

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 14th July 2014
CONTACT OFFICER: Neil Aves, Assistant Director Housing & Environment
(For all enquiries) (01753) 875527
WARD(S): All
PORTFOLIO: Neighbourhoods & Renewal - Cllr Swindlehurst

PART I **NON-KEY DECISION**

OPTION APPRAISAL – SUBSIDIARY HOUSING COMPANY

1 Purpose of Report

This report highlights the further evaluation undertaken in considering the viability of establishing a Subsidiary Housing Company to develop, acquire, manage and sell market and affordable cross tenure properties to assist in meeting local housing.

2 Recommendation(s)/Proposed Action

The Cabinet is requested to resolve:

- (a) That it be noted that following detailed preliminary investigations, the creation of a subsidiary housing company remains a viable and worthwhile option to improve the quality of housing available to residents of Slough and to generate a financial rate of return to the council which maximises the value of its land assets; and
- (b) That the development of a detailed business plan and outline governance rules from within existing and previously approved financial resources be approved and to bring a final report for consideration to Cabinet by October 2014.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Corporate Plan

The provision of additional, good quality family housing can reduce housing need for local households and contribute to the identified priorities of the JSNA by increasing the availability of good quality accommodation. The Corporate Plan has a target of achieving value for money and if this initiative contributes to that by maximising the asset value of development sites that the council will be better placed to respond to the wider needs of the community.

3 Slough Joint Wellbeing Strategy Priorities –

- Health
- Economy and Skills
- Regeneration and Environment
- Housing
- Safer Communities

Investigations to date confirm that it would be both viable and beneficial to establish a subsidiary housing company and in doing so, conceivably it could contribute positively to all five of the wellbeing priorities.

(b) Cross-Cutting themes: improving the image of the town

Clearance or acquisition of redundant or derelict sites across the town and the subsequent construction of aesthetically pleasing family housing will improve the image of the town both visually and in terms of its perception by demonstrating that good quality homes are available and that aspiring households can find homes within the borough avoiding the need to move to adjoining areas.

4 **Other Implications**

(a) Financial

This reports updates Cabinet and seeks approval to complete the evaluation and full business case for establishing a subsidiary housing company (SHC) to potentially develop, acquire and manage properties across the borough as such there are no financial implications at this stage but a future cabinet report seeking approval for the launch of the company will detail the financial risks and benefits. The formulation of any subsidiary housing company will have revenue financial implications, but also Capital and Treasury Management implications, depending on the best option taken forward for the Council in respect of financing any company or other financial vehicle.

(b) Risk Management

Risk	Mitigating action	Opportunities
<u>Legal</u> The local authority can only act as permitted by legislation which may limit some more creative solutions.	The feasibility study has benefited from external legal advice from a company seen as 'industry leaders' in this field.	Establishing an SHC will offer increased financial returns to the local authority and assist in meeting wider housing need in the town
<u>Property</u> If council landholdings are retained and not developed while awaiting the determination of the options appraisal there is a real and opportunity cost if swift assessment and decision making is not achieved.	The majority of sites which may be related to the development of the company have now been cleared thereby reducing financial liabilities for security and occupiers liability.	In preparation for the launch of the company, a parallel activity of site development feasibility and securing of planning approval is being undertaken to remove any delays. If ultimately the council decides not to proceed with the company, the development work will still benefit the council in the enhanced sale value of the asset.

Risk	Mitigating action	Opportunities
<p><u>Human Rights</u> There are no human rights issues associated with this report</p>		
<p><u>Health and Safety</u> On vacant sites the Council has a legal duty to secure the site and prevent access which could lead to accidents and injury</p>	<p>Demolition of existing buildings has been completed and will reduce obligations and liabilities.</p>	
<p><u>Employment Issues</u> There are no employment issues associated with this report however when the subsidiary housing company is established it is possible that some existing staff will be contracted to work directly for the company and this may give rise to TUPE issues later.</p>		
<p><u>Equalities Issues</u> There are no equalities issues associated with this report</p>		
<p><u>Community Support</u> There are no issues related to this report however in future specific sites may be subject to challenge or opposition if the community perceives that designs and developments are inappropriate.</p>	<p>All schemes will be developed in accordance with Development Control guidance and designed to contribute positively to the town and the need for good quality accommodation.</p>	<p>Well planned site developments are likely to gain community support if they result in the removal of derelict or rundown sites.</p>
<p><u>Communications</u> There is an outside chance of negative public perception of council owned vacant sites being left undeveloped over a longer period of time</p>	<p>This feasibility study will be a short, intense programme of work with a final decision or 'launch' paper being presented to Cabinet in either October or if possible September 2014. the parallel process of securing planning approval on key sites will be working to the same timetable.</p>	<p>If successful a subsidiary housing company will maximise the efficient use of the council's resources as well as delivering new homes to meet local housing need. All of these aspects will be positive issues for the Council.</p>

Risk	Mitigating action	Opportunities
<u>Community Safety</u> Vacant and derelict properties together with cleared sites can attract a variety of anti-social behaviour activities	The feasibility study will be completed expeditiously and colleagues in Neighbourhood Enforcement will be advised to maintain a watching brief on the site to deal promptly to any issues.	If successful the subsidiary housing company could resolve a number of longstanding 'eye sore' sites across the borough removing ABS focal points
Risk	Mitigating action	Opportunities
<u>Financial</u> Financial implications at this stage are limited to the specific 'invest to save bid and the delayed receipt of any sale or development values for sites	The feasibility study has demonstrated that there are obvious benefits in maximising the value of current landholdings and the council will be in a position to consider a launch report in the early Autumn	If successful a subsidiary housing company will maximise the efficient use of the council's resources as well as delivering new homes to meet local housing need. That in itself will reduce financial liabilities for homelessness and temporary accommodation and property sales will generate additional income..
<u>Timetable for delivery</u> Indecision or ongoing delays continue the revenue expenditure of maintaining vacant sites and delay receipt of projected capital receipts and/or revenue income	The feasibility study has made good progress for a first time venture and subsequent projects of a similar nature will benefit from lessons learned and be delivered more swiftly.	Sound project management regulation will ensure that timely decisions are made and prevent 'mission creep' to investigate other peripheral issues.
<u>Project Capacity</u> Staff resources to undertake feasibility studies are limited and timescales could extend without sound project management control	The availability of external specialist advice together with learning from peer authorities has meant that this project can proceed to completion on time and within existing resources.	
<u>Other - None</u>		

(c) Human Rights Act and Other Legal Implications

This report is seeking to continue the feasibility study into the establishment of a subsidiary housing company (SHC) as such there are no Human Rights or Legal implications at this stage however, should the project proceed, the creation of a company as a legal entity will be subject to full legal advice and guidance both internally and through external specialist advice.

(d) Equalities Impact Assessment

As a feasibility report there is no proposed policy change at this stage and hence no requirement for an equality impact assessment. Should the project result in the creation of a subsidiary housing company a further EIA screening will be undertaken although superficially, a project which increases the availability of new homes to all across the borough is unlikely to raise equality issues.

(e) Workforce

As a feasibility report there are no implications for the council's workforce at this stage. Should the project proceed the launch report will outline the employee related implications if any.

(f) Property

This feasibility study relates initially to the establishment of an SHC to develop and rent or sell properties on existing council owned land. As the outline business case shows a financial benefit of such action, further SBC owned properties and landholdings deemed to be surplus to requirements could be transferred to the company to deliver additional market and affordable housing as well as a financial return to the council.

5 Supporting Information

- 5.1 Members will recall that in the initial report to cabinet in April the rationale for the company was set out as;

Looking at the borough as a whole it is clear that there are only a limited number of large sites (in public or private ownership) which might support the delivery of large numbers of new homes and of those sites, those in council ownership are already linked to the SRP while those privately owned, such as Castlevue or Middlegreen Trading Estate are already under construction.

What remains are a significant number of small, difficult sites, some owned by the council as housing (HRA) or in the General Fund and many sites in private ownership which because of their location, size or former uses have not been seen as attractive to speculative developers.

Therefore if somehow, the council could create a smaller, more flexible special purpose vehicle to intervene on such sites then not only would additional homes and jobs be created but a more comprehensive regeneration of the area could be achieved.

- 5.2 Since the initial report, officers have attended a number of seminars and briefing sessions on subsidiary housing companies, regeneration and the associated funding and the financing options now available to the council. Additionally Trowers and Hamlins law firm have been retained to provide the very specific advice associated with this new area of law.
- 5.3 Evaluations to date both in terms of legal options and financial modelling have demonstrated very clearly that there are no legal impediments to prevent the council from establishing a subsidiary company and further that the rate of financial return is such that it makes sound sense to create a company which can maximise the value of existing landholding assets. There is of course an associated risk with any investment or development however the currently buoyant housing market and high demand for good quality housing mitigates that risk. Furthermore the council is in an almost unique position in that in the unlikely event of a downturn in property values there will always be a demand for social housing which will mean that the company would never be left with vacant, unsalable properties.
- 5.4 Considerations to date
- 5.5 Investigations to date have confirmed that while a number of authorities have already established subsidiary housing companies, the numbers are still in single figures so Slough is very much in at the start of a new initiative. What has become evident is that every company is established for its own particular and local reason and that clarity of purpose from an early stage is a determining factor in forming the company. Examples already exist where companies have been established, to restart a stalled housing market, to compete with and to regulate the existing private rented sector, to establish a balanced and stable community on a large regeneration site and also simply to maximise income generation to the council's general fund.
- 5.6 In the case of Slough the focus is very much upon maximising the asset value of existing landholdings and generating a substantial and ongoing revenue stream for the council. But there is also a desire to assist in the regeneration of areas of the borough by controlling the type and quality of any development and to act as a catalyst to accelerate the regeneration of existing privately owned sites. It is these joint aims that will ultimately determine the structure of the proposed company.
- 5.7 In completing an outline business case the following options have been fully considered and are summarised below;
- 5.8 Purpose of the company – will the company be established to engage in market activity or purely be operated as a social entity? While the company could undoubtedly contribute to the council's regeneration aspirations it will also aim to maximise income generation through the development of sites for market housing. In doing so the Localism Act determines that any commercial interests of a council can only be carried on through a subsidiary company. Thus the purpose of the company is determined.
- 5.9 Form of the company – the articles of association and company memorandum determine what a company can and cannot do and these can be produced and registered with Companies House fairly easily while allowing a broad range of activities normally associated with property management and land development.

- 5.10 The form of the company also considers whether it should of a charitable or commercial nature. While charitable companies have a variety of tax benefits, they are restrictive in terms of operation and would require a greater degree of separation and control from the council. As registration can take in excess of a year, this option was discounted as there is an urgency to deal with existing sites and to maximise their potential without further delay. As a commercial company it can either be solely owned by the Council or be a joint venture with a private sector partner. Again, a solely owned company allows for a swifter delivery whereas any JV would inevitable require a selection process to choose a preferred partner which would be time consuming. While a joint venture would share any anticipated risk, it would of course mean that any revenue generation would also be shared between the partners.
- 5.11 Determining the form of the company does not preclude future changes should the declared aims of the company change.
- 5.12 Finance - The Local Government Act 1988 allows council's to grant loans to other bodies however they must be at a commercial rate while any reduced rate of interest risks the legitimacy of the operation being challenged by competitors under what are known as State Aid rules. Similarly statute allows staff, office space, equipment and 'assistance' to be provided to other bodies and while charges can be applied, the council cannot make a profit otherwise it would breach the commerciality rule mentioned above.
- 5.13 Land transfer – General fund land or vacant HRA land can be transferred into a subsidiary company however this must only be at 'best consideration' which usually equates to market price. If a local authority disposes of land below a certain value the action can require Secretary of State approval.
- 5.14 Tax issues – Operation of a property company focuses on three main tax implications, VAT, Stamp Duty Land Tax and Corporation Tax. Corporation Tax is payable on profits however loan charges and operational costs of the company are tax deductible. Clearly this would be a highly specialised area where expert advice would be required.
- 5.15 Procurement rule – Depending upon their form and purpose, subsidiary companies can either be bound by public law and subject to all the procurement requirements of the local authority, or they can operate outside of public law, almost as a private company and benefit from supply procurement processes. While avoidance of the public procurement regime would appear attractive it would be extremely difficult to secure and there are many statutes and case law rulings that would need to be adhered to in order to avoid challenge by potential competitors throughout the European Union.
- 5.16 To fall outside public law not all of the following criteria would need to apply but the more that were applied the greater the defence to any potential challenge.
- Must compete in the open market
 - Must be created to make a profit
 - Must have no guaranteed funding from the parent authority
 - Must 'survive' solely on its own income
 - Must not be expected to contribute to any council aims or strategic objectives

- Losses cannot be underwritten by the council and the company must be allowed to go into insolvency if it failed
- Majority of directors appointed on their merits and business acumen
- No obligation to comply with social, environmental or ethical policies
- Council cannot be involved in the running or dictate the direction of the company.

5.17 The above list is not exhaustive but given that any potential company is likely to contribute to the council's regeneration aims and follow its strategic direction, it seems unlikely that it will fall outside public procurement rules.

What would the company do?

5.18 In simple terms the company would be established to develop, acquire, manage and sell market and affordable cross tenure properties initially on landholdings currently owned by the council. The company would be loaned the initial capital from the council, at market rates and with that money the company would buy the council's landholding and then commission a company to design and build an appropriate development. In return for lending the money, the council would receive an initial revenue income in the form of interest and this would be at rates higher than currently available in commercial deposit accounts. As properties are developed, the company would either sell properties on the open market or rent them out at market or sub market rates to households who would not have access to the existing social housing. The profits derived from market renting, after deducting running costs would represent a further income back to the council.

5.19 A detailed financial modelling package has been developed to test all the assumptions about the future of property values, interest rates, repair and maintenance costs and rent levels, even starting as a small company with a single site of 10 properties shows the proposal is viable and with added economies of scale from subsequent developments, the outline business case demonstrates that within 3-5 years the company would be making a significant rate of return for the council.

5.20 If cabinet agrees to continue with the feasibility study, a final business case and model will be developed for final approval before launch of the company.

6 Conclusion

6.1 This report summarises the conclusion of the outline business case and evaluation of options to launch a subsidiary housing company. The detailed evaluation will now be completed and a final report recommending launch of a company will be brought to cabinet in October or September if key staff availability over the summer period allows.

7 Background Papers

'1' - None