

ESTABLISHMENT OF A NOT-FOR-PROFIT REGISTERED PROVIDER

Committee: Council

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Author: Director Commercial

[T164]

1.0 ISSUE

- 1.1 To consider the establishment of a not-for-profit registered provider (NFP RP) of affordable housing and make an application to the Social Housing Regulator for Stage One consent.

2.0 RECOMMENDATION(S)

- 2.1 Members are requested to:

2.1.1 Establish a Company Limited by Guarantee; East Cambridgeshire Housing Association,

2.1.2 Authorise the Chief Executive, Director Commercial and Legal Services Manager to complete the necessary legal documentation to implement 2.1.1 above

2.1.3 Authorise the Director Commercial to submit a Stage One (preliminary) application to Social Housing Regulator for East Cambridgeshire Housing Association to be registered as a not-for-profit registered provider.

3.0 BACKGROUND/OPTIONS

- 3.1 In July 2018 the National Planning Policy Framework (NPPF) provided a new definition of affordable housing. This new definition provides that affordable housing for rent must be provided by a registered provider, stating as follows:

Meets all of the following conditions: (a) the rent is set out in accordance with the Government's rent policy, or is at least 20% below local market rents (including service charges where applicable): (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider): and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent Schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

- 3.2 The Council must now be mindful that government has restricted, in so far as planning policy is concerned, the provision of affordable housing for rent, to registered providers only.
- 3.3 The Council and its trading company; East Cambs Trading Company (ECTC), are committed to delivering Community Land Trusts (CLTs) and this is the preferred mechanism for delivering affordable housing in East Cambridgeshire. The changes to the NPPF introduce challenges to delivering mixed tenure affordable housing.
- 3.4 In order to overcome these challenges the Director Commercial has identified the need to establish a vehicle that would enable the Council and ECTC to continue to deliver all tenures of affordable housing and maintain control of the stock, i.e. the establishment of a housing association.
- 3.5 The Director Commercial has sought advice from Trowers & Hamlins to consider the options available to become a housing association.
- 3.6 **Choosing the right model for providing affordable housing**
- 3.6.1 The Council has a range of powers that it can exercise, the most appropriate being Section 9 of the Housing Act 1985. There are five key considerations for the Council owning and managing the housing stock:
1. Tenancies
 - Tenants automatically secure tenancies under Section 81 of the Housing Act 1985
 - Tenancies are further protected under the Planning and Regeneration Act 2016
 2. Right to buy
 - Subject to Right to Buy under Section 118 of the Housing Act 1985
 - Pre 1993 tenants do not qualify under Section 118 of the Housing Act 1985 but qualify under Section 171A of the Housing Act 1985
 3. Housing Revenue Account
 - Need to re-open Housing Revenue Account
 - Must negotiate with the Minister of Housing as it concerns the debt cap and increasing indebtedness
 4. Prudential borrowing and Minimum Revenue Provision
 - Need to consider the implications this will have on prudential borrowing and minimum revenue provision
 5. Becoming a Registered Provider

- Must register as a Registered Provider under Section 114A of the Housing and Regeneration Act 2008
 - Must comply with Regulator Consumer Standard
- 3.6.2 Points 1, 2 and 5 do not present any issues for the Council. However, points 3 and 4 would place an unacceptable burden on the Council's budget position as this will impact minimum revenue provision.
- 3.6.3 The Director Commercial has considered alternative models that would enable the Council to achieve the desired outcome. 2 alternative models were considered:
- Company Limited by Guarantee
 - Community Benefit Society
- 3.6.4 A community benefit society has been discounted as an option for consideration as it must have at least three members (the Council would not have control). Therefore, the most appropriate model for delivery is a Company Limited by Guarantee (CLG). Benefits:
- It is a legal entity in its own right
 - Can own and deal in assets
 - Can contract in its own right
 - Limited liability for members
 - Only needs one member
- 3.6.5 The next consideration is whether to apply to become a for-profit registered provider or a not-for-profit registered provider.
- 3.6.6 A for-profit registered provider has been discounted for the following reasons:
- Impact of Social Housing (Influence of Local Authorities) (England) Regulations 2017 make it impossible for the Council to be the shareholder
 - No more than 24% of officers can be Council officers
 - Council cannot hold or exercise voting rights
- 3.6.7 The most appropriate model is a not-for-profit registered provider for the following reasons:
- Council can have full control if wholly owned
 - Obtain charitable status from Charity Commission
 - Exemption from Corporation Tax on its charitable purposes
- 3.6.8 If the Council is to progress it is recommended the Council establish a Company Limited by Guarantee and apply to become a not-for-profit registered provider.

3.7 Registering to become a not-for-profit registered provider

3.7.1 Establishing a housing association and applying to the Social Housing Regulator for consent to become a registered provider is a two-stage process.

3.7.2 Stage One- Preliminary application

3.7.3 The proposed housing association is required to complete a preliminary application for registration for new entrants as providers of affordable housing. The preliminary application covers the following:

- Part 1- Declaration and consent
- General information
- Eligibility criteria

3.7.4 The proposed housing association will need to provide details of a specific scheme along with supporting evidence of proposed arrangements with the Council for referrals/nominations. This will include the following:

- Provide specific details of scheme addresses, ownership, and the status of any planning applications
- Supporting evidence to show existing or proposed arrangements with the Council for referrals/nominations
- Detailed assessment of proposed rents (core and non-core) based on an identified scheme alongside evaluation of market rents using a RICS approved methodology
- An example of a tenancy agreement for a property in question showing a proposed breakdown of rents including core and non-core elements

3.7.5 The Director Commercial has commissioned Redloft Consultants to assist with the application process.

3.7.6 Submitting an application for Stage One does not bind the proposed housing association to proceed to Stage Two. If consent is granted the Director Commercial will seek authority from Council to proceed to Stage Two of the process.

Stage Two is the detailed application stage which comprises of 9 parts:

- Part 1: Declaration and consent
- Part 2: General information
- Part 3: Changes to information provided at the preliminary application stage
- Part 4: Meeting the Governance and Financial Viability Standard
- Part 5: Specific expectations applicable to categories of applicants
- Part 6: Meeting the other standards
- Part 7: Rents
- Part 8: Non-profit applicants
- Part 9: Equalities

The supporting documents required will include the following:

- Business plan
- Financial modelling and viability
- Value for money
- Stress testing
- Asset register
- Code of governance compliant table
- Home standard
- Neighbourhood and community standard
- Tenancy standard
- Tenant involvement standard

4.0 ARGUMENTS/CONCLUSIONS

4.1 **Next Steps**

4.2 **Establishing a Housing Association**

4.2.1 In order to make an application to the Social Housing Regulator the Council must first establish a Company Limited by Guarantee (for the reasons set out in 3.6.1-3.6.8 above).

4.2.2 It is proposed that the Company will be called East Cambridgeshire Housing Association.

4.2.3 The governance arrangements for East Cambridgeshire Housing Association is in its infancy. Until such time that consent is achieved from the Social Housing Regulator, it is proposed that East Cambridgeshire Housing Association is registered with the Director Commercial as the sole Director. Trowers & Hamblins has advised that this course of action is appropriate given the uncertainty as to whether consent would be granted from the Social Housing Regulator to become a registered provider.

4.2.4 Once Stage One consent is achieved the Director Commercial will bring forward, to be approved by Council, formal proposals for the governance structure of East Cambridgeshire Housing Association.

4.2.5 Advice from Trowers & Hamblins has indicated that the board of directors should consist of five directors; three nominated by East Cambridgeshire District Council and two independent directors.

4.2.5 Standard Articles of Association will be used in the first instance and will be amended and resubmitted once Stage One consent is achieved and formal governance is approved by Council. Council will approve any amendments to the Articles of Association at the appropriate time.

4.2.6 A Shareholder Agreement will be drafted and agreed by Council once Stage One consent is achieved. This agreement will set out the relationship between the Council and East Cambridgeshire Housing Association.

4.2.7 A business plan will be produced and will be approved by Council once Stage One consent is achieved.

4.3 **Applying for Stage One consent**

4.3.1 There is a standard application, requiring information (as mentioned above) to be submitted as part of the application process. For a stage one application, most of the information sought is high level. Reference is made to financial modelling based on an actual site; this work is currently being undertaken by the consultants.

4.4 Members are recommended to establish a Company Limited by Guarantee; East Cambridgeshire Housing Association, for the purpose of delivering affordable housing. Once established, Members are recommended to approve East Cambridgeshire Housing Association making a Stage One application to the Social Housing Regulator for consent to become a not-for-profit registered provider.

4.5 **Applying for Stage Two consent**

4.5.1 Once Stage One consent is achieved the Director Commercial will seek consent from Council to proceed to Stage Two consent.

5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

5.1 Stage One- Preliminary application

The Director Commercial has commissioned Redloft to prepare and complete the application to the Social Housing Regulator. The cost of Stage One is £3,500 + VAT. This cost will be met from existing budgets.

External legal advice has been sought from Trowers & Hamblins. To date legal advice has totalled £2,500 + VAT. This cost has been met from existing budgets.

The Council will need to commission external legal advisers to incorporate East Cambridgeshire Housing Association. The cost of incorporation is £2,150 + VAT. This cost can be met from existing budgets.

5.2 Future costs

At this stage future costs are not known. However, there are known costs to proceed to Stage Two:

- Redloft Consultants - Stage Two detailed application- £6,500 + VAT

- Redloft Consultants- Developing policies and procedures- £8,000 + VAT

5.2 Equality Impact Assessment (INRA) not required.

6.0 APPENDICES

6.1 None

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
None	Room 107 The Grange, Ely	Emma Grima Director Commercial (01353) 616960 E-mail: emma.grima@eastcambs.gov.uk