5 Risks and issues will be reviewed and managed on an ongoing basis

14.0 Recommendations

14.1 To approve the proposal to develop a business plan to support the creation of a council owned housing company

14.2 To receive a further report to approve the business plan and to incorporate the housing company.

15.0 Conclusion

15.1 The creation of such a company will allow the council to deliver housing across all tenures that meets the needs of the local population and ultimately contribute to the Councils General Fund.

**Graeme Wilson
Programme Director**