

Appendices

None



CABINET REPORT

Report Title

Establishment of a Council-owned Housing Development Company (DevCo)

AGENDA STATUS:

PUBLIC

Cabinet Meeting Date:	18 July 2018
Key Decision:	No
Within Policy:	Yes
Policy Document:	No
Directorate:	Chief Executive's
Accountable Cabinet Member:	Councillor Stephen Hibbert
Ward(s)	All

1. Purpose

- 1.1 The purpose of this report is to consider the case for setting up a wholly Council-owned subsidiary to support the direct delivery of new homes and, potentially, other associated development in the Borough of Northampton.

2. Recommendations

2.1 It is **recommended** that Cabinet:

- (a) Approves the principle of establishing a Council-owned Development Company (DevCo) to build homes for sale and rent, together with associated development;
- (b) Approves the principle of funding the initial start-up costs of the DevCo and agrees that a sum of up to £20,000 is made available from Reserves;

- (c) Supports and commits to the principle of PWLB borrowing being loaned to the DevCo, and agrees that work should start on identifying initial projects and working up scheme costs and viability; and
- (d) Receives a further report in October 2018 when Cabinet approval will be sought for approval of the DevCo's Business Plan and Legal & Governance structure and the establishment of the DevCo.
- (e) Delegates to the Chief Executive (in consultation with the Cabinet Member for Housing & Wellbeing, the Chief Finance Officer and the Borough Secretary & Monitoring Officer) the authority to set up a Development Company, appoint initial directors and implement the Legal & Governance structure.

3. Issues and Choices

3.1 Report Background

- 3.1.1 On 21 February 2018, the Cabinet approved a new, 3-track approach to housing delivery that will expand the range of options available to the Council and Northampton Partnership Homes (NPH) to maximise the supply of new homes.
- 3.1.2 The 3-track approach comprises new build within the Housing Revenue Account, new build within a Community Benefit Society (CBS) and new build within NPH.
- 3.1.3 At the same meeting, the Cabinet agreed that this approach would not preclude the Council from considering other options such as forming a Housing Development Company (DevCo) either on its own or with appropriate partners such as NPH.
- 3.1.4 The delivery of new homes and associated development is fundamental to sustaining economic growth, supporting communities and meeting housing need in a sustainable way in Northampton. However, in order to meet Northampton's needs, it is necessary to substantially increase the net number of additional dwellings provided in the borough each year between now and 2029.
- 3.1.5 A Council-led housing delivery vehicle will not only complement the work that the Council is already undertaking with NPH (through the Housing Revenue Account) and private sector partners but it will also help to accelerate the delivery of new homes in the Borough. Cabinet approval is required, however, for the Council to progress plans to set up such a vehicle.
- 3.1.6 Establishing a DevCo to deliver new homes is an increasingly popular model because of its flexibility and freedom to operate. Unlike the CBS – which precludes the Council from having a controlling interest – the DevCo is controlled by the Council which is able to speed up, or slow down, delivery and provide the Council with better financial returns if, in due course, it is able to generate an ongoing surplus.
- 3.1.7 Northampton's DevCo would be owned and funded by the Council. One of the main benefits of this model is that the the company's development ambitions would not be constrained by the limitations of the HRA borrowing cap.

- 3.1.8 It is proposed that the DevCo's vision would be for the Council – working proactively and collaboratively with NPH – to create and deliver a house building programme that produces aspirational housing (energy efficient homes, built to the 'Homes designed for Life' standard) and acts as an exemplar for the housing market, but with the overarching aim of increasing housing supply in the Borough.
- 3.1.9 One of the key benefits of this Council-owned company is that it could implement segmental pricing in order to allow a suitable mix of social, affordable and commercial rented homes including, if required and appropriate, key worker homes.
- 3.1.10 It is proposed that the DevCo focuses activity around the following:
- **Private rented accommodation** – create more choice and household stability through longer term tenancies, acting as an exemplar for the rented market whilst retaining the units as an asset for the DevCo
 - **Developing homes for sale** – contribute towards meeting local demand, influencing the pace and type of house building through site acquisition and development whilst contributing to the company's long term financial sustainability
 - **Retirement housing, including extra care housing** – support the ageing population in the borough by expanding choice and, in turn, create movement in the housing market by freeing up family sized accommodation
- 3.1.11 The DevCo could address a number of the Council's other priorities (subject to them being proved to be financially viable) including the purchase of empty properties.
- 3.1.12 Although the Right to Buy would not apply to the tenants living in homes developed by this type of company, it should be borne in mind that the Government may at any point change the legislation around the Right to Buy.
- 3.1.13 Where the Council is financing or transferring land to the DevCo, the Council could decide – either in its capacity as lender or through the shareholders agreement – to set the parameters for the tenancies that will be offered, the rent levels that will be charged, any allocations / nominations agreements that will be introduced and the employment of local labour in relation to the activities of the company and any procured works. The overall mix and tenure for any scheme would be considered on a site by site basis.
- 3.1.14 Depending on the size and nature of the scheme – and in order to ensure a high quality landlord service – any tenanted property would be managed by the Council's Social Lettings Agency or the Council's partner, NPH.

3.2 Choices (Options)

- 3.2.1 Cabinet could choose to support the creation of a DevCo, with associated set up costs and the principle of borrowing to lend to the DevCo.
- 3.2.2 Cabinet could choose not to approve the creation and funding of a DevCo.

- 3.2.3 Cabinet could choose an alternative model for increasing the delivery of additional homes in the Borough.

4. Implications (including financial implications)

4.1 Policy

- 4.1.1 The development of new affordable housing remains a key priority for the Council.
- 4.1.2 Whilst the existing New Build programme continues to meet its targets, the programme is limited by the rules relating to the HRA debt cap. Also, the Council only has powers to let rented property on a secure tenancy or fixed term basis and it has no power to deliver assured shorthold tenancies through its HRA.
- 4.1.3 A company structure would be required to meet the Council's aspiration to provide sub-market private rented accommodation that is able to meet the housing needs of, for example, families that are threatened with homelessness.
- 4.1.4 Although the Council has identified the need for a range of affordable housing tenures, addressing the demand for affordable rented housing remains the priority.
- 4.1.5 In June 2018, the Government invited local authorities in areas of high affordability pressure – including Northampton – to bid for increases in their HRA borrowing caps in 2019-20, 2020-21 and 2021-22, and a share of a £1.67 billion affordable homes programme which includes investment for social rented homes. The Council and NPH will be submitting bids to both programmes.
- 4.1.6 In light of these recent developments, it is recommended that the Council continues to fund the majority of the Council's development programme through the HRA.

4.2 Resources and Risk

Financial implications

- 4.2.1 Funding for any development could be provided through borrowing from the Public Works Loan Board (PWLB) or from other financial institutions. The margin on these loans could generate additional surpluses for the General Fund whilst offering the DevCo competitive loans secured against its housing stock.
- 4.2.2 If the DevCo undertakes market activities, it will need to ensure that any loans are lent at a market rate and therefore a margin is added on to the PWLB rates. However, if the DevCo focuses on affordable housing (including intermediate rent or keyworker accommodation) then the loan would not need to be provided on commercial terms. If the company carries out both types of activities, it will require separate loan agreements.
- 4.2.3 The DevCo would be subject to Corporation Tax on any surplus of its activities. The financial modelling for the Business Plan would contain a detailed tax analysis.

- 4.2.4 The overriding principle of establishing a Council-owned DevCo is that there would be no overall cost, over the life of the Business Plan, to the Council and that, depending upon the delivery model chosen and subsequent performance, the Council could benefit from the following:
- Any dividends (surplus after tax) from the company
 - Any capital growth in the value of the property portfolio
 - A premium on the loan repayments
 - Council Tax and New Homes Bonus payments as new units become occupied
- 4.2.5 The operating costs of running the company would need to be determined as part of the Business Plan and these will include any specialist advice or support that is required from support services such as Legal, HR and Finance.
- 4.2.6 The investment in the delivery of housing will form part of the wider Council investment strategy that is being developed.

Risk management

- 4.2.7 Property development carries inherent risk in terms of the potential for cost escalation (due to site conditions, design issues, material and wage inflation) as well as uncertainties around market demand and movement in property values.
- 4.2.8 All of these factors and more will need to be reflected in a thorough approach to risk management and mitigation. A full risk analysis will be developed as part of the business model that is developed and presented to Cabinet in the next report.

4.3 Legal

- 4.3.1 The Council may exercise its general power of competence under the Localism Act 2011 to establish a DevCo as a limited liability, wholly owned housing delivery company of the Council
- The company would be a separate legal entity.
 - The company can hold property and assets, sue and be sued and enter into contracts in its own right
 - There are potentially onerous statutory duties on the part of directors who owe fiduciary duties to the company.
 - The directors (whether de jure, de facto or shadow) may be liable for wrongful or fraudulent trading and may face proceedings for disqualification if the company fails.

4.3.2 As part of the process, detailed consideration should be given to developing clear documented policies, business plans, financial appraisals and processes by which sites are identified for development and/or acquisition as well as a policy and procedure which will determine when an identified site is not pursued, or alternatively identified as a “windfall” and to the governance policy which will regulate the company.

4.4 Equality and Health

4.4.1 The action that is proposed in this report will help to improve the housing conditions and life chances of people with protected characteristics, including homeless people, people with disabilities and families with children. It will therefore have a positive impact on Equality and Diversity.

4.4.3 Maximising the supply of new homes is part of the Council’s commitment to improving communities and our town as a place to live. In its operation of the DevCo, the Council will have due regard to its Public Sector Duty and will continue to work to tackle discrimination and inequality and help to create a fairer society.

4.5 Consultees (Internal and External)

4.5.1 Housing and Planning Officers at Northampton Borough Council, together with Councillors and a wide range of stakeholders, have been supportive of the proposal to maximise the supply of new homes and accelerate the delivery of housing.

4.6 How the Proposals deliver Priority Outcomes

4.6.1 The action proposed in this report will help meet 2 of the priorities in the Council’s Corporate Plan:

- **Housing for Everyone:** By helping to maximise the supply of new homes, the establishment of the DevCo will improve housing choice and help people to meet their housing needs in decent housing.
- **Working Hard and Spending your Money Wisely:** Establishing a Council-owned Development Company (DevCo) will help to maximise the supply of new homes, accelerate the delivery of new housing and increase the income received from Council Tax and New Homes Bonus. It may also enable the Council to receive a premium on the loan repayments.

Appendices

None

Background Papers

Cabinet Report - Maximising the supply of new homes – 21 February 2018

Phil Harris
Head of Housing and Wellbeing
01604 837871