

**CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES'
SHAREHOLDER)
24 November 2021**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: TRADING COMPANY UPDATE

REPORT OF : SERVICE DIRECTOR – COMMERCIAL

EXECUTIVE MEMBER : EXECUTIVE MEMBERS FOR ENTERPRISE AND COOPERATIVE DEVELOPMENT

COUNCIL PRIORITY : BUILD THRIVING AND RESILIENT COMMUNITIES / RESPOND TO CHALLENGES TO THE ENVIRONMENT / ENABLE AN ENTERPRISING AND CO-OPERATIVE ECONOMY

1. EXECUTIVE SUMMARY

1.1 The purpose of this report is to provide the Cabinet Sub Committee (Local Authority Trading Companies' Shareholder) an update on the progress that has been made and to seek approval to commence trading of the holding company and to the establishment of a subsidiary company that will let Harkness Court.

2. RECOMMENDATIONS

2.1 To approve the business case and agree to commence trading of the holding company (Broadwater Hundred Limited) and the incorporation and trading of a subsidiary company for the purpose of letting out Harkness Court.

2.2 To provide delegated authority to the Service Director - Commercial and Service Director - Legal and Community to agree the final company documents (prior to any necessary company approval) and nominate the Directors for the companies.

3. REASONS FOR RECOMMENDATIONS

3.1 To enable the Council company to trade and provide more commercial opportunities which will benefit the Council.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Not to establish a subsidiary company, by taking this approach this will limit commercial opportunities for the company.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 The Executive Member and Deputy Executive Member for Enterprise and Co-operative Development have been kept regularly updated

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key Executive decision that was first notified to the public in the Forward Plan on the 24 September 2021.

7. BACKGROUND

- 7.1. At the Cabinet Sub-committee (LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER) held on 15 March 2018 the following was resolved:

- (1) That it be agreed that no further work be undertaken to investigate buy to let investment options; and
- (2) That further work be undertaken to investigate potential conversion/ development opportunities, subject to future consideration of the business plan for specific proposals.

RECOMMENDED TO CABINET: That the principle of setting up a wholly owned holding company and trading companies for the purposes of development; and letting existing and future assets as residential dwellings be approved, and the Chief Finance Officer and Executive Member for Finance and IT be given delegated authority to determine the detail of the structure.

REASON FOR DECISION: To explore the options for making best use of existing assets.

- 7.2. A part 2 exempt delegated decision was taken on 24 March 2020 by the Chief Executive, to establish a holding company for business continuity reasons¹ and following this, the Council incorporated a holding company on 7 May 2020, called Broadwater Hundred Limited (BHL). The Council is the sole shareholder and BHL is currently registered as dormant (i.e. not trading), this would be the overarching company under which other subsidiary companies would operate. In an update Cabinet report of 23 June 2020, Cabinet resolved that a business case was to be present to the Sub-Committee for approval.
- 7.3. Since then officers have been exploring if a Property Letting subsidiary would be viable and, if so how best to set up the company.

8. RELEVANT CONSIDERATIONS

- 8.1. The draft business case is provided in the part 2 report as it contains commercially confidential information. This document is fundamental and is required for a Local Authority when setting up a trading company.
- 8.2. As an overview, the following sets out some of the key areas that are part of the business case: -
- **Commercial Opportunity** - this section focuses on how the company will aim to grow to include more properties in the long-term, however, to start off with will just focus on letting Harkness Court which has been recently refurbished into 4 one bed flats.
 - **Strategic Fit** – specifically linking to the Council's Medium-Term Financial Strategy and the need to optimise income generation and efficiency savings.

¹ Remaining exempt under para 3 of Schedule 12A Local Government Act 1972.

- **Corporate Delivery Structure: Local Authority Trading Company** – this section focuses on the Legal structure of a company and the relationship between the Council and the Company. It explains how the Council has already formed a Holding Company (BHL) and the property company will be a subsidiary to this company. Therefore, the ownership of the property company (subsidiary company) is via BHL.
- **LAPC: Commercial Operating Principles** – this section explains how the Council will lease Harkness Court to the company. Therefore, the 4 Flats will remain assets of the Council. It also outlines the need to provide the company with a short-term loan to cover initial set up costs. The company will repay the loan back to the Council.
- **Financial Information** – this section provides an overview of the financial projections of the company and demonstrates that the company is viable, more detail is provided in the part 2 report.
- **Operational Matters** – this section sets out how the companies (specifically the subsidiary) will be run and explores many operational issues from staffing, branding, policies, Data Protection, General Data Protection Regulation (GDPR) and Freedom of Information (FOI).
- **Governance and Management** – this section covers the proposed governance and management arrangements, which includes an Intelligent Shareholder and Board of Directors. The Board of Directors still need to be appointed and it is important the any director does not have a conflict of interest.
- **Risk Analysis** – a high-level risk analysis has been undertaken focusing on the Council establishment of the company and the initial investment.

8.3. If this business case is approved the next stage will be to produce all other relevant documents, for example the Articles of Association and the Share Holder Agreement, this will require external legal assistance due to specialist nature and resources. Company secretariat function will also be required once the incorporate is complete.

8.4. As explained above, the Directors for the company have not been appointed as yet, therefore, officers will need to agree who will undertake these roles. Ideally it needs to be officers that are at a senior management level and have a good understanding of commercialisation.

9. LEGAL IMPLICATIONS

9.1. Members should note that external legal advice was provided by Freeths LLP on the incorporation of BHL and Subsidiary Company (and the business case presented in the part 2 report).

9.2. The Cabinet Sub-Committee's terms of reference are concerned with the Council's actions as shareholder of local authority trading companies. The Sub-Committee has within its terms of reference at 5.11.4 (a): 'to represent the Council's interests as shareholder in wholly owned and other companies.'

9.2. Within the Sub-Committee's terms of reference, at 5.11.4 (i), prior to the creation of any wholly or partly owned company: "it has a key role to consider options for activities which are for a commercial purpose" and at 5.11.4 (i) (ii) "to make recommendation to Cabinet to establish such a company."

- 9.3 Section 1(1) of the Localism Act 2011 introduced the “general power of competence” for local authorities, defined as “the power to do anything that individuals generally may do” and which expressly includes the power to do something for the benefit of the authority, its area or persons resident or present in its area.
- 9.4 Section 4(2) of the Localism Act 2011 provides that where, in exercise of the general power, a local authority does things for a commercial purpose the authority must do them through a company.
- 9.5 Section 95 of the Local Government Act 2003 authorises the Council to do for a commercial purpose anything which it is authorised to do for carrying on any of its ordinary functions (other than where it is under a statutory duty to provide that function) however, this power is only exercisable through a company. This is the key power in respect of establishment of a trading arm. There are certain restrictions that may apply to the use of the 95 LGA 2003 power – in basic terms: function-related (section 95(1)(a)); it cannot be for a statutory duty (section 95(2)(a)); it cannot be used if an alternative commercial trading power already exists (section 95(2)(b)); applicable only to relevant authorities (section 95(3)(a)(b)) – ‘formerly referred to as ‘best value’ authorities. Before exercising this trading power, the authority ‘shall’ support this with an approved business case under The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 no 2393 (para 2(2). The “business case” means a comprehensive statement as to (a) the objectives of the business; (b) the investment and other resources required to achieve those objectives; (c) any risks the business might face and how significant these risks are; and (d) the expected financial results of the business (which should cover the costs of any accommodation, goods, services staff supplied), together with any other relevant outcomes that the business is expected to achieve. Freeths LLP were instructed and have considered the business case and indicated that it meets the legal requirements.
- 9.6 Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any other of its functions, whether involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.
- 9.7 Section 9 of the Housing Act 1985 empowers the Council to provide housing accommodation by erecting houses, or converting buildings into houses, on land acquired by them. This power may equally be exercised in relation to land acquired for the purpose of disposing of houses provided, or to be provided, on the land, or of disposing of the land to a person who intends to provide housing accommodation on it.
- 9.8 Section 17 of the Housing Act 1985 empowers the Council to acquire land as a site for erection of houses or to acquire houses, or buildings which may be made suitable as houses, together with any land occupied with the land or buildings. The power conferred this section includes power to acquire land for disposing of houses provided, or to be provided, on the land or of disposing of the land to a person who intends to provide housing accommodation on it.

10. FINANCIAL IMPLICATIONS

- 10.1 The costs of converting the Harkness Court property have been funded from the capital budget for the purchase and development of residential property. This work has been carried out through the Council, not via the company. The funding for these costs has been met from capital receipts.

- 10.2 Once the subsidiary company is established, the Council will lease the whole property to the company. The company will then lease each of the individual properties on to individual tenants. The company will take on the risk of finding tenants, managing the lettings and maintaining the properties. It is forecast that the company will be able to make sufficient income to cover its costs (including the lease payments to the Council and any interest charges) and make a sustainable level of profit.
- 10.3 The company is expected to have some initial costs and will also have some fixed costs. The Council will provide a cashflow loan to the Company to cover these costs. This loan will be at a market rate. This loan will be repaid once the Company has generated sufficient cash.

11. RISK IMPLICATIONS

- 11.1 The body of the report has referenced the relevant risks associated with the update. These are covered in more detail in the business case within the part 2 report. As detailed in section 10, the property will remain in the ownership of the Council and will be leased to the company. This means that if the company is not successful then the lease will end and the property will revert back to the Council. For example, the Council could then choose to sell the flats for a capital receipt.
- 11.2 There is a Corporate Risk entitled “Income Generation”, which assesses the risks associated with the Council adopting a more commercial approach to service delivery, as well as focusing on the many opportunities and positive benefits it could achieve by delivering the aims and objectives of the Commercial Strategy.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 There are no direct equality implications in the setting up of the property company in itself. However, equality law does apply to the provision of goods, facilities or services to member of the public, including the letting and management of properties. As noted at 10.2, the property company will conduct the activity of ‘*finding tenants, managing the lettings and maintaining the properties*’. This will include potentially having access information concerning a customer’s protected characteristic, taking into consideration the manner of communicating and accessibility needs that disabled people may have, the specific management needs of those who exhibit a protected characteristic and any reasonable adjustments that may be required. The directors of the company will need to complete an equality impact assessment prior to any property lettings.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and “go local” requirements do not apply to this report, as this is not a procurement exercise.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. Environmental Impact Assessment has been undertaken. This has demonstrated there are currently no relevant mitigation measures that need to be applied at this point in time, as Harkness Court has recently been refurbished and is the only property in the

company, however, there will be the opportunity to investigate renewable energy sources in this facility as and when items need to be replaced.

15. HUMAN RESOURCE IMPLICATIONS

15.1 There are no direct human resources implications for this report.

16. APPENDICES

16.1 None to the Part 1 report.

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19. BACKGROUND PAPERS

None.