

Part A

Report to: Cabinet
Date of meeting: 7 November 2016
Report of: Head of Community and Customer Services
Title: Establishing a Joint Venture with Watford Community Housing Trust

1.0 **Summary**

- 1.1 This report seeks members approval to enter into a joint venture with Watford Community Housing Trust to undertake developments within Watford and beyond and also to hold properties for rent.
- 1.2 It also seeks members approval to establish a standalone trading company Watford Commercial Services Ltd for the Council to allow the Council to enter into the joint venture and to trade and act for commercial purpose.

2.0 **Recommendations**

- 2.1 That the Council establishes its own wholly owned trading company to be known as Watford Commercial Services Limited (WCS) for the purpose of facilitating the joint venture arrangement with Watford Community Housing Trust and to also enable the Council to trade and act for commercial purpose beyond the joint venture.
- 2.2 That the Head of Finance and Head of Community & Customer Services be appointed to the Board of WCS and that the Deputy Managing Director also be appointed when that post is filled.
- 2.3 That the business case for WCS as set out in Appendix 1 be approved.
- 2.4 That the proposal to loan £50,000 to WCS be approved subject to the Managing Director, following consultation with the Director of Finance, agreeing terms of the loan.
- 2.5 That the business case for Hart Homes (Watford) Limited as set out in Appendix 2 be approved

- 2.6 That the proposal to purchase additional shares in Hart Homes (Watford) Limited in exchange for a land transfer be approved
- 2.7 That the business case for Sale LLP as set out in Appendix 3 be approved for recommendation to the Board of WCS
- 2.8 That the proposal for WCS to become a member of Sale LLP be approved
- 2.9 That following the establishment of WCS, the Managing Director be authorised to give the Council's (as sole shareholder in WCS) consent to the Board of WCS:
2.9.1 adopting the Sale LLP Business Case; and
2.9.2 taking all necessary steps for WCS to become a member of Sale LLP
- 2.10 That the Managing Director be authorised to take any and all decisions deemed necessary in his opinion to enable the Council to establish WCS and/or to participate in the joint venture with Watford Community Housing Trust to include without limitation the negotiation of terms and approval for execution and/or signature of all documentation
- 2.11 That in accordance with the business plans approved by Cabinet and monitored by the Property Investment Board, the Managing Director, following consultation with the Director of Finance, be given delegated authority to agree to any future financial injections into WCS whether by way of cash, loan notes or shares in order for WCS to be able to act as a full partner in Sale LLP or to develop other commercial activities.

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Report approved by: Managing Director

3.0 Detailed Proposal

- 3.1 Cabinet received a report on 18 January 2016 seeking approval to enter into a joint venture with Watford Community Housing Trust (The Trust). The aim was to maximise our respective land holdings, particularly where we had adjacent land ownerships, to develop housing within Watford and beyond for both affordable and market rent and also onward sale. To improve the housing situation within Watford but also to provide both parties with income and capital receipts.
- 3.2 Since then detailed work has been undertaken by officers of both parties together with our external legal advisers and tax advisers on the most effective way of undertaking those aims.
- 3.3 The outcome of that work is a recommendation to revise the arrangement that both parties had originally envisaged, which was one joint venture company between the Council and The Trust's trading company Clarendon Living Limited (formerly known as Gateway Enterprises Watford Limited) (Clarendon) and which has been formed and is known as Hart Homes (Watford) Limited (Hart) but is not currently trading. The revised structure involves the Council setting up its own wholly owned trading company (Watford Commercial Services Limited (WCS)). WCS then enters into a Limited Liability Partnership with Clarendon to act as a developer and build dwellings for onward sale, and also act as developer on behalf of Hart. Hart would be a holding company for properties that would be retained for rent, both affordable (sub-market but not social rent) and market.
- 3.4 The rationale behind this revised arrangement is threefold:
- It separates the pure development work from the long term ownership of assets. The business plan for Sale LLP envisages initially a 5 year programme of potential development. If at the end of that 5 year period it is felt that future opportunities are limited the company can be wound up. Whereas Hart is expected to be a long term venture as it will be holding properties that it will be renting.
 - Having the development venture as an LLP is the most tax efficient way of structuring the joint venture.
 - The Council itself cannot enter into an LLP that is created purely to generate profit. In order to trade commercially the Council is required by the Localism Act 2011 to set up a limited company. By having its own trading company which would then enter the LLP with Clarendon the Council can also use it for other commercial activities to assist it to bridge the funding gap it will face when RSG (Revenue Support Grant) is withdrawn by the Government in 2018.
- 3.5 Two detailed papers setting out the council's legal powers to participate in the joint venture and to establish WCS are included as Part B Appendix 4 and Appendix 5.

- 3.6 The Shared Director of Finance has been working closely with officers of the Trust to satisfy herself that the business cases for both Hart and Sale LLP mean that the companies are viable and will provide both parties with a return. The principles behind the arrangements are that both parties contribute equally into Hart and the LLP and therefore both receive equal returns. Both parties have the ability to onward loan to the companies at commercial rates. The detailed financial information is set out in a Part B appendix to this report.
- 3.7 It should be noted that in order for Hart to be financially viable land to be used by the company for its initial phase of development and ownership would have to be contributed in return for shares rather than a capital receipt and similarly Clarendon will get shares for its financial contribution matching the value of the land. The legal paper at Appendix 4 explains in more detail the implications of that for the Council. The Council must ensure that in disposing of any land that it obtains best consideration pursuant to section 123, Local Government Act 1972. Officers consider that obtaining shares in Hart equivalent in value to the land allows best consideration to be obtained.
- 3.8 The business cases for all three entities are attached. Members need to satisfy themselves that they are happy with the objectives and proposals.
- 3.9 Members are asked to approve the Head of Finance and the Head of Community and Customer Services as initial directors of WCS and to approve that the Council provides to WCS loan of £50,000 in the form of an overdraft facility in order to get WCS off the ground. The funding is provided on the basis of a loan to WCS on commercial terms. Commercial terms must be obtained to ensure that the Council does not grant state aid to WCS. It is also intended that the Council will provide support services to WCS, around company secretariat and finance and administrative support. This support is to be provided on a full cost recovery basis.
- 3.10 It should be noted that it is also intended that Clarendon will act as development manager for Sale LLP and will undertake company secretariat duties for both Sale LLP and Hart. It is also likely to act as estate manager for Hart once the dwellings are built and available for letting for which it will receive a fee from the respective companies.
- 3.11 Further investment into the joint venture by the Council (whether by land or funding) will be assessed on a site by site basis. An initial proposal report will go to the Property Investment Board for recommendation to Cabinet for final approval.
- 3.12 Governing the relationship between the Council and WCS and Hart is very important. Officers have already been appointed to the Board of Hart (Head of Community & Customer Services and the Director of Finance) and as noted at paragraph 3.9 it is proposed that officers are appointed to the Board of WCS. As part of these governance arrangements, Cabinet will represent the Council as shareholder in both Hart and WCS. Initially officers appointed to the Board of Hart will represent the interests of that company in Sale LLP.

- 3.13 The Shareholders Agreement between WBC and the Housing Trust (Gateway Enterprises) set out the matters that have to have shareholder approval. In this case such matters will be considered by Cabinet. This includes the business plan and changes to the nature and scope of the business plan.

In addition, monitoring of the housing company's performance, programme and investments will take place through the Property Investment Board. Briefings on and review of all the major schemes will take place through Major Projects Board.

- 3.14 Cabinet should note that since legal advice and company structures were first detailed, a number of the entities have been named (e.g. Hart Homes and Watford Commercial Services) but of course there are still references in the advice/structures to the old acronyms. The company structures are complicated and a presentation to clarify and summarise the position will be made to Cabinet.

4.0 **Implications**

4.1 **Financial**

- 4.1.1 The Shared Director of Finance comments that the detailed financial forecasts for WCS, Hart and Sale LLP are included in the Part B appendices (1, 2 & 3). Financial advice has been received from Grant Thornton (GT) on the viability of Hart and Sale LLP. The Council has also separately sought financial and tax advice from GT on the viability of WCS. All of the companies are considered to be viable. Copies of the advice are included in Part B, appendices 6 (joint venture) & 7 (WCS).

4.2 **Legal Issues (Monitoring Officer)**

- 4.2.1 The Head of Democracy and Governance comments that the Council has jointly instructed Anthony Collins Solicitors with the Trust to provide detailed legal advice on vires, state aid, best consideration and for the drafting of the documentation. The Council has separately instructed them for work on WCS.

The Council is empowered under the General Power of Competence (Localism Act 2011) to participate in the joint venture and to establish and operate WCS.

There are two legal papers setting out the full legal implications for the Council in Appendix 4 (joint venture) and Appendix 5 (WCS) (both included as Part B).

4.3 **Equalities**

- 4.3.1 No equalities impact analysis has been undertaken; whilst this is a new departure for

the council the setting up of these ventures will not have a direct impact on anyone with protected characteristics. Detailed business cases will be required to proceed with any proposal which will have regard to equalities as necessary.

4.4 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Hart and the LLP prove to be unviable	2	4	8
The Council and the Trust fall out	1	4	4
Insufficient capacity to operate Trade Co	3	4	12
Council does not get a meaningful financial return on its investment	3	4	12

4.5 Staffing

- 4.5.1 It is proposed that Clarendon provide the necessary staff for running Sale LLP and Hart. At this time it is not intended to employ any staff in WCS.

Where WCS undertakes further commercial activity outside of the joint venture there may be a need to support that activity. A further report will be brought to Cabinet to authorise any business case for such commercial activity.

4.6 Accommodation

- 4.6.1 The registered offices of Sale LLP and Hart will be/are at the Trusts offices. The registered office for WCS will be the Town Hall

Appendices

- Appendix 1 (Part B) Business Case WCS
- Appendix 2 (Part B) Business case Hart Homes Watford Ltd
- Appendix 3 (Part B) Business case Sale LLP
- Appendix 4 (Part B) Legal advice – joint venture
- Appendix 5 (Part B) Legal advice – WCS
- Appendix 6 (Part B) Financial advice regarding Hart Homes and Sale LLP
- Appendix 7 (Part B) Financial advice regarding WCS

Background Papers

- Cabinet report dated 18 January 2016

File Reference - None