

Scrutiny Committee



Listening Learning Leading

Report of Acting Deputy Chief Executive - Place

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Wards affected: All

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To: SCRUTINY

Date: 29 September 2020

Establishing a council-owned delivery vehicle

Recommendation

Scrutiny Committee is asked to review the proposal to develop a Business Case to establish a council-owned delivery vehicle and to provide any recommendations to Cabinet on the approach.

Purpose of Report

1. The purpose of this report is to seek Scrutiny Committee's comments on the proposal for the council to progress with developing a business case to establish a wholly owned holding company/vehicle to focus on public sector intervention to achieve desired goals to deliver a wide range of regeneration and community benefits.
2. Officers have taken external legal advice as to how the council is able to progress development of such a company/vehicle in order to meet these wide aims of progressing regenerative community benefit through delivery of projects across the district.

Corporate Objectives

3. The 2016-2020 corporate plan sets out the corporate priority to deliver "homes and jobs for everyone" and to "build thriving communities". The emerging corporate plan 2020-2024 themes include to deliver "homes and infrastructure that people need",

“improved economic and community wellbeing” and “action on the climate emergency”.

Background

4. In October 2019, officers were asked to investigate options for further affordable housing delivery. This included the possible setting up of a council-owned delivery vehicle with South Oxfordshire District Council which could be used to deliver new affordable homes.
5. Following a tendering process, a report was commissioned from property consultants, Savills, in order to identify the viability of such a project (and alternative options), and to consider the legal and financial structures necessary for the council to be able to deliver affordable homes. The draft report produced by Savills has been completed. During the engagement process between Savills and officers, it became apparent that complexities exist with relatively recently introduced financial regulations that were not explored by the Savills report in sufficient detail to permit officers to fully evaluate the potential financial and legal risks to the council.
6. It also became apparent that a company only focused on delivering affordable housing would not be financially viable.
7. Therefore, there has been a need to consider how the council can proceed in a way that it can establish a delivery vehicle that can meet the ambitions of the council to deliver the targets set out in the emerging corporate plan 2020-2024.
8. The reason that the previous approach has not progressed is because of the recent Local Government Association consultation on the change of the ways councils can use such vehicles and borrowing regulations.
9. It is commonplace for councils to establish such delivery vehicles, many councils in the UK have delivery vehicles and use these vehicles to deliver their programmes to support wider community benefit.

Establishment of a delivery vehicle

10. External advice has been sought from legal advisors Trowers and Hamblins LLP. The full advice is attached in appendix one.
11. It is officers recommendation that the council progresses with the steps as set out in the legal advice to progress the establishment of a delivery vehicle company with the aim to focus on public sector intervention to achieve desired goals to deliver a wide range of regeneration and community benefits.
12. These steps are set out in paragraphs 40.1 – 40.1.12 of the attached appendix.
13. The vehicle will have the ability to be used to deliver a range of projects, including the delivery of truly affordable housing at social rent level, that meet the council’s aspiration around zero carbon/carbon neutral. The strategic property review that is currently underway provides an opportunity to identify pieces of land which the council could seek to transfer to the vehicle to deliver regeneration projects, that could include housing delivery, but also commercial and community facilities, such as community hubs, land maintenance and management, health facilities etc.

Options

14. The council could choose not to establish such a delivery vehicle; however this may hinder the council's ability to address its emerging corporate plan ambitions such as "providing the homes people need" "improving health and jobs" and "dealing with the climate emergency".
15. The council could choose to establish a delivery vehicle primarily focused on making a financial return, however as set out above the latest advice from the Local Government Association advises council against this approach.
16. The council could establish a joint vehicle with the Vale of White Horse District Council. However, the advice from legal advisors sets out the benefits of each council establishing its own holding company. This will also make it easier for the council to progress with the establishment of the vehicle without having to wait for agreement from the other council. It also provides greater transparency and traceability of each council's own investment along with greater flexibility.
17. The council could establish one company with a series of sub-companies for particular themes or projects. This is not deemed necessary at the outset, but could be relevant as projects come forward, at which stage it could be progressed.

Next steps

18. In order to progress with setting up a delivery vehicle there are a number of steps that need to be followed.
19. As set out in paragraph 10.1 of the attached appendix, "before each authority can decide to set up a delivery vehicle in order to trade at a profit, each Authority must prepare their own individual Business Case to set out the rationale for the decision, and the Authority must then formally approve their own Business Case". This is in line with requirement under Section 2(2) (a) and (b) of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009. This is therefore the first piece of work that the council is required to undertake.
20. Subject to approval of the budget by Council, officer propose to seek a consultant to support officers with the development of this Business Case. External legal advice will also be used to provide appropriate "check and challenge" on the Business Case. This Business Case will then require the council's formal approval.
21. Alongside this there is a duty for the council to conduct a best value consultation.
22. Following approval of the Business Case, the subsequent steps will be to agree the governance model for the company, to agree the terms of the memorandum and articles of association for the company, to agree the name and branding of the company and to register the company at Companies House. There will also be a requirement to draft the terms of reference of any associated advisory bodies. There will also be need for approval of what funding investment the council want to make in the vehicle. The council's investment strategy will be required to be updated to include reference to the fact that the council is planning to invest in a vehicle.

Financial Implications

23. Any council decision that has financial implications must be made with the knowledge of the council's overarching financial position. The position reflected in the council's medium-term financial plan (MTFP) as reported to Full Council in February 2020 showed that the council was due to receive £2.2 million less in revenue funding than it planned to spend in 2020/21 (with the balance coming from reserves including unallocated New Homes Bonus). This funding gap was predicted to increase to over £6.5 million per annum by 2024/25 before recent events. These include delivering a response to the Coronavirus and planning for further changes in Government Grants. Latest estimates show the council funding gap could increase by in excess of £1 million in 2020/21 which could worsen further in the medium term due to delayed changes to business rates income. Every financial decision will be made in cognisance of the need to eliminate this funding gap during the next five years.
24. To progress the development of the vehicle it will require staffing and it is proposed initially to establish four posts. With proposed funding in the region of £100,000 this will allow the level of expertise required to allow recruitment to take place. £100,000 has been added to the revised budget to progress this project. These staff will lead on the range of projects and work closely with existing council staff, landowners, partners and delivery bodies in relation to opportunities to drive forward a range of regeneration and community benefits, in line with the objectives set out in the emerging corporate plan. Use of S106/CIL contributions will be examined as part of the funding exercise.

Legal Implications

25. External legal advice from Trowers and Hamlin LLP attached set out in detail the legal powers, constraints and legislative framework within which the council is able to set up a council owned delivery vehicle.

Risks

26. There are clearly a number of risks for the council is setting up a company. However by ensuring the council follows the legal advice it has received and progresses each step sequentially these risks will be minimised.

Conclusion

27. This will be a new venture for the council and therefore it is proper that all the risks are considered carefully. Further reports to Cabinet will seek agreement on the further stages of establishing the vehicle. These will also be presented to the Scrutiny Committee for input.
28. It is positive development for the council to establish a delivery vehicle to ensure swift and ambitious progress with projects to meet the desires set out in the emerging corporate plan 2020-2024.

Report checklist [This checklist must be completed and sent with your report to enable democratic services to issue the report]

REPORT TITLE: ESTABLISHING A COUNCIL OWNED DELIVERY VEHICLE

Press Officer

	Communications	Date	
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Financial implications

Simon Hewings	Accountant	Date	24/09/20
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Legal implications

Pat Connell	Solicitor	Date	23/09/20
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Other implications

Other than the above, I confirm that consideration has been given to the following. Any that impact on the item have been integrated in the report:

- Climate and biodiversity implications
- Equality and diversity implications
- Health and safety implications
- Human resource implications
- Crime and disorder implications (anti-social behaviour, harm to local environment and substance abuse)
- Outside organisations
- Sustainability implications
- Risk management implications
- Relevant ward councillors
- Union representatives

Suzanne Malcolm	Author signature	Date	24/09/20
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Style guide

Report is in accordance with style guide Suzanne Malcolm	Author signature	Date	24/09/20
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Agreed by cabinet member (if appropriate)

Robin Bennett	Cabinet member	Date	24/09/20
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Exemption/confidentiality

Is report exempt/confidential?	<input type="checkbox"/>	If yes, state which paragraph of Schedule 12A to the Local Government Act 1972	<input type="checkbox"/>
<input type="text"/>	Democratic services officer	Date	<input type="text"/>

Report checked and cleared for issue by head of service

Suzanne Malcolm – Acting Deputy Chief Executive - Place	Head of service	Date	24/09/20
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Note - Every report to the cabinet must be signed off by your head of service in advance of being submitted to democratic services.

Send this completed form to democratic services with final version of report