



# **Overview Scrutiny Committee**

## **Review of proposed council-endorsed trading companies**

**Report – January 2019**

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## Foreword

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In recent years, there has been an increase in the number of local authorities establishing trading companies (or similar) to deliver services to the public. The Overview Scrutiny Committee felt it would be beneficial to explore this option in more detail and specifically to look at the proposal for a council-endorsed trading company at Gravesham Borough Council due to:

- progression of the Heritage Quarter development and the potential need for the creation of a Council-owned and endorsed company to support that development.
- a number of the balancing the budget initiatives focusing on trading activities for which a company would be required by law.

This topic review has identified a number of potential improvements/recommendations that could be taken into account when the council is considering establishing a Local Authority Trading Company.

We would like to take this opportunity to thank the officers involved in the review for their time and assistance in providing comprehensive information which has enabled Members to discuss, debate and identify potential improvements for consideration.

Cllr John Burden  
Chair of the Sub-group

# Introduction and Summary of Recommendations

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- 1.1 In June 2018, the Overview Scrutiny Committee selected the subject of council-endorsed trading companies for a topic review. The terms of reference for the review focused on objectives to:
- **Workstream One** - Undertake a comparison of company structures that are already in place across other Local Authorities in order to see how the different approaches can work in practice.
  - **Workstream Two** - Review the legal frameworks available for the development of council-owned companies (Local Authority Trading Company – LATC) including:
    - Roles and responsibilities of officers and Members potentially associated with the company (structure) and potential training requirements for officer and Members.
    - Legal requirements in order to formally establish the company including formal company registration processes including preparation of a business case.
    - Risks and opportunities associated with the respective structures for company/commercial proposals.
  - **Workstream Three** - Consider the potential reporting lines for the proposed LATC in terms of reporting back to the council’s Management Team and Full Council.
- 1.2 Throughout the review, Members of the sub-group have been provided with a significant amount of information to review and analyse, which has prompted in-depth discussions about the potential for a trading company at GBC.

## Summary of Recommendations

- 1.3 In summary, the Scrutiny Topic review of proposed council-endorsed trading companies has identified the following recommendations for Cabinet consideration:

	RECOMMENDATION	Report page
1.	<p>The creation of a local authority trading company is in no way intended to result in the transference of existing council functions or the erosion of staff terms and conditions. To carry out certain functions or services beyond the normal remit of the council however, there is a need for a company structure.</p> <p>Accordingly, there is a need to ensure that advice and guidance is sought when establishing a trading company and subsidiaries to ensure that it is appropriate for the function/service being delivered.</p>	Page 6

	<b>RECOMMENDATION</b>	<b>Report page</b>
<b>2.</b>	Whilst the responsibility to set-up a trading company at the council may be for Cabinet or Full Council (depending on the type of service), Cabinet or Full Council may wish to delegate the discharging of shareholder responsibilities of the company (or some of them) to a sub-group/committee or officer.	Page 7
<b>3.</b>	An Executive Member should be made responsible for oversight of shareholder responsibilities for the commercial entities within the council but should have no other Executive responsibilities i.e. for other services in the council.	Page 8-9
<b>4.</b>	There must be a clear segregation of duties to ensure that, for both officers and Members, it gives no rise to conflicts of interest.	Page 11
<b>5.</b>	Both Members and officers to receive full training to support their respective roles and responsibilities within any new trading company.	Page 12
<b>6.</b>	Where training is delivered, in so far as possible, this is attended by all Members who act as trustees or Directors for other organisations beyond the LATCO that may be formed by Gravesham Borough Council.	Page 12

In making their recommendations, the sub-group were clear that these recommendations should be considered when establishing any trading company within the Council, as consideration would need to be given to the specific nature of the function and specific requirements of the company in order to deliver the services to the customer.

- 1.4 Further information to support these recommendations is contained within the body of the report.

## 2. Review Findings

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Whilst there were three key workstreams identified in the terms of reference for the review the research and discussions that have taken place have demonstrated that all of the workstream are inter-linked and as such, the report sets out the general findings of the review in a collaborative manner, rather than specifically across the three individual workstreams.

### **Background**

- 2.1 Given the financial pressures that have been placed on councils in recent years, there has been a drive for local authorities to consider the way in which they operate and provide their services. This has resulted in councils exploring other options for income generation such as purchasing of commercial properties, but most noticeably there has been an increase in the number of council's looking to form trading entities to deliver council services.
- 2.2 There are two key pieces of legislation which allow a local authority to trade in the services it provides:
- The Local Government Act 2003 which allows local authorities to trade in the ordinary day to day functions of the council.
  - The Localism Act 2011 which allows local authorities to trade in any area (unless expressly prohibited or limited by statute).

Should the council wish to trade in council services such as private repairs and maintenance, house clearance and vehicle repairs then a local authority trading company would have to be set up to enable this. There is no intention to transfer existing functions of the Council into a trading company (such as back-office services).

- 2.3 In addition to the legislation setting out the basis for establishing a trading company, consideration also need to be given to whom the company will trade with and to what extent, as this will impact on procurement regulations. A local authority would be required to go through normal procurement requirements in order to award a contract to its wholly owned company (creating a risk that the company may not provide the winning bid) unless:
- the company is heavily controlled by its local authority owner; and
  - more than 80% of revenues that are generated over a three-year period have been with the local authority itself i.e. less than 20% of services can be provided to other organisations before the Procurement rules are activated.

This is known as the 'Teckal' exemption.

- 2.4 A number of local authorities have already established trading companies for various elements of their operations. The services provided range from the provision of housing, repairs and maintenance, social services, property services and education services.

- 2.5 Appendix one to the report provides a summary of the research undertaken into the types of companies other local authorities have established.
- 2.6 What is clear from this research is that there is no 'one size fits all' for company structures and there is a need to ensure that company structures meet the need of the council itself and the functions/services that are being delivered. Even with an over-arching parent company, there is the potential for any subsidiary companies to be structured differently, in order to ensure that the delivery of functions/services is done so in the best possible way.

#### **RECOMMENDATION 1**

**The creation of a local authority trading company is in no way intended to result in the transference of existing council functions or the erosion of staff terms and conditions. To carry out certain functions or services beyond the normal remit of the council however, there is a need for a company structure.**

**Accordingly, there is a need to ensure that advice and guidance is sought when establishing a trading company and subsidiaries to ensure that it is appropriate for the function/service being delivered.**

Each potential company entity must be established taking account of the specific needs for the company, based upon the function/service that is being considered. As such, it is critical that advice and guidance from both a legal and financial perspective is sought each time a new company entity is considered.

#### **Governance arrangements**

- 2.7 The decision to set up the company, and subsequent shareholder decisions, would be for either Cabinet or full Council, depending on whether the services to be provided by the company are executive or non-executive functions. As such, any company entity would need to be formally established in accordance with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and the Council's Constitution. Although most decisions depend on the type of service, some decisions outside of service delivery are reserved to full Council, e.g. appointing members of officers to the company would be a decision for full Council. Full Council would be responsible for decisions that would not be wholly in accordance with the Budget, or for key decisions (e.g. expenditure over £100,000 for a loan to the company). However, the way in which the company reporting lines could be established, is open to consideration.

- 2.8 In order for the company to operate effectively, the Council may wish to set up a Member sub-group (with a purely advisory role) or a committee/sub-committee with delegated decision making powers. This approach would enable all new companies to be established formally through Full Council or Cabinet (as appropriate) but enable the Company Board to report to the sub-group/committee of the Council or Cabinet, in order to ensure that there is an effective and timely reporting mechanism. Meetings of the Full Council are sporadic throughout the financial year and as such, requiring formal reporting through this process could result in delays to the process, which may impact on the general management of the company; the approach suggested would enable the Council to ensure its responsibilities as shareholder are managed effectively. The Council may also wish to consider delegating responsibility for appointing members or officers to the company to an officer for expediency.
- 2.9 Research obtained from other local authorities who operate trading companies supports this approach; appendix one provides greater detail on the way in which companies have been established in other local authorities.

#### **RECOMMENDATION 2**

**Whilst the responsibility to set-up a trading company at the council may be for Cabinet or Full Council (depending on the type of service), Cabinet or Full Council may wish to delegate the discharging of shareholder responsibilities of the company (or some of them) to a sub-group/committee or officer.**

Meetings of Full Council take place five times per year and as such, requiring general management decisions to be made by Full Council could present a barrier to the effective management of the company. It is suggested that any Full Council decisions that are required relating to the general management of the company could be delegated to a Members group or Committee or an officer.

#### **Roles and responsibilities of officers and Members**

- 2.10 It is clear that both officers and Members will have a role to play in both the establishment of a company but also the management of the company operations. This will be a new challenge for all involved and there is a need to be clear about the roles and responsibilities within a company entity.
- 2.11 Appendix two to this report provides further details about the Executive vs. Non-executive Director roles within a company.
- 2.12 It is clear that there is the potential for conflicts of interest to arise should Members have a dual role i.e. on the Council and on the company. In order to minimise this role, the sub-group have suggested that it would be beneficial to have an Executive Member with responsibilities for 'commercialisation' but no other formal responsibilities i.e. no specific service functions falling within their remit.

### RECOMMENDATION 3

**An Executive Member should be made responsible for oversight of shareholder responsibilities for the commercial entities within the council but should have no other Executive responsibilities i.e. for other services in the council.**

This approach would enable an Executive Member to have responsibility for specifically overseeing the shareholder responsibilities of the Council, in respect of any commercial entities, without having any potential conflict with ongoing service delivery within the council.

- 2.13 In terms of officer responsibilities within the company, local authorities have taken various approaches in terms of who should be involved in the Board of the company (as can be seen by the detailed information in appendix one).
- 2.14 Following discussion of the sub-group, it was felt that officers on the Board should be those who only have a sole interest. As such, this would mean that statutory officers of the council (Section 151 Officer and Monitoring Officer) could not be members on the Board as they have a specific interest to the council which could present a conflict of interest. However, the Deputy Officer roles could be Board Members.
- 2.15 Members and officers who sit as Directors of companies need to be aware of their statutory responsibilities in that role. Training will be provided but in summary Directors owe the following duties (s171-177, Companies Act 2006):
- a fiduciary duty to the company to act honestly and in good faith and in the best interests of the company as a whole. Directors must ensure they act within the company's constitution.
  - a general duty of care, skill and diligence to the company. A Director is not expected to be an expert, (unless he or she holds themselves out to be one) but is expected to use due diligence and to obtain advice if necessary.
  - to exercise independent judgement. If you are in a position where the interest of the Council are relevant you must disclose this. You cannot simply vote in accordance with the Council mandate.
  - To avoid conflicts between the interests of the Council and the company.
  - Not to make a private profit from their position. You must therefore disclose any interests you or your family have in relation to the company's contracts.
  - To ensure the company complies with other legislation such as health and safety legislation.
  - A range of accounting and financial responsibilities, including the preparation of accounts for each financial year.

2.16 Individual Directors can be personally liable in these circumstances:

- If they knowingly cause the company to act beyond the scope of its Memorandum of Association.
- Liable for breach of trust if they misapply the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a Co-Director of which they are aware.
- If they fail to act in accordance with the best interests of the company or use their powers improperly or make a personal profit from their position as Director, then they may be personally liable for loss to the company and may be required to give to the company the personal profit made.
- If the level of skill and care shown by a Director falls below that which could reasonably be expected and the company suffers loss, the director will be liable for the loss incurred.
- If a Director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, the Court may require the Director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the Director took all reasonable steps to minimise the loss to the creditors.
- Directors will also be liable if to their knowledge the company carried on business with intent to defraud creditors or any other person, or for any other fraudulent purpose.

2.17 Directors also need to be aware that:

- As duties are owed to the company the company must bring any action against the Director. Typical remedies include damages and setting aside the offending transaction. Very serious breaches could lead to disqualification of a Director (Company Directors Disqualification Act 1986).
- A director who does not scrutinise and understand the company's accounts risks incurring personal liability to the company's creditors for wrongful trading (s214 or S246ZB of the Insolvency Act 1986) if they continue to trade when they knew or ought to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation or insolvent administration. Fraudulent trading is a criminal offence.
- Members and officers as directors could be personally liable to the bank for debts of the company.
- Officers and members acting within their own local authority within their powers and acting in good faith have statutory immunity against personal liability (s265 Public Health Act 1875). This does not apply where they act on a local authority owned company.

- The Council may choose to indemnify all Councillors and Officers appointed as Directors for any loss or damages arising from any act or omission as a Director (s112 Local Government Act 1972). It does not cover defamation, a constitution offence or the result of fraud. There is provision for re-payment of sums expended by the council or the insurer where a member has been found to be in breach of the Member's Code of Conduct or a member or officer has been convicted of a criminal offence (Local Authorities (Indemnities for Members and Officers) Order 2004).
- Directors should be aware of whether the body owes any obligations to regulators or other outside bodies e.g. Homes and Communities Agency, Information Commissioner, Register of Companies, or Health and Safety Executive.
- Members also need to be mindful of the possibility of the issues of a prejudicial interest and a bias or closed mind arising when considering a council matter (s25 Localism Act 2011).

If as a Director you act properly, use adequate skill and act in the best interests of the company you are unlikely to attract personal liability, given companies' status as separate legal bodies.

#### **RECOMMENDATION 4**

**There must be a clear segregation of duties to ensure that, for both officers and Members, it gives no rise to conflicts of interest.**

When establishing a company Board, there is a need to be clear on the roles and responsibilities of any officer and/or Member on the Board to ensure that segregation of their company duties and councillor duties is clear. Legal advice should be sought on this with the potential for company 'job descriptions' to be established so that these roles and responsibilities are clearly defined from the outset.

- 2.18 As previously detailed, this approach presents a new and significant challenge to both officers and Members alike. It is critical that all involved are given the support required to enable them to undertake their new roles effectively.

- 2.19 In addition, there is a need to ensure that all Members have an understanding of the company approach and what this means to them and their constituents. A more general overview of this approach is something that all Members would benefit from, particularly with the borough elections in May 2019 and the potential for a new cohort of Members joining the council.

#### **RECOMMENDATION 5**

**Both Members and officers to receive full training to support their respective roles and responsibilities within any new trading company.**

In order to ensure that both Members and officers have the skills and knowledge required to fulfil their roles within any established trading company, they must be provided with adequate training. Training is provided by a number of organisations; specifically CIPFA offer a range of training sessions relating to 'Commercial Skills' and can deliver bespoke sessions to specifically meet the needs of the council if required.

In addition, regular briefings/training sessions should be provided to all Members. A session is scheduled for 04 December 2019 for all Members to attend, but this is something that should be built into the ongoing training plan for Members moving forward.

#### **RECOMMENDATION 6**

**Where training is delivered, in so far as possible, this is attended by all Members who act as trustees or Directors for other organisations beyond the LATCO that may be formed by Gravesham Borough Council.**

It is recognised that the training could benefit other Members who may not have a direct role in the council LATCO but act as trustees of Directors in other organisations. As such, the training provided should be offered to all Members of the council.

## Appendices

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## Comparison of local authority companies

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### Oxford City Direct Services

Local Authority Trading Company (LATCo) established in 2017 and named *Oxford Direct Services*. The company structure had two elements; a 'Teckal' element to primarily service the council and the other element to trade with third party entities. Council employees who were already delivering the services to the council, were TUPE transferred to the Teckal company. Therefore, two companies were established and registered with Companies House:

- Oxford Direct Services Limited (Teckal Arm)
- Oxford Direct Services Trading Limited (Trading Arm)

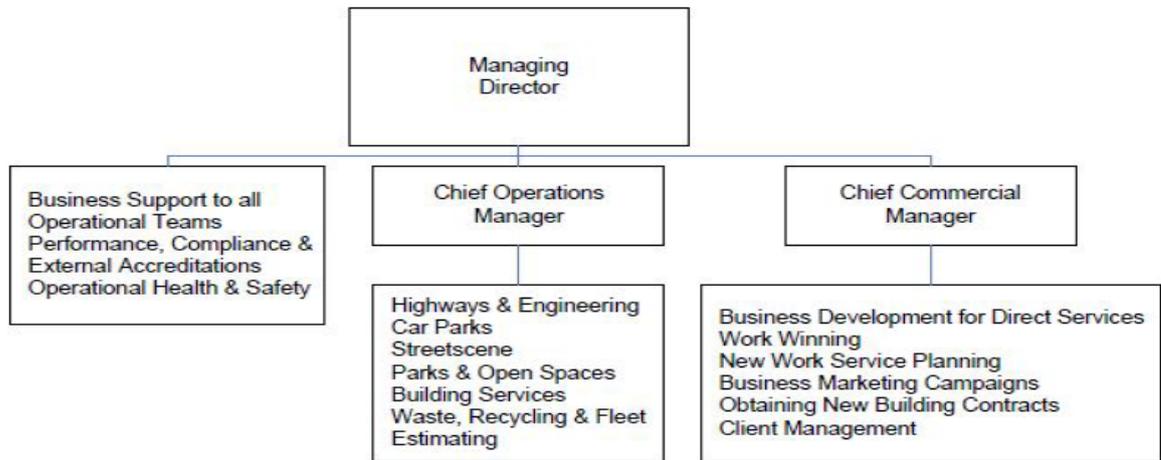
The companies are wholly owned by the City Council who is the single shareholder and is represented by the City Executive Board. Each company has a specific board set up which initially, met monthly to get the companies up and running and, in due course, the delivery of the business plans. The intention is for at least two Shareholder meetings to be held each year with the City Executive Board representing the Shareholder Group. The Scrutiny Committee is able to scrutinise the decisions taken by the Shareholder Group.

The companies' Board of Directors takes decisions on matters not reserved to the Shareholder and delegates day-to-day running of the company to the Managing Director. An appropriate scheme of delegation to the Managing Director is in place.

The Board composition is for a minimum of three and a maximum of six Directors for both companies. The Board is made up of the following officers:

- |                  |  |                   |
|------------------|--|-------------------|
| • Tim Sadler     | Executive Director (Oxford City Council) | Director (Chair)  |
| • Jackie Yates   | Executive Director (Oxford City Council) | Director          |
| • Graham Bourton | Direct Service (Oxford City Council)     | Director/MD       |
| • VACANT         | External post                            | Director          |
| • Lindsay Cane   | Law & Governance (Oxford City Council)   | Company Secretary |

A company structure has been put in place (detailed overleaf) which undertakes both the Teckal and Trading arm company activities:



## East Cambridgeshire District Council

In January 2016, the council established a Local Authority Trading company (LATIC) as a wholly owned trading company where the council retains full control, manages the risks and receives the benefits in full. The council is the sole shareholder.

The LATIC has in place individual service level agreements with council support services which includes measurable performance indicators, break clauses and remedies for non-performance. These are reviewed on an annual basis. IT assets are eased from the council as part of the service level agreement with IT Services.

The LATIC has been established as a company limited by shares with a Teckal exemption. The Board of Directors comprises (the quorum of which is three):

- An independent chairman;
- 2 elected members of the council; the Leader of the Council and the Deputy Leader;
- 2 senior officers of the council; the Chief Executive and the Director (Commercial & Corporate Services).

Board meetings are held at least quarterly on such dates that the Board agrees; failure to reach an agreement will result in the decision being made by the Chairman.

The Managing Director of the LATIC is the Chief executive of the council and acts as the conduit between the company and the council and is responsible for overseeing compliance with the Shareholder Agreement. The Company Secretary is the Chief Financial Officer of the council.

The LATIC is split into company divisions:

- Commercial Services Division managed by the council's Director (Commercial & Corporate Services)

- Property & CLT Development managed by the Head of Property Services and CLT Development (new post which was appointed to by the Board)

The Shareholder Committee role is undertaken by the council's Asset Development Committee; elected Member appointed to the LATC cannot be members or substitutes of the Shareholder Committee. The role of the Shareholder Committee is not operational; it has no power to make decisions on behalf of the council or the LATC. The Shareholder Committee meets at least quarterly and is able to call extraordinary meetings to accommodate additional business as required.

## Hastings Borough Council

Hastings Borough Council established a wholly owned private housing company, limited by shares, in 2017. At this time, delegated authority was given to the Chief Executive, in consultation with other officers, to establish other trading arms as required. The company is entitled 'The Hastings Housing Company Ltd.' (HHC) and is solely owned by the council.

The purpose of the Housing Company was to, initially acquire and provide housing for both sub-market and market rent in the Borough but with the potential to undertake development activities (and provide housing for sale or rent) either inside or outside the Borough.

Approval for the company, business plan and governance arrangements was subject to Full Council approval.

The intention when establishing the Housing Company was for it to be financed by the Council through loans provided the Council; this would be through the council using its own resources, or by borrowing from the Public Works Loan Board. The council established the company to ensure that it would be the sole beneficiary of any future dividends, capital growth in the value of the property portfolio and would realise a premium for lending monies to the Housing Company.

As sole shareholder, the Council appoints the directors to the Housing Company and approves the business plan and monitors and holds the Housing Company to account.

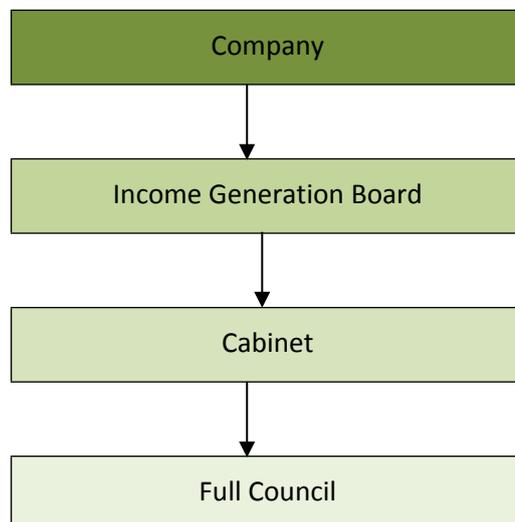
The initial intention for the company was to establish a Board which comprised solely of Senior Council officers i.e. no member involvement. The reason for this initial proposal was to avoid any potential conflict of interest for Members between their role as an elected Member of the Council and the day to day operational management of the Housing Company. Members would still exercise control of the Housing Company at a strategic level with Officers tasked with managing the Housing Company within a framework and through delegated authority provided by Members and documented in the Shareholder Agreement.

However, in the final report in September 2017, the Board structure was updated as follows:

- Four directors who take decisions collectively.
- The quorum for the transaction of the business will be three directors.
- The four directors will be the chair of the Charity Committee, the Assistant Director of Housing & Built Environment, Income Generation Manager and the Chief Accountant.

- The directors will appoint a chair for company meetings.
- The council will retain the power to appoint and remove Directors.
- For the avoidance of doubt, directors of the company will not receive a salary under the approved business plan.

The reporting structure for the company is as follows:



The detailed Company Business Plan and governance arrangements developed for the wholly-owned Local Authority Housing Company are subject to final approval by Full Council. Funding for the company would follow the production of a viable Business Plan.

## Ashford Borough Council

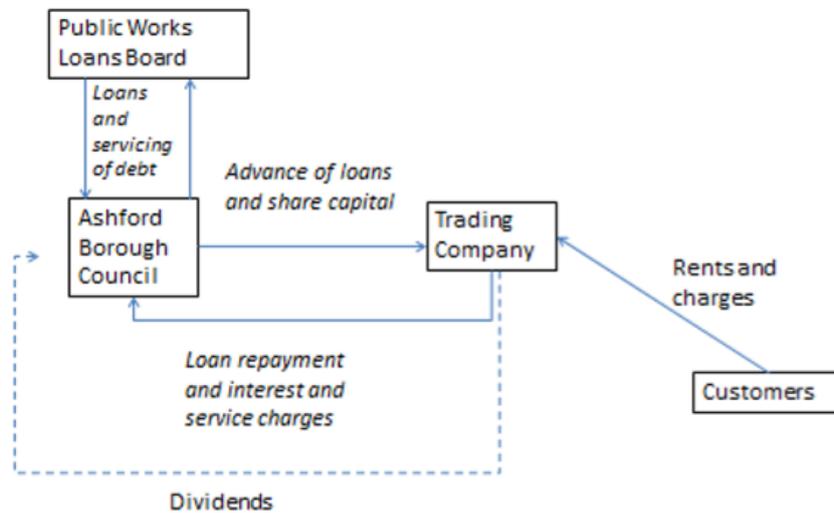
Ashford Borough Council established two council-run Private Sector Housing Company (which is split into two entities - *A Better Choice for Property Limited* and *A Better Choice for Building Consultancy Limited*) which operates outside of the Housing Revenue Account (HRA); they are wholly-owned subsidiaries of the council. The Council is 100% in control of Member/Shareholder decisions, including the appointment and removal of Directors and winding up of the companies. Service Level Agreements are in place with the Council regarding the use of Council staff and resources.

The companies were established in April 2014 and currently comprises of 50 homes which are rented on the private rental market at true market rents.

The company currently only employs one person who is the surveyor which has been appointed on commercial terms and they are not entitled to be part of the Local Government Pension Scheme (LGPS) but are entitled to a private pension. The company has its own set of accounts and its own bank account and produced group accounts at year-end. The commercial development aspect is retained within the General Fund in order to benefit from VAT. The council has a contract with the Housing Company to provide services such as maintenance.

The cash flows for the company have been modelled as follows:

## Model of Cash Flows

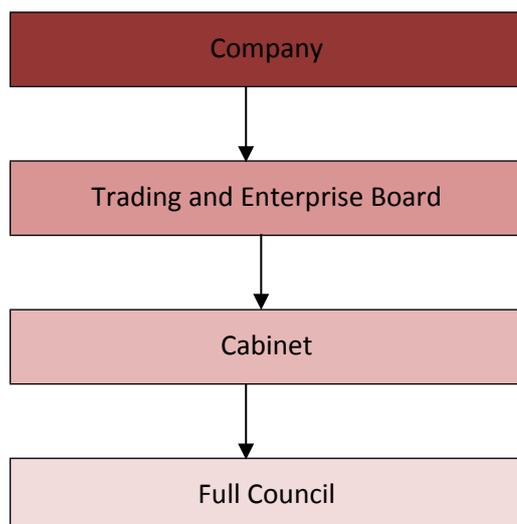


The council draw down a loan from the PWLB which it then loans to the Trading company in order to build/establish new private sector rented housing. The trading company is then responsible for providing this housing to the customers/tenants and recovering rents and service charges. The loan is repaid to the council with commercial interest and service charges PLUS additional dividends paid to the council

The Board for the Housing Company is currently in the process of being reviewed but the *likely* structure is as follows:

- Chief Executive
- Deputy S151 Officer
- Deputy Leader of the Council
- Surveyor employed by the Housing Company (Non-executive)
- Private individual (Non-executive)
- Directors of the company and any officers undertaking activities on the behalf of the company do not receive any additional payment for this role/work.

The reporting structure for the company is as follows:



The Trading and Enterprise Board is a sub-group of the Cabinet and consists of Members of the Cabinet who do not have a direct interest in the Housing Company itself. The Board is chaired by the Vice-chair of the cabinet and consist of five Cabinet Members in total. The first meeting of the Board took place in November 2015. The Board is responsible for the appointment of the external auditors for the company and can make recommendations for Cabinet approval, such as the agreement of the Business Plan and the agreement to draw down funds from the loan pool (as per the Shareholder’s Agreement’).

## Wokingham Borough Council

Wokingham Borough Council own seven companies:

- Optalis - a group of 3 companies providing social care solutions (Optalis Holdings Limited, Optalis Limited and Optalis Wokingham Limited)
- Wokingham Enterprises Ltd - managing the holdings for the redevelopment of Wokingham town centre
- Wokingham Housing - providing social housing through Loddon Homes Ltd and Wokingham Housing Limited
- Berry Brook Homes Limited - private local housing company providing affordable, subsidised, housing to rent in Wokingham Borough
- WBC (Holdings) Limited (providing Governance over the Local Authority Trading Companies on behalf of the Shareholder.)

## WOKINGHAM HOUSING LIMITED

Wokingham Housing Limited was established in 2011 and is a wholly owned subsidiary of Wokingham Borough Council, working to create good quality affordable and private market housing. Once WHL completes a social or affordable housing development it is transferred to the subsidiary company, Loddon Homes, who acts as caretaker and landlord.

The WHL Board works independently to formulate the company's strategic direction and core business focus. Board members are elected based on their skill set and relevant experience in property and have a central role in both ensuring the business plan is delivered and scrutinising the work of staff. The Board structure is as follows:

- Chair/Non-Executive Director Member of the Council
- One Non-executive Director Independent
- Secretary and Finance Director Independent

The Board is supported by a team of people to deliver the objectives set out within the Business Plan:

- Managing Director Independent
- Operations Director Independent
- Development Manager Independent
- Business Support Manager Independent

## LODDON HOMES LIMITED (

Loddon Homes Limited forms part of a group of companies that are wholly owned by Wokingham Borough Council (WBC), to provide first class services as well as generating a financial return that can be invested back into communities and services. Loddon Homes will purchase high quality housing from its parent company Wokingham Housing Limited.

Loddon Homes Limited (LHL) is overseen by an independent Board of directors. The Board's role is to provide strategic direction for Loddon Homes, as well as ensuring that objectives are being achieved, customer satisfaction targets are met and that as a company LHL is performing well against its key performance indicators. Appointment to the Board is based on an individual's knowledge and skill set in the housing sector. The Board Structure is as follows:

- Chairman/Non-Executive Director Member of the Council
- Vice-chairman/Non-Executive Director Independent
- Company Secretary Independent
- Managing Director Independent

Four additional Non-Executive Directors Two Members of the council, a tenant (actively involved in tenant associations activities) and an independent).

Loddon Homes is supported by the team at Wokingham Housing Limited.

## BERRY BROOKS HOMES

Berry Brook Homes is owned by Wokingham Borough Council. The council is investing in a new, commercial approach to housing for the provision of as many new homes as possible. It is achieving this by using its own land and money, along with commuted sums from developers (payments made in lieu for some of the affordable housing that would otherwise be required on new private housing sites). The company was established in 2014. The majority of Berry Brook properties are purchased from its sister company [Wokingham Housing Limited \(WHL\)](#).

Berry Brook is overseen by an independent Board of Directors. The Board's role is to provide strategic direction for the organisation, as well as ensuring that objectives are being achieved, customer satisfaction targets are met and that as a company we are performing well against key performance indicators. Appointment to the Board is based on an individual's knowledge and skill set in the housing sector. The Board Structure is as follows:

- |   |                       |
|---|-----------------------|
| • Chairman/Non-Executive Director       | Member of the Council |
| • Vice-chairman/Non-Executive Director  | Independent           |
| • Company Secretary                     | Independent           |
| • Managing Director                     | Independent           |
| • one additional Non-Executive Director | Independent           |

## Hertfordshire County Council

Hertfordshire County Council have set up a property company – Herts Living Limited – with the aim of using the council's own land and assets to unlock development in the county. Their aim is to deliver 6,000 homes over a period of 15 years with a gross development value of £2bn. The council has entered into a joint venture with Morgan Sindall Investments, with the first phase set to deliver 500 properties across the county.

This approach combines the best of the private and public sectors with the local authority achieving greater profits than selling its land for market values and accelerating the pace of property delivery through a private sector partner.

The selection of the Joint Venture Partner was through an OJEU procurement process. The corporate structure through which to create the Joint Venture partnership was agreed following legal advice, to be a 50/50 Limited Liability Partnership ("LLP"). The 50/50 corporate structure delivers a 50/50 split of development profit to the Morgan Sindell Investments subsidiary and Herts Living Limited.

Profits made within the JV on the development and sale of assets will be passed in equal shares to Herts Living Limited and Morgan Sindell (as wholly owned subsidiary of the Preferred Bidder), where they will be subject to corporation tax. The net profit can then pass to County Council as a dividend.

As set out in the Articles of Associations:

- **Executive Director:** means a director appointed in accordance with these Articles who is the managing director of the Company (and who is not, for the avoidance of doubt, an Officer Director).
- **Officer Director:** means a director who is an officer of the Council.
- The number of directors shall not be less than four but shall not exceed six.
- The Council may at any time and from time to time appoint any person (including, without limitation, an Executive Director) to be a director or remove any director from office.
- Subject to the approval of the Council, the board of directors may appoint a person (including, without limitation, an Executive Director) who is willing to act as a director either to fill a vacancy or as an additional director including the appointment of a director for a fixed term.
- The Company may pay reasonable expenses which the directors properly and reasonably incur in connection with their attendance at meetings. Directors' expenses shall be paid in accordance with any rules or procedures authorised by the Council.
- The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit.

Herts Living is run by [Steve Faber](#) who is a Chartered Surveyor with 23 years' experience of UK Property. Board/membership is as follows:

- Steve Faber            Director (independent)
- Simon Aries            Director (council employee - Assistant Director – Transport, Waste and Environmental Health Management)
- Michael Evans        Director (council employee - Head of Estates and Asset Management)
- John Oakley            Director (council employee – Head of Commercial and Property Law)

## Portsmouth City Council

In August 2017, the council's Cabinet approved plans to set-up a joint venture energy company with the aim of combatting rising real terms prices from the Big Six Energy suppliers to enable more affordable energy bills for city residents and provide an income stream to the council (called Victory Energy).

The intention is for the authority to spend £3.8m on establishing the company using funds from the medium-term resource strategy reserve, avoiding the need for Full Council authority. The intention is for the investment to be paid back within three years and seven month. It is not the first authority to pursue the idea with both councils in Bristol and Nottingham having launched their own supply companies.

The Leader of the Council at the time (Conservative) would act as chair of a governance board for the company prior to its establishment.

**However** a more recent article in July 2018, has suggested that the company could be abolished (at a cost of £1m to the council), with PricewaterhouseCoopers being tasked with reviewing the profitability of the company by the now Liberal Democrat leader of the council. He has stated that:

*The business plan at the moment says that we would be profitable after three years. My concerns are whether it is being over optimistic in terms of the number of households that will sign up.*

*To break even the energy company has to sign up 44,000 new households each year and there are only 85,000 in Portsmouth. And most households have never changed their energy provider.*

*And it is everyone's money that is at risk, it will be paid for out of council tax. I want to be assured that this money is safe. Southampton have done it in a different way. They intend to use their energy company to lower prices for residents. But here the plan was to generate income for Portsmouth City Council.*

Once PwC's report is delivered to the council the findings will be taken to a full council meeting where councillors will decide whether to scrap or save Victory.

## London Borough of Brent

Previously known as Brent Housing Partnership, until 11 October 2017. First Wave Housing Limited is wholly owned by Brent Council. In addition, there is a secondary company - I4B HOLDINGS LIMITED – with the same company structure.

Company Structure (as per information held on Companies House):

1 x Company Secretary	Peter Gadson (Director of Policy, Partnerships and Performance)
5 x Directors	George Crane (Councillor - Lead Member for Environment)
	Gail Tolley (Officer - Strategic Director, Children and Families)
	Peter Gadson (Director of Policy, Partnerships and Performance)
	Martin Smith (Officer – Programme Manager)
	Akintoye Durowoje (Chartered Surveyor – does not appear to be linked directly to the council)

The company was incorporated in September 2002 with the purpose of providing an excellent housing management service.

## Guildford Borough Council

The council has set up a wholly-owned local authority housing company– North Downs Housing Limited – as a separate limited company, owned by Guildford Borough Council. A parent company called ‘Guildford Holdings Ltd was also established.

The company was established in February 2016 to enable the council to provide homes across a range of tenures other than social rent and aims to “tackle the shortage of homes in Guildford and in particular, the shortage of affordable homes and a mixture of other tenures that are ‘affordable to everyone’”.

The WOLAHCo was initially set up to purchase properties from the open market to provide to tenants for private rent.

The structure of the company is a company limited by ordinary shares in which the Council is the sole shareholder. To avoid the provision of illegal state aid, the Council capitalises the company through a mixture of share equity and debt financing of a ratio typically seen in private companies and housing associations. The debt to equity ratio was initially set at 25% equity and 75% debt.

Using the equity to debt ratio, the Council made an initial equity investment in the company of £0.6 million and provided an initial start-up loan to the company of £1.8 million. The drawdown of the equity and loan by the Company from the Council was agreed to be undertaken in stages as properties are acquired.

The initial start-up loan was provided to the WOLAHCo at a variable interest rate but with an initial rate of 6.5%, the loan was secured against the assets of the WOLAHCo. The interest on loans to the WOLAHCo was to be recognised in the Council’s General Fund revenue account and targeted to provide income of £2.7 million over the 25-year life of the business plan, equating to approximately £111,000 per annum on a straight-line basis.

The management of the properties within the WOLAHCo is undertaken through a commercial contract arrangement with the Council’s housing and finance departments.

A summary of the high level business plan of the company is set out below:-

Summary Financial Position	Years 0-5	Years 6-10	Years 11 - 15	Years 16-20	Years 21 - 25	Total
WOLAHCo Total expenditure / (income ) after tax	324,935	253,473	143,177	(15,770)	(239,571)	466,245
Balance on P&L reserve at end of period	324,935	578,409	721,585	705,815	466,245	466,245
Cash balance at end of period	581	2,701	10,795	54,088	151,635	151,635
Net Assets at end of period	968,233	1,526,614	2,367,874	3,592,355	5,332,084	5,332,084
GBC Interest Income	(201,791)	(353,125)	(523,527)	(728,525)	(979,321)	(2,786,290)
GBC Capital Receipts	(178,131)	(244,055)	(334,377)	(458,125)	(627,671)	(1,842,360)

In July 2017, the council approved a plan to provide the housing company with £22 million to implement its latest business plan.

As the Council is the sole shareholder of the company, it appointed the first company directors. It was agreed that the Executive delegated the appointment of directors to the company to the Head of Paid Service, in consultation with the Monitoring Officer and the Leader of the Council. Following experience from other local authorities who have set up companies, they agreed that the company has three directors of which a minimum of two officers or elected members were nominated as directors of the company.

To ensure that the directors understand their statutory duties under the Companies Act 2006 and that there are no real or perceived conflicts of interest relating to the dual role of being an officer/elected member of the Council and a director of the company, the Council ensured that relevant training was provided to the directors and any other officers or elected members that were closely involved in the WOLAHC.

Company structure is as follows:

3 x Directors:	Sarah Kreeedy	(Councillor - Lead Councillor for Housing and Social Welfare)
	Gordon Jackson	(Councillor – Lead Councillor for Innovation and Transformation)
	Susan Reekie	(Officer (although now retired?) – Principal Accountant (Financial Management & Projects))

## Reigate and Banstead Borough Council

In September 2016, the council agreed to set up a commercial property and investment company to boost the local economy and to help plug the future funding gap caused by the termination of government grant. The Council's Executive agreed to set up the company at their meeting on Thursday 15 September 2016.

The company is a commercial trading company wholly owned by the Council. It is funded through a combination of council reserves, the Public Works Loan Board (via the Council) and commercial sources and is expected to generate a minimum of 6% return on investment.

At its meeting in September 2016, the Executive agreed that:

- The Shareholder function of the Council be delegated to an Executive Sub-Committee to be known as the Property Sub-Committee.
- The membership of the Executive Sub-Committee to be the Leader, Deputy Leader, and Executive Members for Finance and Property, and the Leader be authorised to make any future changes or further appointments required in accordance with the terms of reference of the Sub-Committee.
- The Property Sub-Committee in consultation with the Head of Legal Services and Head of Property be authorised to finalise and document specific arrangements between the Council and the Company (including the appointment of Directors).
- The Company would be managed by a small board of senior officers (Property Board of Directors) to allow for maximum speed of response and flexibility. The Board will work within established structures for member / officer liaison on property matters. In addition the Property Sub-Committee will exercise the Shareholder function of the Council to hold the Directors to account for the performance of the Company.



## Kent County Council

KCC has a long history in establishing trading companies, not all of which have been a success.

In 2013, the council decided to 'pull the plug' on several trading companies at a loss of £191,000. This was because it was felt that none of the entities were commercially viable and some would have needed major investment to get them going. In addition, Invicta Law, the authority's legal services company, recently failed to deliver a dividend of £1m and had posted losses of £500,000

### Education Services

In June 2017, agreement was reached for the council to set up a company to sell education support services to schools. The company was to have its own separate board but will be overseen by the county council. The council already had an in-house company called EduKent with a more limited brief and mainly focused on schools in the county but from April 2018, EduKent rebranded to The Education People incorporating all aspects into one company. Whilst the website is operational, a decision was made by Kent County Council to put back the official 'start date' of the company to September 2018.

Edseco Ltd is the parent company to The Education people. The Board for Edesco Limited are as follows:

8 x Directors	Neil Birch	(Independent - Executive Head Teacher)
	Carl Roberts	(Independent – Head teacher)
	Steven Whiting	(Independent)
	Christine Herring	(Independent – Education Consultant)
	Michelle Jones	(Independent – Pre-school Manager)
	Richard Hallett	(Officer - Programme Management Officer)
	Patrick Leeson	(Officer - Corporate Director for Education, Learning and Skills)
	Katherine Stewart	(Officer – Director for Environment, Planning & Enforcement)

### Commercial Services

Commercial Services Group is a Kent County Council trading division operating as a trading style of Commercial Services Kent Ltd. Commercial Services has undergone a period of evolutionary development, creating a private limited company corporate structure, wholly-owned by the local authority, aligned to seizing opportunities for further growth beyond its established customer base and markets. There are a number of 'subsidiary' companies associated with Commercial Services:

- kcs4education - education and office supplies
- kcs4ps - setting up and managing OJEU-compliant contracts and frameworks
- LASER and Lumina – energy supplies and energy management
- Connect2Staff – recruitment service

- Operational Services:
  - CTS Vehicle Services
  - Landscaping Services
  - Inspection Services

## London Borough of Newham

Red Door Ventures is a commercial residential developer established in 2014 and is a wholly council-owned company. When established, the aim of the company was to build at least 3,000 new homes in Newham over a 13-year period and to also acquire a further 500 existing properties. All the homes will be available for residents at market rent or below with a third of the homes set at affordable rent subsidised by the council with plans to increase this. Two-years into the programme, a revised business plan was developed to deliver 3,140 homes by 2023, at a cost of £1 billion, all on already-identified, Newham Council-owned sites.

Establishing the company made Newham Council the first local authority to deliver a large programme of private rented homes for residents. To finance the early stages of the programme of development, the council will provide loans to the company as a commercial investment.

Red Door has completed four schemes:

- Stratford (The Tanneries) 36 two bedroom maisonettes /apartments for private rent.
- East Ham (Nelson Street) 6 homes (converted from 3 old firefighter cottages)
- Plaistow (Gregory House) 17 one and two bedroom apartments for rent
- Whitechapel (Cheviot House) 97 studio apartments for rent

To ensure the quality of the homes is matched by the quality of its services, Red Door is working in partnership with Hera Management Services, a multi-divisional company that specialises in residential property management and software project management.

### The Board:

Chairman	Chris Wood	Previously CEO of London Borough of Newham and is now MD of Red Door Ventures.
Finance Director	Patrick Shaw	Joined in April 2017; experience of working with social housing providers in London and the south east.
NED Board Member	Sarah Gaventa	previously the Director of CAFE Space - the UK government's advisor on public space and currently Director of the Illuminated River Foundation.
NED Board Member	David Christie	Councillor in the London Borough of Newham for 6 years and currently leads the council's Small Business and Newham 2020 Transformation programmes

NED Board Member	John Swinney	Chief Executive of Just Housing Group a niche consultancy working in social housing and considerable experience of the public private partnership space.
NED Board Member	Joe Montgomery	Previous roles include being the Chief Executive (Europe) at Urban Land Institute, Director General at the Department for Communities and Local Government, Director General, Office of the Deputy Prime Minister and Executive Director for Regeneration, London borough of Lewisham.

## London Borough of Barking and Dagenham

In October 2017, the council launched its new development and regeneration company – Be First – which is wholly owned by the east London council and plans to work on large regeneration sites across the borough. In addition to running Barking & Dagenham’s planning functions and its estate regeneration projects, it will seek to turn a profit through planning consultancy and development management services, as well as developing. Staff from the council’s planning department transferred to the new company in October 2017.

Veteran civil servant and Peabody chair Lord Bob Kerslake will sit as Be First chair

The council expects to see a return of £10m a year by 2021 on its initial investment – a loan of around £4m. Through its own development, Be First could eventually deliver up to 1,000 homes a year, with most transferred to the council’s housing company Reside and others for market sale.

## Roles and responsibilities

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### Executive Directors v Non-Executive Directors

An executive director (ED) is a member of the board of a company who also has management responsibilities for running the company's business. ED's carry an added responsibility of having to ensure that the information laid before the board by management is an accurate reflection of their understanding of the affairs of the company.

A non-executive director (NED's) is a board member without responsibilities for daily management or operations of the company and tend to be picked for their personal qualities, experience and specialist knowledge. They primarily provide objective criticism on board matters and monitor the executive management. NED's duties are of an intermittent nature to be performed at periodic board meetings.

However, there is no legal distinction between NED's and ED's. The legal duties, responsibilities and liabilities of ED's and NED's are the same. Both have a fiduciary duty to the company and must act in the best interests of the company.

Directors who are also councillors are known as "regulated Directors" under the Local Authorities (Companies) Order 1995 and their corresponding duties and limits on remuneration and expenses. Regulated directors must manage conflicts of interest when taking part in decision making for local authority and the company. Regulated directors may need to declare their interest and consider withdrawing from taking part in council or committee decisions. However, due to the restrictions on the remuneration and expenses of members in relation to such companies, members are unlikely to have a disclosable pecuniary interest (DPI). Members should nonetheless, declare their conflict of interest at Council meetings and avoid voting on or taking Council decisions in relation to such companies.