



Report for:	Cabinet
Date of meeting:	24 May 2016
Part:	1
If Part II, reason:	

Title of report:	Proposals for a Development Company
Contact:	Cllr Graeme Elliot, Portfolio Holder for Finance & Resources James Deane, Corporate Director (Finance & Operations)
Purpose of report:	To gain Cabinet approval for the overarching principles of a Council-owned Development Company, ahead of procuring specialist, technical advice.
Recommendations	<p>It is recommended that Cabinet approve:</p> <ol style="list-style-type: none"> 1. The procurement of specialist technical advice to progress work on the creation of a Development Company; 2. The primary objectives of the Development Company, as detailed in paragraph 7 of this report; and, 3. The development sites identified in paragraph 12 to form the initial pipeline for the Development Company, <p>It is also recommended that Cabinet recommend to Council:</p> <ol style="list-style-type: none"> 4. A draw down of £100k from the Invest to Save reserve, in order to fund the procurement of advice associated with the creation of a Development Company.
Corporate Objectives:	This project aligns with all of the Council's corporate objectives, as approved by Council in February 2016.
Implications:	<u>Financial</u> The financial implications are included within the body of the report.
'Value For Money	

Implications'	<p><u>Value for Money</u></p> <p>The procurement exercise will be governed by the Council's Procurement Standing Orders, deigned to ensure fair competition and maximise value for money.</p>
Risk Implications	<p>There are limited risks associated with the recommended procurement at this stage of the project. The risks inherent with the actual creation of a company will be reported back to Cabinet to consider later in the year, before the next steps are taken.</p>
Health And Safety Implications	<p>None</p>
Monitoring Officer/S.151 Officer Comments	<p>Monitoring Officer:</p> <p>The Council has the power to establish a Development Company pursuant to provisions contained in the Local Government Act 1972, Local Government Act 2003 and the Localism Act 2011.</p> <p>As highlighted in the report, detailed legal advice will be obtained in relation to the governance arrangements which will operate between the Council and the Development Company, the applicability of 'State Aid' rules (EU rules in place to prevent members states distorting cross boundary competition), and the Council's requirement to achieve 'best consideration' for any disposal/transfer of land to the Development Company.</p> <p>Comprehensive advice on all of the above issues will be provided in future reports to Cabinet in due course.</p> <p>S.151 Officer</p> <p>This is a Section 151 Officer report.</p>
Consultees:	<p>Chief Officer Group</p> <p>Cabinet</p>
Background papers:	<p>None</p>

Executive Summary

1. In response to the continued financial pressures faced by the public sector, a number of Local Authorities have created, or are in the process of creating, Development Companies with a view to optimising the return on council-owned assets, in particular land, housing and commercial assets.
2. Whilst the principles of a Development Company are straightforward, the legal and financial considerations are complex and must be addressed from the outset in order to ensure that the Council creates the type of company most suited to delivering its objectives. The

fundamental purpose of this report is to take the first steps towards addressing these considerations.

3. Based on consultation with other Local Authorities exploring the concept of a Development Company, the recommended process to progress from concept stage through to formation, together with indicative timeframes, is shown below. (More detail on each point is provided within the body of the report.)
 - a. Establish the Council's development objectives (Cabinet May 2016)
 - b. Identify potential development land (Cabinet May 2016)
 - c. Issue tender for specialist legal, financial and property advice (end of July)
 - d. Provision of specialist advice (end of July – end of October)
 - e. Seek Cabinet and Council approval (November – January 2017)

4. The purpose of this report is to seek Cabinet approval of the following 'in-principle' recommendations which will underpin a procurement exercise for specialist advice. A further report will be brought to Cabinet later in the year, after the advice has been provided, with recommendations on next steps.
 - a. Procurement of specialist advice based on the principles within this report
 - b. The Development Company objectives detailed in paragraph 6
 - c. Inclusion of the development sites proposed in paragraph 11

Establish the Council's development objectives

5. There are various types of Development Company the Council could create, and determining which is the most efficient depends on the objectives the Council has for the company. For example, the Council could opt to create a charity in order to benefit from the associated tax reliefs. However, the potential downside of creating a charity is that there are restrictions on the use of charitable income which would render it an unsuitable structure if the Council intends to use revenue from the company to support the provision of wider General Fund services.

6. It is, therefore, a prerequisite for the procurement of specialist advice that the Council establishes clear objectives for the Development Company. Without this clarity, advisors will be unable to recommend the most appropriate company structure.

7. Following consultation with Cabinet and Chief Officer Group, it is recommended that the Council's principle objectives for the Development Company be approved, in order of priority, as:
 - a. To maximise revenue income to support provision of General Fund services
 - b. To contribute to the delivery of local housing in a high-demand market

8. Broader, additional objectives can be explored with the specialist advisors. However, in order to focus the advice, prioritise options and deliver something that works, it is essential that the Council is signed up to clear overarching objectives in advance.

9. Some of the broader objectives that will inform discussions with specialist advisors include: whether there is flexibility to broaden the scope of services provided by the company in future; delivery of future HRA developments alongside commercial development; and, what is the most efficient means of operating the company e.g. the Council's selling staff services to the company.

Identify potential development land

10. Whilst it is possible to create a company before identifying development land, the majority of Local Authorities create companies with a clearly identified pipeline of development land. Taking this approach ensures that financial, legal and property advice can be more focused, and that particular challenges relating to specific sites can be identified and addressed while the specialist advisors are within commission.
11. Pre-identification of sites is not intended to limit future projects for the company. The Council will seek optimal flexibility within the structure of the company to deliver as wide a range of sites as possible in the future.
12. It is recommended that the following sites be specified as development sites for consideration within the tender specification:
 - a. Civic Centre site
 - b. Market Square site
 - c. Magic Carwash site
 - d. Various garage sites, including surrounding land
 - e. Martindale

Issue tender for specialist legal, financial and property advice

13. There is a mature market for the procurement of combined specialist advice for the creation of a development company by Local Authorities, which effectively reduces the procurement timeframe. The Council can make use of the HCA Property Framework, with an indicative tender timeframe of around 6 weeks from issue of tender to appointment.
14. Some of the key questions for specialist advisors are as follows:

Legal advice

- a. Evaluate company options: Charity; Limited by Shares; LLP; Joint Venture
- b. Evaluate governance structures, operational structures & relationship with Council
- c. Compliance with State Aid regulations and best consideration rules
- d. Retain scope for broader business opportunities (commercial dev. & other services)
- e. Confirm appropriate legal powers and political risk

Financial advice

- a. Evaluate tax implications e.g. Stamp Duty, Land Tax, Corporation Tax, VAT
- b. Evaluate tax implications for the Council e.g. VAT partial exemption
- c. Accounting requirements of the company
- d. Evaluate financing options e.g. PWLB or market – tax propriety, on-lending rates

- e. Selling services to the company or the company selling services
- f. Transfer of assets from Council to company at the most efficient time, and vice versa
- g. Sustainable medium-term plan e.g. mix of tenures, mix of receipts, maintenance

Property advice

- a. Optimisation of site returns – business case, residential/commercial, sale/rent
- b. Market risk – mix of tenure/Temporary Accommodation/delivery model
- c. Development risk – composition of appropriate delivery team

Next steps

- 15. Subject to approval by Cabinet, the recommendations within this paper will form the basis of a tender to procure the technical advice required to progress the Development Company project.
- 16. It is recommended that Members approve a draw down of £100k from the Invest to Save reserve in order to fund the procurement and other associated costs that may be required in advance of the next report to Cabinet.
- 17. The initial stages of the Development Company project will be led by the Corporate Director (Finance & Operations), working closely with the Chief Officer Group as a whole, together with Mark Brookes, as Solicitor to the Council and Monitoring Officer.
- 18. A further report will be brought to Cabinet later in the year, following further work, recommending next steps.