

WAVERLEY BOROUGH COUNCIL

OVERVIEW AND SCRUTINY (CUSTOMER SERVICE AND VFM)

11 SEPTEMBER 2017

Title:

CREATION OF A PROPERTY COMPANY – DETAILED MATTERS

[Portfolio Holder: Cllr Tom Martin]

[Wards Affected: All]

Summary and purpose:

In July 2017 the Council agreed to create a property company to support its financial and property strategies in the medium/long term, after seeking specialist advice. Before advice is sought, Waverley needs to agree the purpose and objectives of the company and how it will operate and the report to Council included a number of detailed matters that were delegated to the Investment Advisory Board to finalise, after consideration by the VFM O&S Committee.

The relevant matters that need to be agreed prior to appointing external specialist external advisors are set out below and the Overview and Scrutiny Committee is asked to consider each one and agree on proposals to recommend to the Investment Advisory Board.

Background

1. The primary objective of the Council's Investment Strategy 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. In July the Council agreed 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).

Legal Implications

3. The detailed legal implications were set out in the report to this Committee, the Executive and Council in July 2017. At the request of the VFM Overview and Scrutiny Committee at its meeting in June, officers sought legal advice on various specific aspects of the operation of a Waverley property company. This advice is included at Exempt Annexe 1.

Financial Implications

4. 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.

Detailed Matters agreed by Council to delegate to the IAB after VFM O&S

a. Governance arrangements

As a company wholly-owned by the Council, it would be imperative for an appropriate governance structure to be put in place to ensure the sound and robust management of the company alongside protection of the Council's financial and reputational investment in the company.

The company shareholder would have ultimate control over the company and would control the company in a variety of ways, including the appointment of directors, provision of funding and the Articles of Association, but operational matters could also be included in a Shareholder's Agreement as described below.

The most appropriate avenue would be for the Shareholder function of the Council to primarily be executed through a dedicated Sub-Committee of the Executive comprising members appointed by the Leader, with a minimum of three Members. If further appointments were required these will be made by the Leader. Details of the sub-committee were included within the report to the June meeting of this Committee.

WBC will be the sole company shareholder and the Shareholder would, through a Shareholder Agreement, set out the performance levels required for the company and the tolerances (e.g. financial and decision making) within which the Company may operate.

b. Authorisation

Every property option will 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. Authorisation would be required from the Board. Any lending from the Council to the Company would be subject to the normal decision making process through the Executive and Council if necessary, depending on the financial amount.

c. Scope of activity and types of investments

It is proposed that the company, as a property vehicle, will target a specified minimum return with funding either from loans from the Council or commercial sources. The agreed aim is 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.

It is proposed that, initially, the focus of the company will be to concentrate on property investment and development work both inside the Borough and also nationally, 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.

The type of investments will not be restricted by sector or location within the UK but the IAB (or company) will be seeking the best opportunities, with strong covenants (Good tenants) on suitable lease terms, whilst seeking to achieve a balanced portfolio mix. As

such as the opportunities arise each will be considered on its merits, filtering potential investments and seeking external advice.

d. HRA interface (in particular the use of revenue from disposals to the company for affordable housing)

Subject to legal advice and a sound business case for the HRA and the Company it is proposed that the Company should be permitted to undertake transactions that involve Housing assets.

e. On-lending (i.e. any restrictions around the Council's ability to loan money to the company).

This would be permitted and the details are included in the legal advice at annexe 1.

f. Tax.

The Company would be liable to corporation tax in the normal manner on profits, and would need to charge VAT.

Every property opportunity would be looked at on its own merits to decide whether to purchase through the Council or the Company dependent upon the taxation and legal implications of the opportunity concerned.

g. Raising finance, including borrowing from the Council.

Borrowing from the Council will be the primary source of capital funding and working capital. External funding would be considered as an alternative for any large scale spending decisions if favourable conditions can be secured.

The company would seek loans from the Council that comply with State Aid requirements. Loans would include draw-down provisions that meet the need of the business case. Where property acquisitions are made by the company, loans from the Council would be secured against the property by way of a legal charge (or mortgage) in favour of the Council.

h. Support costs and other overheads.

These would be agreed in advance between the company and the council and SLA's would be put in place to agree the basic level of service required and the cost of additional services needed. Recharges will be on a cost recovery basis including appropriate oncosts.

i. Investment criteria.

It is proposed to align the Company's investment criteria with Waverley's Investment Advisory Board approved criteria – annexe 2.

j. Further scope for the company's activities in future.

- Joint ventures

- Operating existing Council assets
- Development management agreements
- Housing schemes for rent or development and sell

Recommendation

The Committee is asked to consider and comment on these matters and to submit any observations and comments to the Investment Advisory Board.

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