

**CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES'
SHAREHOLDER)
19 March 2024**

PART 1

TITLE OF REPORT: TRADING COMPANY UPDATE

REPORT OF: SERVICE DIRECTOR – ENTERPRISE

EXECUTIVE MEMBER: EXECUTIVE MEMBERS FOR ENTERPRISE AND THE ARTS

COUNCIL PRIORITY: SUSTAINABILITY AND A BRIGHTER FUTURE TOGETHER

1. EXECUTIVE SUMMARY

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 Broadwater Hundred Property Management Limited so Harkness Court can be let. The report also confirms that Broadwater Hundred Limited will also be trading and operating as a holding company.

2. RECOMMENDATIONS

- 2.1. To approve the updated financial projections of the business case and commence trading of Broadwater Hundred Property Management Limited and Broadwater Hundred Limited.
- 2.2. To provide delegated authority to the Service Director – Resources (as Client Lead Officer for the Company), in consultation with the Chair of this Committee to:
 - Agree a loan and a loan amount that will be loaned to either Broadwater Hundred Ltd or Broadwater Hundred Property Management Limited by the Council
 - If required, agree an onward loan to Broadwater Hundred Property Management Limited.
 - Agree that the loans will be governed through a loan agreement, which may give flexibility to each Company to draw-down funds as they are required.

3. REASONS FOR RECOMMENDATIONS

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

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. Not to commence trading of Broadwater Hundred Property Management Limited, by taking this approach this will limit commercial opportunities for the companies.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Executive Member and Deputy Executive Member for Enterprise and the Arts have been kept regularly updated.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

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). 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. Following the Cabinet report of 23 June 2020 the business case was developed and a part 2 report was presented to the Sub-Committee on 24 November 2021 seeking approval to commence trading of the holding company and the establishment of a subsidiary company to let Harkness Court. The following was resolved:

RESOLVED:

(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) 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 in consultation with the Executive Member for Enterprise, the Arts and Transport to nominate the Directors for the companies.

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

REASON FOR DECISIONS: To enable the Council companies to trade and provide more commercial opportunities to benefit the Council.

8. RELEVANT CONSIDERATIONS

- 8.1. Since the above approval, officers have been working on the refurbishment of Harkness Court. Unfortunately, this project has taken significantly more time than originally thought to complete. The main issue was obtaining Building Control approval due to a fire and rescues related issues. However, following a productive site visit with Hertfordshire Fire and Rescue Service, they wrote to Hertfordshire Building Control (HBC) and provided HBC with the confidence that was required to resolve the fire and rescue items. This led to the Council receiving Building Control approval on 17 January 2024.
- 8.2. Following Building Control approval officers from the Council, Broadwater Hundred Property Management Limited and Broadwater Hundred Limited have met to ensure each party knows what needs to be undertaken to ensure the flats can be let.
- 8.3. The updated financial projections for the business case are 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.
- 8.4. If the financial projections for the business case are approved the next stage will be to update relevant documents, these include the Articles of Association and the Share Holder Agreement, this will require external legal assistance due to specialist nature and resources. These document updates will be required for both companies. The cost of this has been taken into consideration and the detail is provided in the part 2 report.
- 8.5. Directors for Broadwater Hundred Property Management Limited have been appointed and they have recently undertaken Company Director training. Updates to the directors of Broadwater Hundred Limited are covered as part of a separate report on this agenda.

9. LEGAL IMPLICATIONS

- 9.1. 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. Within the Sub-Committee's terms of reference, at 5.11.4 (h) is "[t]o make recommendations to Cabinet on the investment, **loans**, resource arrangements and asset transfers to companies. The loan referred to in this report is already covered by the Council's Investment Strategy. This has been approved by Council following a referral by Cabinet. The 2023/24 Investment Strategy is referenced in the background papers. In respect of the loan, the content of the 2024/25 Investment Strategy is the same as the 2023/24 Strategy.

- 9.4 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.
- 9.5 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.
- 9.6 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.
- 9.7 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.
- 9.8 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.

10. FINANCIAL IMPLICATIONS

- 10.1. Financial implications are covered in the part 2 report.
- 10.2. The intention is that the Council will lease the whole of the Harkness Court property to the Holding Company, who in turn will lease it on to the Property Company. The Property Company can then lease each of the individual properties on to individual tenants. The companies will take on the risk of finding tenants, managing the lettings and maintaining the properties. It is forecast that the property 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. Both companies will have some initial costs and will need to have cashflow available before they start generating income. The intention is that the Council will provide a cashflow loan to the Holding Company, who will provide an onward loan to the Property Company. The loan to the Holding Company will be at a market rate. The Holding Company can provide a margin on both the loan and the property lease to ensure that it can generate income to cover its costs. It will be for the Company Directors to determine when it is appropriate to repay any loans.
- 10.4. The above structure is the current intention but may need to change following the receipt of the advice detailed in paragraph 8.4. This is why the delegation in recommendation 2.2 provides flexibility on how the loan from the Council is structured.
- 10.5. Loans made by the Council could fall under the Subsidy Control Act if they are at less than market rate. Even if the loan is at slightly less than market rate, then it would be covered by Minimal Financial Assistance.

11. RISK IMPLICATIONS

- 11.1. Good risk management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.
- 11.2. The detailed risks are covered in the part 2 report, as these link to the financial projections of the business case. 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.
- 11.3. There is an entry on the Risk Register entitled Income Generation, which assesses the risks associated with the Council adopting a more commercial approach. This highlights that even when making informed decisions on pursuing new ventures and realising opportunities, there is a risk of unforeseen issues arising due to a lack of practical experience and historical learning.

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 such 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.

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

17. CONTACT OFFICERS

17.1 Steve Crowley
Service Director – Enterprise
steve.crowley@north-herts.gov.uk ext 4211

17.2 Jeanette Thompson
Service Director – Legal and Community and Monitoring Officer
Jeanette.Thompson@north-herts.gov.uk ext 4370

17.3 Ian Couper
Service Director - Resources
ian.couper@north-herts.gov.uk ext 4243

17.4 Reuben Ayavoo
Policy and Communities Manager
Reuben.Ayavoo@north-herts.gov.uk ext 4212

17.5 Tim Everett
Performance & Risk Officer
Tim.Everitt@north-herts.gov.uk ext 4646

17.6 Isabelle Alajooz
Legal Manager and Deputy Monitoring Officer
Isabelle.Alajooz@north-herts.gov.uk

17.7 Shah Mohammed
Group Accountant
Shah.mohammed@north-herts.gov.uk ext 4240

18. BACKGROUND PAPERS

- 18.1 *Investment Strategy 2023-24;* <https://democracy.north-herts.gov.uk/documents/s21482/Final%20Council%20Appendix%20A-%20Integrated%20Capital%20and%20Treasury%20Strategy.docx.pdf>