

Wyre Forest District Council

Record of a Council Decision delegated to be made by an Officer

This includes a record of an Executive Decision made by an officer under Regulation 13, Part 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Item decided: To enter into a Limited Liability Partnership (LLP) with Public Sector Plc (PSP)	
Officer who has taken the decision	Director of Economic Prosperity & Place
Date of the decision	03/03/17
Reason for the decision/alternatives considered	<p>On 14/06/16 Cabinet granted delegation to the Director EP&P to agree the business case for entering into a LLP with PSP and following that to enter into the LLP (in consultation with the Chief Financial Officer, Solicitor to the Council and Cabinet Member for Planning & Economic Regeneration).</p> <p>On 05/12/16 the Director EP&P issued the first delegated decision that the business case had been agreed. Following negotiations between the Council and PSP with advice from both parties' legal advisors the formal documentation of Procedure Agreement and Members Agreement are now ready for signature to enable the formal establishment of the LLP. As part of completing the LLP the Council has to populate the formal Partners Board and Operations Board and in order to ensure the Council is represented with the appropriate decision makers and professional experts it is decided that the Council will be represented at the Partners Board by the Chief Executive and Cabinet Members for Resources and Planning and Economic Regeneration and on the Operations Board by the Directors for Economic Prosperity & Place, Community Wellbeing &</p>

	Environment and Resources together with the Solicitor to the Council and the Head of North Worcestershire Economic Development & Regeneration.
Date and source of Delegated Decision (if appropriate)	14/06/16 Cabinet (attached)
Council/Cabinet member consulted – if applicable	Cllr Ian Hardiman – Planning & Economic Regeneration
Any interest declared by the Consultee or officer	None

WYRE FOREST DISTRICT COUNCIL

CABINET
14 JUNE 2016

Alternative Vehicles for the Delivery of Development Opportunities Including Establishing a Local Authority Trading Company (LATC)

OPEN with an Exempt Appendix 2 which contains information which is commercially sensitive	
CABINET MEMBER:	Councillor Tracey Onslow, Cabinet Member for Planning & Economic Regeneration
RESPONSIBLE OFFICER:	Mike Parker, Director of Economic Prosperity & Place
CONTACT OFFICER:	Mike Parker, Director of Economic Prosperity & Place
EXEMPT APPENDICES:	Appendix 1 – Public Sector Plc Exempt Appendix 2 – Opportunities for development

1. PURPOSE OF REPORT

- 1.1 To agree that further work continues to develop the business case(s) for development proposals that could meet need where the market is failing to address local issues and deliver a revenue stream for the Council, and to agree to the establishment of a Local Authority Trading Company (LATC) where the business case means that this is the most viable option.

2. RECOMMENDATION

The Cabinet is asked to DECIDE :

- 2.1 **To delegate to the Director of Economic Prosperity & Place authority, in consultation with the Chief Financial Officer and Solicitor to the Council, to develop the business case(s) for development opportunities set out, but not limited to those, in Appendix 2; and to report to Cabinet for final agreement to proceed to implement proposals.**
- 2.2 **To delegate to the Director of Economic Prosperity & Place authority, in consultation with the Chief Financial Officer, Solicitor to the Council and Cabinet Member for Planning & Economic Regeneration, to develop the business case for entering a Limited Liability Partnership (LLP) with Public Sector Plc and to proceed to enter a LLP where the business case is agreed.**
- 2.3 **To delegate to the Director of Economic Prosperity & Place authority, in consultation with the Chief Financial Officer and Solicitor to the Council, to develop the business case for the establishment of a Local Authority Trading Company (LATC) and to report to Cabinet for final agreement to establish a LATC where any business case agreed under 2.1 above demonstrates that this is the most viable option.**

3. BACKGROUND

- 3.1 Although there are extensive proposals that councils can undertake under their own auspices, increasingly many, including smaller district and borough councils, are turning to alternative delivery vehicles to deliver a range of commercial or other services or to undertake development. The reason for this is that the Local Government Act 2003 restricts local authorities from making a profit from its services, other than to recover relevant costs. In the current climate when authorities are being encouraged to take a more 'business like' approach to financial self sustainability, the provisions of the 2003 Act are rather counter productive. However, the Localism Act 2011 affords power to local authorities to generally do anything that individuals may do, including make a profit, but only if delivered through a separate company.
- 3.2 The advantages of considering alternative delivery models means that councils can expand the services they offer within and outside their administrative area, intervene in markets where they are dissatisfied with the private sector response and can attract new investment into their area, all with the benefit of improving or maintaining services to their residents on a more financially sustainable model.
- 3.3 Amongst the variety of alternative delivery models, some councils have joined together with private partners Winston Group and William Pears Group to form a Limited Liability Partnership known as Public Sector Plc (PSP) which is a model using 'Relational Partnering' (a relationship in advance of any contractual commitment) and brings finance and resources to a project to assist with delivery; its key is flexibility as it is not an Asset Backed Joint Venture Company (ABJVC) and requires no prior commitment with property, nor is it exclusive (Appendix 1).
- 3.4 PSP would not require a LATC to be established to enter it and could sit alongside an LATC if one were in place. Other investigations have been made into other opportunities for direct delivery of new development that doesn't necessitate the establishment of a LATC, for example the Penda Property Partnership which is a Joint Venture Company (JVCo) between Staffordshire County Council and Kier Group which could be accessed as a framework type agreement. Officers have also been in discussion with WM Housing Group who have established 'Signature', the midlands largest property management, development and regeneration companies who have a JVCo with Coventry City Council about possibilities of working together in the district. This offers the potential for the Council to benefit from sale of land, development of affordable properties for sale, sharing in profit generation above an agreed return and reinvestment of WM profit within the district to support other housing schemes.
- 3.5 The Council's External Auditor, Grant Thornton has published papers drawing together good practice around a number of alternative models for the future delivery of public sector services including in 2015 their 'Spreading Their Wings – Building a Successful Local Authority Trading Company' report. Members received a presentation from Grant Thornton at the Members Forum on 14th January based on this report.
- 3.6 The Council has already begun to think differently about the way in which it uses its assets to develop investment opportunities that will create revenue streams for the Council, as well as tools for stimulating local regeneration. This began with the

report by EC Harris (a built asset consultancy) in July 2014 that led to the establishment of the Evergreen Investment Fund and a refresh of the Council's Strategic Asset Management Plan (SAMP) which was approved by Cabinet at its 8th March meeting. The idea of a LATC is a logical extension of that work to utilise the Council's land holdings to promote regeneration for the direct benefit of the district council and its residents.

- 3.7 Senior Officers have been researching further the progress being made by other district and borough councils in establishing LATCs and have opened up a direct dialogue with a number to further understand how establishing LATCs has benefitted them. This includes Nuneaton and Bedworth, East Cambridgeshire, Hinckley & Bosworth, South Norfolk and Cherwell Councils, all of which are facing challenges similar to Wyre Forest that have prompted them to take steps to establishing LATCs.
- 3.8 Many authorities have established so called Teckal companies, this was developed out of the case of Teckal SRV v Comune Le Viano which established that wholly owned local authority companies could have the freedom to be awarded contracts directly by the owning Council, but also enabling them to trade commercially for up to 20% of their turnover. The key consideration with a Teckal company is whether it is being established to predominantly deliver the Council's services or whether it is intended to trade externally. LATCs tend to be companies limited by shares or by guarantee. Those limited by shares are where the Council is the main or sole shareholder and the Council's responsibility for the company's financial liabilities are limited to the value of shares it owns. Those limited by guarantee have no share capital and are guaranteed by a nominal amount.

4. KEY ISSUES

- 4.1 There are a number of opportunities open to the Council to consider in supporting further local economic growth. These are briefly set out in the exempt appendix 2 to this report (they are exempt as they contain commercially confidential information). For example in terms of enabling further business growth, there is evidence highlighting the shortage of small to medium sized industrial units (600ft²-2000ft²) in the district yet there is also strong demand from Wyre Forest indigenous companies wishing to expand but unable to find appropriate units. The private sector tends to be risk averse in speculating in developing these smaller sized units that don't lend themselves to pre-let circumstances and so there is a shortage. The council may wish to take the initiative and deliver such units that would also create a revenue stream which is consistent with the Council's position on using assets to generate revenue.
- 4.2 In housing too, particularly so in the current climate, there are questions about the ability of the private sector to meet local affordable housing need in the district and this is where a number of the other councils introducing LATCs have intervened in the market to deliver new housing such as East Cambridgeshire, South Norfolk and Hinckley & Bosworth; or act to deliver private rented accommodation such as Nuneaton & Bedworth; or to facilitate self and custom build housing such as Cherwell. All of these options are worthy of further investigation and the Council has some flexibility already to undertake new residential development even though it does not have a Housing Revenue Account. Further, changes to the way in which

Housing Benefit is paid to cover bed and breakfast provision for those homeless who need immediate and temporary accommodation is changing and will be a further cost to the Council. This is also an area of possibility for the Council to consider where it could provide this accommodation acting as a 'private landlord' and help reduce increasing costs to the Council.

- 4.3 Clearly the move to a LATC is something that will require careful consideration and would seem to be the natural direction of travel when the Council is clear about the business case for potential development opportunities and once the Council has exploited development opportunities within its existing structure. It is therefore proposed that officers continue to develop business cases for the opportunities set out in Appendix 2 on an individual basis and as necessary to establish a LATC where the Council could not fulfill the business case potential within the existing Council structure.
- 4.4 As part of the business case development it is also proposed that officers further develop the case for joining PSP as this could unlock some of the more complex development opportunities.

5. FINANCIAL IMPLICATIONS

- 5.1 Many Councils are now using LATCs as alternative service delivery models to deliver strategic priorities in more cost effective, flexible ways than possible using traditional in-house delivery.
- 5.2 The potential for the generation of improved revenue income streams is in line with our strategic priorities and is part of the overall plan towards future financial sustainability. This is one of the tools that could help close the significant funding gap in the face of challenging Finance Reform and ultimately help protect services to the public by moving us closer to financial self-sufficiency – being Central Government's objective for all Councils.
- 5.3 Detailed financial implications will be considered as business cases are developed and it is recognised that there may be a requirement to seek external specialist assistance to undertake due diligence work on specific proposals e.g tax implications of a particular proposal. A budget of £50,000 is available for this work from the Transformation Fund. This sum recognises the inherent legal and financial complexity and need to be thorough to mitigate risk to the Council.
- 5.4 A detailed business case will be prepared for specific proposals, including both Capital and Revenue implications to assess affordability and also set out in full key risks. It is highly probable that upfront investment will be required to set up a LATC and that this may include Capital expenditure funded by prudential borrowing. Any such funding costs will be factored into each specific business case and subject to approval by Council as an amendment to the Capital Programme.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1 The Council has the ability through the 2011 Localism Act to establish a LATC. Clearly much of the due diligence required will be around the legal requirements associated with establishing a LATC.

- 6.2 The decision on formation of a local authority company and the other options mentioned in this report are executive functions and therefore fall to the Cabinet to decide. If the Council wished to provide funding to a local authority company or other development vehicle, and this was not already authorised as part of the Council's capital or revenue budget, it would require prior approval by full Council.

7. EQUALITY IMPACT NEEDS ASSESSMENT

- 7.1 An Equalities Impact Assessment is not required at this stage.

8. RISK MANAGEMENT

- 8.1 Clearly there are risks associated with establishing a LATC and a separate detailed risk analysis will be required to support individual business cases.

9. CONCLUSION

- 9.1 The natural direction of travel for the Council following its assets review in 2014 and establishment of the Evergreen Investment Fund and following the adoption of the revised Strategic Asset Management Plan is to consider entering the development market for direct intervention where there are gaps that can be filled for the benefit of the district in support of its local economic and housing growth and where there is a proven case for investment that will offer a revenue stream to the Council. It is proposed that the Council pursue development opportunities within its current legal and administrative framework and remain open to the establishment of a LATC as a vehicle to achieve this where it is demonstrated that this required to be able to realise the full potential of opportunities.

10. CONSULTEES

- 10.1 Corporate Leadership team

11. BACKGROUND PAPERS

- 11.1 'Spreading Their Wings – Building a Successful Local Authority Trading Company'
11.2 Cabinet July 2014 – Use of Assets
11.3 Cabinet 8th March 2016 – Strategic Asset Management Plan.