

## WAVERLEY BOROUGH COUNCIL

### OVERVIEW AND SCRUTINY (CUSTOMER SERVICE AND VFM)

26<sup>TH</sup> JUNE 2017

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**Title:**

**CREATION OF A PROPERTY COMPANY**

[Portfolio Holder: Cllr Tom Martin]

[Wards Affected: All]

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**Summary and purpose:**

The Investment Board are exploring the advantages and opportunities that would be offered should the Council set up a property company. Most important amongst these is the ability of a company to pursue opportunities to acquire commercial properties that are beyond the Council's powers i.e. solely for income generation purposes.

Overview and Scrutiny Members are asked to consider these advantages and to advise on other opportunities and challenges such a vehicle might offer or present.

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**Background**

1. The primary objective of the Council's Investment Strategy, and therefore of the Investment Board, is to contribute to offsetting the overall budget deficit. The Council is currently constrained under s.1 of the Localism Act 2011 when it comes to acquiring property for investment purposes.
2. Should the Council wish to do so it has the ability to establish a 'Local Authority Trading Company' via section 95 of the Local Government Act 2003. Such a company would in effect be a subsidiary company of the local authority and as such the shareholder (i.e the Council) would have ultimate control over activity and operational matters).
3. The company as a property vehicle would target a specified minimum return with funding either from loans from the Council or commercial sources. The aim would be to maximise the opportunities within the existing portfolio where there is a clear business case and an acceptable level of risk, and to bring in new opportunities to increase the assets the Council already owns in cases where this falls outside of the Council's legal powers. Every property option would be looked at on its own merits to decide whether to purchase through the Council or the Company dependent upon the business case and legal implications of the opportunity concerned.
4. It is the intention that the company has enough flexibility to acquire and work on a commercial basis across a range of activities if appropriate. This may include joint ventures, special purpose vehicles, operating existing Council assets and possibly the development of management agreements.
5. Initially, the focus of the company would be to concentrate on property investment and development work both inside and outside of the Borough which is needed to provide a valuable income stream to the Council. The company would mainly operate in situations where the Council can't or where there is a need to respond

more quickly and effectively to market opportunities where the Council is more disadvantaged by the regulations on decision making which affect speeds of response.

### **Legal Implications**

6. The detailed legal implications are included in the Annexe which was the information reported to the recent Investment Advisory Board meeting. A summary of the main points is below.
7. An appropriate governance structure will be needed to ensure sound and robust management alongside protection of the Council's financial and reputational investment. The Council as shareholder would control the company and delegate operational matters via a Shareholder's Agreement.
8. The company would be subject to the Local Authorities (Companies) Order 1995. The order sets out regulations that are specific to controlled companies and start from the basis that the public should be aware that the company they are dealing with is controlled by the local authority. It should be noted that the company would be liable to corporation tax in the normal manner on profits, and would need to charge VAT.
9. The Council would also need to consider how the support services required by the company will be contracted out. This would include legal services for property acquisition and accounting services provided by local authority staff (and re-charged to the company).
10. The following documentation is required to complete the establishment of a company and associated governance arrangements.
  - Articles of Association
  - Shareholder Agreement.
  - Loan Agreements
  - Director Appointments
  - Appointment of Company Secretary and an Auditor.
  - Business Plan

### **Financial Implications**

11. The company would need significant funding to purchase property in the open market. Therefore, as well as the Council having the powers to form the company it would also need to be able to provide it with the necessary loans (which it can do via the Localism Act 2011 and also s24 of the Local Government Act 1988) and equity funding. The Company would also need working capital and this is likely to be provided by way of short term loans from the Council.
12. The creation and operation of a company by a local authority is a complex matter. It is however, an action that a number of other local authorities have taken successfully. To ensure that the Council maximises the opportunities from having a company and manager the associated risks effectively to safeguard the Council's finances, and it will be necessary to seek specialist advice. This advice will aim to cover Waverley's specific aspirations and include advice on:

- Structure, including subsidiaries if appropriate.
- Tax.
- Raising finance, including borrowing from the Council.
- Support costs and other overheads.
- Investment criteria.
- Further scope for the company's activities in future.

## **Conclusion**

13. The creation of a Company whilst presenting opportunities to the Council that could otherwise not be realised does raise questions for Members as regards issues such as:

- Governance arrangements
- Structure
- Authorisation
- Scope of activity and types of investments
- HRA interface (in particular the use of revenue from disposals to the company for affordable housing)
- On-lending (i.e. any restrictions around the Council's ability to loan money to the company).

14. Subject to the comments of this committee, it is envisaged that Executive and Council will consider this matter in July and the company will be established and ready to operate in the Autumn.

## **Recommendation**

The Committee is asked to consider and comment on these matters and others arising from this proposal and to submit any observations and comments to the Executive.

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