
Report to:	Cabinet	Date of Meeting:	1 September 2016
Subject:	Sefton Council Housing Development Company	Wards Affected:	All
Report of:	Head of Housing and Regeneration		
Is this a Key Decision?	Yes	Is it included in the Forward Plan?	No – Rule 27 Consent Given
Exempt/Confidential	No		

Purpose/Summary

Over 11,000 housing units are required between the period of 2012 to 2030 in Sefton to meet with the local housing demand.

This report to Cabinet sets out the main drivers and reasons in considering the viability of a housing development company, which could help meet the borough's housing needs.

Recommendation(s)

1. That Cabinet approve in principle the creation of a wholly owned Council Housing Development Company;
2. Cabinet are requested to approve the allocation of £200,000.00 from the Council's Transformation Reserve, for the procurement of external advisors as set out in the report, in order to support the production of the business case and business plan for the most appropriate option for a housing development company;
3. The management of the one-off revenue funding (Recommendation 2) is delegated to the Cabinet Member for Communities and Housing whom will receive detailed breakdown of this expenditure as chair of the Member Reference Group;
4. That subject to the viability tests that will be set out within the Outline Business Case and Outline Business Plan (i.e. feasibility studies); the authority to commence with Full Business Case and Full Business Plan is delegated to Cabinet Member for Communities and Housing, provided viability tests

undertaken as part of the feasibility stage prove favourable;

5. That Cabinet will receive a further report and a request to implement the housing development company subject to the drafting, scrutiny and presentation of a satisfactory Full Business Case and Full Business Plan.
6. It be noted that the proposal was a Key Decision but had not been included in the Council's Forward Plan of Key Decisions. Consequently, the Leader of the Council and the Chair of the Overview and Scrutiny Committee (Regeneration and Skills) had been consulted under Rule 27 of the Access to Information Procedure Rules of the Constitution, to the decision being made by the Cabinet as a matter of urgency on the basis that it was impracticable to defer the decision until the commencement of the next Forward Plan because the short period of time within the project plan to undertake technical investigations combined with the need to proceed with a number of procurements for advisors, and the economic drivers to establish the Company to provide the choice and type of housing in the prevalent market conditions, resulting in a programme for delivery that is time bound.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		X	
2	Jobs and Prosperity	X		
3	Environmental Sustainability	X		
4	Health and Well-Being	X		
5	Children and Young People		X	
6	Creating Safe Communities	X		
7	Creating Inclusive Communities	X		
8	Improving the Quality of Council Services and Strengthening Local Democracy		X	

Reasons for the Recommendation:

Sefton is an ambitious Metropolitan Borough and part of the Liverpool City Region:

- Resilient People and Place;
- Growing, living and ageing well;
- A great place to live, work and play;
- Image, culture and environment

are four of the Council's eight Strategic Priorities as set out under the draft Vision 2030, tackling the best start in life for our families and leading on housing choice remains a priority in order to deliver on these outcomes. Over the period of June and July 2016 the

Council has been considering its role in the provision of housing throughout the Borough to complement an active third and private sector market; there is significant demand for housing sites and housing development within Sefton.

Over 11,000 housing units are required between the period of 2012 to 2030 in Sefton to meet with the local housing demand. The Housing and Communities Agency have further announced a national housing shortfall of circa 1m homes (of which 400,000 fall into affordable homes) whilst across the Liverpool City Region a total of circa 50,000 housing units will be required in the medium term.

Alternative Options Considered (The Appraisals to Date):

There have been a number of options explored at this pre-feasibility stage of the project, these are:

Option A

A wholly owned council housing development company, the preferred option.

Option B

Again a wholly owned company, however, utilising what is referred to as a Top-Company (a Top-Co a parent, holding or shell-company with subsidiaries).

Option C

A Joint Venture Company (JV). In this option the Council would procure a private and/or third sector partner to work with.

What will it cost and how will it be financed?

(A) Revenue Costs

The Housing Development Company Task Group, a preceding group to the proposed Housing Development Company Governance (effective from the 6th September 2016 subject to Council Cabinet decisions), is being funded from within the Council's current resources.

There is a need to incur "one-off," revenue costs to appoint advisors required to investigate the viability of the Housing Development Company; subject to satisfying viability tests through the creation of the outline business case and outline business plan these costs will be curtailed should the proposals be deemed non-viable.

These are considered as a total of £200,000 as follows:

- **Financial advisors**,; the procurement of financial advisors whom will assist to create 1) the Outline Business Case and Business Plan viability assessment for a wholly owned company and, 2) the Full and Final Business Case and Plan to enable the housing development company to come into being as a wholly owned company;

- **Legal advisors**,; the procurement of legal advisors whom will assist the project team to ensure the preferred option is compliant with the Council’s Constitution and various Acts of Parliament including the Local Government Act, Localism Act and the Public Contract Regulations;
- **Technical Advisors**; the procurement of one or more technical advisors to help identify the “preferred-site,” (from 22 identified in total) that the development company will develop out. The size, intensity and mix and type of houses thereon and the initial work investigating the abnormal costs over and above the development benchmark costs the development company will both have to manage and deliver within to enter the market as a competitive business.

Cabinet are advised that variance to the £200,000.00 approved will be reported to the Cabinet Member and also referred back to Cabinet if and where required. A cash flow forecast will be prepared and all appointments will be “called-off,” i.e. Council Officers will manage what services are needed from which advisors under which contract.

All tenders and contracts will be subject to value for money tests managed with Procurement officers. Contracts will be awarded in accordance with Recommendations 2 and 3 of this report and delivered between the periods of October to December 2016.

(B) Capital Costs

There are no direct capital costs incurred as part of this undertaking.

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

<p>Financial</p> <p>The allocation of the £200,000.00 for advisors will be met from the Councils Transformation Reserve</p>
<p>Legal</p> <p>Key officers have been involved in the development of initial options to date. There are no specific legal implications at this stage.</p>
<p>Human Resources</p> <p>There are no specific implications.</p>
<p>Equality</p> <p>1. No Equality Implication X</p>

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|---|
| <ol style="list-style-type: none">2. Equality Implications identified and mitigated3. Equality Implication identified and risk remains |
|---|

Impact of the Proposals on Service Delivery:

There are no foreseen direct impacts to the Councils current services.

What consultations have taken place on the proposals and when?

The Head of Corporate Resources (FD4282/16) and Head of Regulation and Compliance (LD3565/16) have been consulted and any comments have been incorporated into the report.

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting

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Background Papers:

Should Cabinet wish more detailed information on the appraisals carried out to date, set out below is a concise precis in support of recommending Option A to be investigated in detail through detailed feasibility.

1. Introduction/Background

- 1.1 Vision 2030 identifies 8 strategic outcomes that the Council will use to shape and deliver a prosperous Sefton working in partnership with our communities and local business, one priority being A Great Place to Live Work and Play; it is without any doubt therefore that Sefton is changing and the Council will play a significant role leading that change, non-more so than delivering the economic growth requirements, one fundamental enabler being a good quality and choice of housing for our residents.
- 1.2 In considering how to meet the needs of our changing communities technical investigations have taken place throughout June and July 2016 into the opportunities associated with the creation of a wholly owned housing development company.
- 1.3 The creation of a wholly owned Council Housing Development Company would therefore sit at the heart of our ambitions and aspirations, to create a great place to live and meet the following demand drivers:
 - Local Housing Need: Over 11,000 homes (all types and classifications) are required in and across Sefton in the medium to long term, this translates at a build rate of circa 650 units per year;
 - Right for Business: The private and third sector already operate and provide housing at all levels, however supply is in shortfall currently (largely because of an inadequate supply of land, which the Council with good access to land and assets will help to unlock);
 - Sefton's Communities: where the Council does elect to lead, develop and deliver housing it will do so with due consideration to each community effected and after significant appraisal and in consultation with communities.
- 1.4 With so much housing demand across the Borough we must act appropriately and considerately, creating pathways and opportunities for our families, our youngest and eldest. If a housing development company is created it will do so mindful of delivering additional social value: work placements, apprenticeships, local employment contracts for Sefton's business etc.
- 1.5 In addition to delivering improved outcomes, the Council faces funding pressures which threaten its ability to provide essential front line public services. It must find new ways of generating funding streams to help continue to deliver essential services; the development company will enable new revenue sources in order to assure front line services.
- 1.6 There are several options, forms and company types that the development company could take. The scope currently is limited to a housing development company that will provide housing for sale, transfer or/and potentially rent, depending on the final approved business plan and approved business operating model. The Council will seek to explore viability of the development company through the sponsoring of an outline business case and business plan, with approval in principle sought from Cabinet as set out in the recommendations.

- 1.7 Subject to proven viability, the Council will create a development company that acts as what are referred to as a wholly owned company, i.e. 100% owned and operated by the Council.
- 1.8 A joint venture partnership would take a different approach to its business plan/ning than a wholly owned company, and although not ruled out in its entirety, the prospect and option of a joint venture as a subsidiary could be created in the future (the medium term) subject to the operational performance of the company as a new business start-up.
- 1.9 From the options outlined below, there is much to consider in order to determine the best way forward for Sefton. It is navigation of these highly technical legal, financial and market reasons that external assistance is sought.

Option A

A wholly owned council housing development company and the preferred option.

This type of company can be set up relatively quickly and easily and without the need to procure a partner but will have some limitations over the medium term.

The Localism Act 2011 and latterly the Public Contract Procurement Regulations 2015 mean that the legal regime has changed and that there are a number of options and routes that the Council can use to create a housing development company that is wholly owned. One such option is to create what is referred to as Teckal-exempt extended arm company (so named after the original court case that tested fairness and competition). This exemption allows Councils and other best-value authorities to exercise this option.

There are however limitations to what a Teckal-exempt company can do. Regulation 12 of the Public Contract (Procurement) Regulations 2015 codifies and amends the Teckal-exemption rules. Sefton Council would become the Contracting Authority (CA) if it set up a wholly owned company using the exemption, where:

- The Council exercises control over the development company. this control must be similar to that which it exercises over its own departments, (i.e. the **control** requirement);
- More than 80% of the activities of the controlled entity are carried out in the performance of tasks entrusted to it by the Council or by other entities controlled by that CA; (the activity requirement);
- There is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislation provisions, in conformity with the treaties, which do not exert a decisive influence on the controlled entity.

Control is defined at Regulation 12(3) as meaning that the contracting authority exercises a decisive influence over both strategic objectives and significant decisions of the controlled entity.

In considering the activities that the development company would carry out and undertake as a Teckal-exempt wholly owned company, it could be argued that this is difficult to measure. This aspect would need to be thoroughly reviewed as part of the viability and feasibility investigations and development of the outline business case to determine viability.

There is a further technical/legal test that can mean the company would be exempt from the procurement regulations and this is referred to as the Hamburg Exemption following a particular case. This exemption might be useful when looking at structural options for wider incorporation in the Liverpool City Region housing ambitions

If the Council chose to set up and operate a development company utilising a Teckal-exemption then it is recommended that sufficient research and development is undertaken within the Proof of Concept stage of the project in order to:

- Understand sufficiently what working capital is required so it is not restricted by the Control and Activity Test criteria contained in the Teckal exemption above, i.e. it doesn't reach an unfavourable position whereby it has expanded or projected to exceed more than 20% and therefore restricted by the 80% activity rules;
- Has a comprehensive understanding of the options available once the company has matured sufficiently, gained a credible reputation, market position and share such that it can grow, differentiate and mature sustainably without the inherent caps it will likely face remaining as a wholly owned company;
- Understand the issues the company will have to manage to manage state-aid implications, and in order maximise and tax relief options i.e. off-set its financial position to develop profitably.

In comparison to a Teckal-exempt wholly owned company, utilising powers under the Localism Act, i.e. the Power of general competence, combined with what is called a power to trade order (Local Government Act 2003, Power to Trade Order 2004) a contracting authority can bring into being a traded organisation that is wholly owned.

Given the size and scale and financial imperatives associated with housing development, utilising the Power of General Competence and the options enabled under the Local Government Act 2003, may provide more freedoms than a Teckal-exempt founded development company. All wholly owned company options, strengths and weaknesses need to be thoroughly explored within the development of the Outline Business Case.

A Sefton wholly owned development company is the **preferred option** at this point in time.

Option B

Again, a wholly owned company, however, utilising what is referred to as a Top-Company (a Top-Co a parent, holding or shell company).

In this option the wholly owned company would be/could be financed for its business operations from the Council as per Option A, however because subsidiary companies are created, in doing so more flexibility is built into the overall business plan. This will

include the potential to be able to set up a joint-venture company (JV) within its overall structure.

The JV is therefore procured by the Top-Co (compliant with the Public Contract Regulations 2015) but retains only minority shares as opposed to a majority retained in private ownership, and therefore would be free from the Teckal exemption etc. as described previously (and wider public sector constraints), suffice that wider funding, finance and governance matters are satisfied.

In this arrangement the Council could potentially provide equity and resources (land and property for development, but not finance) and in return would receive a dividend/equity or capital share based on the performance of the JV. As any other contracted joint venture the parent companies are required to govern the JV independently and with separate audit and scrutiny than that of their parents, and as a consequence will be time bound for what is usually a period of circa ten-years (this period of time could be longer or shorter).

There is no doubt that Option B is inherently more complex than setting up a Council wholly owned company in its most simplest form (Option A), and there are not too many examples in existence. However, from the research Sefton Council have undertaken it is evident that at least two London Borough Councils are doing something similar.

This option is to be considered as part of the business and forward planning the Sefton housing development company will undertake. It is therefore not to be excluded nor discounted, but will be a medium-term business planning option rather than a start-up option.

Option C

A Joint Venture Company (JV). In this option the Council would advertise and procure a private and/or third sector partner to work with.

Naturally there are strengths and weaknesses associated with this option, but the main principles are that the partner shares both the burdens and the benefits whilst this JV is free from any prescriptive rules associated with all wholly owned company options explained previously due to the majority shareholding being in private ownership.

The main benefit of a JV over and above a Council owned company is the ability to raise and provide revenue and capital finance, largely free from such constraints as State Aid and/or other public procurement rules etc.

Given the procurement timescale-disadvantages, the number of private and third sector housing developers and builders successfully operating within Sefton currently' (i.e. the risk of market-upheaval), this option is not recommended to be explored further at this stage, and could be achieved through Option B.

Liverpool City Region Context (LCR)

Housing and Planning are a major component of the Liverpool City Region Devolution Deal. New governance through the Liverpool City Region Housing and Spatial Planning Board has brought an increased focus on the quality and supply of housing.

If the Council created a wholly owned company in its own right, and/or the City Region (through the City Region Combined Authority) created a Housing Parent Company with subsidiaries thereunder, it is quite possible that the two could work together (co-operate) or even have the potential to merge at some point. In this option the LCR Parent could create subsidiaries for the Council(s) to operate development companies in their own right.

When looking at detailed options associated with each main option, clear legal advice will be sought in order to have the freedom to exercise options in order to maximise flexibilities and avoid, unknowingly, designing in constraints that may disadvantage the Council mid to long term. This is particularly pertinent should the Council decide to sponsor a wholly owned company.