

Notice of:	Executive
Decision Number:	EX56/2014
Relevant Officer:	Alan Cavill, Director of Place
Relevant Cabinet Member:	Councillor Gillian Campbell, Cabinet Member for Housing, Public Safety and Enforcement
Date of Meeting:	15 th December 2014

CREATION OF A WHOLLY OWNED HOUSING REGENERATION COMPANY

1.0 Purpose of the report:

- 1.1 To consider the establishment of a wholly Council owned housing regeneration company to lead housing market change within Blackpool and source investment to facilitate local housing market change.

2.0 Recommendation(s):

To recommend Council as follows:

- 2.1 To agree the business case as set out in this report and to recommend the Council to authorise the Chief Executive, following consultation with the Director of Governance and Regulatory Services to take the necessary steps to form a wholly owned company of the Council, including:
- To incorporate the company under the Companies Act 2006, as a private company limited by shares.
 - To appoint Directors to serve on the Board of the company and constitute a Shareholder's Panel, in line with the Council's Governance Code of Practice.
 - To identify the need and then carry out any staff transfers as appropriate.
 - To prepare articles of association for the company setting out its objectives and governance arrangements.
- 2.2 That the Director of Place be authorised, following consultation with the Director of Resources, to develop financial options to support the furtherance of the company's objectives and to report back to the Executive in due course.

3.0 Reasons for recommendation(s):

3.1 Housing market failure within Blackpool is considered to have significantly adverse impacts on the health and wellbeing of residents and on the overall economic vitality of the town. The establishment of a wholly owned housing company will enable a more pro-active approach to be taken to help secure a stronger housing market that meets Blackpool residents housing needs.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

Not to proceed with the proposed company

4.0 Council Priority:

4.1 The relevant Council Priorities are:

- Improve health and well-being especially for the most disadvantaged
- Attract sustainable investment and create quality jobs
- Improve housing standards and the environment we live in by using housing investment to create stable communities
- Create safer communities and reduce crime and anti-social behaviour

5.0 Background Information

5.1 Context

The private rented sector has an increasingly important role in meeting Blackpool's housing needs. It is growing rapidly and there are many examples of good quality and well maintained properties providing safe, warm and secure homes for many people. Blackpool's coastal legacy however has led to a substantial concentration of small poor quality rental units as guesthouses have been converted into flats and Houses in Multiple Occupations. Most accommodation seeks to meet the most basic standards to comply with the Housing Act 2004 requirements, but is not desirable accommodation. These properties offer a low standard of accommodation and are often poorly managed. The result is that it is a housing choice of last resort for people with few housing options available to them.

- 5.2 The proportion of homes in owner occupation in Blackpool dropped from 71% of all homes in 2001 to 62% of all homes in 2011, compared with an England average of 64%. This has been a dramatic shift in tenure whilst the proportion of social rented has remained at just under 11%, compared with a national average of 18%. The proportion of homes in the private rented sector however jumped from 18% in 2001 to over 26% in 2011, compared with an England average of 17%, a rise of nearly 5,500 homes.
- 5.3 Over 80% of homes in the private rented sector are rented to people receiving Housing Benefit, compared with around 30% nationally. There is a concentration of private renting in Blackpool's inner wards – 50% of all households in the defined inner area live in a privately rented home, equivalent to 6,887 households.
- 5.4 The dominance of poor quality private rented accommodation in inner neighbourhoods is the overriding cause of high levels of transience in these areas. Poor quality housing is generally only accessed by households who are unable to access better housing choices, and there is continuing demand from people attracted to the town from deprived urban areas in other parts of the UK. This means that many people moving into the area have no real association with the community and are likely to quickly move on again. Analysis of new Housing Benefit claimants has shown that 85% of new claimants come from outside the borough – around 4,500 households each year – and that 70% of these move into rented accommodation in the inner wards.
- 5.5 This transient dynamic leads to intense concentrations of deprivation and an environment that fosters poor health and a lack of opportunity for residents. Low life expectancy and mental health problems in these areas are amongst the worst in the country. The poor environment and endemic social problems in the inner town have a serious negative effect on tourism, which continues to be the town's major economic sector. Investment is reduced and skilled individuals who could drive investment in the local economy live elsewhere.
- 5.6 This leads to the Council and other public services having to commit significant resources in responding to social care, health and educational needs and to ensure properties meet basic minimum standards. In spite of this little progress is being made to stem the high levels of social deprivation and poor housing conditions in large parts of the town's inner areas.
- 5.7 There are continuing financial incentives for property owners to use former guest houses as rented accommodation let to people on Housing Benefit because of continuing long term decline in demand for traditional guest house accommodation from holiday makers and the high yields associated with letting rented property to Housing Benefit claimants in Blackpool. The initial returns are greatest for small flats and where investment in the quality of accommodation is minimised
- 5.8 A recent HSBC market analysis showed Blackpool's private rented market to have the highest yields in the UK when average property prices are compared to average rents

and yields can be very much higher still for Houses in Multiple Occupation accommodation

- 5.9 Not only does this economic model deliver unstable communities constantly seeing a change of population it also exerts a massive strain on public services as new residents drawn to the ready supply of accessible accommodation bring with them a range of embedded and enduring problems that get referred to public services already under strain.
- 5.10 Intervening in the housing market to change the current dynamic is essential if the efforts of public services to improve the life chances of residents and to transform our deprived inner areas into thriving neighbourhoods are to be successful. This has been recognised by Central Government through the Growth Deal announcement in July of this year. The Council has been offered financial assistance to intervene directly in the housing market. The details of this offer have however yet to be determined and Treasury approval will be required before this offer can be taken up.
- 5.11 What is the Council already doing?
- 5.12 The Council, through concerted effort has gained a good understanding of how the Fylde Coast housing market works and has been able to bring to bear some measures that are starting to make a difference; albeit slowly. A key element of the Council's housing strategy is to reduce the supply of poor quality rented stock and to increase supply of higher quality homes for rent and for sale. This strategy has led to:
- 5.13 Selective and additional licensing: Following its introduction in South Beach the Council is now able to compel landlords to comply with basic standards, reasonable management practices and ensure landlords pass a fit and proper person test. The scheme is now being rolled out to the Claremont area and will progressively be used across the inner wards. This programme will help us establish a baseline minimum standard and will provide an incentive for landlords to improve.
- 5.14 Robust enforcement: allied to the selective licensing the Council's Public Protection teams aim to take a robust and proactive approach to housing and planning enforcement and work with partner agencies to target the worst offenders. Blackpool's teams are among the most productive and effective in the country but like all local government services find themselves under increasing financial constraints.
- 5.15 The Transience Programme has been established to identify and address unmet social care and health needs within the town's inner areas. Working alongside housing teams, skilled support workers are assessing housing needs within poor quality private rented accommodation. Low level preventative support is offered to prevent needs escalating to the point where statutory services are required and referrals are made to wider support services where required. The programme is working also making links with local community networks in order to increase community resilience. The Council has recently been invited by Government to make

a bid for additional revenue funding to roll out this programme across the rest of inner Blackpool over the next 3 years.

- 5.16 Support services are being redesigned to deliver more effectively into deprived communities. In particular to work in a way that focuses on prevention rather than cure and to ensure services are more accessible. The work of the pilot in South Beach has shown that communities can be stabilised and change can be delivered for individuals but again the ability of public services in the current climate to scale up this activity is limited by lack of finance.
- 5.17 New planning policies have been established requiring higher standards for new conversion of guest house accommodation to residential use, which has been successful in helping to drive up the standards of new conversions.
- 5.18 Providing financial assistance to property owners to encourage high quality residential conversions, including grant assistance targeted in particular streets such as Crystal Road, and the Clusters of Empty Homes programme which is bringing 100 new homes into use from empty buildings in the inner area.
- 5.19 Provision of new homes: Blackpool has recognised the need to provide new affordable accommodation that raises the standard for residents and provides an alternative to the poor quality rented sector. The pump priming of the Rigby/Tyldesley Road development has required the Council to invest with the private sector in a 400 home development on the edge of the town centre at a time when councils across the UK have had to scale down capital programmes. The creative use of the Council's own public sector stock has also led to the demolition of poor quality tower blocks that were adding to the problem replacing them with new affordable family homes for rent and sale.
- 5.20 What more needs to be done to support housing market change?
- 5.21 Despite the steps the Council has taken and the multi-faceted approach it has to changing the housing market; the inner core of Blackpool still has 3,000 Houses in Multiple Occupation and a ready supply of struggling guest houses for which the next most economically viable step is to enter the private rented sector at the lowest end of the market.
- 5.22 To secure sustainable change the nature of the housing market within the town's inner areas must fundamentally change. The housing supply must be diversified; the current supply of poor quality privately rented accommodation must be reduced and a broader range of decent housing choices are required. At the same time the core social problems within the town's inner neighbourhoods need to be addressed and broad place-making programmes are required to develop inner areas that are safe and desirable places to live. An environment is needed that encourages people to stay and settle supporting the creation of strong and vibrant communities.

- 5.23 What is the proposed approach?
- 5.24 The recently announced Growth Deal for Lancashire included a section on Blackpool. Within this section provision was made for Blackpool Council to develop a proposal for housing market intervention and possibly attract funding to assist. In order to do this the Council must create a company along with an appropriate and deliverable business case that satisfies analysis by the Treasury. This will only be achieved through a comprehensive set of interventions including and initiatives including working with existing Landlords to improve stock, developing new higher quality housing and intervening in market that is providing poor quality accommodation. Whilst the Council can continue to pursue the first two of these without the establishment of a company that can operate outside of the direct constraints of the Local Authority and its provision of "Council" housing the Council will not be able to move this forward; hence the reason for the recommendation to set up a Special Purpose Vehicle - a Housing Company.
- 5.25 With regard to the Special Purpose Vehicle delivery option, the main advantages are:
- 5.26 The Council's legal powers to establish the Company to acquire and let properties are clear under the provisions of the Localism Act 2011.
- 5.27 The Council would retain a long term stake in the properties through the Special Purpose Vehicle, which would not be the case if the properties were let by a Registered Provider; this goes to the heart of the Council's desire to create sustainable communities.
- 5.28 The properties let by the Special Purpose Vehicle would create a long term cash revenue stream for the Council, probably by way of regular dividend payments by the Special Purpose Vehicle and by making reasonable surpluses on loan charges, supplies and services.
- 5.29 The properties (or the shares in the Special Purpose Vehicle) are a potentially tradable asset – not only could individual dwellings be sold on a case-by-case basis but also the Special Purpose Vehicle itself could be sold to an investment company or an institutional investor at some later stage.
- 5.30 It is significantly easier and more tax efficient to dispose of the Special Purpose Vehicle as a single entity than it is to dispose of individual dwellings and exit strategies for the Council are significantly simplified in the use of an Special Purpose Vehicle.
- 5.31 It is therefore proposed that the Council develops a Special Purpose Vehicle (SPV) to acquire and remodel properties and then rent dwellings at market rents.

- 5.32 An Special Purpose Vehicle could be set up as;
- A company limited by shares,
 - A company limited by guarantee, or
 - Possibly as a limited liability partnership (LLP).
- 5.33 A company limited by guarantee is a company where the general members do not hold shares, but instead each member undertakes to pay a nominal figure (usually £1) in the event of the company becoming insolvent. If the Special Purpose Vehicle is to be a wholly-owned subsidiary, the Council would initially be the sole member; but a company limited by guarantee can have many members and different categories of members with different voting rights. Changing from a single member company to one with many members is also simple.
- 5.34 A Limited Liability Partnership has to be set up with a view to profit. The principal advantage of using a Limited Liability Partnership over a limited company is the way in which it is treated from a tax perspective. The Limited Liability Partnership is treated for tax purposes as a traditional partnership, and members are also treated as traditional partners. Therefore, unlike a limited company, it is tax transparent and any trade, profession or business carried on by a Limited Liability Partnership with a view to profit will be treated as if the Limited Liability Partnership was a conventional partnership. Since the tax status of the partners determines how much tax is paid, the Council's share of any profits should be corporation tax free. A Limited Liability Partnership requires a minimum of 2 partners so the Council could not have a 100% interest. It should be noted that the Council cannot set up the Special Purpose Vehicle as an Limited Liability Partnership solely for the reason of tax efficiency; there must also be a commercial reason for using an Limited Liability Partnership. Furthermore, since the introduction of the Localism Act 2011 Council's powers to participate in a Limited Liability Partnership are far from clear. This option has therefore been discounted from further consideration.
- 5.35 A company limited by shares is the type of company with which most people are familiar. Existing Council companies such as the Blackpool Entertainment Company, Blackpool Transport Services and Blackpool Operating Company are all companies limited by shares. The corporate structure is tried and tested and is underpinned by an established body of law and practice. In terms of overall ownership and also financial and tax planning, the structure of a limited company provides considerable flexibility through the creation of different types of share and loan capital. It is also simple to admit equity shareholders if the Council wishes to make the Special Purpose Vehicle a joint venture vehicle in the future, possibly to introduce a RP partner or perhaps with the aim of taking the Special Purpose Vehicle off the Council's balance sheet.
- 5.36 In conclusion it is recommended the most appropriate vehicle is to establish a wholly owned local authority company limited by shares of which the Council has 100% ownership. This has the advantage of allowing the Council to retain full control of the company and its strategic direction.

5.37 It is proposed that the company;

- Develops a stake in the private rented market in Blackpool and increases the supply of good quality housing with the view to becoming a private sector landlord of choice.
- Operates in a commercial way to produce a revenue return that requires little or no Council subsidy over time and is ultimately economically attractive to private sector institutional investors.
- Provides supportive management of tenants to ensure they can maintain a tenancy and reduce their need for public sector support over time.
- Secures increased and higher quality private sector investment to accelerate the diversification of the towns housing supply.
- Enables the delivery of future public and private sector housing development programmes such as Queens Park and Foxhall Village.
- Provides a delivery solution for dealing with empty properties.
- Creates social value through creating and encouraging, apprenticeships, training and local employment opportunities through all development initiatives.

5.38 Longer term goals are to;

- To support a genuine housing market within inner Blackpool whereby a broader range of quality housing choices are available and the areas are no longer reliant on Housing Benefit.
- To work with the Council and other agencies to reduce transience, create stable resilient communities with improved environmental quality.
- Reduce public sector costs of managing social need.
- Be the landlord of choice across Blackpool for tenants seeking to access market rented property but with a clear focus on the inner areas.
- Create an influential supply of quality desirable homes within inner Blackpool.
- Initiate competition within the private rented market whereby other private landlords need to improve the quality of their offer in order to secure tenants.

- Increase capacity and skills in local building firms and increase employment and training opportunities for local residents.
- Increase the capital value of acquired stock over time through good maintenance and the regenerative impact of improved housing

5.39 Company Structures and Governance

If the recommendations are agreed, then Articles of Association for the proposed company will be drawn up in accordance with Blackpool Council policy, as will a memorandum of agreement between Blackpool Council and the company. These articles and working arrangements will be in line with the principles of those approved by the Executive in October 2012 (EX35/2012) when it adopted the Governance Code of Practice for other Council owned companies. These would be subject in due course to a separate officer decision.

It is proposed that the company will initially test and validate this model and then engage with private and public sector funding bodies to seek funding opportunities. Council officers will continue negotiations with Treasury in respect of funding offered to Blackpool as part of the wider Lancashire LEP Growth Deal

5.40 Does the information submitted include any exempt information? No

5.41 **List of Appendices:**

None

6.0 **Legal Considerations:**

6.1 The Council may use its General Power of Competence under Section 1 of the 2011 Act to acquire housing for rent in the General Fund, either directly or through an SPV. Although there is a requirement under section 4(2) of the 2011 Act that if the exercise of the Section 1 power is for a "commercial purpose" then the Council must use a company to do so.

6.2 On the face of it the acquisition of House in Multiple Occupation and continuing to let that housing at market rents however would be pursuing a "commercial purpose". Whilst there is no legal authority yet on what a "commercial purpose" is taken by the Court to mean it is likely that acquisitions would be deemed to be for a "commercial purpose" in which case the Council would need to acquire these properties through a special purpose company.

6.3 Consideration has been given to the most appropriate form of special purpose company for the Council to pursue. An analysis of the options has been set out in the report and it is recommended the most appropriate vehicle is to establish a wholly

owned local authority company limited by shares of which the Council has 100% ownership. This has the advantage of allowing the Council to retain full control of the company and its strategic direction.

- 6.4 The Council has clear powers under sections 24 and 25 of the Local Government Act 1988 to provide financial assistance (which includes the making of a loan) to the Housing Company.

7.0 Human Resources Considerations:

- 7.1 It is recommended that the transfer of any staff to the Company be considered and determined by the Chief Executive through normal procedures.

- 7.2 Consultation will take place with Trade Unions and any affected employees

8.0 Equalities considerations:

- 8.1 The Council has a wide ranging statutory responsibility under section 149 of the Equality Act 2010, known as the “Public Sector Duty” to have “due regard” in decision making to the need to :

Eliminate discrimination, harassment, victimisation and other prohibited conduct

Advance equality of opportunity

Foster good relations between different (defined) groups

- 8.2 The recommendations in the report have been examined to understand the scope of possible impacts on people because of the protected characteristics of:

Age

Disability

Gender Reassignment

Race

Religion or belief

Sex

Sexual Orientation

Pregnancy and Maternity

- 8.3 The creation of a wholly owned Company to deliver Housing regeneration as set out in the report would not, in itself, have an adverse impact on these equality characteristics. Both positive and negative impacts would be possible, dependent on the approach the company takes to these policy issues once established.

- 8.4 It can also be concluded at this stage, that the development of better quality housing in the town does have potential to positively impact on equality of opportunity and community cohesion through the creation of more stable communities in the inner wards.

- 8.5 It will be important to secure the ongoing commitment of the company to the Council's equality ethos and to continue to deliver the specific "due regard" requirement under the Equality Act.
- 8.6 To guarantee this, it is recommended specific clauses are included in the company's articles of association. These could cover both the requirement to have due regard in decision making , advance – where appropriate the Council's Equality Objectives and take account of equality issues in the composition of the Board.
- 8.7 Since the Council is not able to delegate its ultimate responsibility for the Public Equality duty, the client oversight functions will need to take reasonable steps to ensure this approach is implemented.

9.0 **Ethical considerations**

- 9.1 The Council is developing an ethical policy to systematically approach ethical issues as it develops policies and during operational decision making processes. This is based on the Council's conviction all human beings have inherent needs, (which clearly include housing) and that local government has a moral obligation to pursue policies around fairness and social justice.
- 9.2 It is likely that the framework will aim to ensure the Council's policies and day to day decision-making are built on ethically sound principles, promote social justice and are focused on our core priorities .It is therefore appropriate that these concerns are built into the constituting articles of the new company.

10.0 **Financial considerations:**

- 10.1 As outlined in the recommendations, the Director of Place will after consultation with the Director of Resources, develop the financial options available to support the furtherance of the objectives set out above and report back to a future Executive meeting.
- 10.2 As the company will be wholly owned by the Council and will provide the substantial part of its services to the Council, the Council can benefit from the Teckal Exemption, which enables the Council to procure the services of the local authority controlled company directly without the need for carrying out a procurement process. If the company is to have any private ownership/interest in the future, the Council will be required to carry out a procurement exercise in accordance with the Contract Procedure Rules depending on the role of the private partner and the purposes of the joint venture.

11.0 Risk management considerations:

11.1 Housing needs change and the demand for properties of this nature change.

To a degree this is what the Council is seeking to achieve, however the proposal is to develop a portfolio of higher quality stock which will be much more resilient to market change than property of a lesser quality. Further mitigation is however possible by broadening the target occupier group, as well as the option to sell property if required.

11.2 Redevelopment costs consistently exceed anticipated costs.

Robust financial monitoring and contract management systems will be established and monitored by the company board and company senior management team. Acquisitions will start slowly to ensure cost assumptions are deliverable before large numbers of properties are acquired. Major cost variations in refurbishment projects tend to become apparent during the early stripping out phases of construction will be able opportunities to reduce costs elsewhere through scope of works if absolutely necessary to avoid significant cost over runs.

11.3 Anticipated rental returns are not achieved.

Rent targets are based on Local Housing Allowance rates so are more likely to be affordable by tenants claiming benefits. Clients referred by Housing Options will in most cases be entitled to have their rent paid direct to the housing company reducing the risk of arrears. The housing provided will also be higher quality than many other choices available meaning that the company is more able to attract tenants who are able to pay and less likely to fall into arrears. A robust rental income monitoring system will be established by the company to identify and respond to instances of rent arrears early in order to avoid escalation. Risk assessments will also be made of potential tenants before granting a tenancy to reduce risk of anti-social behaviour, arrears and damage.

The company is expected to establish a market position of being a landlord of choice amongst tenants. This will enable lists of potential tenants to be developed to minimise void periods.

11.4 Repair costs are higher than expected

Property will mostly be subjected to extensive refurbishment. This will ensure that the stock is at a good condition and future repair costs are minimized. A proactive programme of routine maintenance and future major repairs has been allowed for within the business model.

12.0 Internal/ External Consultation undertaken:

12.1 Consultation has been undertaken internally within the Council, including, finance, legal and Human Resources advice. Expert legal advice has also been sought from Trowers Hamilns.

12.2 At the time of writing the report, arrangements have been made to consult with Trade Unions and staff who may be TUPE'd by these proposals..

13.0 Background papers:

13.1 Health and Wellbeing Board – Market Rental Report

14.0 Key decision information:

14.1 Is this a key decision? Yes

14.2 If so, Forward Plan reference number: 18/2014

14.3 If a key decision, is the decision required in less than five days? No

14.4 If **yes**, please describe the reason for urgency:

15.0 Call-in information:

15.1 Are there any grounds for urgency, which would cause this decision to be exempt from the call-in process? No

15.2 If **yes**, please give reason:

TO BE COMPLETED BY THE HEAD OF DEMOCRATIC GOVERNANCE

16.0 Scrutiny Committee Chairman (where appropriate):

Date informed: 5th December 2014 Date approved: N/A

17.0 Declarations of interest (if applicable):

17.1 None

18.0 Executive decision:

18.1 The Executive resolved:

To recommend Council as follows:

1. To agree the business case as set out in this report and to recommend the Council to authorise the Chief Executive, following consultation with the Director of Governance and Regulatory Services to take the necessary steps to form a wholly owned company of the Council, including:

- To incorporate the company under the Companies Act 2006, as a private company limited by shares.
- To appoint Directors to serve on the Board of the company and constitute a Shareholder's Panel, in line with the Council's Governance Code of Practice.
- To identify the need and then carry out any staff transfers as appropriate.
- To prepare articles of association for the company setting out its objectives and governance arrangements.

2. That the Director of Place be authorised, following consultation with the Director of Resources, to develop financial options to support the furtherance of the company's objectives and to report back to the Executive in due course.

18.2 Date of Decision:

15th December 2014

19.0 Reason(s) for decision:

Housing market failure within Blackpool is considered to have significantly adverse impacts on the health and wellbeing of residents and on the overall economic vitality of the town. The establishment of a wholly owned housing company will enable a more pro-active approach to be taken to help secure a stronger housing market that meets Blackpool residents housing needs.

19.0 Date Decision published:

16th December 2014

20.0 Executive Members in attendance:

20.1 Councillor Jackson, in the Chair

Councillors Cain, Collett, Cross, Jones and Rowson

Apologies were received from Councillor I Taylor who was otherwise engaged on Council business.

21.0 Call-in:

21.1

22.0 Notes:

22.1