Executive

Excerpt of the minutes of the meeting held remotely on Thursday 10 December 2020 at 6.00pm, which was broadcast live via the Council's YouTube Channel.

Present: Councillors Day (Leader), Cooke, Falp, Grainger, Hales, Matecki and Rhead.

Also Present: Councillors: Boad (Liberal Democrat Group Observer), Davison (Green Group Observer – late arrival), Mangat (Labour Group Observer), Milton (Chair of Overview & Scrutiny Committee) and Nicholls (Chair of Finance & Audit Scrutiny Committee).

61. **Declarations of Interest**

There were no declarations of interest made in relation to the Part 1 items.

Part 1
(Items upon which a decision by the Council was required)

65. **Formation of a Local Housing Company**

The Executive considered a report from Housing setting out the business case and seeking approval for the establishment of a Local Housing Company (LHC). The LHC would be a separate legal entity, wholly owned by the Council (100% through its share capital), and be operated to support the Council's housing development plans and objectives, and would provide the Council with housing related income generating commercial opportunities.

At the beginning of this item, the Leader reminded Members of a revised report which had been circulated prior to the meeting in an addendum, due to substantial amendments to the report following the publication of the agenda.

The addendum advised that the report was amended to better reflect that Members were being asked to consider two separate but inter-related matters. Firstly, officers recommended that the Council created a Local Housing Company (LHC) which would then become a separate legal entity. The proposed LHC had produced a business plan which had two strands. Firstly, the purchase of homes that would become available on the private market, which would require a loan from Warwick District Council so that the LHC could purchase those homes. Secondly, the creation of a Joint Venture (JV) enterprise between the LHC and a national house builder, which could enable the purchase of significant amounts of land for a large house building programme.

With regard to this second aspect, this was more problematic for Members as not only had the LHC yet to be approved, but if Members did agree to the LHC's creation, this new company would then seek to become a 50/50 partner in a JV.

Consequently, although the LHC would be a 50% partner in the JV, this was not the same as the Council being a 50% partner, albeit it was an 100%

shareholder of the LHC. Therefore, before the Council agreed to make any loan to the JV there were documents, information and evidence that officers and Members would need to see before signing-off the loan.

Finally, the Council had received detailed legal advice from Trowers & Hamlins LLP, in respect of the creation of a JV. However, this did not cover the scenario of the LHC entering into a JV, albeit many of the issues highlighted would be pertinent. Should Members wish to pursue the proposals outlined in the report, further legal advice would be sought to ensure that the Council's interests were fully protected.

The Business Case set out the rationale and basis for setting up the company and what it was intended to achieve. The Business Case had been prepared using the principles of HM Treasury Green Book Five Cases Model, which were that the business case in support of a new policy, strategy, programme or project had to evidence:

- that the intervention was supported by a compelling case for change that provided holistic fit with other parts of the Council's strategy – the "strategic case";
- that the intervention represented best public value – the "economic case";
- that the proposed Company was attractive to the market place, could be procured efficiently and was commercially viable – the "commercial case";
- that the proposed spend was affordable – the "financial case"; and
- that what was required from all parties was achievable – "the management case".

Item 6 on the agenda for the meeting,, Minute Number 67 – Housing Revenue Account Business Plan Review 2020, explained that the current planned activities of the Council's Housing Revenue Account (HRA) were set to utilise all the available resources within the HRA Business Plan. The ability to expand the provision of new homes within the HRA was therefore at its limit and, particularly for tenures other than social and affordable rent, the Council would need to utilise other delivery vehicles to deliver new homes. Legal and commercial advice was that models such as Joint Ventures and/or a wholly owned company which could access alternative funding sources and provide intermediate and market rented properties, were viable options available to the Council.

Establishing a LHC would assist Warwick District Council to take a commercial approach to the delivery of new homes and offer a range of products to assist in the delivery of local housing needs. Furthermore, it could offer an alternative to traditional private rented options by offering a good quality product through a trusted organisation.

The LHC model had the aim of making significant contributions to the Council's income in the face of funding shortfalls, and by doing so, put services on a more sustainable footing to support local people, as well as raising money to invest in the Council's priority outcomes. At this stage, the initial business activities being worked on were set out in in Appendix D to the report.

The advice was that for a company to trade directly with the developer without carrying out a procurement exercise, it must be a company to which the Public Contracts Regulations (PCR) 2015 did not apply, i.e. be a 'non-teckal' company. This required the Company to act commercially and at 'arm's length' from the Council. However, it avoided the potentially expensive PCR 2015 compliant procurement procedures which could be disproportionate to its turnover, and would allow the company to take advantage of direct approaches from developers.

Being able to operate outside of the PCR 2015 did not mean that a company would not be obliged to secure value for money in accordance with good business practice - it would still seek quotes/conduct a tender process – but it would be free to do so flexibly rather than follow a specified procedure.

It was envisaged that the company would be incorporated in December 2020. It would function as an ethical landlord, providing rented homes of a good quality.

It was noted that potential housing company developments would be individually assessed on their financial viability and suitability, and that the primary focus would remain on delivering affordable/social rented units through the Housing Revenue Account (HRA), which afforded significant efficiencies.

Advice on the proposed structures had been received from Warwickshire Legal Services (WLS) and Trowers and Hamlins (legal) and the recommendations in the report had taken that advice into account. It was possible to structure the company in a number of ways, each of which had benefits and limitations. The advice was that a single company structure would achieve the Council's objectives within the desired timeline. Advice on Treasury management was received from Link and KPMG, and on Tax from KPMG, and the recommendations within the report had taken that advice on board. Discussions took place with a number of Councils who operated a LHC model and the learning from those experiences was also reflected within the proposed approach.

The Articles of Association formed part of the Company's constitutional documents and were a requirement. They set out the rules about running the company and were needed to set up the company.

Subject to the Articles, the Directors were responsible for the management of the Company's business and could exercise all the powers of the Company. The Council, as sole shareholder, could by special resolution, direct the directors to take or refrain from taking specified actions.

The shareholder's agreement set out the role of the Council as a sole shareholder and provided parameters for what the company could and could not do. It detailed how the company would conduct its business and how it would report back to the Council. A number of references were made to the Business Plan, which would require approval from the Executive annually.

It was proposed that there would initially be four Directors who would take decisions collectively. The Directors proposed were the Head of Housing and the Strategic Financial Manager as Council directors and two non-executive directors, one with experience in property development and one with experience in property sales and lettings. To support the Company being classed as a non-Teckal company, the two non-executive directors would be appointed by the Board. It was proposed that the Head of Housing would be the Chair of the board.

The quorum for the transaction of the business would be two directors, one of which would be a Council Director. The Council would retain the power to appoint and remove Council directors under the shareholder's agreement and the company would be permitted to appoint and remove the other two directors.

The budget was required to enable the Business Plan to be funded and its activities to be delivered. A budget up to the value of £56.825m had been identified as being required for the full range of activities set out for the company.

The Business Plan set out the aspirations for the company and contained specific proposals for initial lending by the Council. In each subsequent year, the company would be required under the shareholder's agreement to bring their updated business plan to Executive for approval. The company would only be able to carry out business in accordance with its Business Plan.

The Business Plan proposed two areas of activity. The first activity focused on the purchase up to 50 Market Rental Homes available on the open market, to be retained by the company for the life of the business plan and sought to continue to acquire further units beyond the life of this business plan, as the market and financing allows. These homes would be purchased using a loan from the Council of approximately £12m, to which commercial rates of interest would be charged, generating an income for the Council's General Fund. Secondly, the LHC also had the opportunity to create a six-year Joint Venture with a national property developer, which aimed to build homes on a large development site in the District. Again, the plan was to finance this using a PWLB loan of up to which the Council would lend at a commercial rate. This, in turn, would generate loan profit for the Council. There was also potential for a dividend payable to the Council's general fund upon completion of the development, which was funded from the profit share split between the LHC and Developer. The deal included for the Council to purchase the affordable properties and for the LHC to purchase some additional homes on the site, both of which would be the subject of separate reports.

The Council would finance the loan with a prudential rate which was considerably lower than the rate to be charged for the on lending. The LHC/JV would make regular loan re-payments during each financial year during the term of the loan. As a consequence, the Council effectively attracted 'loan profit' over the course of the loan period. The Business Plan set out that the Council would attract 'loan profit' from year one of operation. 'Profit' would also be generated from selling professional services to the company. The Council could also, in future years, benefit from receiving dividends from the Company.

The purchase of existing properties to rent out at market level rents was a relatively low risk form of investment. The rented property market was buoyant and was a familiar entity to the Council.

The development activity had its risks mitigated by the loan from the Council being secured against the land (which was valued higher than the loan value). Furthermore, the Terms of the loan would require the Council to be a secured creditor and therefore have preference over other creditors.

The market rented activity had its risks mitigated by purchase of an asset which would be valued prior to purchase and insured following purchase.

The Company had no stated intention to dispose of its investments, but had the option of disposing of assets in the future and realising a capital receipt, which could be returned to the Council, if considered desirable or necessary.

As sole shareholder, the Council would exercise some degree of control over the company but the company would be allowed to operate at 'arm's length' to deliver its objectives, independently of the Council.

To meet the Council's vision, aims and objectives for the provision of homes, there was a real need to open up every opportunity and channel to provide the numbers and type of homes needed. A Local Housing Company could be a very impactful additional channel that could offer the Council a 'triple dividend':

- much needed extra housing;
- a greater stewardship role in place shaping and meeting climate change objectives; and
- a financial return to the Council.

Both activities were geared to produce an income, primarily for the General Fund but also for the Housing Revenue Account.

The Business Plan set out the activities for the first year and presented the latest projections for the Company for 2020/21 - 2029/30 in detail. It included an insight to objectives, priorities and financial projections for the entire 50-year business plan up to 2069/70.

Bids to purchase the land which would be the subject of the JV detail were, at the time of writing, being considered, with the land purchase due to take place in late January. There was a chance that the landowner did not accept the bid, in which case the deal would fall away. Nevertheless, there was a time pressure to establish the company and make the necessary approvals to enable the company and the Council to take advantage of this opportunity. Given that the land purchase could be lost, the report focused on the other main area of business, namely market rented housing provision. The detail of the development opportunity was set out within the confidential appendices attached to the Business Plan at Appendix D to the report.

Whilst every matter had been considered and was set out in the report documents, the unexpected could emerge. Recommendation 2.4.1 in the report would enable the timetable to be met.

A Memorandum of Association would also need to be signed by one of the Council's authorised signatories on behalf of the Council. This was a legal statement which agreed to form the company.

Whilst striving to adopt a name that was familiar to residents of Warwick District, it should not be exclusive of other communities should the Company develop or acquire properties outside of the District. Additionally, the name adopted could not be already in use or registered with Companies House and therefore, the choice of name would be subject to availability at the time of registration.

The intention was to name the Company 'Spa Living/Milverton Homes'. However, this would be subject to availability at the time of registration.

In advance of the first property purchase, the company would adopt a range of operational polices covering:

- rent and lettings policy;
- sales policy;
- debt recovery policies;
- conflict of interest policy; and
- planned/reactive maintenance provision policy.

Where properties were retained by the company, they would be let on an Assured Short hold basis. It was important that the Company adopted a fully commercial approach to both letting and debt recovery.

Given that two directors of the company would also be employees of the Council, a clear and unambiguous conflict of interest policy would be drawn up which would make clear the respective roles and responsibilities. Such a policy also needed to cover instances where other officers were providing services to the company. The articles of association also addressed directors' legal responsibilities regarding transactions that it had another interest in.

The LHC would require some start-up funds to enable it to bring to life the business plan. Costs included legal fees, insurances and company registration, and were calculated at £200K.

The company would, where it was getting market value, agree supply agreements with the Council. Having an agreement would formalise the approach for officer time invested in the company to be recharged appropriately. As a consequence, some of the costs for the company would appear as a receipt for the Council.

It was noted that the company would buy in external support including for company secretarial services and audit services under a separate agreement.

For the avoidance of doubt, the directors who were also Council employees would not receive remuneration, but non-executive directors would receive a remuneration for undertaking the role of non-executive directors. The level of remuneration would be set by the Head of Finance.

Full due diligence was taking place, in relation to the two areas of work planned for the Company:

- the establishment of an arm's length wholly owned housing company, which would purchase accommodation in the District to let on a market rate for long term income generation; and
- a proposed Joint Venture with a Developer to deliver homes.

Expert financial and treasury advice was provided by KPMG's regeneration and housing team, who were experienced in advising on Joint Venture and Local Housing Company implementations. This expert advice would allow the Council to ensure that the arrangements were structured in a way that mitigated risk for the Council, provided commercial, tax and accounting input, and provided surety on lending as well as maximising the financial return for the Council. As described at paragraph 3.27 in the report, there was a time limited opportunity for a JV to develop housing which would enable the Council to acquire much needed affordable housing and generate income for the General Fund, thereby maintaining vital Council services. The time pressures prevented a further report being brought, setting out the detail of the loan arrangements before the land purchase was due to take place. It was therefore necessary for the delegated authority to be established.

The loan agreement was a written agreement between the Council as lender and the company as borrower, which set out the terms on which the Council would provide funding to the company in order to enable it to function and achieve its objectives. Any loans to the company would be on market terms in order to comply with state aid obligations.

A decision from full Council was needed to provide the authority to add the project to the Council's capital programme and make provision to subscribe for ordinary shares in the LHC, and make provision to fund the loan facility that the Council would be required to make available to the LHC/JV. The provisions within recommendation 2.6.2 of the report provided the necessary legal and financial approvals for this to take place.

The company would need to formally request the loan from Warwick District Council and provide key documents as part of this process.

Expert financial and treasury advice was provided by KPMG's regeneration and housing team, who were experienced in advising on Joint Venture and Local Housing Company implementations. This expert advice would allow the Council to ensure that the arrangements were structured in a way that mitigated risk for the Council, provided commercial, tax and accounting input, and provided surety on lending as well as maximising the financial return for the Council.

In terms of alternatives, the option of not setting up a LHC was considered. As this would not increase the flexibility with which the Council could address current and future needs for housing, this option was not recommended.

Options other than a wholly-owned LHC were considered (e.g. a partnership with a private sector organisation or with another LA), but since it was unlikely that such partnerships would be able to be aligned wholly with the Council's objectives, these were not recommended.

The Finance & Audit Scrutiny Committee noted the report and confidential appendices. It expressed concern about the robustness of the governance arrangements for the delegation of powers for approving loans in paragraphs 2.6.1 and 2.8 of the report, while recognising the need to balance the ability to act swiftly with appropriate oversight and scrutiny. Following the meeting, in discussion between the Chair of the Committee, the Deputy Chief Executive and Monitoring Officer, and the Portfolio Holder for Housing and Property, the latter proposed amendments to the report to read:

"2.6 That subject to the approval of recommendation 2.3, Executive agrees that it:

2.6.1 Delegates authority to the ***Deputy Chief Executive & Monitoring Officer,*** *Head of Finance and the Deputy Chief Executive (BH), following consultation with the Portfolio Holders for Housing and Property and Finance**, Chair of Finance & Audit Committee and the Chair of the Finance PAB**, to agree the terms and conditions of, and approve loans up to a value of £56.835m* ***£11.625m.***

*2.8 That subject to agreeing recommendation 2.7, Executive agrees to delegate authority to the Chief Executive, Head of Finance and Deputy Chief Executive & Monitoring Officer, in consultation with the Group Leaders, noting that this includes the Chair of Finance & Audit Committee**, and the Chair of the Finance PAB,** to approve a loan request from the JV and determine the terms and conditions of the loan, having taken appropriate legal and commercial advice, and it is then recommended to Council that the capital programme is adjusted to reflect the loan to the JV funded by PWLB borrowing subject to Council approving changes to the Prudential Indicators as detailed in a further report."*

In response to a question from Councillor Boad, the Liberal Democrat Group Observer, Councillor Matecki, the Portfolio Holder for Housing & Property, stated that under normal circumstances, recommendations 2.6.1 and 2.8 would be Executive decisions. However, he emphasised that speed was of the essence, and as there was not an Executive meeting before a decision needed to be made, it was necessary for delegated authority to be established.

In response to a concern from Councillor Boad, the Leader reiterated that Group Leaders would be consulted as part of the process, and that he would personally undertake to engage with Group Leaders to keep them appraised and feed back any views to the Portfolio Holder for Housing & Property.

The Deputy Chief Executive and Monitoring Officer (AJ) wished to ensure that the Executive understood the extent of the control that it would have over the company. He suggested that, subject to the approval of the recommendations, a briefing for all Members could be arranged in order to make sure they were clear about the extent on the influence and control the Council could bring to the company. He could work with the Head of

Housing & Property and the Portfolio Holder for Housing to bring the appropriate information forward for Members.

Councillor Matecki thanked officers for their hard work in getting the report done so quickly, and expressed his pride at the work the Housing team had undertaken. He then proposed the report as laid out in the addendum, subject to the amended recommendations proposed by the Finance and Audit Scrutiny Committee.

Recommended to Council that the capital programme be adjusted to reflect the loan to the LHC funded by Public Works Loan Board (PWLB) borrowing subject to Council approving changes to the Prudential Indicators as detailed in a further report.

Resolved that

(1) the Business Case for the establishment of a Local Housing Company (LHC), as set out at Appendix A to the report, be noted;

(2) the Executive approve:

1. the creation of a wholly owned LHC, to be limited by Shares, with the initial purpose of the delivery of intermediate and market housing;

2. the Articles of Association, as set out at Appendix B to the report;

3. the Shareholders Agreement as set out at confidential Appendix C to the report;

4. the appointment of Directors to the LHC, as set out in section 3 of Appendix D to the report; and

5. a loan facility of £11.625m is made by the Council to the LHC.

(3) the Business Plan, as set out at Appendix D to the report, to the LHC's Board of Directors, noting the proposed initial projects to be undertaken by the LHC, including the potential Joint Venture proposal set out in detail at confidential Appendix 2, be approved;

(4) authority be delegated to the Heads of Housing and Finance, in consultation with the Portfolio Holders for Finance and Housing & Property to:

1. take the necessary legal and administrative actions to establish the LHC (a Memorandum of Association will also need

to be signed by one of the Council's authorised signatories on behalf of the Council. This is a legal statement which agrees to form the Company.);

2. agree the name of the LHC; and

3. agree such Operational Policies as would be required by the LHC.

(5) authority be delegated to the Head of Finance and the Deputy Chief Executive (BH), following consultation with the Portfolio Holders for Housing & Property and Finance to consider and put in place:

1. a Loan Agreement for up to £200k to provide working capital and 100% share issue to the Council to be funded from either share capital issue or loan;

2. a supply Agreement between the Council and the LHC, consistent with the approved business plans; and

3. remuneration levels for the Non-Executive Directors.

(6) authority be delegated to the Deputy Chief Executive & Monitoring Officer (AJ), Head of Finance and the Deputy Chief Executive (BH), following consultation with the Portfolio Holders for Housing and Property and Finance, Chair of Finance & Audit Committee and the Chair of the Finance PAB, to agree the terms and conditions of, and approve loans up to a value of £11.625m; and

(7) the LHC will seek to establish a Joint Venture (JV) company with a national house builder and that the JV will be requesting a loan of £45.210m from this Council and consequently given the need to deal with matters at speed, the following is agreed:

1. upon the JV's creation it writes to the Council to formally request a loan of £45.210m providing its:

   a) Business plan;
   b) Details of its corporate governance arrangements;
   c) Resumes of the appointed directors;
   d) Constitution;
   e) Articles of Association;

f) Standing orders;
g) Schemes of Delegation;
h) Financial and contract regulations; and
i) Any other documents as considered necessary by the Head of Finance and/or Deputy Chief Executive and Monitoring Officer (AJ).

(8) authority be delegated to the Chief Executive, Head of Finance and Deputy Chief Executive & Monitoring Officer (AJ), in consultation with the Group Leaders, noting that this includes the Chair of Finance & Audit Committee, and the Chair of the Finance PAB**,** to approve a loan request from the JV and determine the terms and conditions of the loan, having taken appropriate legal and commercial advice, and it is then recommended to Council that the capital programme is adjusted to reflect the loan to the JV funded by PWLB borrowing subject to Council approving changes to the Prudential Indicators as detailed in a further report.

(The Portfolio Holder for the item was Councillor Matecki)

70. **Public and Press**

Resolved that under Section 100A of the Local Government Act 1972 that the public and press be excluded from the meeting for the following items by reason of the likely disclosure of exempt information within the paragraph of Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006, as set out below.

Minute Numbers	Paragraph Numbers	Reason
72	3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)

72. **Confidential Appendices to Item 5 – Formation of a Local Housing Company**

The Executive noted the confidential Appendices in relation to Agenda Item 5, Minute Number 65 – Formation of a Local Housing Company.

(The meeting ended at 7.22pm)