

Overview and Scrutiny Committee

07 October 2019

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

Tunbridge Wells Property Holdings Ltd

Final Decision-Maker	Overview and Scrutiny Committee
Portfolio Holder(s)	David Scott, Property, Major Projects and Strategic Engagement
Lead Director	Lee Colyer, Director of Finance, Policy and Development
Head of Service	David Candlin, Head of Economic Development and Property
Lead Officer/Author	David Candlin, Head of Economic Development and Property
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to the final decision-maker:

That members of the Overview and Scrutiny Committee note the update regarding Tunbridge Wells Property Holdings Ltd.

- A Prosperous Borough
- A Green Borough
- A Confident Borough

Tunbridge Wells Property Holdings Ltd meets the objectives of the Council as stated in the Five Year Plan and strategically summarised in the Asset Management Plan approved by Full Council.

Timetable

Meeting	Date
Overview and Scrutiny Committee	7 October 2019

Tunbridge Wells Property Holdings Ltd

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Tunbridge Wells Borough Council established Tunbridge Wells Property Holdings Ltd to hold and manage residential properties. The report provides some background on the operation of the Company.
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2. INTRODUCTION AND BACKGROUND

- 2.1 Tunbridge Wells Property Holdings Ltd was formally established by the Council in 2015 for the purpose of providing privately let housing on assured short-hold tenancies at market rents. The formation of the company enabled existing residential properties to be held and new residential properties in the future, either built or acquired.
- 2.2 In 2018/19 the Council became self-sufficient with Revenue Support Grant funding being removed completely. It was highlighted in 2015 that one of the ways in which local authorities were mitigating the significant reductions in local authority funding was to make better use of property assets. This fitted in with the Government's continuing wish to make local authorities more self-sufficient. The use of a company in connection with local authority property assets is not unusual these days.
- 2.3 The Company established is wholly owned by the Council. By leasing the dwellings to the company, the company is able to provide assured shorthold tenancies, allowing flexibility for tenants and better management for the Council that will meet local demand for privately let housing. Most private lets attract considerable interest in the borough and the local market is fairly buoyant. These benefits apply to the Council's existing property portfolio and the Council will review which properties may be appropriate to lease to a company in the future.
- 2.4 By managing the properties through a separate legal entity, risks associated with management of the dwellings is minimised, especially where the property letting is outsourced and the use of a company will help to ensure transparency of the costs of operation.
- 2.5 The Cabinet report in April 2015 set out the benefits and the disbenefits of setting up the Company. These were highlighted in paragraphs 7 to 12 of the 2015 report. These are repeated below.

Benefits of forming a company

Should the Council wish to utilise Sections 24 – 26 of the Local Government Act 1988 to provide privately let housing on assured short-hold tenancies at market rents, the formation of a company which can hold existing and new residential properties will be required.

By leasing the dwellings to a company, the company is able to provide assured shorthold tenancies, allowing flexibility for tenants and better management for the Council that will meet local demand for privately let housing. Most private lets attract considerable interest in this area and the local market is fairly buoyant. These benefits will also apply to the Council's existing property portfolio and officers would be able to review which properties may be appropriate to lease to a company.

By managing the properties through a separate legal entity, risks associated with management of the dwellings is minimised, especially where the property letting is outsourced and the use of a company will help to ensure transparency of the costs of operation.

The company could apply for planning permission for developments of an appropriate.

Disadvantages of forming a company

Additional bureaucracy which is not considered to be significant.

Additional cost to form the company and put in place arrangements for accounting and administration, plus any corporation tax payable (if any) on profits in due course, and other costs.

3. RECORDED DECISIONS

3.1 The recorded decisions of Cabinet in April 2015 were:

- 1) That the establishment of a company limited by shares (based on the Articles at Appendix E) for the purpose of managing privately let housing with the Council holding 100% of the issued share capital company of £100 on the basis set out in the report be approved;
- 2) That the name of the new company - called Tunbridge Wells Property Holdings Limited be approved;
- 3) That the nomination of the Council's Head of Economic Development and two non-Executive members (to be agreed by the Portfolio Holder for Property and Major Projects in consultation with the Finance Director) as the Council's Directors on the company be approved;
- 4) That the nomination of the Council's Policy and Governance Manager to assume responsibility for providing adequate resource to maintain the company's registers and records and provide the services previously provided by company secretaries be approved;
- 5) That the Portfolio Holder for Property and Major Projects be authorised to act as the Council's shareholder representative;
- 6) That the provision of insurance and indemnity for member and officer Directors and Officers of the company be approved;
- 7) That a 22 year lease to the company of the 8 residential units listed in Appendix B to the report be granted for best consideration, and a separate 22 year lease, at the appropriate time to the Company of the 5 residential units to be constructed.
- 8) That the company applying for planning permission for the John Street and Kevin Lynes development, to ensure the permission, ensure for the benefit of subsequent occupiers;
- 9) That the Initial working capital funding to be provided to the company through a funding/ management agreement that requires the company to pay interest on any loans received from the Council at commercial rates be approved;
- 10) That regular monitoring reports be provided (as part of the Property Transactions report) (at least 6 monthly) on the progress in managing the residential and commercial units in line with budget and expectations etc; and
- 11) That the Finance Director be authorised to agree any funding or ancillary arrangements that may be required from time to time in connection with the establishment of the company and periodically review the achievement of the Council's objectives and financial returns, in consultation with the Cabinet Member for Finance and Governance, reporting by exception to Cabinet.

- 3.2 The reasons for the decision being set out as: the formation of a limited company for the purpose of managing privately let housing will provide the advantages set out in paragraphs 7, 8 & 9. It will also provide additional revenue and meet the objectives of the Council as stated in the Five Year Plan and strategically summarised in the Asset Management Plan approved by Full Council.
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4. OBJECTIVES

- 4.1 Based on the report and the decisions taken the Councils stated objectives for the Company are:
- To provide assured shorthold tenancies, allowing flexibility for tenants and better management for the Council that will meet local demand for privately let housing. These benefits will also apply to the Council's existing property portfolio and Officers would be able to review which properties may be appropriate to lease to a company.
 - To manage the properties through a separate legal entity, to minimise the risks associated with management of the dwellings, especially where the property letting is outsourced and the use of a company will help to ensure transparency of the costs of operation.
 - The company would also be able to apply for planning permission for developments of an appropriate nature addressing the issue of planning permissions that are personal to the Council.
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5. POWERS

- 5.1 The Council has utilised sections 24 - 26 of the Local Government Act 1988 which allow local authorities to set up or participate in companies or to assist persons to develop housing for private letting. This covers (a) making grants or loans; (b) guaranteeing the performance of any obligation owed; (c) indemnifying that person in respect of any liabilities, loss or damage; or (d) if that person is a body corporate, acquiring share or loan capital in that person.
- 5.2 The Company established can therefore provide privately let housing on assured short-hold tenancies at market rents.
- 5.3 The Company complies with the controls set out in the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995/849.
- 5.4 The Council's insurance and indemnity arrangements have been extended to cover any actions or inaction of member and officer Directors and any other Officers of the company (i.e. company secretarial and other officer support) pursuant to s39 Local Government (Miscellaneous Provisions) Act 1976/s265 Public Health Act 1875 and s101 Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) Order 2004/3082 regulations.
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6. DIRECTORS

- 6.1 The Company has three directors, David Candlin, Head of Economic Development and Property and Councillors Beverley Palmer and Godfrey Bland as non-executive directors. Appointment to a post in the company is from the Council and this is delegated to the Portfolio Holder for Property and Major Projects, this was initially set out in the Cabinet report of April 2015 with the two non-Executive members then appointed by with a publish Portfolio Holder report.

- 6.2 Councillor Bland was appointed on the 8 August 2019 replacing Councillor Tracy Moore who resigned on the 3 June 2019. Appointment was through a published Portfolio Holder report.
- 6.3 The day to day management and control is the responsibility of the Directors of the company. However, within TWPH Ltd the Directors' role is largely administrative and there is limited business to transact. It should be noted that the Director posts are unpaid.
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7. COUNCIL STRUCTURES

- 7.1 To reduce the scope for conflicts of interest, the Portfolio Holder for Property & Major Projects (or full Cabinet where appropriate under the Constitution) take decisions about the company on behalf of the Council, rather than act as Directors on the Board of the company.
- 7.2 The Company could utilise outside bodies to provide all its services. In terms of managing agents it is using an external company with Bracketts appointed through a company procurement. In addition the External Auditor is an appointment by the Company again through a procurement process. However other services are provided by the Council including budget management, property, maintenance and legal advice.
- 7.3 The Estates team provide as part of the 6 monthly Property Transactions report submitted to Cabinet details of any transactions related to the Company in the exempt appendices.
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8. PORTFOLIO

- 8.1 At the point when the Company was set up the Council had 8 dwellings let to private tenants using managing agents. These 8 dwellings were placed in the Company by the Council at its creation in 2015. The Council was also in the process of building a further 5 flats at John Street. These 5 dwellings were transferred to the Company in 2016 along with properties at Monson Road and Crescent Road. Appendix A attached to this report lists the property assets and the dates when they transferred to the Company.
- 8.2 Cabinet took further decisions to acquire and transfer properties in Grove Hill House to Tunbridge Wells Property Holdings on 1 February 2018 and 2 August 2018. The exempt reports considered by Cabinet setting out the investment opportunity are available to members.
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9. BUSINESS PLAN

- 9.1 The Company produces an annual business plan a copy of which is attached as Appendix B. While produced and signed off by the Company the structures of approval within the Council via the Property and Major Projects Portfolio Holder does need to be formalised.
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10. AVAILABLE OPTIONS

- 10.1 The update on the Tunbridge Wells Property Holdings Ltd is for Members to note.
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11. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 11.1 The views of the Committee will be reflected in the minutes of the meeting which will be published on the Council's website.

12. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	There are no legal implications resulting directly from the recommendations in the report	Patricia Narebor, Head of Mid-Kent Legal Partnership
Finance and other resources	With the loss of all government grants, future funding will be dependent on this Council's ability to deliver growth, new income streams and to retain a greater share of business rate growth proceeds.	Jane Fineman, Head of Finance and Procurement
Staffing establishment	There is no impact on staffing levels as a result of the recommendations in the report.	Nicky Carter, Head of Human Resources and Customer Services
Equalities		Report author

13. REPORT APPENDICES

The following documents are to be published with and form part of the report:

Appendix A – Asset List

Appendix B – Business Plan