

Agenda Item No: 19



Report of Overview and Scrutiny Committee to Cabinet

O&S Recommendations to Cabinet – A Better Choice for Property

The Overview and Scrutiny Committee recommends to the Cabinet:-

- I. That the six monthly updates to TEB should include a table setting out affordable social rented property, local needs housing and specific accommodation for vulnerable people provided by the property company.
 - II. That TEB's right to appoint or remove Directors of the company is no longer subject to approval by the Leader.
 - III. That an experienced non-executive Director be appointed to the property company to minimise the risk of governance failings
 - IV. That a firm be appointed to carry out a review of the tax affairs of the property company and address whether the UK Corporate Interest Restriction rules apply to the property company as it is 'grouped' with the council and whether the Criminal Finances Act 2017 could apply to councillors.
 - V. That the financial regulations of the company are changed to ensure that a Director can no longer act singularly to purchase property.
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Date of O&S meeting:	Tuesday 22 May 2018
Chair of O&S Committee:	Cllr Brendan Chilton (Cllr Winston Michael in the chair)
Date of Cabinet Meeting:	Thursday 19 July 2018
Key Decision:	No
Significantly Affected Wards:	None specifically
Relevant Portfolios:	Corporate Property and Projects Finance and IT
Management Team Comment:	See paragraphs 10-15

**Background
Papers:**

A Better Choice for Property Ltd – Trading Company,
report to Overview and Scrutiny Committee, 22 May 2018

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Report Title:

Introduction and Background

1. During scrutiny of the council's draft 2018/19 budget, the Budget Scrutiny Task Group felt that there would be benefit in the full Overview and Scrutiny Committee examining the governance arrangements and performance of the council's trading company, A Better Choice for Property Ltd, and the Trading and Enterprise Board.
2. The Portfolio Holder for Corporate Property and Projects; Portfolio Holder for Finance and IT; Deputy Leader (as the shareholder representative for the council and chair of the Trading and Enterprise Board) Director of Finance and Economy; Head of Corporate Property and Projects, Interim Head of Finance, Head of Legal and Democracy and Senior Accountant attended the Committee and presented a number of reports relating to the company's history, business planning and trading activity; as well as reports relating to the governance arrangements for the company and the Trading and Enterprise Board (TEB).

Recommendations

3. The Committee raised a number of questions in advance of the meeting, with responses to these questions tabled at the meeting by officers with a number of requested background and explanatory papers. The committee noted the considerable work undertaken by officers in preparing responses to Members' questions and expressed their thanks.
4. Members noted that the original aims of the company as reported to Cabinet in 2013 included the provision of homes on a variety of tenures, including social and intermediate rents as well as market rents and outright sale. Members felt on reviewing the required six monthly updates made to the Trading and Enterprise Board on progress against the company's business plan, that an assessment of performance against these goals would be beneficial to advise the council of the social worth delivered by the company (**Recommendation 1**).
5. In reviewing the terms of reference for the TEB, Members noted provision (m):

m) To appoint and remove the Directors of the Companies (subject to the approval of the Leader of the Council)

6. It was felt that this provision within the terms of reference was problematic from a governance perspective as it effectively gave one of the Directors of the company a veto over a key oversight function of the council as

shareholder representative through the TEB, and could give rise to a situation where the Leader could overrule the TEB with regard to the appointment or removal of company Directors (including the Leader's own position as Director). The Committee duly recommend that this provision is corrected to preserve the independence of TEB (**Recommendation 2**).

7. The Committee noted that the original paper to Cabinet proposing the formation of the property company in 2013 proposed up to two outside Directors be appointed for the company. Members were pleased to note the actions of the company's Board of Directors in this regard, and felt that the appointment of an experienced non-executive Director to the company was important (**Recommendation 3**).
8. Members also noted advice given on the financial operation of the company by various bodies at the company's inception and at the point of drawing down loans from the council and felt that a clear written opinion may be required to protect Councillors and the Directors of the company with regard to transfer pricing (**Recommendation 4**).
9. The alterations to the company financial regulations presented in the main report to the committee were of concern to Members in respect of permitting Directors of the company to act singularly in approving property purchases by the company. The Directors present confirmed that all property purchases were put to a vote of the Company Board, however Members felt that this amendment to the financial regulations should be corrected (**Recommendation 5**).

Management Team Comment

10. Management Team has considered the report and wishes to submit the following comments for the attention of the Cabinet.
11. Regarding recommendation 1, Management Team wished to remind members that the business plan for the company has changed and that a number of the original aims (such as the outright sale of properties and the provision of affordable housing) no longer form part of the property company's plans. Notwithstanding this, Management Team felt that reports to the TEB could be amended to incorporate this information without significant work and recommend that Cabinet **adopt recommendation 1** with the understanding that the company's portfolio is relatively small at present with a primary focus on offering properties at market rent.
12. Management Team note that the Leader ceased to be a Director of the company following the 9th July meeting of the TEB and instead took the role of Shareholder Representative and Chairman of the TEB, with the Deputy Leader being appointed as a Director in his stead; however Management Team suggest that Cabinet **adopt recommendation 2**.

13. It is understood that the appointment of non-executive Directors to the company is being pursued and Management Team support and encourage this, and would suggest that Cabinet **adopt recommendation 3**.
14. Management Team is satisfied that the company is compliant with regard to its tax affairs and that work undertaken to date by Grant Thornton and KMPG attests to this. As noted in discussion at the TEB on 8th of May and in Overview and Scrutiny on 22nd May, loan benchmarking will be revisited as part of the renewal of the loan facilities agreement to maintain compliance. Management Team suggest that Cabinet **do not adopt recommendation 4**.
15. It was noted at the Overview and Scrutiny Committee meeting of 22nd May that Directors do not act singularly to purchase property, however Management Team support the amendment of the financial regulations to reinforce collective decision making by the company directors and suggest that Cabinet **adopt recommendation 5**.

Conclusion

16. The Overview and Scrutiny Committee thanks the Portfolio Holders and Officers for their attendance and the reports presented, and recommends the following to Cabinet:
 - I. **That the six monthly updates to TEB should include a table setting out affordable social rented property, local needs housing and specific accommodation for vulnerable people provided by the property company.**
 - II. **That TEB's right to appoint or remove Directors of the company is no longer subject to approval by the Leader.**
 - III. **That an experienced non-executive Director be appointed to the property company to minimise the risk of governance failings**
 - IV. **That a firm be appointed to carry out a review of the tax affairs of the property company and address whether the UK Corporate Interest Restriction rules apply to the property company as it is 'grouped' with the council and whether the Criminal Finances Act 2017 could apply to councillors.**
 - V. **That the financial regulations of the company are changed to ensure that a Director can no longer act singularly to purchase property.**

Contact and Email

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