

Establishment of a Development Company

Summary

The Executive is asked to note the progress with developing a strategy for the delivery of Key Priority 2 and to agree the establishment of a Land and Property Board to consider potential delivery vehicles for development opportunities in Surrey Heath

Portfolio: Leader

Date Portfolio Holder signed off report: 3 February 2016

Wards Affected: All

Recommendation

The Executive is advised to RESOLVE

- (i) to create a Land and Property Board to look at the current development opportunities within the borough and progress potential development sites within its ownership;
- (ii) that the authorisations set out in the Property Acquisition Strategy be delegated to the Board; and
- (iii) to authorise the Chief Executive to further explore, through appropriate soft market testing exercises, the appropriate procurement options and/or delivery vehicles referred to in this report to further the Council's commitment to delivering economic growth opportunities in Surrey Heath and other commercial ventures in support of Key Priority 2.

1. Resource Implications

- 1.1 Property advice has been sought in relation to the setting up a development company from the Council's retained advisers, both legal and commercial, as part of the evolving work on Camberley Town Centre and other development initiatives in Surrey Heath. The Council has also sought specialist legal advice on the various company models which could be explored using allocations from the transformation budget.
- 1.2 This work has identified a number of potential company models or procurement options which the Council could consider to further its aspirations in Key Priority 2.
- 1.3 The Chief Executive, working collaboratively with a Land and Property Board will look to consider the best options available to the Council to deliver effective outcomes for Key Priority 2, after taking appropriate

specialist advice and following one or more soft market testing exercise on various identified sites to establish the best procurement and delivery vehicles for Surrey Heath and report on those findings to a later Executive.

- 1.4 It is estimated that the soft market testing exercise would be funded from the current transformation budget.

2. Key Issues

- 2.1 Like many other councils, there is a need to deliver more development in the form of housing in order to secure funding from the Government, such as the New Homes Bonus. Surrey Heath Borough Council has reflected this and has set out, in its Key Priorities, its intention to promote construction-led development within the borough. In order to take some of the housing orientated initiatives forward, as we are no longer a housing provider at Surrey Heath, we will need to deliver housing development and any subsequent management thereof through either a joint venture vehicle or a development company.
- 2.2 Any agreed model will have as its stated objective the development of sites within or for the benefit of the borough. These may include land currently within the ownership of the Council or sites yet to be acquired in the future. Whether by engaging on acquisitions by negotiation or, if necessary, potentially resolving to use compulsory purchase powers.
- 2.3 To date the Council has approached its property acquisitions as opportunities have arisen in the market, however it is often very difficult for the Council to secure these sites quickly and the current pace of market conditions plus the ability to buy land for housing development, requires the Council to look at more flexible models of delivery, through streamlined procurement options or a company structure.
- 2.4 Advice is currently being sought by the Council by way of soft market testing in order to ascertain whether there is interest from the construction/development industry in joint venture with the Council to bring forward development. This is one model of a development company.
- 2.5 The options available to the Council will need to be fully explored by the officers after taking appropriate technical and legal advice but could range from a limited liability company limited by shares or a limited liability partnership may be set up. There are then variations which could include a wholly owned company, joint ventures with private partners for site specific development, or a local asset backed vehicles with one joint venture partner for all potential development sites. Where the Council is awarding one or more contracts for goods, works or services, the EU procurement regulations will apply to the structure. In addition, the Council will need to comply with EU state aid rules and with all local authority finance and decision making requirements. There could, for example, be a group structure, with

different companies delivering different types of development, such as housing or as investment for the Council to assist in its future sustainability.

- 2.6 The funding and tax arrangements for each of these structures will also need to be closely looked at so that the company is structured in the most tax efficient way, so that SDLT and Corporation Tax are minimised, as appropriate. It will also be vital to ensure compliance with best value requirements and that section 123 tests are satisfied in each transaction.
- 2.7 The governance arrangements of any company are also important to ensure there is sufficient transparency about future decision-making.
- 2.8 The Council's advisers are working together to ensure options are tailored to the strategic interests of our economic area and Surrey Heath's aims and objectives. Once we are clear on the appropriate structures, this will form the basis of a further detailed report to Executive.

3. Options

- 3.1 The Executive will need to weigh up advantages and disadvantages, risks and rewards for each model, when they are further reported and this will be the subject of a further report.
- 3.2 The options at this stage are either to authorise soft market testing and the Land and Property Board as a vehicle for delivering project sites quickly, upon the terms set out in the report or not to pursue this approach.

4. Proposals

- 4.1 It is proposed that the Chief Executive be authorised to conduct a soft market testing process and further advice to work up the most appropriate options to best deliver key priority 2 and report back with proposals.
- 4.2 It is further proposed that interim governance arrangements are put in place via a Land and Property Board, consisting of the Chief Executive, the Leader and Deputy Leader and the s151 Officer so that decisions on business cases for acquisition can be overseen in detail and the delegated authority set out in the Property Acquisition Strategy of 2011 can be discharged through this process. This will assist in the Council's ability to move quickly where necessary in acquiring suitable properties.

5. Supporting Information

- 5.1 The specialist advice is of course confidential at this stage. A number of issues will be addressed fully in the further report to Executive.

- 5.2 The Peer Review Challenge report which is currently being finalised with the LGA supports this approach and urges the Council to move quickly with this proposal. Other local authorities who have taken this approach have delivered more speedy outcomes in delivery by working with appropriate delivery partners through streamlined governance procedures.

6. Corporate Objectives And Key Priorities

- 6.1 Key Priority One and Two set out clearly the Council's intention to deliver the Camberley Town Centre projects and to achieve construction-led growth. Setting up a development company will help to deliver these priorities.

7. Policy Framework

- 7.1 n/a

8. Legal Issues

- 8.1 There are many legal issues, particularly in terms of local government law, EU public procurement and state aid law, and company law. Professional advice is being sought and will be set out in the further report.
- 8.2 Councils have legal powers under section 1 of the Localism Act 2011, the general power of competence to do anything an individual may do. This is subject to the requirement that, if what it is doing is for a commercial purpose then, in accordance with section 4, it must do it through a company.
- 8.3 The EU public procurement regime will apply whenever the Council is looking to do more than acquire or dispose of land. Development agreements where the Council has specific required outputs/control can require a procurement process to select the developer. Any long term joint venture arrangement would also need to comply with the procurement rules.
- 8.4 Any sale of land must meet the obligations of section 123 of the Local Government Act 1972 to obtain the best consideration reasonably obtainable for the land, as well as the EU state aid sale of land guidelines.
- 8.5 We also have to be mindful of provision which could become law in the Housing and Planning bill which is currently progressing through Parliament, to ensure our own surplus landholdings are utilised appropriately.

9. Governance

- 9.1 There are governance issues that will arise on the setting up of a company and these too will be the subject of a further report.
- 9.2 In the meantime, the interim arrangements as set out in paragraph 4.2 above.

10. Risk Management

- 10.1 Risk will be addressed in the further report to the Executive.

Annexes	None
Background Papers	Confidential advice from professional advisors.
Author/Contact Details	Karen Whelan – Chief Executive
Head of Service	n/a

Consultations, Implications and Issues Addressed

Resources	Required	Consulted
Revenue	✓	
Capital		
Human Resources		
Asset Management		
IT		
Other Issues	Required	Consulted
Corporate Objectives & Key Priorities	✓	
Policy Framework		
Legal	✓	
Governance		
Sustainability		
Risk Management		
Equalities Impact Assessment		
Community Safety		
Human Rights		
Consultation		
P R & Marketing	✓	