

Enabling the delivery of homes to meet the needs of local people

Cabinet	25 July 2019
Report Author	Tim Willis, Deputy Chief Executive
Portfolio Holder	Cllr Lesley Game, Cabinet Member for Housing and Safer Neighbourhoods
Status	For Decision
Classification:	Unrestricted
Key Decision	Yes
Reasons for Key	Expenditure not in budget
Ward:	All

Executive Summary:

This report considers the purpose of the council establishing a new housing company and recommends that the principle of establishing a wholly owned housing company be approved, to:

- Enable the delivery of new homes, that would otherwise not be delivered, with the ability to directly acquire land and construct homes.
- Acquire homes with the aim of improving conditions, management standards and affordability for the benefit of residents.
- Supplement existing housing programmes and funding within the council's HRA.
- Offer a wider range of housing tenures and costs, in addition to existing provision.
- Create a financially viable and sustainable vehicle for the acquisition, development and management of housing.

The report sets out the further decision making required and details the necessary work and controlling documents that will be needed to establish a wholly owned company. It highlights potential areas of risk and recommends that specialist external advice is taken to appropriately manage these risks.

The report sets out a time table of activity, leading up to the new company being ready to start trading by 1 April 2020 and recommends an initial budget of £50,000 to fund the necessary set up work.

The report recommends that officers report back to the Overview and Scrutiny Committee, Cabinet and Full Council at key points in the process, as set out in annex 1.

Recommendation(s):

It is recommended the Cabinet agree to:

1. Support the purposes for setting up a housing company to:
 - a. Enable the delivery of new homes, that would otherwise not be delivered, with the ability to directly acquire land and construct homes.
 - b. Acquire homes with the aim of improving conditions, management standards and affordability for the benefit of residents.
 - c. Supplement existing housing programmes and funding within the council's HRA.
 - d. Offer a wider range of housing tenures and costs, in addition to existing provision.
 - e. Create a financially viable and sustainable vehicle for the acquisition, development and management of housing.
 - f. Such other purposes which are ancillary to the above purposes
2. Allocate an initial set-up budget for the housing company of £50,000, to be funded from the Business Rates Equalisation Reserve, and delegate authority to the Deputy Chief Executive to approve expenditure against this budget.

CORPORATE IMPLICATIONS

Financial and Value for Money	<p>The recommendation to agree in principle to establish a wholly owned housing company requires an initial investment of £50,000 for set-up costs, which can be met by the Business Rates Equalisation reserve.</p> <p>Beyond this, the establishment of a housing company would provide the opportunity for a financial return primarily in the form of dividends to be provided to the council, further diversifying the council's income base. Such a further source of income would aid the council's financial sustainability, particularly in light of on-going reductions in central government funding.</p> <p>Any subsequent investment will be subject to further approval from members, with consideration given to the potential risks and benefits.</p>
Legal	<p>The Council can rely upon the general power of competence within the Localism Act 2011 to form the housing company for operating a business to let homes at market rent or to provide homes for market sale.</p> <p>Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the 'general power of competence'.</p> <p>A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others i.e. this includes the setting up of a housing company. In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duties it owes to its rate and local tax payers) and to the public law requirements to exercise the general power of competence for a proper purpose.</p>
Corporate	<p>The recommendations set out in this report support the council's ambitions to enable the delivery of homes in the district to meet the needs of local people. The financial arrangements will ensure that the new company</p>

	provides a viable and sustainable vehicle for the provision of housing, and has the potential to return any surplus profit to the council.								
Equality Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td>Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td></td> </tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td> <td>✓</td> </tr> <tr> <td>Foster good relations between people who share a protected characteristic and people who do not share it.</td> <td></td> </tr> </table> <p>It is anticipated that the council's new housing company will develop policies and programmes that enhance the housing opportunities for people with protected characteristics in the community.</p> <p>A detailed impact assessment will be completed alongside the detailed proposals and presented to members for consideration.</p>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,		Advance equality of opportunity between people who share a protected characteristic and people who do not share it	✓	Foster good relations between people who share a protected characteristic and people who do not share it.	
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CORPORATE PRIORITIES (tick those relevant) ✓	
A clean and welcoming Environment	
Promoting inward investment and job creation	
Supporting neighbourhoods	✓

CORPORATE VALUES (tick those relevant) ✓	
Delivering value for money	✓
Supporting the Workforce	
Promoting open communications	

1.0 Introduction and Background

- 1.1 The council has identified that enabling the delivery of homes to meet the needs of local people is a key priority. There are examples from around the country of councils establishing wholly owned housing companies to assist in delivering this ambition. This report explores the potential benefits of TDC establishing a wholly owned housing company. It recommends, in principle, that a housing company is established by the council and that further work is completed and reported to Cabinet and Full Council later in 2019.
- 1.2 Housing companies have the potential to provide councils with greater flexibility about the management of homes owned by the company. For example, the company would have flexibility about tenure and rent levels and have the ability to trade for profit.

- 1.3 Central Government generally expects councils with Housing Revenue Accounts (HRAs) to hold and manage affordable and social housing within their HRA. Social and affordable homes owned by the council, and managed within the HRA are let on secure, fixed term tenancies, subject to rent control and subject to the right to buy. Central Government does not support the use of housing companies to circumvent these requirements for social and affordable homes. The council's current development programmes are funded and managed through its HRA, and this report does not propose any changes to these programmes.
- 1.4 Housing Companies do however have a role in supplementing HRA housing provision. They can own and manage homes with greater flexibility than councils directly. They can offer a wider range of tenures and rent levels including market renting, intermediate or sub-market renting, shared ownership shared equity or market sales. A housing company could enable flexible joint venture arrangements with other housing providers and developers and work alongside programmes within the council's HRA.
- 1.5 The draft Thanet Local Plan sets the housing requirement for 17,140 homes by 2031. This sets the annual requirement for 897 homes, including 397 new affordable homes, per annum over the 20 year plan period. As a result of slower than required delivery in the early years of the Plan, the residual requirement has increased for the remainder of the plan to 1,137 per annum. Over the last 10 years, however, annual completions have averaged only 424 (net) units. This illustrates the need for the Council to identify a different way of delivering housing to address the under-performance of the development sector in the district. A wholly owned housing company has the potential to be part of the council's response to these challenges.

2.0 Purpose

- 2.1 This report sets out the proposal to establish a new council-owned housing company. Before determining the form of any company it is essential to first agree its purpose, so that arrangements can be established that best deliver the required outcomes.
- 2.2 The purpose of the council seeking to establish a housing company is therefore to:
- Enable the delivery of new homes, that would otherwise not be delivered, with the ability to directly acquire land and construct homes.
 - Acquire homes with the aim of improving conditions, management standards and affordability for the benefit of residents.
 - Supplement existing housing programmes and funding within the council's HRA.
 - Offer a wider range of housing tenures and costs, in addition to existing provision.
 - Create a financially viable and sustainable vehicle for the acquisition, development and management of housing.
 - Such other purposes which are ancillary to the above purposes
- 2.3 Wholly owned housing companies are permitted to trade for profit and proposals will include provision for any profits generated to be returned to the council, for use on other housing activities or wider priorities.

- 2.4 Before recommending a wholly owned housing company, officers have considered a number of other options ranging from joint ventures to lease arrangements. This work concluded that a 100% (wholly) owned Council company would best meet the specific outcomes set out above, provide flexibility and be relatively straightforward to establish.
- 2.5 The company's activities would need to be controlled by means of an approved business plan, and it is anticipated that initial acquisition or development programmes will be relatively small scale to ensure that any risks are manageable, with the flexibility to take on larger scale programmes or projects in the future.

3.0 Governance Arrangements

- 3.1 There are a number of potential approaches to the governance of a wholly owned housing company. Officers have considered other local examples of local authority housing companies and recommend what is considered to be the most straightforward and flexible approach.
- 3.2 It is recommended that the council establish a company limited by shares in which 100% of the shares are held by the Council. This would ensure that the council retained a controlling oversight of the company's activities. Over time, and with the approval of the council, the company would have the ability to establish subsidiary companies or joint ventures and to issue shares to other partners in exchange for equity investment to increase its flexibility.
- 3.3 Through the use of a shareholders agreement the council will be able to define the governance arrangements for the company and oversee its activities. The shareholders agreement could, for example set out how the company's Articles of Association are approved, who sits on the company's board of directors company, how the company's activities are funded and how its business plan is approved. Within the structure, the council will need to consider it's own internal governance arrangements and decide how it manages any matters reserved to the council by the shareholders agreement.
- 3.4 The company will require its own independent legal and financial advice and access to other officer resources as required to deliver its programmes of work. This could be provided by officers employed by TDC by means of a service level agreement, or by officers employed directly by the company.
- 3.5 The table below provides a summary of the purpose of each of the required controlling documents for the company's activities.

Key controlling document	Purpose of document
Shareholders agreement	Sets out the level of control that shareholders have over the activities of the company. It could for example: <ul style="list-style-type: none"> ● Restrict activities to an approved business plan. ● Restrict the sources of funding and/or level of debt. ● Describe any scrutiny role reserved to the

	<p>council.</p> <ul style="list-style-type: none"> • Provide for any share capital invested by the council in the company.
Articles of Association	Sets out the objectives of the company and governance arrangements. In particular who will act as company directors.
Business Plan	The business plan would set out the company's activities in detail for the coming period. The shareholders agreement could require the company to seek the council's approval for the business plan.
Loan and grant agreements	Sets out any funding to be provided by the council in the form of loans or grants. It would include amounts, drawdown arrangements, interest rates and default arrangements.
Service Level Agreement	Describes any services provided by the council to the company, for example staff time and set out the cost of this.

3.6 Independent legal advice will be required to prepare these controlling documents and to ensure that the council is fully aware of all of the legal ramifications of its preferred governance arrangements.

3.6 Capital investment will be required to enable the company to develop or acquire housing projects in the form of share capital, grants or loans, with income to meet the costs of this capital investment coming from rents or sales receipts.

4.0 Funding the Company's Activities

4.1 The company will have the ability to raise loan funding, grant funding and investment capital as set out in its controlling documents. This could include raising loan finance from the financial markets or seeking loan finance directly from the council.

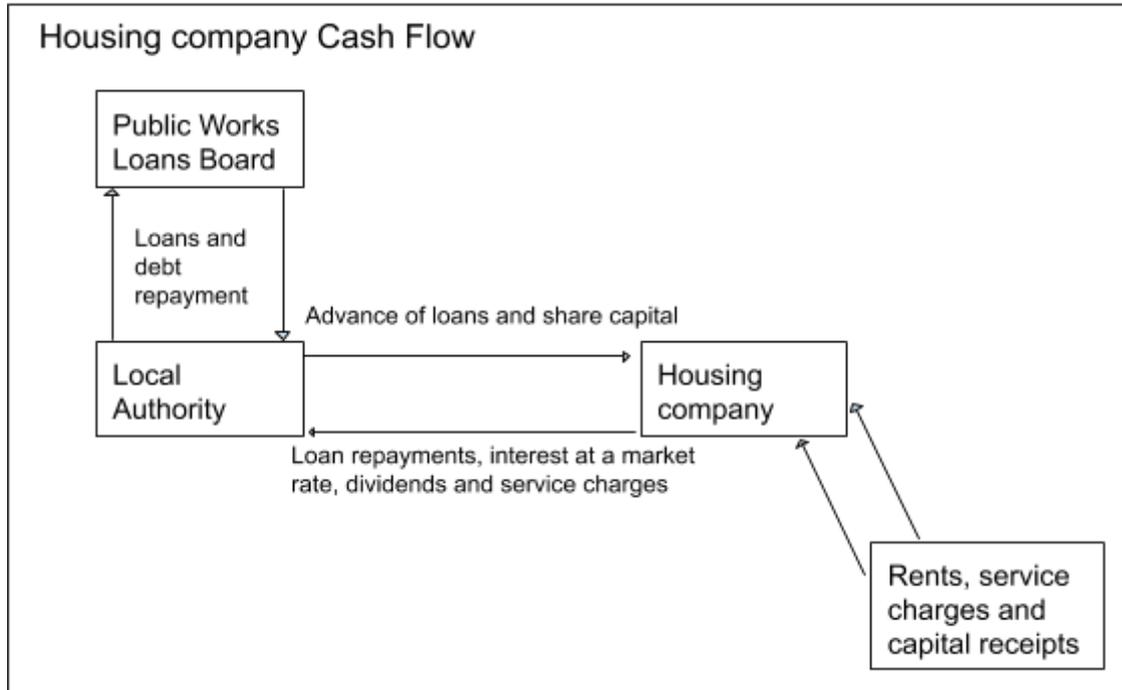
4.2 The council could, for example borrow from the PWLB and on-lend capital funding on to the company. The on-lending would be set out in a loan agreement between the parties and would have to be at an appropriate market rate to comply with state aid requirements. This would result in an uplift in the interest rate payable that would generate a revenue income to the council's general fund.

4.3 It is likely that the company will also require an investment of share capital to assist with its set up costs, initial cash flow and initial capital projects. Detailed financial modelling, as part of the companies business plan, will be needed to fully determine the level of share capital required.

4.4 Over time, the company will generate income from rents and sales. This income would be available to the company to fund borrowing costs and management and maintenance costs. Any surpluses generated by the company, after corporation tax, could be returned to the council in the form of dividends. Any TDC officers

undertaking work to support the company's activities could recharge their time to the company.

- 4.5 The diagram below illustrates an example of the potential flow of capital and revenue funding through the company and council.



- 4.6 Any loans to the Company will be made in line with constraints of the Local Government Act 2003 and related statutory and CIPFA guidance and State Aid compliance restrictions, which require any loans to a company for commercial purposes to be made at market rates.

- 4.7 Any funding provided to the company by the council would fall outside of the Housing Revenue Account and be accounted for within the council's General Fund. Any payments to the council including share dividends and loan repayments would be returned to the council's General Fund

- 4.8 Independent financial advice will be required to ensure that the council is fully aware of the financial and taxation implications of the proposals.

5.0 Initial Council Set-up Costs

- 5.1 To facilitate the establishment of the company, Cabinet approval is sought for an initial budget of £50,000 to commission legal, taxation and treasury advice to assist with the drafting of controlling documents and to establish effective financial arrangements for the company and the council.

- 5.2 In making the decision, Cabinet will need to give due consideration to the risks and benefits of loan facilities to the company. The Council will ensure it achieves an appropriate return for its risk, that the risk has been minimised and the funding is proportionate and properly balanced against the anticipated benefit. A summary of the key areas of risk is shown in section 6.0 below.

5.3 It is proposed that the required £50,000 set-up budget should be funded from the Business Rates Equalisation reserve.

5.4 Any future investment of share capital, grants or loans from the council to the company, will need to be included in the council's approved capital programme and be properly reflected within the council's Medium Term Financial Strategy. Any borrowing by the council for on-lending to the company will also be required to comply with and operate within the confines of the council's treasury management strategy.

6.0 Risk Management

6.1 Housing development is an inherently risky activity and modelling can only be done at the initial stages by informed modelling of costs, risks and income. Key areas of risk include:

- **Site abnormal and infrastructure costs:** Road construction, services, ground conditions, contamination, ecology. Provisional sums and contingencies to cover these issues need to be included in evaluations.
- **Construction costs:** Impact of market conditions and tendering, delays in construction timetable.
- **Project management:** The cost of effective project management and professional fees needs to be included. Delays in project delivery can impact on overall costs.
- **Planning risks:** Details of planning consent, conditions and contributions.
- **Demand risks:** Voids, sales risks, marketing costs.
- **Management and maintenance risks:** Arrears of rents and service charges, responsive repairs and planned maintenance, vandalism, servicing and housing management.
- **Capital financing and interest rates:** Interest rates and rent levels that are sensitive to variation which would impact on project viability.

6.2 The establishment of a housing company and the preparation of the key controlling documents will need to include detailed arrangements for the management of risk.

7.0 Implementation

7.1 Cabinet approval is sought to the principle of establishing a wholly owned housing company, as set out in this report, subject to the approval of detailed proposals, controlling documents and funding. The action plan set out at annex 1 identifies the actions required to enable the company to commence trading activity by 1 April 2020.

7.2 Following approval of this proposal, detailed proposals will be developed, including external legal and financial advice as required, including consideration of the following issues:

- Agreeing the required level of council control and scrutiny over the company's activities.
- Establish required internal governance arrangements
- Consider the scale of development proposed and the required capital funding.
- Appointment of required consultants and advisors
- Preparation of draft controlling documentation
- Preparation of draft business plan
- Development of detailed operating arrangements
- Appointment of the company's board of directors and company secretary

- Considering the staffing and resource requirements for the company
- Conclusion of all legal and financial processes to establish the Company, including the contractual arrangements (e.g Articles of Association) between the Council and the Company.

Contact Officer:	Bob Porter, Head of Housing and Planning
Reporting to:	Tim Willis, Deputy Chief Executive and S151 officer

Annex List

Annex 1	Action Plan
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Background Papers

Title	Details of where to access copy
None	

Corporate Consultation

Finance	Chris Blundell Head of Finance and Procurement
Legal	Tim Howes, Director of Corporate Governance