



## Policy and Resources Committee

**16 February 2016**

<b>Title</b>	Establishment of a new wholly owned council housing company (WOC)
<b>Report of</b>	Commissioning Director, Growth and Development
<b>Wards</b>	All
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	Yes
<b>Enclosures</b>	None
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### Summary

This report sets out the business case for a new wholly owned council housing company (WOC) to develop and own homes and requests Committee recommends its creation to Full Council, subject to Committee agreeing the business plan at a later date, prior to commencement of trading.

### Recommendations

**That the Committee endorse the business case for a new wholly owned council housing company to develop and own homes and recommend that Full Council approve the creation of the above, subject to Committee further agreeing the business plan in due course, prior to the WOC commencing trading.**

## **1. WHY THIS REPORT IS NEEDED**

- 1.1 There is a recognised need to increase the supply of housing in Barnet and across the UK as a whole. As a strategic housing authority, the Council must consider how best to meet future housing demand based upon the limited resources available. The Council's Housing Strategy has the overarching objective of providing housing choices that meet the needs and aspirations of Barnet residents and its first priority is to increase housing supply. The Strategy highlights that Barnet has the largest population of any London borough, with an estimated 393,000 residents and this number is expected to grow by 76,000 over the next 25 years – an increase of 19% per cent.
- 1.2 In July 2014, The Assets, Regeneration and Growth Committee (ARG) agreed that a development pipeline would be established, making use of council owned land, to enable the Council to benefit directly from any uplift in land values associated with developing sites, rather than simply seeking a capital receipt through disposal on the open market. A wide range of variables, coupled with a complex regulatory and funding regime, means that maximising the benefits for the Council is not straightforward. This led to the Council commissioning an appraisal of the options by The Chartered Institute of Housing and a review of how other councils were taking forward housing development in their boroughs.
- 1.3 The conclusion, after also seeking advice from specialist lawyers and tax advisers, that whilst the council has the legal powers to develop both homes for affordable rent and private sale, the creation of a new wholly owned council housing development company (WOC) is necessary to enable the Council to develop and own homes for private rent (PRS). Local Authorities have the power to create wholly owned companies for this purpose under the Localism Act 2011 and are required to do so for activity which is undertaken for commercial purposes, as is the case for the development and ownership of homes for PRS.
- 1.4 In addition, the creation of a housing WOC offers the Council with a separate legal entity that can be flexed to provide housing development in a variety of forms depending on the strategic direction of the council and legislative changes in to the future

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 As a strategic housing authority the London Borough of Barnet must consider how best to meet future housing demand based upon the limited resources available. The Council's Housing Strategy has the overarching objective of providing housing choices that meet the needs and aspirations of Barnet residents and its first priority is increasing the housing supply. The Strategy highlights that Barnet has the largest population of any London borough with an estimated 393,000 residents: This is expected to grow by 76,000 over the next 25 years – an increase of 19% per cent.

- 2.2 The London Plan and Barnet's Local Plan recognise the pressing need for more homes in the capital. Managing housing growth and the provision of new homes is the first objective set out in Barnet's core strategy. The London Plan and the Core Strategy set challenging targets for the delivery of new housing, with the former having increased the minimum annual target for Barnet to 2,439 homes per annum.
- 2.3 The WOC would provide a delivery mechanism for developing new homes within Barnet to complement a range of other housing developments the Council is undertaking or proposing, both directly and through Barnet Homes and its Registered Provider, Open Door Homes. Whilst the main purpose of the WOC initially would be to develop and own homes for private rent, its remit could be extended in the future depending on the strategic direction of the Council and/or legislative changes
- 2.4 The WOC would be a limited company, with all shares owned by the Council. It would operate with a small Board of Directors, comprising existing council officers and possibly one or more non-executive directors to facilitate independent scrutiny. It would not employ staff directly; operational requirements would be met through a mix of contracted out resources and existing staff with their time charged to the WOC.
- 2.5 Directors of a company have a duty to act in the interests of the company, even if there is a conflict with the interests of the Council. However, in view of the WOC's rationale and proposed structure it is relatively unlikely that conflicts would arise. As the sole shareholder the Council would be able to protect its interests by adding to or changing Directors as it sees fit.
- 2.6 The WOC would have its own Articles of Association. These are documents which effectively set out its internal rules. Whilst there are standard rules which could be adopted, it is open to the Council to adapt these for its own circumstances.
- 2.7 It is envisaged that the WOC would procure the majority of its services through the Council and The Barnet Group to take advantage of *Teckal*. *Teckal* (a European legal case now codified in Regulation 12 of the Public Contracts Regulations 2015) allows a public authority to procure direct from an external company in which it has control, similar to that which it exerts over its own departments, so that the requirement for open advertisement and tendering for public contracts, in accordance with regulations, does not apply. This would provide the Council with a slim, flexible and low cost structure.
- 2.8 Before the WOC commenced trading a business plan, which demonstrated its financial viability and the way in which it would deliver the Council's strategic objectives, would need to be developed and adopted by the Board. The business plan would also need to cover its development and operational activities and resources, as well as its funding arrangements.

## 2.9 Creating a housing WOC would:

- Increase the supply of homes in Barnet and meet wider housing demand
- Increase investment in regeneration
- Create realisable capital assets for the Council
- Enable the Council to control the housing mix through the planning process and design standards
- Enable the Council to retain full control of the development and construction process, including the marketing
- Generate long term revenue for the Council

## 3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Whilst there is a recognised need to increase the supply of housing in Barnet – and across the UK as a whole, the Council could adopt a ‘do nothing’ approach. However, this would not assist the Council to meet its Core Strategy housing objectives or support the delivery of the London Plan. It would also mean LBB would miss the opportunity to generate revenue and create assets; objectives which are becoming increasingly important with the year on year decrease in financial settlement from central Government.

## 4. POST DECISION IMPLEMENTATION

- 4.1 The WOC will be created as a new Council owned legal entity and Council officers will work with specialist advisers in designing the best legal and operational structure for the company to minimise tax implications and maximise financial benefits, undertake financial modelling and prepare the business plan.
- 4.2 It is important to ensure that the WOC is established based on a sound business case. As a Local Housing Authority, has both a duty to consider housing conditions and the needs in their area, with respect to the provision of housing accommodation and has the power to provide housing accommodation (sections 8 and 9 respectively of the Housing Act 1985).
- 4.3 A potential site has already been identified for the first development of PRS homes – Watling car park, with the capacity for 250/300 new homes. A detailed feasibility assessment of the site is underway, noting that initial advice from the estates team is that the site has some drainage issues so may be more costly to develop. Work is also on-going to determine further site options.
- 4.4 A project plan is under development and it is envisaged that the first PRS site could start to be built from October 2017, assuming the Watling car park or an alternative site proves suitable.
- 4.5 Prior to commencement of trading the detailed business plan will be submitted to Policy and Resources Committee for approval.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

5.2 The Council's Corporate Plan 2015-20 states that the Council, working with local, regional and national partners, will strive to ensure that Barnet is a place:

- Of opportunity, where people can further their quality of life
- Where people are helped to help themselves, recognising that prevention is better than cure
- Where responsibility is shared, fairly
- Where services are delivered efficiently to get value for money for the taxpayer

5.3 London Plan and Barnet's Local Plan recognise the need for more homes in the capital. Managing housing growth and the provision of new homes is the first objective set out in Barnet's Core Strategy. The London Plan and Core Strategy set challenging targets for the delivery of new housing, with the former having increased the minimum annual target for Barnet to 2,439 homes per annum.

5.4 The highest priority of the Council's Housing Strategy is increasing the supply of housing with the population of Barnet forecast to increase by 19% over the next 25 years.

### **5.5 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.5.1 The start-up budget for the WOC is envisaged to be in the region of £315,000, to be funded from reserves. These costs will be capitalised against the WOC, where possible. Policy and Resources Committee at its meeting of 16<sup>th</sup> December 2015 approved the procurement activity to support the Development Pipeline, including the establishment of a housing WOC.

5.5.2 A comprehensive business plan will be developed to include financial modelling and assumptions; land and development assumptions; rental income projections; cash flow; fees, costs and tax, funding profile, sensitivity analysis and resources. Specialist external advisers will be appointed to assist with this process. The business plan will need to be able to show that the WOC is financially viable and self-sustaining, whilst simultaneously offering demonstrable benefits to the Council.

5.5.3 Right to Buy (RTB) does not apply to homes developed through the WOC, as a distinct legal entity from the Council. A WOC for this purpose could be viewed as a means of avoiding the borrowing cap, but this is unlikely where it is only developing private housing. Government has made clear that it will not sanction any proposals for organisations set up to avoid the RTB being available to tenants of affordable housing (but this is not anticipated here).

- 5.5.4 The precise funding arrangements adopted for the WOC will result from an assessment of the alternative funding streams, such as borrowing arrangements and equity investment by the Council, having due regard to the Council's overall funding and treasury management strategy and relevant regulations. The assumption is that, initially, the WOC would, primarily, be funded through a loan and equity investment by the Council, itself utilising PWLB finance. Debt funding would be secured through a debenture (effectively a comprehensive legal charge over the WOC and its assets). Further security would exist through the Council's ability as shareholder to control the WOC and the appointment/removal of directors.
- 5.5.5 In funding the WOC the council must take account of and comply with State Aid Rules. This means funding must be on market terms and comply with HMRC requirements in relation to tax treatment. The Council would charge a premium on all loans approved to the WOC, (providing an income stream to the Council) in excess of PWLB rates. All lending would be subject to a loan agreement and would include pre-conditions on draw down, as well as on-going performance measurement.
- 5.5.6 It is anticipated that the WOC would purchase its land for development from the Council. The transfer of land from the Council to the WOC could not be at less than its independent valuation and must comply with best consideration requirements. Payment of the land price to the Council could, however, be deferred to assist with cash flow for the WOC, subject to the state aid rules mentioned. The supply of services should also be at market rates.
- 5.5.7 The timing of the transfer of land from the Council to the WOC would be determined by the most tax efficient process. Transfer of property between different entities can give rise to a liability to pay Stamp Duty Land Tax (SDLT). However, there is relief from this liability where the WOC is a wholly owned subsidiary of the Council. Formation of a limited company under the Council's ownership should allow the Council to take advantage of this relief.
- 5.5.8 Homes built for market rent could be retained directly by the WOC. Alternatively, there may be tax advantages in the WOC selling the property freeholds or leasing, on a long term basis, to a separate rental trading company as a subsidiary of the WOC or as part of The Barnet Group. This will provide an income stream to fund the repayment of loan/s and long term revenue income to the Council.
- 5.5.9 The WOC would be subject to corporation tax on the profits of its activities. The financial modelling for the business plan would seek to minimise any tax incurred by the WOC and the full business case will contain a detailed tax analysis.
- 5.5.10 The Council and the WOC would be able to rely upon the *Teckal* exemption to procure services and works between the parties without the need for OJEU procurement. However, the WOC would, potentially, be a contracting authority when procuring works and services from third parties, (meaning it would be subject to the Public Contract Regulations 2015). In practical terms it is

anticipated that the WOC would appoint the Council as its development agent for each site.

5.5.11 If, in the future, the WOC wished to take advantage of private finance to support development, this would substantially change the nature of the relationship with the Council and the tax and VAT regime that would apply.

## 5.6 Social Value

5.6.1 The establishment of the WOC will increase investment in regeneration in Barnet and the supply of homes to meet housing need.

## 5.7 Legal and Constitutional References

5.7.1 The Council has the powers to form a WOC under Section 1 of the Localism Act 2011.

5.7.2 Policy and Resources Committee will need to approve the business plan for the WOC prior to commencement of trading. The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 states that before exercising the power (to trade) the authority shall:

- (a) Prepare a business case in support of the proposed exercise of that power
- (b) Approve that business case

5.7.3 Legal implications arising in relation to State Aid, the duty to obtain best consideration for land transfers, the so called *Teckal* exemption, which exempts contracts between the Council and the WOC from following a regulated competitive procurement process, are all covered earlier in this report.

5.7.4 The Council's Constitution - Appendix A - Responsibilities for Functions, details the responsibilities for the Policy and Resources Committee including to be:

- The principle means by which advice on strategic policy and plans is given and co-ordinated and to recommend to full council as necessary on strategic issues
- Responsible for the overall strategic direction of the Council

## 5.8 Risk Management

5.8.1 The table identifies the key risks associated with the proposed housing WOC. These risks only emerge once the WOC commences trading. Up until this point the only risk associated with creating the WOC is the cost of development and set up.

<b>Risk</b>	<b>Mitigation</b>
Failure of WOC	A slim, low cost structure is proposed, which the Council would control; the WOC could be wound up relatively easily if necessary
Suitable land sites cannot be identified and / or planning approval is not granted	An initial site has been identified and is currently being assessed. Work is underway to look at other options
Creating an appropriate delivery vehicle to minimise tax implications	Expert tax and legal advice is being harnessed to minimise this risk
Perception and reputation	LBB's role as private house builder will need to be considered in the context of ensuring the correct branding vehicle and marketing strategy is adopted
WOC's business plan is not viable	Extensive financial modelling will be undertaken with the support of a market expert to ensure that the business plan is viable and robust prior to the WOC beginning to trade
Homes prove difficult to rent and impact on the financial projections/profitability	Thorough market research will be undertaken to inform the financial projections and external expertise will be commissioned to support the development of a robust marketing plan
Government intervention	The creation of housing development vehicles is still a relatively new concept and there are different views and opinions about the legal options – none of which have been challenged. Therefore, there is no legal precedent. Where local authorities are seeking to innovate there is always an element of risk through legal challenge and/or Government intervention in the future.



## **5.9 Equalities and Diversity**

5.9.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups

5.5.2 The Council has taken account of its Equalities Policy and paid due regard to equalities as required by the legislation issues in relation to the WOC. The proposals in this report anticipate a positive impact for residents and do not raise any negative equalities issues because the creation of a housing WOC will:

- Underline the Council's aim that all residents from our diverse communities – the young, old, disabled people and those on low incomes – benefit from the opportunities of growth.
- Contribute to Barnet's commitment to fairness - to be mindful of the concept of fairness and in particular, of disadvantaged communities - which was adopted at Policy and Resources Committee in June 2014.
- Form part of Barnet's Housing Strategy 2015-2025 which includes the objective to deliver homes that people can afford.

5.5.3 Equality and diversity issues will also need to be considered as part of the development and design and the WOC would undertake Equality Impact Assessments on a scheme by scheme basis.

## **5.10 Consultation and Engagement**

5.10.1 Consultation would be undertaken on an individual scheme basis. This would include, but not be limited to, statutory consultation undertaken as part of the planning process. Each development project would be expected to produce a consultation and engagement plan that would be used to demonstrate how the Council has consulted with its citizens at various stages of the project life cycle. A library of evidence for the findings would be kept by the project team. The consultation findings would be published with the relevant council papers.

## **6. BACKGROUND PAPERS**

- 6.1 Assets Regeneration and Growth Committee, 9 July 2014, Strategic Asset Management Plan  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7960&Ver=4>
- 6.2 Assets Regeneration and Growth Committee, 8th September 2014, Strategic Asset Management Plan  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7885&Ver=4>
- 6.3 Assets Regeneration and Growth Committee, 8 September 2014, Barnet Development Pipeline  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7885&Ver=4>
- 6.4 Assets Regeneration and Growth Committee, 16th March 2015, Barnet Development Pipeline – Tranche 1  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7887&Ver=4>
- 6.5 Assets Regeneration and Growth Committee, 1st June 2015, Barnet Development Pipeline  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8309&Ver=4>
- 6.6 Assets Regeneration and Growth Committee, 7th September 2015, Barnet Development Pipeline, Tranche 1 – Moxon Street  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8310&Ver=4>
- 6.7 Council, 20 October 2015, Report of Housing Committee – Housing Strategy and Commissioning Plan  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=162&MId=8340&Ver=4>
- 6.8 Policy and Resources Committee, 16th December 2015, Procurement activity to support the Development Pipeline including the establishment of a Council Wholly Owned Property / Housing Company (WOC)  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=8349&Ver=4>