



Meeting: Council

Date: 5 December 2018

Wards Affected: All

Report Title: Torbay Council's Housing Rental Company

Is the decision a key decision? No

When does the decision need to be implemented?

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1. Proposal and Introduction

- 1.1 Following from Housing Committee on 19 November, Council is being asked to support the recommendation of that Committee to merge the Housing Rental Company (RentCo) into the TDA, or a subsidiary of the TDA to enable relevant affordable housing schemes to be delivered at pace.
- 1.2 The Council has looked to set up their own housing company to bring forward affordable housing and have registered three subsidiary companies: a holding company, 'Dev Co' and a 'Rent Co'. The Housing Company, supported by the TDA, commissioned financial modelling of an ambitious programme of development across Council-owned sites that are identified for housing in the Local Plan. The State Aid regulations and Best Value requirements, as well as the existing policy framework for the Housing Company, restricted the extent to which the Housing Company could cross subsidise affordable housing development from market-orientated development resulting in difficulties in making the development programme sufficiently viable. In particular it was found that the Company would not be able to meet its own operating costs/overheads. This financial modelling assumed that the Housing Company would benefit from both Council affordable housing capital grant and Homes England grant. Subsequently the Housing Company has modelled a much restricted development programme consisting of three Council owned sites that have already been approved by Council for disposal for affordable housing development. TDA are currently commissioned to take forward these sites through feasibility, design and planning stages on behalf of the Council. This work is ongoing (please see update report later on the agenda).

- 1.3 Following a report to Council in September 2018 and further discussions with Council officers, the TDA have proposed to their Board that they could pursue the Council's Housing Company objectives to carry out direct affordable housing development. Significantly, the use of the TDA in this respect would reduce the operating costs/overheads of the Housing Company given their existing structure. The TDA Board have approved an "in principle" operating framework to undertake this activity and the broad principles of how this could work are set out in Appendix 1. Further consideration will need to be given to the relationship between the TDA and the Council on affordable housing delivery and to finalise any commissioning arrangements.
- 1.4 To ensure any proposals to deliver affordable housing are viable, grant funding will be required from Homes England. Initial conversations with Homes England and the TDA have been positive and they have confirmed that they have significant monies to invest in Torbay. However, in order to bid for grant the Council and/or the TDA need to achieve Investment Partner (IP) status. The organisation who will own and manage the homes as affordable housing must also become a Registered Provider (RP). Further detail is required from the TDA as to how it will ensure that it meets the necessary governance arrangements and can demonstrate that it will meet the regulatory standards as set out by the Regulator of Social Housing (RSH), however, this should be achievable.
- 1.5 Given its existing functions and staffing the TDA may be well placed to deliver both the development work and to manage and maintain the homes in the long term. This activity will involve the following departments at the TDA:
- Affordable housing team
 - Development Surveyors
 - Estate management
 - Project Management
 - Flood and Highway engineers
 - Property services
 - Marketing
 - Facilities management
 - Repairs Helpdesk
 - Cleaning company
 - Town centre regeneration
 - Finance
- 1.6 Further work will be required to ensure that the TDA Board and the Council are content with the organisational and management arrangements that will be required of the TDA for registration as an RP. In particular it will need to establish whether the TDA will require an additional organisational entity to own/manage the affordable housing that is separate from TDA's commercial/profit making activities.

- 1.7 The Council has undertaken significant modelling in respect of options for housing delivery, including associated financial and legal advice. This modelling will be able to be utilised in whatever form the company takes.

2. Reason for Proposal and associated financial commitments

- 2.1 On the 20 September 2018 the Council agreed that the Housing Committee be asked to consider the benefits and/or disadvantages of merging the Housing Rental Company (RentCo) into the TDA, or a subsidiary of the TDA to enable relevant schemes to be delivered at pace, and report back to Council with an appropriate recommendation. The Council wishes to expedite a programme of affordable housing development on Council-owned sites and retain the ownership and management of those sites in the long term. The potential advantages of TDA taking forward this role, as opposed to the existing Housing Company, are that it has existing governance arrangements and existing staffing, expertise and office accommodation available to it. This will reduce the initial burden of the operating costs that have made the Council's Housing Company business plan unviable and may make the process of registering as an IP and RP more straightforward. A report was presented to Housing Committee on the 19 November 2018.
- 2.2 It is proposed that the TDA may be the most appropriate subsidiary company to take forward the affordable housing development function. The detailed requirements of how to achieve this will need to be explored further and will ultimately be the subject of a formal commissioning agreement and a "reserve matter" decision for the Council. The relationship between this delivery role and the current enabling role of the TDA will also need to be further explored and arrangements proposed to ensure that there is no conflict of interest in this respect.
- 2.3 The financial and other commitments related to these proposals are set out broadly in Appendix 1 (Draft Housing Delivery Operating Framework between Torbay Council and TDA) but this will need to be detailed in a final commissioning agreement between the Council and the TDA linked to the delivery and management of a finite number of affordable housing.

3. Recommendation(s) / Proposed Decision

- 3.1 That Council approves the recommendations from Housing Committee:
- 3.2 That in principle there appear to be clear benefits in merging the Housing Rental Company (RentCo) into the TDA, or a subsidiary of the TDA to enable relevant affordable housing schemes to be delivered at pace.
- 3.3 That the principle of merging the Housing Rental Company (RentCo) into the TDA, or a subsidiary of the TDA be approved, subject to further due diligence and a detailed commissioning agreement.

- 3.1 That the Assistant Director of Business Services be authorised to undertake further due diligence and, if appropriate, finalise a detailed commissioning agreement with the TDA for the delivery of affordable housing schemes, in consultation with the Executive Lead for Housing, the Chairman of the Housing Committee and the Section 151 Officer.

Appendices

Appendix 1 - Draft Housing Delivery Operating Framework between Torbay Council and TDA

Appendix 2 - St Kilda's site plan

Appendix 3 - Totnes Road proposed scheme

Background Documents

Council Report – 'Delivery and implementation of the Housing Strategy' - 20 September 2018

Housing Committee Report – 'Torbay Council's Housing Rental Company' - 19 November 2018

Section 1: Background Information

1.

What is the proposal / issue?

The Housing Committee was asked to consider the benefits and/or disadvantages of merging the Housing Rental Company (RentCo) into the TDA, or a subsidiary of the TDA to enable relevant affordable housing schemes to be delivered at pace. Housing Committee has now received a report with a recommendation for Council.

2.

What is the current situation?

It has been suggested that recently Housing Associations in Torbay have been less active and have only been engaged in acquiring affordable homes from privately driven developments by way of S106 agreements. This has resulted in a reduction of new supply of affordable housing over a number of years across all sizes and tenures in all three towns.

The Council has looked to set up their own housing company to bring forward affordable housing and have registered three subsidiary companies: a holding company, 'Dev Co' and a 'Rent Co'. The Housing Company commissioned financial modelling of an ambitious programme of development across Council-owned sites that are identified for housing in the Local Plan. The State Aid regulations and Best Value requirements, as well as the existing policy framework for the Housing Company, restricted the extent to which the Housing Company could cross subsidise affordable housing development from market-orientated development resulting in difficulties in making the development programme sufficiently viable.

Following the original investigations and financial modelling, the Council are considering whether TDA would be better placed than the Housing Company to pursue the Council's objectives to carry out direct affordable housing development. In order for the Housing Company to obtain the levels of affordable housing grant that are required to make the development programme viable it would need to become an Investment Partner (IP) to bid for funds from Homes England. To own and manage the affordable units going forward the Housing Company would also need to become a Registered Provider (RP) of Affordable Housing with the Regulator of Social Housing (RSH). This would require improvements to the governance framework for the Housing Company, as it stands, and recruitment of additional Board members. Given that the Housing Company does not have access to the additional resources that would be required to make this happen, an alternative approach would be to deliver the affordable housing through the TDA and for the TDA to applying for Registered Partner (RP) and Investment Partner (IP) status. A further alternative would be for Torbay Council to be the lead IP with TDA as a subsidiary partner and the owning organisation (RP). This would still require TDA to meet the requirements for

becoming an IP and RP but would allow greater engagement of the Council with the development programme and grant bids – it may also make the process of verification to become an IP simpler.

Following a report to Council in September 2018 and further discussions with Council officers, the TDA have proposed to their Board that they could pursue the Council's Housing Company objectives to carry out direct affordable housing development. The TDA Board have approved an in principle operating framework to undertake this activity and the broad draft principles of how this could work are set out in Appendix 1. Further consideration will need to be given to the existing relationship between the TDA and the Council on affordable housing delivery and to finalise any commissioning arrangements.

Currently the TDA carries out the Council's strategic housing enabling function and negotiates affordable housing requirements through the planning system. Arguably there could be a conflict of interest for TDA to be both the preferred development partner and chief recipient of S106 deals whilst also undertaking the enabling role. An area for negotiation and clarity would be whether the housing enabling role should be carried out by the Council directly, with a specialist housing enabling role within the Planning Policy or Strategic Housing teams.

To ensure any proposals to deliver affordable housing are viable, grant funding will be required from Homes England. Initial conversations with Homes England and TDA have been positive and they have confirmed that they have significant monies to invest in Torbay. However in order to bid for grant the Council and/or TDA need to achieve Investment Partner (IP) status. The organisation who will own and manage the homes as affordable housing must also be come as Registered Provider (RP). Further detail is required from the TDA as to how it will ensure that it meets the necessary governance arrangements and can demonstrate that it will meet the regulatory standards as set out by the RSH. In this respect the governance arrangements should reflect the National Housing Federation's (NHF) Code of Governance 2015. This will require ensuring that the TDA governance arrangements meet the NHF nine principles for good governance as follows:

- **Ethics** –the organisation operates according to high ethical standards, explicit values and appropriate codes of conduct.
- **Accountability** – there is proper accountability to the organisation's stakeholders, in this instance the Council, local communities and the TDA's residents.
- **Clarity** – there is clarity of roles and responsibilities between the TDA's Board members, paid staff and shareholder (the Council).
- **Control** – there are effective systems for delegation, audit, risk management and control. The board receives adequate and timely reports and advice to inform its decisions. The board has an

	<p>effective relationship with internal auditors, external auditors and regulators.</p> <ul style="list-style-type: none"> • Structures – there are effective staffing and Board structures to support the board’s work. • Openness – there is a spirit of openness and full disclosure of governance matters and other information, especially between board and shareholder (Council). • Diversity and inclusion – there is fairness, equality of opportunity and recognition of diversity in all aspects of the governance. • Customer First – business decisions and strategy focus on the needs of current and potential service users and customers.
<p>3.</p>	<p>What options have been considered?</p> <p><u>Do Nothing</u> The Council has agreed that we need to do more to stimulate the delivery of affordable housing to meet the objectives and outcomes identified within the Housing Strategy.</p> <p><u>Continue with the Council’s existing Housing Company approach</u> The Council’s Housing Company business plan unviable for the reasons set out in this report.</p>
<p>4.</p>	<p>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</p> <p>Ambitions: Prosperous and Healthy Torbay</p> <p>Principles:</p> <ul style="list-style-type: none"> • Use reducing resources to best effect • Reduce demand through prevention and innovation • Integrated and joined up approach <p>Targeted actions:</p> <ul style="list-style-type: none"> • Protecting all children and giving them the best start in life • Working towards a more prosperous Torbay • Promoting healthy lifestyles across Torbay • Ensuring Torbay remains an attractive and safe place to live and visit • Protecting and supporting vulnerable adults
<p>5.</p>	<p>How does this proposal contribute towards the Council’s responsibilities as corporate parents?</p> <p>When considering all matters in relation to affordable housing the Council will take into account how this can assist looked after children to help give them the best start in life.</p>

<p>6.</p>	<p>How does this proposal tackle deprivation?</p> <p>Delivery of more affordable housing will have a positive impact on deprivation.</p>
<p>7.</p>	<p>How does this proposal tackle inequalities?</p> <p>Delivery of more affordable housing will have a positive impact on reducing inequalities.</p>
<p>8.</p>	<p>How does the proposal impact on people with learning disabilities?</p> <p>When considering all matters in relation to affordable housing the Council will take into account how this can assist people with learning disabilities.</p>
<p>9.</p>	<p>Who will be affected by this proposal and who do you need to consult with?</p> <p>The development of a finalised commissioning agreement will require further consultation with the TDA, the Executive Lead for Housing, the Chairman of the Housing Committee and the deputy Section 151 Officer.</p>
<p>10.</p>	<p>How will you propose to consult?</p> <p>Formal consultation will take place via the Council's website and through meetings and circulation of papers.</p>

Section 2: Implications and Impact Assessment

11. What are the financial and legal implications?

The Council's Housing Rental Company Policy Framework approved July 2017 requires the delivery of affordable housing at "cost neutral" position to the Council.

There is a draft operating framework (Appendix1) between the Council and TDA which will be the basis for the future operating and funding arrangements.

The framework will require the support of the Council affordable housing budget (on a grant per unit basis) and access to prudential borrowing which is ultimately a Council decision that has been delegated this to the Housing Committee.

Approvals for any schemes to be funded from prudential borrowing and the affordable housing capital grant will be subject to individual business cases being presented by the TDA to Council.

Whilst all of the development activity, the management and maintenance regime will be fully funded over the life of the buildings through the rental stream there will be set up costs incurred to establish an effective housing function which are not currently funded. This will focus primarily around the RP and IP applications and all the necessary policies and procedures that will need to be produced and be in place before Homes England will approve any application. In addition there will be some external advice on the tax and accounting treatments and the optimum structure for TDA to operate within. TDA have given a commitment to fund these costs at no additional cost to Torbay Council.

12. What are the risks?

Development risk

Any decisions to proceed with any development will be supported by fully costed and detailed business plans showing both the initial development costs but then also the lifecycle costs of any scheme and how both will be repaid. It is envisaged that any developments will be let on a design and build fixed price contract to minimise any exposure or cost overrun. Whilst this does not remove all risks it should help limit any potential exposure. To mitigate this further the TDA will create a Project Board for each scheme to monitor activity and performance against programme and budget. In addition to this they will create a separate TDA Sub-Committee to monitor and deal with the performance of the overall programme.

Demand/market conditions

Once the homes are built it is imperative that they are occupied in-line with the assumptions set out in the business plan. Any reduction in the occupation

	<p>will have a negative impact on the scheme performance. There are currently over 1,000 households on the Torbay Council waiting list with 100% of nominations going to Torbay Council. Also, currently Torbay has no 'hard to let' stock within the affordable sector, such is the demand. What this means is that for every vacancy there are multiple households wanting the accommodation and in some cases between 15 and 20 households per property.</p> <p><u>Not acquiring RP and IP status</u> This is a significant risk and any decision to proceed would be subject to the TDA obtaining this status. The grant payments are essential to make development viable and without this funding, the delivery will not be possible. The Government has just released further funding for affordable housing and Homes England have been supportive to the TDA's proposals which mitigates the concerns in this area. It is envisaged that this application process will take approximately 4 months and therefore until this is finalised it will delay any development activity. Consequently a rapid Council decision is required to avoid any further delay on the two sites at Totnes Road and St Kilda's.</p>
<p>13.</p>	<p>Public Services Value (Social Value) Act 2012</p> <p>Not applicable.</p>
<p>14.</p>	<p>What evidence / data / research have you gathered in relation to this proposal?</p> <p>This proposal has been discussed with the relevant officers within the Council, the Directors and Board of the TDA, as well as the Directors of the Council's Housing Company.</p>
<p>15.</p>	<p>What are key findings from the consultation you have carried out?</p> <p>Consultation has been undertaken internally between Council officers and the Directors of the TDA. A report was presented to Housing Committee in November 2018.</p>
<p>16.</p>	<p>Amendments to Proposal / Mitigating Actions</p> <p>No additional; amendments or mitigating actions were forthcoming after the internal consultation. Amendments and mitigating actions could be proposed following consultation with the Housing Committee and/or at the full Council meeting.</p> <p>Further discussions with the TDA may result in amendments to the broad principles of an operating framework in agreement with the Council.</p>

Equality Impacts

17.	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people			There is no differential impact
	People with caring Responsibilities			There is no differential impact
	People with a disability			There is no differential impact
	Women or men			There is no differential impact
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			There is no differential impact
	Religion or belief (including lack of belief)			There is no differential impact
	People who are lesbian, gay or bisexual			There is no differential impact
	People who are transgendered			There is no differential impact
	People who are in a marriage or civil partnership			There is no differential impact
	Women who are pregnant / on maternity leave			There is no differential impact

	Socio-economic impacts (Including impact on child poverty issues and deprivation)		There is no differential impact
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)		There is no differential impact
16	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	Not applicable	
17	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	Not applicable	