

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 4 November 2013

Portfolio:	Health and Housing; Policy and Resources
Subject:	Local Housing Company
Report of:	Director of Community and Director of Finance and Resources
Strategy/Policy:	Housing Strategy
Corporate	A balanced housing market.
Objective:	A dynamic, prudent and progressive council

Purpose:

To consider proposals to form a new Joint Venture company to facilitate housing and economic development in the borough.

Executive summary:

Fareham Borough Council is proposing to form a new company in partnership with Eastleigh Borough Council, First Wessex and Radian Housing Association for the purposes of facilitating housing and economic development in a sustainable manner.

The parties wish to enter into the Joint Venture to enable the parties to:-

- meet housing need in its core areas of operation in partnership with other organisations
- bring forward housing developments that may otherwise stall due to economic conditions.
- increase housing supply in order to meet local housing needs.
- increase the supply of market rented housing to overcome local shortages.
- provide housing accessible to those in receipt of welfare benefits.
- boost the local economy through development, creating work in construction and a range of other industries.
- develop projects aimed at reducing carbon emissions and/ or increasing renewable energy usage.

The purpose of the Joint Venture (JV) is to primarily provide management, control and administration of the structure including high level risk management.

The company will be undertaking a continuing business which will have project based Special Purchase Vehicles (SPV's) underneath the main structure.

The intention will be that each SPV will attract separate funding and that there will be a number of development projects arising. Each SPV will have different economic participants but all SPVs will be managed by the Joint Venture.

Investment in the specific housing projects will be ring-fenced in the relevant SPVs. Investment and participation in individual SPV's by Fareham Borough Council will be subject to a separate report relating to the individual SPV and approval of this Council's Executive.

Approval is being sought for the Council to form the new company (with the partners listed above) and to nominate two persons to serve as directors on the Board of the company.

Recommendation:

The Executive agrees to Fareham Borough Council forming a new Joint Venture company (limited by guarantee) in partnership with Eastleigh Borough Council, First Wessex and Radian Housing Association for the purposes of facilitating housing and economic development in the borough.

The Executive authorises the Solicitor to the Council and the Director of Finance and Resources to prepare and sign on behalf of Fareham Borough Council the necessary documents leading to the formation of the new company.

The Executive authorises the Director of Finance and Resources to incur any necessary expenditure leading to the formation of the company.

The Executive agrees the appointment of one elected member and one officer to serve on the Board of the company.

Reason:

To assist the Council in delivering its corporate priority to deliver 500 new affordable homes by 2017.

Cost of proposals:

Fareham's contribution to the cost of forming the new company (including the provision of specialist legal and financial advice) is estimated to be less than £5,000. These costs can be met within existing General Fund resources.

The cost of administering the Joint Venture Company are expected to be met in full by the activities of the company although in the short term the Council may be required to make a nominal contribution towards the overheads of the company. It is anticipated that this loan will be recovered in full once the company becomes economically active.

The cost of forming each individual SPV and any lending provided to the SPV by Fareham Borough Council will be subject to a separate report to this Executive as and when appropriate development opportunities have been identified.

Appendices: **A: CONFIDENTIAL:** Memorandum of Understanding
B: CONFIDENTIAL: Company Articles
C: CONFIDENTIAL: Example of Limited Liability Partnership Agreement

FAREHAM

BOROUGH COUNCIL

Executive Briefing Paper

Date: 4 November 2013

Subject: Local Housing Company

Briefing by: Director of Community and Director of Finance and Resources

Portfolio: Health and Housing and Policy and Resources

INTRODUCTION

1. At the meeting on 8 July 2013, the Executive considered a report outlining a new approach to support housing delivery in the borough through the creation of a local housing company as a Joint Venture. The Executive approved the proposal in principle and authorised officers to work up the proposal in more detail with appropriate specialist advice.

BACKGROUND

2. The Council has adopted a target to enable 500 new affordable homes in the Borough over the period 2011-17 as a corporate priority. Although the target has been exceeded for the first two years, the forecast output for the remaining three years is not as promising.
3. Currently, affordable homes are delivered in the main by Registered Providers (previously known as Housing Associations). Typically, free serviced land is made available for affordable housing through the planning process or by Registered Providers purchasing development sites on the open market. The cost of building the new affordable homes is met by the Registered Provider borrowing against their existing assets and or future rental income. Registered Providers require the approval of the Regulator (the Homes and Communities Agency) for all development and borrowing.
4. Registered Providers are able to apply to the Homes and Communities Agency for a capital grant towards the cost of construction from the government's Affordable Housing Programme 2011-15. These grants are typically between 10-15% of the cost of construction with the balance being met from borrowing. Bidding under the Affordable Housing Programme closed in April 2011 and all funds have been allocated. The Government have recently announced their intention to make further funding available for the period 2015-2018 and details of the eligibility criteria and timetable for bidding are still awaited.

5. Although Fareham Borough Council is legally able to build new council housing its ability to build is severely restricted by a borrowing cap that has been applied by the Government following the reform of the Housing Revenue Account system. In Fareham's case our borrowing capacity within the Housing Revenue Account is restricted to approximately £2m (which is sufficient to build less than 20 new Council houses).
6. Therefore, officers have been investigating the feasibility of forming a Joint Venture Company (JV Co) to improve the delivery of new affordable homes in the borough.

JOINT VENTURE MODEL FOR HOUSING DELIVERY

7. It is proposed that Fareham Borough Council should form a JV Co in partnership with Eastleigh Borough Council, First Wessex Housing Association and Radian Housing Association. The JV Co will be a company limited by guarantee and will operate entirely independently of the Council and the other partners. Details of the JV Co are set out in the confidential appendices attached to this report).
8. Companies limited by guarantee are widely used for charities, community projects and other similar bodies.
9. The main reason for forming a company limited by guarantee is to protect the people running the company from personal liability for the company's debts, just as a business may be set up as a company limited by shares for the same reason. If the company is not registered as a limited company, then the people running it (typically the management committee, etc.) can be made personally liable for its unpaid debts. In a company limited by guarantee, the liability is limited to the amount of the guarantee set out in the company's articles, which in this case will be just £1.
10. A company limited by guarantee is much like an ordinary private company limited by shares. It is registered at Companies House, must register its accounts and an annual return each year, has directors, etc. A major difference is that it does not have a share capital or any shareholders, but members who control it.
11. The JV Co will comprise a board of directors, with two appointees being nominated by each of the partners. Fareham Borough Council and Eastleigh Borough Council will each hold a 24% stake in the company, whilst First Wessex and Radian will each hold a 26% stake in the new company. However each partner will retain equal voting rights.
12. The JV Co will be responsible for :-
 - Preparing and agreeing the Business Plan
 - Monitoring progress and delivery
 - Risk Management
 - Annual Accounts
 - Audit & Governance
 - Branding and Marketing
 - Management Agreements
 - Promoting shared learning

13. Beneath the JV Co will be a number of subsidiaries known as Special Purpose Vehicles (SPV's). Specific sites would be progressed in a "subsidiary", set up as a limited liability partnership (LLP). By doing so, this would isolate other Joint Venture partnerships from any risks associated with specific sites; (only those party to the LLP will have a liability).
14. The JV Co would hold a commercial interest in the activities of each of the LLP's but no economic interest. Therefore, in the event of an individual LLP failing, the JV Co would be protected.
15. The benefit of such an approach is that the council could have a stake in developments across the borough without putting the Housing Revenue Account at risk from the development. As a part shareholder, the Council would only bear a proportion of the risk, yet could maintain an influence over the management and letting of the stock. It would also leverage in external funding to developments and could open up access to a wider range of privately owned sites, which wouldn't otherwise be possible if the Council led wholly on the scheme.
16. The LLP which held the housing assets would not be owned or controlled by the Council, but would be structured in such a way as to only be able to act on behalf of the Council in purchasing land, vacant properties or giving guarantees on land values to encourage developers to build new properties.
17. The Council would provide individual LLP's with the capital finance to enable development and this will be repaid to the Council (at a market rate) through loans secured on the value of the assets. As, over time, property values start to rise so the loan would increase in value in accordance with the value of the property. The loans can be classified as capital spend and can therefore be considered for borrowing under the Prudential Code.
18. The properties would be leased by the LLP to a Registered Provider and or Fareham Borough Council who will then let them to tenants for up to 5 years at either market, affordable or social rents. Incentives to purchase could be offered with the tenancy to help achieve the sales of the properties in the longer term. Letting properties at market and affordable rents rather than social lettings will ensure that the site will generate a mix of tenures.
19. It is felt there is merit in working collaboratively on this in order to share knowledge expertise and costs of setting up such a venture.

RISK ASSESSMENT

20. Officers are investigating a number of sites in the borough that could be brought forward for development using this model in the near future. Officers will bring forward reports to future meetings of the Executive for consideration, setting out the detailed proposals for each site and each LLP in due course.

21. It should be noted that Fareham Borough Council's lending and involvement with any sites and any LLP will be restricted entirely to sites within Fareham Borough Council's boundary. Similarly Eastleigh Borough Council will be restricting its activity to sites within its boundary. The advantage for both Councils of being involved in the same JV Co. is the opportunity for shared learning and the sharing of set up and running costs.
22. The risks associated with forming the JV Co. are minimal. The legal and financial (i.e. the economic risk) rests with each of the LLP's as and when they are formed.

FINANCIAL IMPLICATIONS

23. The costs of forming the JV Co are estimated to be in the region of £5,000 this includes preparation of the company articles, memorandum of understanding, company registration and specialist advice.

CONSULTATIONS

24. The Council has consulted the Regulator (the Homes and Communities Agency) about the proposals. The Regulator has offered advice and raised no concerns or objections to the proposals.
25. The partners have taken specialist legal advice (including Counsel's opinion) to help develop the proposal and draft the required documentation.
26. Officers have also consulted District Audit to ensure that the proposed company structure and future lending to LLP's meets with their approval.

CONCLUSION

27. The Council has adopted a target to enable 500 new affordable homes by 2017 as a corporate high priority. In addition, the Council is committed to securing longer term housing growth via the new community at Welborne.
28. However, the current market and financial conditions have resulted in a significant downturn in new housing delivery across both nationally and locally.
29. At the same time, there is a growing need for affordable homes in the borough and a reducing level of finance available to support affordable housing investment in the traditional ways.
30. Financial restrictions on the Council's Housing Revenue Account combined with reduced funding available from traditional routes are impacting significantly on the delivery of affordable housing in the borough. Consequently, there is a need to explore new approaches to help deliver the much needed new homes to buy and or rent.

31. Officers consider the proposals outlined in this report will help the Council to towards meeting its corporate priority to enable 500 new affordable homes by 2017 and will have an important role to fulfil in helping bring forward development at Welborne.

Reference Papers: Executive Report:

8 July 2013: Alternative Approach to Supporting Housing Delivery