

APPENDIX D

WAVERLEY BOROUGH COUNCIL

EXECUTIVE – 9 JUNE 2009

Title:

LOCAL HOUSING COMPANY – WAVERLEY INITIATIVES LIMITED

[Portfolio Holder: Cllr Keith Webster]

[Wards Affected:N/A]

Summary and purpose:

The Council has previously agreed the principle of establishing a wholly-owned local housing company called 'Waverley Initiatives Ltd' in order to help secure additional affordable housing in the Borough. This report seeks approval of the Executive to:

1. incorporate 'Waverley Initiatives Limited' as a wholly-owned company limited by guarantee;
2. appoint the first (unremunerated) directors of the company; and
3. agree to further business options being produced to consider the advantages and disadvantages to the council of developing projects through a Local Company.

How this report relates to the Council's Corporate Priorities

This report relates directly to the Corporate Priorities viz:

- 'Subsidised Affordable Housing' – Working for more affordable housing to be built, and managing council housing well.
- 'Improving Lives – Improving the quality of life for all, particularly the more vulnerable within our society.'
- 'Value for Money' – Ensuring all our activities are customer focussed and provide good value for money.

Equality and Diversity Implications:

There are no direct Equality and Diversity implications arising from this report.

Resource/Value for Money implications:

These are potentially significant. One of the advantages of a wholly-owned housing company is that any assets passed to the company will remain under the 'Waverley umbrella' and not lost to a separate organisation.

Legal Implications:

There is a range of legal issues. At this stage this primarily relates to the incorporation of the company and the appointment of company directors. The company will need to address governance, procurement, and contract issues once established.

Introduction

1. In recent years the Government has recognised that local authorities have a role to play in helping to secure more much needed affordable housing. However the restrictions placed on the Housing Revenue Account (HRA) through the national subsidy regime meant that most local authority landlords could not afford to build new homes within the HRA.
2. More recently, the Government and its agency – the Homes and Communities Agency – has been trying to find ways to support local authorities to build housing through the creation of Local Housing Companies. A pilot project was established in late 2007 that focussed on fourteen councils with significant land holdings and in growth areas. It included: Bristol, Dacorum, Barking & Dagenham, Harlow, Leeds, Manchester, Newcastle, Nottingham, Peterborough, Plymouth, Sheffield, Sunderland, Wakefield, and Wolverhampton. Other local authorities, like Waverley, have been considering the advantages of establishing local housing companies. Woking Borough Council, for example, has set up a housing company and has recently acquired properties for letting to local people in housing need.
3. Last year the Government changed legislation in order for local authorities to establish local housing companies, which could be wholly owned by the council. Prior to that if a council promoted the establishment of a company it had to be held at arms-length and be independent of the council.
4. Affordable housing is one of the Council's key corporate priorities – both to secure more affordable housing for people in housing need and to strive to manage it well.

Waverley Housing Company

5. In November 2008, the Executive approved the creation of a wholly owned local delivery vehicle company limited by guarantee - to be known as Waverley Initiatives Ltd. The Council's legal advisors on this matter – Trowers and Hamlins – have reserved the name and has established a 'shell' company within their organisation until such time as the Council decides to formally incorporate the company.
6. This report outlines the process required to enable the company to become a stand-alone organisation and be in a position to commence business transactions.

Objective of the company

7. The Council has agreed to set up a wholly owned non-charitable, not-for-profit company for the purposes of providing affordable housing, and any surpluses generated would then be reinvested in additional affordable housing.
8. In order to move matters forward the company limited by guarantee needs to be incorporated, and the following information will need to be provided to enable the process to be determined:

- there needs to be one subscriber (equivalent to a shareholder) - this would usually be the Council (as a body corporate);
- the incorporation will be made under the terms of standard memorandum and articles (attached at Annexe 1). However once the constitution of the board is agreed the memorandum and articles can be amended to fit the specific circumstances of the company;
- the minimum requirement for incorporation is for one person to be named as a director (or board member). This would be any senior staff member from Director Level. It is worth noting that the inclusion on the board of officers and members of Waverley Borough Council does not present a conflict of interest, as the Company will be fully owned by the Council, and using its finance in the interests of achieving Waverley Corporate objectives. It is proposed that, at this stage, five unremunerated directors be appointed viz:
 - the Leader of the Council;
 - the Housing Portfolio-holder;
 - the Finance Portfolio Holder
 - the Chief Executive;
 - the Deputy Chief Executive.

[A briefing note on the roles and responsibilities of board members is attached at Annexe 2.]

- it will be necessary for the company to pay the insurance premiums for director/officer liability insurance, as the Council's own insurance cover does not extend to the activities of separate bodies, even though they are wholly-owned by the Council;
 - the size and constitution of a future board will depend upon the amount and size of the business the company wishes to carry out and as the business grows further expertise in relevant fields would be an advantage;
 - there needs to be a named Company Secretary. This is not a legal requirement but official correspondence to the company would normally be addressed to the Company Secretary and it would be prudent to have a named person responsible for disseminating that information (essentially the company constitutional procedures). This could be carried out by the Solicitor to the Council;
 - additionally there will also be a need for a registered office and it is proposed that this be the Councils office address.
9. Although wholly-owned by the Council, the company would be stand-alone and as an entity be subject to the Companies Act 2006 which sets down the rights and responsibilities of the directors. The company could use the resources and expertise of Council employees particularly in the finance, legal, and technical spheres.

Opportunities for securing affordable housing

10. There are a variety of ways in which the housing company can secure affordable housing:
 - purchasing properties on the open market, which could help the local housing market at present;
 - Receiving HRA vacant properties that require major works - Section 32 Ministerial consent would be required;
 - Undertake new house building on land currently owned by the Council; and
 - Acquiring land for development.
11. Each of these activities would require a business case to be formulated, and would contribute to the overall business plan of the company in order for a proper assessment to be made of the opportunities as they present themselves. Work is currently in hand to provide this information when it is required.
12. As the company is undertaking activities that are consistent with the Council's Corporate Priorities and largely funded by through the Council, it would be appropriate for the Company to present an annual business plan to the Council in January of each year.

Resourcing Waverley Initiatives Ltd

13. The Council has accumulated capital resources earmarked for expenditure on affordable housing. This sum includes commuted sums that have arisen through the planning system to contribute towards affordable housing.
14. The Council also has a limited number of small sites, which might have some development potential for affordable housing. These land holdings could be made available to the housing company in due course, subject to Council approval.
15. Opportunities may come available through the Homes and Communities Agency for grant-funding, however, competition for HCA resources is likely to be strong.
16. As the company acquires property it could be rented above social housing rents but below market rent levels. This will produce an income stream. In due course, as the business develops, this revenue stream will (along with its asset base) will give rise to the opportunity for the company to borrow funds on a prudential basis. Any such borrowing would be reinvested in providing more homes.

Value for Money

17. The main advantage of a wholly owned local housing company is that the assets transferred to the company will remain part of Waverley's overall resources.
18. In addition, it is proposed that the Council's HRA could provide the housing management and repairs service to these properties in return for a fee, which will help support the HRA. Similarly, the Council will be able to offer the company other services (financial/legal) that may be required.
19. Because the local housing company can retain all of its rental income; in time it will develop a rental stream against which it will be able to borrow and reinvest in additional homes in Waverley.

Risk

20. A full risk analysis will be developed in the next few months as the business plan is completed. Risks include, for example:
 - the company overextending itself;
 - acquires inappropriate properties where void works are higher than planned;
 - exposure to risks associated with loans and borrowing (though this will not be an immediate issue);
 - rent arrears higher than budgeted for;
 - risks associated with new developments as and when these arise.
21. Clearly, the company will have to provide a risk assessment and determine what mitigation it can put in place to reduce the risk to itself, and the Council will need to be satisfied that its investment is properly protected.

Conclusion

22. The proposal to create a local housing company is not unique to Waverley. This approach has been successfully taken in Woking where the Council has established 'Woking Borough Homes' as a wholly-owned local housing company; and has so far acquired properties for letting.
23. Waverley has capital resources available for investment in securing more housing to help meet local housing need.
24. Detailed work on business plans for each of the options for development to be carried out to enable the long term direction of the company to be assessed

Recommendation

It is recommended to the Council that:

1. Waverley Initiatives Limited now be incorporated as a non charitable, not for profit wholly owned company by Waverley Borough Council, limited by guarantee, and Officers and Portfolio Holder report further on the Memoranda and Articles of Association as set out in Annexe 1;
2. as part of the incorporation process a board of five directors be set up to include: the Leader of the Council, the Portfolio holder for Housing, the Portfolio Holder for Finance, the Chief Executive, and the Deputy Chief Executive;
3. it be noted that the director and officer liability insurance will be paid for by the company and that directors will not be remunerated;
4. Trowers and Hamlins be appointed to carry out the process of incorporation of the company;
5. the Solicitor to the Council be authorised to act as the Company Secretary; and
6. An overall business plan be developed to enable a comprehensive assessment of the future direction of the company.

Background Papers (SDCS)

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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