

## Overview and Scrutiny Committee

Minutes of a Meeting of the Overview and Scrutiny Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **9<sup>th</sup> July 2013**.

### Present:

Cllr. Chilton (Vice-Chairman in the Chair);

Cllrs. Apps, Bartlett, Bennett, Burgess, Clokie, Davidson, Davison, Feacey, Mrs Hutchinson, Link, Miss Martin, Mrs Martin, Mortimer, Smith, Yeo.

In accordance with Procedure Rule 1.2 (iii) Councillors Clokie and Davidson attended as Substitute Members for Councillors Hodgkinson and Adby respectively.

### Apologies:

Cllrs. Adby, Hodgkinson.

### Also Present:

Cllrs. Mrs Bell, Britcher, Clarkson, Hicks, Shorter.

Deputy Chief Executive, Finance Manager, Principal Accountant, Business Manager and Head of Building Control, Head of Customers, Homes and Property, Strategic Housing and Property Manager, Customer Service Manager/Joint Operations Manager Gateway, Head of Property and Community Projects, Senior Scrutiny Officer, Member Services & Scrutiny Support Officer.

Prior to the commencement of the meeting the Vice-Chairman in the Chair advised that a paper containing responses to questions put forward by Members of the Committee had been circulated and the meeting was adjourned for 10 minutes to allow all those present to read this paper.

## 69 Call-In of Cabinet Minute No: 33 – Trading Companies

In accordance with Overview and Scrutiny Procedure Rule 15 five Members of the Overview and Scrutiny Committee had requested that the decision of the Cabinet taken at the meeting on the 13<sup>th</sup> June 2013 concerning Trading Companies (Minute No 33 refers) be called in for scrutiny.

The Vice-Chairman in the Chair welcomed everyone present and outlined the procedure to be followed at the meeting. He advised the Committee that Officers would be able to answer any questions the Committee had pertaining to the Trading Companies. He did not propose to go through the agenda papers page by page and advised that the Leader wished to make a statement on the matter.

The Leader felt that the Overview and Scrutiny Committee was important to the Council and its Constitution. He fully understood their wish to have all of the facts before them for consideration. It was usual for the Committee to scrutinise matters

referred to them, however they had the ability to Call-In decisions and had exercised this right. He advised that the Property Company had been under consideration within the Council for the past two years, an options paper had been presented to the Cabinet in December 2012 regarding the potential creation of both companies. Following this it had been suggested by a Member that there should be provision for independent members on the Board of each company. A shadow board had met on the 22 March 2013 following on from which all Members had been invited to attend a presentation on the proposals on 22 May. Paper versions of the presentation were distributed to Members who had been unable to attend with an invitation to discuss any issues with the Officers concerned. The Cabinet report on the formation of the Companies was presented on the 13 June and made provision for up to two independent members on each Board.

The Leader advised that there had been 16 completions under the Right to Buy (RTB) scheme in 2012/13, 11 in 2011/12 and 4 in 2010/11. The number of residents on the housing register was approximately 1,400 and the 2010 Housing Need Survey had identified a shortfall of homes of 450 per year. 78 homes had been built through the Housing Revenue Account (HRA) over the past two years with 59 new homes and 100 new homes at Farrow Court to be delivered over the next three years via a Homes and Communities grant and the borrowing capacity within the HRA. All new general needs homes were subject to the RTB. The Housing Company rent levels were likely to be set at Local Housing Allowance (LHA) levels. Properties built by the company would be subject to differing tenures dependant on the viability of each site. The Council was considering the Local Authority Mortgage Scheme which assisted purchasers onto the housing ladder who were having problems raising deposits. A number of Local Authorities had signed up already. It should be noted that the Property Company would not be a social housing provider. It would provide for those people who could not access home ownership and who may not have sufficient need to be able to access the Housing Register but needed accommodation.

The Portfolio Holder for Housing and Customer Services was concerned about the number of people currently on the Housing Register. The proposed creation of the Property Company was borne out of two priorities; to increase the revenue to the General Fund (GF) at a time when government grants had been reduced and to deliver more housing for the residents of Ashford. The Council had embraced an entrepreneurial approach. The Property Company would borrow money from the Council who would have secured funding from the Public Works Loan Board at a low rate of interest and would charge a higher rate of interest to the Company to provide the GF with a source of income and this would avoid the need for state aid implications. Delivering housing had always been a priority for the Council. New builds within the HRA were not viable due to the debt cap and the reduced availability of grant funding. Through the Company purchasing properties the assets of the Council would increase. She felt that supporting the report would give a message to the residents of Ashford that the Council cared about providing homes within the Borough at a realistic financial cost.

During the discussion, the following responses were given to questions from the Committee:

- The financial modelling had been based on a tax rate of 23%. It should be noted that there were some items that were not tax deductible. Taxation advisors had been consulted regarding this.
- The Companies would be wholly owned by the Council. The Council would be the only member and shareholder, this ensured absolute control. The shareholder agreements would require the Companies to gain permission from the Council to act in certain circumstances. Both Companies would be Limited Liability Companies which would mean that creditors would be unable to chase the Council for the payment of any debt that either Company had. The governance arrangements had been put in place to protect the Council's reputation and its finances.
- In accordance with The Localism Act 2011 the Companies had to be set up as Limited Liability Companies. The Directors of each Company would run the affairs of the respective Companies in line with the agreed business plan. The Companies would be required to abide by the shareholder agreement and would be unable to do certain things without obtaining the permission of the shareholder.
- It was proposed to draw down the funding to the Property Company in tranches of £2m. Properties would then be purchased on the open market. The Council had a good track record of renting properties and they would use the knowledge and expertise at hand.
- The Property Company would let properties via different tenures to those provided by the Council. Rents would be set around LHA levels; this would mean that housing benefit would be able to cover the rent of the property. This was an opportunity to provide a different type of service to the residents of the Borough. There had been an increase in the termination of rental contracts by private sector landlords which had resulted in an increase in people presenting as homeless.
- It would be illegal for either of the Companies to pay any Councillor that was a Director, although it would be possible for payments to be made to other Directors. The Head of Property and Community Projects advised that the governance arrangements could be amended to state that no Director shall be paid by the Company. There was broad support for this suggestion from Members.

- The Trading and Enterprise Board (TEB) had been set up as a Committee of the Cabinet. This was in accordance with the governance arrangements of the Council. All Members of the Council were entitled to attend meetings of the TEB. There was no requirement in law for companies to hold AGMs; however should the Committee feel it appropriate provision for each Company to hold an AGM could be enforced through the shareholder agreement. It should be noted that whilst Members of the Council could attend the AGMs, they would not have voting rights.
- The TEB would approve the appointment of Directors to the respective Companies. This would ensure that the Council retained control over both Companies.
- In respect of potential conflicts of interest it was envisaged that the arrangements put in place would help to minimise and manage these. For example, the Deputy Chief Executive was to be appointed to be a Director of the Property Company and so could not provide the Council with financial advice in respect of that Company. Chinese walls would be in place to ensure that the potential for conflicts of interest were minimised.
- If the Property Company were to make a planning application to the Local Authority they would have a right to appeal the decision. This would not be in the best interests of the Council and so it could be proposed that a provision be placed in the shareholder agreement that the Company could not appeal any planning decision.
- There were two options for dealing with any profit made by the Property Company; the Company could declare dividends and pay these to the Council as sole shareholder or the profit could be reinvested. It should be noted that the payment of Dividends may not be tax efficient.
- The RTB would not apply to properties purchased and managed by the Property Company. RTB only applied to houses when the Council was the Landlord. Alternative tenures would be available through the Property Company, including options for shared ownership and staircasing.
- All properties or land purchased by the Property Company would be on the open market. The Company could not use compulsory purchase orders, only the Council could do that.

During the discussion a Member advised that he was 100% behind the Building Control Company. He felt that there was a need to start up the Company and there was a real possibility that it would be financially viable.

Members then indicated that they wished to discuss the exempt papers in relation to this item.

## **70 Exclusion of the Public**

### **Resolved:**

**That pursuant to Section 100A(4) of the Local Government Act 1972, as amended, the public be excluded from the meeting during consideration of the item, as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present there would be disclosure of exempt information hereinafter specified by reference to paragraph 3 of Schedule 12A of the Act.**

The Committee considered the exempt papers in relation to the proposed creation of the Trading Companies.

Following considerable discussion and questions from Members, the Committee moved back into public session.

## **71 Call-In of Cabinet Minute No: 33 – Trading Companies**

Members felt that the Council should have more control on when the tranches of money were released to the Property Company. It was proposed that the requests for tranches be put before the Full Council for endorsement.

Concerns were also raised regarding the payment of honorariums to Officers that would undertake work for the respective Companies. Some Members felt that Officers should be remunerated in the usual manner, however they could be paid overtime if they were contractually entitled. The Portfolio Holder for Resource Management and Control urged Members not to eliminate the possibility of being able to acknowledge the efforts of Officers further down the line. It was important to remember that Officers skills and expertise would grow and they would become even greater assets to the Council.

The Head of Property and Community Projects advised that it was necessary to appoint Directors at this stage to assist with the start up of the Companies. In time it may become apparent that there were people more suited to the role of Director of one the Companies, in which case changes could be made.

### **Recommended:**

- That**
- (i) No payment will be made to any Director/Officer other than expenses and no Officer should be paid other than contractual overtime.**
  - (ii) Each company will hold an AGM and all Councillors will be invited to attend (but not to have any voting rights)**
  - (iii) Not to appeal against council planning decisions.**
  - (iv) The Council to have an independent review of the financial model to include an opinion on being a going concern.**

- (v) That the Section 151 Officer should not be a Director of either company.**
- (vi) In respect of the Property Company - should consider options to support home ownership models, including staircasing.**
- (vii) that the release of each tranche of the £10M be subject to the approval of Council**