

OVERVIEW AND SCRUTINY COMMITTEE 9TH JULY 2013

Response to questions: -

Cllr Bartlett questions 1 – 29

Cllr Mortimer questions 30 - 33

1. Please can we see the result of consultations with the Tenants Forum to see their view on the right to buy being abolished on these properties.

There is not a need to consult with tenants as it does not impact on the Housing Revenue Account (HRA) the landlord account. The RTB remains the right of every secure tenancy let under the Housing Act, the properties owned by the Council that are for rent will be let as assured shorthold tenancies. The property company will provide homes in addition to the homes provided as social housing through the HRA which is continuing to build new homes using the HRA buy out opportunities it has created but it has a debt cap of circa £124 million that it cannot go above the cap.

2. The right to buy of Council Tenants is enshrined in national legislation. I understand lawyers have found a way around this legislation by creating a company but this very much goes against the spirit of this law. How do National Legislators feel about this practice and how does this sit with the adverse comments made by National Legislators after the decision made by the Scottish Parliament to rescind the right to buy in Scotland.

The RTB has been extended by the coalition government and provides a maximum discount of £75k, and is available to all properties within the HRA and all new build homes developed in the HRA. The Council has lobbied government to extend the debt cap to allow more development within the HRA but to date this has been resisted; this would of course extend the RTB to more tenants. Cllr Clokie at the workshop presentation on 22nd May was concerned that a wholly owned Council company would still have to provide the RTB and that this would make the company unviable, we sought legal advice and established that properties let by a wholly owned Council Company would not be required to provide the RTB.

It is accepted that if the proposal was to transfer existing Council houses and tenants to the Company, that this would be against the spirit of the law. However, this is not the case. The proposal is to acquire properties that are not already subject to RTB (eg buying empty properties) or rent out Company new builds, which would not be subject to RTB.

3. What advice have Officers sought from Thurrock Council on their experiences? (my email of 17 May refers).

Thurrock Council were at the feasibility stage with their company considerations similar to where we were at the 6th December cabinet report. We have sought advice from both Woking and Wokingham Councils who have already set up companies to build homes and undertake regeneration and their experience has been invaluable to us especially in the experiences over governance regarding what has worked well and what hasn't worked so well.

4. As the Council is borrowing money from the Public Work Board (PWB) to fund this venture please advise how much the property values will need to fall or the tenants default on their rent to mean the Company is unable to repay its debt to the PWB.

As the initial cost of purchase would be met by Loan to the PWLB, any short term reduction in property value would affect the Council's ability to repay debt.

Over the long term a reduction of just over 31% in property value would need to occur, for the Council not able to repay its liability. The Council would review its loan to value (LTV) and take such steps to protect the overall ratio and also review its liquidity on a regular basis. The model has the company repaying debt each year and therefore the level of debt and therefore the LTV will decrease allowing for a reduction in values, and still enabling the debt to be covered. The rents are modelled at affordable levels and therefore if rents are set at a market level a cash reserve could accrue to cover the debt. An integral part of the government's recovery plan is to create another housing boom and there is a housing shortage so I guess the question comes to a view on how probable is a reduction in housing prices. Tenant defaults would need to fall by 30% to 65% for Market/ Private and to fall by 30% to 60% for Social/Affordable tenants.

5. What covenants do the PWB require?

Not required as the loans would be taken out through Prudential Borrowing and are set by the Council yearly.

6. In the event of a default to the PWB does the PWB require ABC or its directors or the Councillors to guarantee the debt?

The Council is the guarantor of the debt and this managed through the shareholders agreement with the Property Company. The Loan to the Council is guaranteed effectively by the taxpayers of the borough and therefore no further security is required. The loan to the company will be secured on the properties and no guarantee will be required from directors and shareholders (as the council is sole shareholder then a shareholder guarantee is pretty pointless).

7. What rate of bad debts does the Council currently experience and please confirm that this rate of default or bad debt has been used in your financial modelling.

Yes bad debt provision has been allowed for.

90% Market/Private tenants – 10% Bad debts

95% Social/Affordable tenants – 5% Bad debts

Slightly more pessimistic than the average position for the Council's stock holdings

8. How will private sectors developers feel about the Council creating these new commercial businesses to compete with them? Is ABC expecting a legal challenge?

The number of properties to be acquired is a “drop in the ocean”. Consequently it is not envisaged that there will be any challenge and since the creation of the Companies is something the law allows Local Authorities to do, it is hard to see on what basis there could be a challenge.

9. What is the impact of the Council starting to provide affordable housing in this way on developers' s106 commitments to provide affordable housing - what is officers' assessment of the risk that

developers will cite these steps as evidence that developers do not need to provide affordable housing?

If the requirements for Affordable Housing are satisfied by other means, then a developer could legitimately express concern at having to provide an excess. However, as mentioned at 8 above the provision by the company will be de minimis and the acquired properties are likely to be spread over a wide area.

10. The Chilimington Green Developers say there is minimal demand for affordable housing in Ashford. This view runs counter to the business plan. Who is right?

The 2010 Housing Needs Survey advises that in Ashford there is a 450 shortfall in affordable homes per year. This is based on a total affordable need of 747 minus the annual supply of 297.

Completions for 12/13 = 68
Completions for 11/12 = 255

Since 2000 1691 affordable homes have been delivered an average of 140 per year well below the assessed need.

There is a strategic market assessment being carried out currently which will update these figures and likely to indicate the need is growing.

11. Will all Councillors have a right to attend the companies' AGMs and vote on appointment of directors and review of annual business plans?

The usual business carried out at an AGM (and Companies do not legally have to have an AGM) is the approval by the Company of the accounts and the appointment of Auditors and therefore the appointment of Directors and approval of the Business Plan would not generally form part of an AGM business.

However, under the proposed Shareholder Agreement, the approval of the Business Plan and the appointment of Directors is subject to the approval of the Trading & Enterprise Board. These will be ABC meetings and all Councillors are entitled to attend.

12. What discussions have Officers had with banks on raising finance for this venture?

Have discussed with the Council's Treasury Management Advisors and have advised initially to use PWLB, which will be reviewed once the business becomes operational. Banks/commercial investors would be interested in Council owned companies in the future.

The PWLB is currently the cheapest form of long term finance and therefore the best place to get funding, banks cannot match the long term rates offered so this allows the Council to unlock the profit.

13. Paul Naylor will be conflicted from acting as a director of the property company given his role of arranging the terms of the lending on behalf of the Council.

PN is fully aware that there could be circumstances, where he may have a conflict of interest. Consequently paragraph 41 of the Report to Cabinet, sets out the principle that PN should not advise ABC on financial matters affecting the Housing Company, by saying that such advice will be provided by Ben Lockwood.

Also, Minute 33 of the Cabinet Meeting of the 13th June 2013 states that "The Head of Legal and Democratic Services also advised that members of the Trading & Enterprise Board.....would not be advised by officers appointed to the Company board.

14. Why will these Council companies be more successful than private sector companies?

There is no suggestion that these companies will be more successful than private companies but rather an opportunity to expand the business of the Local Authority being more entrepreneurial and driving a revenue return for the Council.

15. How will the rate of interest on the Property Companies debt from the Council compare to other sources?

As mention in the report to Cabinet, there is a state aid issue to consider and that the Company should not benefit from subsidised

borrowing from the Council. The Council lends at current PWLB rates assumed to be 3% and then charges 2% margin, which is retained by the Council.

Therefore, the overall rate is 5%. Which is consistent with this form of investment.

Essentially a margin to a rate set by the EU should be applied to the institution you are lending money based on the following assumptions; this is in the table below (as seen in the 13th June cabinet report): -

Loan margins in basis points			
Rating category	Collateralisation		
	High	Normal	Low
Strong (AAA-A)	60	75	100
Good (BBB)	75	100	220
Satisfactory (BB)	100	220	400
Weak (B)	220	400	650
Bad/Financial difficulties (CCC and below)	400	650	1 000 (?)

16. How will the Council's lending to these Companies affect the Council's VAT recovery?

The services that are provided by the Council will be VATable and therefore the VAT suffered by the Council in providing this service will be recoverable. Because it is a VATable supply the Company could help the Councils partial exemption calculation by increasing our 5% limit.

17. Will the members of the committee of the Cabinet be precluded from attending the AGMs?

No. However, the terms of reference of the Trading & Enterprise Committee allows it to nominate one of its members to act as representative of the Council at AGM's.

18. Why is the effective rate of tax 36.6%?

Please clarify – what is meant by a rate of 36.6%

The model allows corporation tax be applied at a rate of 23% on profit after allowable expenses. Not all expenses within the model are allowable for tax purposes.

19. What is the impact of the Bedroom Tax on the Property company's revenue forecast?

The social size criteria often referred to as the bedroom tax, is a limitation on the amount of housing benefit that can be paid relating to the bedroom needs of the family. Properties in the private rented sector are limited by local housing allowance (LHA) and the intention of the property company is to keep rents within the LHA limits to minimise the risk of bad debts and collection levels.

20. What will be the impact of the property venture on the number of planning applications for new houses ABC are expecting to receive?

Small in scale, probably two or three applications a year.

21. Will the Property Company build predominately in the villages or in the towns? If in villages what are the views of the parishes and if in the town what are the views of the community forums?

Decision would be made by the Company in line with its business plan, should there be a need consultation would be carried out as a Local Authority, we already carry out advance consultation before applications are made where appropriate.

22. Will the new homes benefit from super fast broadband?

Broadband will be available in accordance with the infrastructure that is available in the areas where properties are either purchased or built, this is not something that we can control as like any developer, but if available then it is something that we would seek to provide the links to.

23. Will the new homes be designated as Local Needs?

Local needs homes are where the properties are built on rural exception sites to retain properties for local people in perpetuity. Properties developed by the Property company on such sites will of course adhere to the planning requirements and fully supports local homes for local people. The benefits of the Council owned company will be, where possible and where Parish Councils are supportive to work closely to bring forward such sites where they are financially viable. Rural housing is always a challenge in terms of viability and can be some of the most difficult sites to bring to fruition.

24. Will the repair cost benefit from the discounts achieved by ABC through its HRA buying power? If so do the suppliers agree given they will be contracting with a separate company?

Yes the repair cost are consistent with the discounts achieved by ABC, contractors are prepared to carry out these works at the same price as offered to ABC.

25. Why are there no capital repair costs for the first 5 years as this period will have to cover snagging?

Model looks at purchase of existing properties. Where built in the future, consistent with the new build programmes within the HRA there will be a defect period of one year from practical completion. No need for snagging and any repairs would be carried out as responsive maintenance.

The model allows for a refurbishment provision in the purchase price and therefore it is not anticipated that there will be any significant repairs needed.

26. What skills will be Board of the Property Company have in property development and financing such ventures?

The property company will have varied skills on the board and while we are currently employed in public service with a LA we do have a track record of delivery in the Housing field. The HRA is a very successful business and delivers high performance in rent collection, repairs and maintenance services, an extensive programme of planned maintenance, development and

construction of new build, negotiation in PFI contracts to deliver robust outcomes. Cllr Clokie at the cabinet on the 6th Dec requested that the board should have up to 2 outside members on the board which has been accepted and incorporated in to the governance arrangements.

27. You show rental income increasing by inflation each year. This runs counter to private sector lending practise and is more in line with Council tenants. I do not expect tenants to agree to this without a substantial inducement. What have you in mind here? What loss will the Council make without this assumption?

The rents would be a blend of market, sub market and social rents. Increases would be in line with increases with the Local Housing Allowance and currently CPI.

Without any increases, (not likely) the Company would move from profit of £2.5m to a loss of £1.6m over the same period.

Rents for private sector rented accommodation do follow market forces and as such we have seen an increase in rents over the short and medium term and we see no reason why this wouldn't continue, with the housing shortage we have.

28. Buildings insurance of around £500 per year for 12 properties is ludicrously low at £41 per property per year. How can the Council achieve this rate?

Yes the insurance costs are consistent with the discounts achieved by ABC. Current insurers are happy to provide cover with the company.

The same premium rate charge on Council properties is applied to the model, calculated by taking a percentage of the sum insured – this has been confirmed by ZM.

29. What fees will the Council incur to carry out credit checks, check-in and check-out procedures with the tenants? Is it your intention to charge a fee to tenants?

Council has an existing arrangement with Experian and has built this cost in the housing management fee. Options would be look at charging for these costs in the future.

30. The relationship between the TEB and the Board of Directors needs to be spelt out. Who has primacy in decisions related to the trading companies? Can the TEB over-rule the Board of Directors? Is it lawful for a Council sub-committee to give direction to the Board of Directors? As an example, is the Deputy Chief Executive acting as an officer of the Council or as a member of the Board of Directors when he uses his delegated authority to decide when to borrow and from where?

The relationship between the TEB and the Company Directors is clearly spelt out in the Shareholder Agreement and the terms of reference of the TEB. For example there is a list of matters for which the Company must obtain approval of the TEB, prior to implementing eg the Business Plan, borrowing & acquisition of land.

The TEB has “primacy” if the matter involved is within that list.

It is lawful, via the Shareholder agreement to give “direction” to the Companies.

To prevent a conflict of interest, the Deputy CE will not be providing financial advice to the Council in respect of financial matters relating to the Housing Company.

31. There is also a question of ethics. How can a TEB made up of cabinet members give impartial advice and direction to a Board of Directors made up of peer cabinet members and officers?

Only one member of the Cabinet will be a director of the Housing Company and only one member of the Cabinet will be a director of the Building Consultancy Company. The members of the TEB will not be directors of either Company.

32. As the Council owns the companies, should not the full Council approve membership of the Boards of Directors rather than just the Leader acting on his own without independent advice or review? As the Council is the sole shareholder, the boards of directors should reflect this and each board should have at least 4 members (both inside and outwith of the cabinet).

The Government’s functions and responsibility regulations make many decisions the responsibility of the Council’s Executive (or Cabinet). This includes the functions in relation to the

establishment of the Companies. The terms of reference of the TEB provide that it appoints and removes Directors , subject to the approval of the Leader.

33. Payments to Directors, officers and staff of the companies. The makes little mention of this important ethical issue other than a half sentence: "***all time and resources will be specifically accounted for and charged to the Company***". The report should spell out in writing whether any ABC members or officers will be paid any additional remuneration of any kind for work done for the company.

It is not proposed that any individual will receive any payment for being a Director. Indeed, in relation to Members that would be unlawful under the Controlled Company legislation.

The Companies will however, be billed for work undertaken by Council officers carrying out Company work.