

APPENDIX I

WAVERLEY BOROUGH COUNCIL

EXECUTIVE - 13 APRIL 2010

Title:

WAVERLEY INITIATIVES LIMITED

**[Portfolio Holder: Cllr Keith Webster]
[Wards Affected: All]**

Summary and purpose:

The purpose of this report is to describe the latest background work carried out on the viability of a Local Authority company and seek authority for the incorporation of Waverley initiatives as a wholly owned local authority company in preparation for its new Board to consider a business plan for the further provision of affordable housing in the Borough.

How this report relates to the Council's Corporate Priorities:

This report relates directly with the following Corporate Priorities

Subsidised Affordable Housing-Working for more affordable housing to be built and managing 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 issues. At this stage it 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.

Original purpose

1. The original purpose of forming a company within and fully controlled by Waverley Borough Council was to enable new housing to be provided which did not fall within the government constraints that control the Housing Revenue Account.
2. In summary these are
 - 1) A significant proportion of the rental income goes to the government as negative subsidy
 - 2) 75% or any capital receipt from Right to Buy sales goes to the government.
3. It was seen that the formation of a company would enable the local authority to control and provide new housing which would not be subject to the Right to Buy, and enable all the rental income to be retained for reinvestment. Also, being independent and having a selected Board would enable it to make its own decisions and control its own future and business plan.
4. However as part of the government's policy to encourage new house building in the public and social sectors these rules governing the HRA were abolished for all new build housing. At the same time, the newly creating Homes and Community Agency was widening its scope, and including local authorities as being eligible for housing grant (providing the local authority was registered and proved its case in the same way as all other bidders). This meant effectively that the advantages provided by the local authority housing company were neutralised. However, it was also made clear that any new build carried out by the local authority through the new rules HRA would be subject to ministerial approval and would require effectively a business plan to be submitted to prove its long term plan.

Comparison exercise

5. An exercise has been carried out comparing the long-term returns available through either a Local Housing company or through the new rules Housing Revenue Account. The result suggests that the long-term outcome provides no significant difference between the two.
6. However further comparison work has indicated that there are other options open to the company
 - 1) Transfer of major repair void properties from the HRA
 - 2) Land Purchase
 - 3) Purchase of open market properties.
7. Of these three, void transfer produces a positive result for the company.

8. The annual cost to the HRA of refurbishing and bringing back into use major repair voids, which require over £15000 of work, is approximately £350,000. Currently, because some void refurbishment expenditure is so high, constraints on expenditure have forced them to be sold to the open market, consequently losing them from the affordable housing sector.
9. Transferring these properties to the company would keep them in social housing and the resultant HRA available finance can then be made available to upgrade proportionately more retained HRA properties to the Decent Homes standard.

Waverley Initiatives Limited

10. The work carried out to date has indicated that Waverley Initiatives, if incorporated, could be a viable concern and would provide a flexible vehicle within which, in time other initiatives besides housing could be considered and tested.

Administration of the company

11. The Council has previously agreed to set up a wholly-owned, not for profit company, for the purposes of providing affordable housing, and any surpluses generated would then be reinvested in additional affordable housing
12. The company exists at present in name only as 'Waverley Initiatives'. Consultant solicitors Trowers and Hamlin have advised that once the Council have agreed to the incorporation of the company the existing company would be dissolved and a new one set up afresh with the same name with an updated set of Articles of Association. (See Annexe 1 for the Articles of Association and explanatory briefing note).
13. Trowers and Hamlin advise that the incorporation of Waverley initiatives would be as a Company limited by Shares. As a wholly owned company by the Local authority there will be one shareholder, which will be Waverley Borough Council. The minimum requirement for numbers of directors is one. However it is proposed that five unremunerated directors be appointed

The Finance Portfolio Holder
The Leader of the Council
The Housing Portfolio holder
The Chief Executive
The Head of Housing

14. Subsequent to Council approval, Trowers and Hamlin will prepare the incorporation paperwork for signature on behalf of the Council (as sole shareholder) and by the chosen directors (board members), and then submit the paperwork to Companies house

Company limited by shares

15. The advantage of a Company Limited By Shares (CLS) is that it can be grouped with the council for Stamp Duty Land Tax (SDLT) and therefore transfers between the two organisations would not be taxable Waverley Initiatives would be subject to VAT and corporation tax on its profits/surpluses
16. As a wholly owned subsidiary of the Council, the Council have the maximum possible degree of control over the future activities of Waverley Initiatives and the Council (as sole shareholder) would have the ultimate sanction of either removing the Board Members and appointing replacements or, ultimately resolving to wind up the company. The company will be 'on balance sheet' and, accordingly, the Council will wish to control the company's ability to borrow.

Risks

17. If Waverley Initiatives were to be wound up, land it owns (including any that was transferred from the Council) would not automatically revert to the Council. Therefore it would be necessary for the land to be transferred to the Council prior to winding up.
18. It would be possible for the Council to impose a covenant on and/or a charge over any initial transfer of land to the company to ensure that the land would be transferred back to the Council at nil value in particular circumstances (such as if the land were not used for affordable housing or other specified purposes). This would protect the Council's interest in the land if the company were to be wound up involuntarily. If the land were transferred back to the Council, the transfer itself would need to be registered with the land registry, so that the Council becomes the registered freeholder again.
19. Waverley Initiatives (upon incorporation) would be a non-charitable company, and as such would be subject to corporation tax. However any revenue surpluses generated, if reinvested back in the company for the provision of affordable would not be liable for tax.
20. Similarly, in the event of a winding up of the company if the land were transferred back to the Council (at nil value) there would be no gain and therefore no tax liability

Conclusion

21. After investigation into the various methods that a wholly owned local authority company can benefit the provision of social housing in the Borough of Waverley, it is concluded that, at this time, a programme of major repairs void transfer offers the most viable both to the company and to Waverley Borough Council. Therefore the incorporation of Waverley Initiatives Limited a wholly owned local authority company limited by shares can now be implemented and a Board of directors appointed to request and receive business plans for projects.

Recommendation

It is recommended that

1. approval be given for the incorporation of Waverley initiatives Limited as a wholly owned local authority company limited by shares at Companies House; and
2. the board, as described in paragraph 13, be established.

Background Papers

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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