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| Cabinet Meeting | |
| Meeting Date | 28 th October 2020 |
| Report Title | Establishment of Local Housing Company (LHC) |
| Cabinet Member | Cllr Ben Martin, Cabinet Member for Housing |
| SMT Lead | Charlotte Hudson, Head of Housing, Economy and Community Services |
| Head of Service | Charlotte Hudson, Head of Housing, Economy and Community Services |
| Lead Officer | Charlotte Hudson, Head of Housing, Economy and Community Services |
| Key Decision | Yes |
| Classification | Open / Restricted Appendix. |
| Recommendations | <ol style="list-style-type: none"> 1. To create a Local Housing Company called Swale Rainbow Homes Ltd. 2. To appoint Cllr. Ben J Martin, Cllr Monique Bonney, Emma Wiggins and Charlotte Hudson as directors of the LHC. 3. To appoint David Clifford as Company Secretary for the LHC. 4. To appoint the Leader and Cabinet Member for Finance, Deputy Cabinet Member for Housing, Deputy Cabinet Member for Health, Chief Executive and Chief Financial Officer to the shareholder panel. 5. To adopt the business plan shown in Appendix I. 6. To transfer the Council owned land old bus depot (East Street), Fountain Street and Cockleshell Walk Carpark to the LHC in exchange for an equity share in the LHC. 7. To loan the LHC up to £23 million to fund the Capital development. 8. To delegate to the Chief Financial Officer in conjunction with The Leader and Cabinet Member for Finance authority to allocate working capital to LHC from the North Kent Shared Business Rates. |

1 Purpose of Report and Executive Summary

- 1.1 This report provides Cabinet with an update on the feasibility work undertaken to create a LHC and proposes the establishment of a Local Housing Company (LHC) to deliver against the affordable housing priority. It sets out the legal and financial considerations and seeks approval of the inaugural business plan.

2 Background

- 2.1 In March 2020 Cabinet was provided with a range of options regarding increasing the supply of affordable housing in the borough, it was agreed to carry out further feasibility on the creation of a LHC.
- 2.2 Savills have been appointed to develop a business plan for the LHC and to form a base model to ensure that the proposals were financially viable and met the delivery objectives. In addition, Trowers and Hamlin LLP have been appointed to provide legal advice to the Council on its powers to establish, fund and transfer land to the LHC, as well as technical advice on state aid and procurement.

Structure to Deliver Housing.

- 2.3 In order to determine if the LHC route was the best option available to the Council, our powers to deliver housing were reviewed. The Council is a "local housing authority" for the purpose of the Housing Act 1985 (the **1985 Act**) and Section 9 of the 1985 Act empowers local housing authorities to provide housing accommodation by acquiring land on which to build, building housing or acquiring houses. It is arguable that this is the most "natural" housing power available to the Council for the provision of general needs social rented accommodation. Any properties acquired / built using the Section 9 power must be accounted for in a council's Housing Revenue Account (HRA) in accordance with Section 74 of the Local Government and Housing Act 1989 (the **1989 Act**).
- 2.4 The Council no longer operates a HRA as a result of completing a stock transfer a number of years ago. Current government guidance states that up to 199 social dwellings may be held in the General Fund under a Direction from the Secretary of State. Once the 200 threshold is reached, a local authority *must* hold them in a (re-opened) HRA.
- 2.5 The Council must therefore have sound reasons for not using Section 9 and developing and retaining affordable rental accommodation in a LHC. (This issue does not arise with market products, as Section 9 is not the "natural" power for delivery of that tenure.
- 2.6 To establish the LHC the Council can rely upon Section 1 of the Localism Act 2011 (the **2011 Act**) which contains the "general power of competence". The general power of competence permits a local authority to do anything an individual may do, subject to a number of limitations. A local authority may exercise the general power for its own purpose, for a commercial purpose and/or for the benefit of others.
- 2.7 If a Council uses the general power of competence for a commercial purpose, it must do so through a company (section 4 of the 2011 Act). However, there is nothing which precludes a local authority from using a company even when it is not acting for a commercial purpose.

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- 2.8 Section 2 of the 2011 Act limits the exercise of the general power of competence where it "overlaps" with a power which predates it. This includes a council's power to trade under Section 95 of the Local Government Act 2003 (the **2003 Act**). It would be prudent therefore for the Council to comply with the requirements and limitations to which Section 95 is subject. These are set out in Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the **2009 Order**) which requires a business case to be prepared and approved by a council before a company starts trading. The 2009 Order also provides that local authorities must recover the costs of accommodation, goods, services, staff or any other thing that it supplies to a company which facilitate its power to trade.
- 2.9 Having considered the option of delivering from the general fund/HRA or the formation of the LHC, a LHC is preferred for the following reasons:
- 2.9.1 while affordable rent / low cost home ownership products are favoured, the LHC may be delivering multi-tenure sites to address site viability issues. It makes commercial sense (and will result in efficiency savings) to keep all units at a site under single ownership.
- 2.9.2 rent flexibility following the application of the Regulator of Social Housing's Rent Standard to council properties (which came into effect on 1 April 2020). This would not apply to properties held by the LHC and so the LHC would have more flexibility than the Council through any re-opened HRA to charge rent at different levels for different tenants, relating to income or some other criteria, such as for key workers. It also allows for the switching of tenure from market to affordable and vice versa which is problematic under the Rent Standard.
- 2.9.3 if the properties developed in the LHC were allocated to those who would not normally qualify for general needs housing or nomination to a Housing Association, this would help the Council to distinguish between what it might ordinarily have provided as a housing authority and what the LHC will provide.
- 2.9.4 it is likely that tenants of the LHC would be granted assured tenancies under the Housing Act 1988 and it has been recommended that the LHC lets properties on assured short-term tenancies (**AST**). A key feature of an AST is that the landlord has the right to regain possession of the property at the end of the fixed term as long as the landlord gives two months' notice (although this may be changed by the Rented Homes Bill). In this situation the LHC would have the ability to change the tenure of the properties it holds should the market require different types of stock. This gives the LHC the ability to react to the market.
- 2.9.5 Using the LHC gives the Council a means of exit, should this be required. The Council would be able to sell the company / its shareholding in the company and sell-on the housing portfolio by way of a share sale. This gives the Council a flexibility in the marketplace which it would not have if it held the properties directly.

Creation of LHC

- 2.10 Part V of the Local Government Act 1989 together with the Local Authorities (Companies) Order 1990 (the **Companies Order**) imposes a number of statutory requirements on companies which are controlled or influenced by local authorities. On the basis that the LHC will be wholly owned by the Council and its directors will also be appointed by the authority then the LHC will (under this legislation) be classified as a non-arm's length controlled company.
- 2.11 Directors appointed to the company will need to act in the best interests of the company. The company records and information are available to the Council to provide overview and scrutiny and regular reporting will be required. To do this effectively a shareholder panel will also be created to ensure regular oversight.

Business Plan / Model

- 2.12 Savills were commissioned to develop the business plan and associated modelling. The overarching aim of the model has been to maximise the delivery of affordable properties whilst also making a return for the Council. For this reason, the baseline outline business case is based on 100% affordable rented properties. The definition of affordable being the lower of the Local Housing Allowance (LHA), or 80% of market rent (this ensures that tenants would be eligible for full benefit cover for their rents, if needed).
- 2.13 The model also provides an alternative appraisal for the introduction of mixed-tenure with 25% of the sites providing properties at market rent level.
- 2.14 The detailed business plan is shown in Appendix I as a restricted document due to the commercial nature of the information. However, the key principles have been outlined in this section of the report. It should be noted that modelling took place for social rents and had to be discounted as they were not financially viable.
- 2.15 The principal aims of the Council in undertaking the LHC is to:
- Increase the supply of affordable housing;
 - ensure that the solution is financially viable and doesn't place a financial burden on the Council;
 - ensure the properties are energy efficient as possible within the financial constraints;
 - ensure densities are appropriate for the location and management of any scheme;
 - control and influence around what is delivered;
 - quality and design standards; and
 - acts as exemplar landlord in the rented sector.
- 2.16 The model has been run on three sites in Sittingbourne already in council ownership which have been identified for development, which is estimated to

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provide 139 properties. The property mix will be 1- and 2-bedroom flats and maisonettes. The need for 1- and 2-bedroom properties currently makes up 68% of the housing register.

- 2.17 The model has been developed based upon appropriate build costs, provides allowances to enable energy efficiency standards as well as factoring in whole lifecycle costs of developing, managing, and maintaining the properties. Overall development costs are between £20 million and £23 million. The latter includes provision for energy efficiency.
- 2.18 The LHC will be able to finance the build of these properties through loans borrowed from the Council and an injection of working capital; this is discussed in detail in the finance section.
- 2.19 The model makes allowances for development management, landlord management and maintenance and operational costs, cashflow forecast have been modelled on these assumptions. The LHC would, initially, need to appoint a managing agent to carry out both management and maintenance of the housing stock.
- 2.20 The initial appraisal based upon a 100% loan financing and land transferred to the LHC in exchange for equity shares in the company, demonstrates an overall financially viable position as measured by debt payback. The loans taken out by the company are able to be repaid within a 50-year period after the final phase of development.
- 2.21 The Council will also benefit from owning shares in a company where the asset value should increase over the coming years and with the likely requirement that 10% of the modelled properties must be let at affordable levels in perpetuity (Local Plan requirement), provides the opportunity to sell or rent the remainder at market levels, depending on need, demand and financial considerations.
- 2.22 The ability to own a company that can provide an annual income stream, repay loans over a reasonable payback period from assets that increase in value means the route of a LHC represents a genuine opportunity to deliver value in housing supply and financial value to the Council.

Transfer of Land

- 2.23 The following sites have been identified to transfer to the LHC to deliver the first scheme of housing, in return for an equity share in the company.
- Old Bus Depot (East Street);
 - Cockleshell Walk Carpark; and
 - Fountain Street.
- 2.24 The market value of these sites based upon independent valuations equates to £1.925m.

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- 2.25 Approval is requested to transfer the sites to the LHC in return for an equity share of £1.925m
- 2.26 Any future pipeline sites will be reviewed by the Council based on its Property Asset Strategy and viability consideration and brought forward at a future date for Cabinet to consider.

Chief Financial Officer Assessment

- 2.27 This report has been written by the Head of Housing, Economy and Community Services but it has a significant financial element to it. In fact after the Sittingbourne Town Centre project it is the most significant capital investment this Council has made. This commentary reflects the Chief Financial Officer's comments. It should also be emphasized that the Leader and Cabinet Member for Finance and the Chief Financial Officer have been closely involved in the development of the business case.
- 2.28 Professional advice- the model has been developed by a financial expert at Savills and the legal advice has been obtained from Trowers and Hamlin LLP who were recommended by others who have been through this process. The advice has been of high quality and assumptions behind the model have been robustly challenged.
- 2.29 Borrowing- the company will be funded through two main means. Working capital will come from the North Kent Shared Business Rates funding of £1.7m. The investment in the build will be funded from borrowing. The business case assumes that this will be long term Public Works Loan Board (PWLB) funding. In the current financial environment local authorities, can borrow much more cheaply from other local authorities. The last borrowing the Council undertook was at a rate of 0.27% compared with PWLB maturity rates currently at 2.6%. So the company will have an agreed schedule of funding drawdowns but the Leader and Cabinet Member for Finance and the Chief Financial Officer will decide the source of funding.
- 2.30 Minimum Revenue Provision- when borrowing is undertaken to fund capital expenditure on the completion of the asset Minimum Revenue Provision has to start to be made. This is basically making a charge to the revenue budget, the revenue is then accumulated in the balance sheet to repay the debt at the end of the agreed period. Savills, Trowers and Hamlin LLP and Arlingclose (the Council's treasury advisers) have confirmed that the repayment of debt through annual contributions from the company is acceptable and the Council's Minimum Revenue Provision Policy already allows for this. It is important to remember that the Council has the security over the assets as the owner of the company.
- 2.31 Value of the land- no cash changes hands and from the Council's perspective it no longer holds the land asset as land- rather the value of the land is reflected in the (enhanced) value of the new share capital in the company. The Council has funded the purchase of the land through internal borrowing.

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- 2.32 Governance- neither the Leader and Cabinet Member for Finance or the Chief Financial Officer will be directors of the company, but they will attend all board meetings and receive all company papers. The Shareholder Panel is explained in this report. The company directors legally have to act in the best interests of the company. Whether it is through non-Council directors nominated to the board or professional advisers it will be essential that the company board has the appropriate skills to oversee the developments and the ongoing property management. There will need to be formal reporting to the shareholder and independent scrutiny of the activities of the company.

3 Proposals

- 3.1 To create a Local Housing Company called Swale Rainbow Homes Ltd.
- 3.2 To appoint Cllr. Ben J Martin, Cllr Monique Bonney, Emma Wiggins and Charlotte Hudson as directors of the LHC.
- 3.3 To appoint David Clifford as Company Secretary for the LHC.
- 3.4 To appoint the Leader and Cabinet Member for Finance, Deputy Cabinet Member for Housing, Deputy Cabinet Member for Health, Chief Executive and Chief Financial Officer to the shareholder panel.
- 3.5 To adopt the business plan shown in Appendix I.
- 3.6 To transfer the Council owned land old bus depot (East Street), Fountain Street and Cockleshell Walk Carpark to the LHC in exchange for an equity share in the LHC.
- 3.7 To loan the LHC up to £23 million to fund the Capital development.
- 3.8 To delegate to the Chief Financial Officer in conjunction with The Leader and Cabinet Member for Finance authority to allocate working capital to LHC from the North Kent Shared Business Rates.

4 Alternative Options

- 4.1 Alternative delivery options were explored in the Cabinet report in March 2020. The legal delivery mechanism options are explored in the main body of the report.

5 Consultation Undertaken or Proposed

- 5.1 Research has been undertaken in relation to LHC and with other authorities who have an active LHC and advice taken from Savills and Trowers and Hamlin LLP.

6 Implications

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| Issue | Implications |
|---------------------------------------|---|
| Corporate Plan | The increase of affordable housing in the borough supports priorities within the Local Plan. |
| Financial, Resource and Property | The financial implications are set out in the main body of the report. |
| Legal, Statutory and Procurement | Legal advice has been received from Trowers and Hamlin LLP in relation to the creation of a LHC and the main legal considerations are set out in the main body of the report. Localism Act General Power of Competence provides the legislative framework for the Council to create a LHA as set out in the main body of the report. |
| Crime and Disorder | None identified at this stage. |
| Environment and Sustainability | Modelling has taken into consideration energy efficiency requirements. |
| Health and Wellbeing | None identified at this stage. |
| Risk Management and Health and Safety | The business plan includes a risk plan for the LHC and initial development programme. |
| Equality and Diversity | None identified at this stage. |
| Privacy and Data Protection | None identified at this stage. |

7 Appendices

7.1 Appendix I - Business Plan

8 Background Papers

Cabinet Report March 2020 on Affordable Housing -
<http://10.201.65.162/documents/s14201/Cabinet%20180320%20-%20Affordable%20Housing.pdf>