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| Report of: | Head of Economic Development |
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| Portfolio Leader: | Corporate Improvement |
| Key Decision: | No |
| Report Track: | Cabinet: 21/04/16 |

CABINET
21 APRIL 2016
ESTABLISHMENT OF A PROPERTY PARTNERSHIP

1 Purpose of Report

- 1.1 The purpose of this report is to recommend to Cabinet that the Council enters into a joint venture limited liability partnership (LLP) with a private sector partner, Public Sector Plc Facilitating Ltd (PSP). An LLP between CCDC and PSP would provide the Council with an additional option over and above those currently available to it with regard to the disposal, sale or use of its assets to maximise income and opportunity.
- 1.2 PSP is a company formed in 2007 between the Winston Group, the William Pears Groups and BVSF. PSP approaches local authorities with whom it seeks to partner. It works in partnership using a relationship first approach and requires no prior commitment or guarantee of work by the Council. The relationship brings funding opportunities for the Council which are not traditionally available and the formed LLP will be required to demonstrate its value to the Council before projects are agreed for delivery. PSP is operating in 11 local authority areas, locally including South Staffordshire and Dudley MBC. A further four local authorities have received cabinet sign off to proceed, including Lichfield.

2 Recommendations

That:

- 2.1 The creation of a limited liability partnership (LLP) between the Council and Public Sector Plc Facilitating Limited (PSP) be approved.
- 2.2 The final terms of the necessary agreements be agreed by the Council Solicitor and the Head of Economic Development in consultation with the Portfolio Leader for Corporate Improvement, provided that all the due diligence checks have been carried out successfully.

- 2.3 It be noted that the LLP arrangement requires the establishment of an LLP Members board with equal Council and private sector representation, supported by an Operations board for officers.
- 2.4 The Council representation on these boards be agreed by the Council Solicitor following consultation with the Portfolio Leader for Corporate Improvement once the format of these boards is established as part of the final terms of the agreement; and that the Council representation on the LLP board will be from members of the Cabinet.
- 2.5 All projects be assessed by an internal Council team before going forward to the LLP to decide on their suitability for further development.
- 2.6 It be noted that the LLP will be an additional option for the Council to use to deal with its property portfolio.
- 2.7 It be noted that further reports will be submitted to Cabinet in respect of relevant proposals to pursue a property related project through the LLP.

3 Key Issues and Reasons for Recommendation

- 3.1 The Council has been invited to express an interest in the establishment of a joint venture Limited Liability Partnership (LLP) with a private sector partner, Public Sector Plc Ltd (PSP). PSP is a joint venture formed in 2007 between the Winston and William Pears Groups (first called BVSF). In its first phase of development PSP secured partnerships with 10 local authorities including locally Dudley MBC. The Council has investigated the feasibility and value of establishing an LLP joint venture with PSP and they have in turn carried out a review of property opportunities with the Council. On this basis both parties believe there to be benefit in forming an LLP.
- 3.2 The purpose of the LLP would be to facilitate property related projects for the Council, making use of private sector funding, resources and skills in addition to those available through the Council and paid for by the LLP. The Council can use the Strategic Partnership created to achieve a wide-range of property opportunities for the Council, including regeneration, redevelopment, rationalisation, property portfolio reductions and property related investment.
- 3.3 The Council and PSP will each own 50% of the shares of the LLP whose main purpose would be to:-
- invest private sector funds in projects of mutual benefit
 - facilitate regeneration projects
 - provide potential capital receipts and/or revenue income streams to the Council from the development of surplus land and buildings
 - support the Council in the development of its strategic review of the property portfolio, including:-
 - the delivery of a property portfolio strategy for the Council involving, where appropriate, a partnership approach to the management of the Council's property assets

- the acquisition of private property or land by PSP to facilitate development and potentially to develop income streams.
- 3.4 Projects are developed by the LLP using PSP resources but the final decision as to whether or not to proceed with a project sits with the Council. The profit share on each project will vary depending on the resources committed to the project and PSP guarantee at least the income currently derived from an asset, with the profit share element relating only to the amount above this level. The option might also be available to the Council to put additional resources into a project in order to achieve a larger percentage of the profit share.
- 3.5 In order to ensure that the land and property portfolio of the Council is maximised into the future, there needs to be a review of these assets. The utilisation of an LLP model and approach would facilitate this and allow the Council a large amount of flexibility to be able to manage the portfolio differently into the future.
- 3.6 The LLP between PSP and the Council is an additional option for maximising the value from property assets and does not remove the Council's ability to consider alternatives.

4 Relationship to Corporate Priorities

- 4.1 This report directly supports the Council's Corporate Priority of 'Making the best use of limited resources'. It will also indirectly support other priorities, particularly 'Better Jobs and Skills', through bringing expertise and resource to achieving economic development objectives.

5 Report Detail

- 5.1 A number of contextual issues need to be documented by way of background to the proposal contained within this report. Firstly, Property Services has been without a property manager post being vacant. In the last year two unsuccessful attempts have been made to fill the post and a restructure of the team is underway to bring more resource to the function. However, even with a fully resourced property services team the level of expertise needed to maximize the value gained from Council assets and contribute to the delivery of Council priorities often requires the buying in of expensive consultancy support.
- 5.2 The current asset management plan was produced in 2012 and is in need of updating.
- 5.3 The Council has in place an Action Area Plan (AAP) for Rugeley Town Centre and is embarking on the development of an AAP for Cannock Town Centre. Councils have long held land and property to achieve regeneration objectives or to facilitate development of their area – like many councils Cannock Chase owns (currently only a small portfolio) shops and employment spaces. However, changes in funding for local government has resulted in many s Council viewing

assets not simply as a means to deliver operational or development requirements but also for income generation.

- 5.4 One of the options being explored to address the issues noted above is to look at a Cannock Chase property development company. Through an introduction by officers at South Staffordshire District Council the Managing Director and the Head of Economic Development met with PSP representatives in 2015 to discuss their organisation, how it works and how it could work in partnership with the Council to achieve joint objectives. This has been followed up with further discussion with PSP which have resulted in an invitation to utilise their LLP model to achieve property objectives. Over 40 councils have expressed an interest in the establishment of their own PSP Partnerships to access the £500m Relational Partnering Fund launched at the Municipal Journal Future Forum in March 2015.
- 5.5 Public Sector Plc (PSP) was established to offer Local Authorities funding in connection with their property portfolios. It is funded through a joint venture (JV) between the Winston and William Pears Groups established in 2007. Funding is made available through a unique partnership model jointly owned by the Council and PSP. The PSP model encompasses a step-by-step facilitation process coupled with robust and flexible governance arrangements. This enables local authorities to ensure they have met all their statutory legal and financial obligations.
- 5.6 An LLP model of working is a jointly 'owned' partnership approach to the managing of properties across an area. It has been in place since 2006/07 and has 13 Local Authorities involved in individual partnerships across England: Bolton MBC, Cheshire West and Chester, Daventry, Dorset CC, Dudley MBC, Isle of Wight DC, Scarborough BC, Southend-on Sea MBC, Southampton CC, South Staffordshire DC and Warwick DC. Two additional councils, Warrington and Lichfield, have had cabinet agreement to pursue LLPs.
- 5.7 Purpose and benefits of a Limited Liability Partnership approach for Cannock Chase Council:

Outcome/Achieve:-

- Generate new additional income through working on property related projects to support the council becoming financially self-reliant;
- Access to significant levels of Capital investment;
- Resilience – complementing our existing resources by tapping into expertise and resources with a commercial edge;
- Community Benefits i.e. realising improvement in the local economy and strengthening district deal proposals;
- Revenue savings and generating capital receipts;
- Utilising and strengthening the skills of the council's staff.

Potential Benefits:-

- Highly flexible and creative in operation;
- Additional option open to the Council, this does not remove ability to consider other options;
- Allows projects to evolve and be assessed before any commitment;
- Baseline value remains with the council it's the added value that is shared;
- Investment of private sector funds into projects of mutual benefit;
- Support the Council in the development of its strategic review of the property portfolio and facilitate the preparation of a new Council asset management strategy and action plan;
- Realise revenue savings;
- Establish new or enhanced revenue income streams;
- Generate improved levels of capital receipts from projects;
- Make more efficient use of their property assets;
- De-risk property transactions;
- Benefit from value created by the private sector.

5.8 In essence the LLP will extend the range of projects that the Council can be involved in which currently we are not able to progress due to the lack of appropriate expertise, finance and capacity. Projects which fall into this category could include:

- future uses for the Grove Colliery buildings;
- plans to deliver the Rugeley market hall redevelopment which is a key site within the Area Action Plan;
- Rugeley Area Action Plan objectives;
- input to the delivery of retail, housing and leisure uses in Cannock Town Centre, including the multi-storey car park;
- developing a portfolio of assets to generate an income stream (subject to consideration by Cabinet).

5.9 The implementation of a partnership approach will assist the Council to meet its future requirements from both a financial, operational and strategic perspective. This will be achieved through maximising the current (and future) assets commercially and allowing a different management approach to be taken in regards to our land and property assets.

5.10 It is noted that any assets developed as part of this approach will be retained under the Council's ownership unless otherwise decided upon by the Council.

Governance and due diligence

5.11 A Limited Liability Partnership is a corporate entity in which two or more partners agree to go into partnership with a view to making a profit. LLPs are regulated by legislation in the same way as for a company; an LLP must file annual accounts and details of membership with Companies House. In an LLP the members have the benefit of limited liability – that is, protection from personal liability for any debts or claims made against the LLP, provided they act within the powers of the constitution of the LLP.

- 5.12 To enter into this proposed LLP it will be necessary to enter into a binding partnership agreement with PSP. This partnership agreement, and the more detailed operating agreement which sits beneath it, commits both parties to a number of obligations in terms of establishing management and decision making structures, but it does not commit the Council to make any financial commitment to the LLP.
- 5.13 The proposed term of the partnership is 10 years, but the agreement enables either partner to terminate the partnership at any time on 12 months' notice.
- 5.14 Entering into the LLP does not give rise to any EU procurement implications since there is no obligation to undertake development works to the Council's assets and therefore no works or services contracts are being awarded through establishing the LLP. In relation to specific projects that the LLP may take forward, every potential asset disposal or development will need to be assessed to ensure legal compliance.

Infrastructure

- 5.15 The inception of the LLP model will facilitate an LLP Partnership Board which has an equal standing within the relationship, i.e. 50/50 decision making ability. Should either party not wish to pursue a project, it will not be pursued.
- 5.16 The creation of an LLP Partnership Board will consist of equal representation of Councillors and PSP nominees and will meet quarterly.
- 5.17 The Chairman would be appointed from the Council representation and the Vice-Chairman from the PSP nominees. There needs to be equal voting by both parties for a proposal to proceed and without this the project would not proceed. There is no casting vote for the Chairman; the total number of representatives on the LLP Board will make decisions in respect of asset related projects.
- 5.18 Prior to any projects being presented to the LLP Partnership Board, a report will be presented to Full Council on proposed projects. This report will be written by the Operational Board of officers.
- 5.19 The Operational Board of officers will have an equal split of representation from the Council and PSP and the total number will need to be set as part of the final contractual arrangements, but is typically between 3-5 representatives from each party. It is proposed that this Operational Board meets initially monthly, then will move to a bi-monthly meeting.
- 5.20 Once the proposal/project has been signed off by the LLP Partnership Board, a project sponsor will be nominated to take the project forward and an agreement on progress will be established back to Members.

Alternative Options Considered

- 5.21 There are a number of options that could be utilised to manage the Council's current assets; these are predominantly classed as 'asset backed' vehicles. This means that the mechanism which allows the partnership to develop in this case

are based on the assets which are put forward and retained by the partnership and as such these are at risk.

- 5.22 Currently, the approach and utilisation of an LLP model would offer the Council the most appropriate method which would allow the council to pro-actively manage the land and property portfolio at present with maximum flexibility as the assets remain in the ownership of the Council.
- 5.23 By entering into the LLP, the Council will not be under any obligation to put any specific property related projects into the Partnership. The key safeguard is that if better value can be delivered by a normal market disposal or by other means then the project would not go through the LLP and would progress as appropriate.
- 5.24 Staffordshire County Council, the Police and Crime Commissioner and Kier (<http://www.kier.co.uk/>) have entered into a Joint Venture arrangement called the Penda Property Partnership (<http://pendaproperty.com/>). Penda is described on their web site as:
- Penda Property is a unique partnership between Kier, Staffordshire County Council and the Office of the Staffordshire Police and Crime Commissioner. By working together, we maximize the use and value of publically-owned land and buildings to deliver real benefits for people across Staffordshire and Stoke-on-Trent.
- 5.25 All the district councils in Staffordshire were named in the European procurement notice so are able to benefit from Penda services. Officers of the Council are in discussion with the Penda team about the development of projects in Cannock Chase, however, this is seen as an additional option available to the Council and not an alternative to the LLP with PSP.

Next Steps

- 5.26 Next steps are envisaged to be as follows:
- a. Formal approvals to establish the LLP – authority having been delegated to officers to negotiate the relevant agreements;
 - b. Negotiation and conclusion of legal agreements;
 - c. Establishment of LLP as a legal entity.
 - d. Review of initial project to stream through the LLP.

6 Implications

6.1 Financial

It should be noted that the costs of establishing the LLP are met entirely by PSP.

The PSP model is unique as it seeks to share net development returns between the public and private sector partners, the exact proportion varying project by project. The basic premise of value created less costs (costs accounting for any facilitation fee) = profit = profit share is central to the proposition. The aim of the LLP is to generate value using Council assets which is above and beyond that

which the Council would be able to generate itself. This could be achieved by, for example, the LLP acquiring assets and improving them, or changing their use. It should be noted that the Council's existing asset value will be protected and it is only the value that is achieved above this figure that will be shared, after the deduction of the associated costs.

The full financial implications from the proposed partnership with PSP is difficult to fully calculate at this time as any future profits are linked to the property and its potential development opportunities. Experience from other Authorities indicates that through a partnership approach they have received best consideration and the percentage increase has varied per project. It is noted at this time that other than officer time with regards to the inception of the partnership board and committee, there is no other financial commitment from the Council.

Once the partnership is in place, it is proposed that a rolling reporting process is completed annually to report back to Cabinet the progress of the partnership which would include a review of the financial details and performance.

6.2 Legal

Statutory power to undertake proposals in the report: The general power of competency Localism Act 2011 Section 1, Local Government Act, 1972 Sections 101 and 111. Local Government Acts 1972 – 2000.

The legal documentation in relation to this matter is constructed in such a way that they do not attract the attention of the European Procurement regime. Property disposals are dealt with on that basis, namely as property disposals in accordance with the Local Government Act 1972.

6.3 Human Resources

There are no identified Human Resources Implications arising from this report although development of the LLP and subsequent project work will require staff and other resources which will be met from within existing budgets. Further reports will be brought forward as and when necessary.

6.4 Section 17 (Crime Prevention)

None.

6.5 Human Rights Act

None.

6.6 Data Protection

None.

6.7 Risk Management

It is difficult at this time to accurately forecast the associated profits, so there is a degree of risk involved. It should be noted at this time there is no financial risk attached to the establishment of the LLP for the Council other than officer time being lost should it not come to fruition.

The LLP model has been risk assessed with the following factors considered:-

- The costs of establishing the partnership and the facilitation of property projects will be met by the private sector partner.
- The establishment of the LLP will provide additional capacity, resources and skills to the Council which will support the delivery of our Asset Management Plan.
- The LLP can manage projects on behalf of the Council without the risk of up-front investment by the Council.
- There is no requirement on the Council to use the LLP.
- Exploration of the experience of the existing 11 LLP's.

6.8 Equality & Diversity

None.

6.9 Best Value

The purpose of the LLP would be to achieve best value from assets through bringing to the Council additional resources and expertise, however, engaging with a single partner does raise questions of best value. A mechanism will be adopted to ensure that the Council can be satisfied on this matter.

7 Appendices to the Report

Appendix 1

Local Authority Questionnaire – South Staffs DC

Previous Consideration

None

Background Papers

PSP Public Sector Plc website: <http://www.publicsectorplc.com/>

PSP Information Pack

Appendix 1

Officers have as part of the due diligence to support the development of an opportunity to work with PSP, spoken to the other Local Authorities who have currently entered into an LLP arrangement. Specific questions were asked of each LA for consistency. Generally it was noted that the responses were duplicated and as such the below table offers a generic response across the range of responses.

| Question asked | Response |
|---|---|
| What is the greatest benefit(s) to the organisation? | <p>The degree of flexibility the partnership offers is great. Up to 1000 properties are now managed through the LLP. Utilisation of a commercial approach has been very useful in managing a range of issues which has proved problematic in the past.</p> <p>Offers another 'tool in the box'.</p> |
| What lessons can be learnt from the original inception? | A lot of work was completed in regards of due diligence and awareness raising to ensure applicability of the approach. |
| Have there been any resource gaps? | <p>A dedicated officer has been employed to facilitate the LLP model including board, committee and as a single point of contact. Additional ad-hoc business support also required.</p> <p>PSP can and do provide commercial acumen which assists the Council in managing its resources.</p> |
| Were there any constitution issues in implementation? | <p>Limited number of constitutional issues were observed. Through the due diligence process both legal and finance were consulted to ensure applicability.</p> <p>Some small issues observed, now reconciled. An in-house 'advisory board' (Members and Senior officers) set-up to review projects prior to them being considered. Should have included within the report that there would be an allocation of delegated powers which would save time and allow the decision making process to be much more succinct.</p> |

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| <p>What was the decision making process?</p> | <p>Depending on the constitutional approach: through the Portfolio holder, through to Scrutiny and then Full Council. Decision taken to include 'delegated powers' at portfolio Holder and Director level.</p> |
| <p>How has the partnership developed from inception?</p> | <p>From the inception, smaller scale projects were reviewed and developed into to a commercial opportunity. As each partnership has developed, wider-ranging projects have been developed across each Council assets portfolio to maximise these assets into the future.</p> |
| <p>Is the partnership utilised for the delivery of any other services?</p> | <p>Some Local Authorities have and are utilising the partnership to develop innovative solutions to such areas as facilities management etc.</p> <p>There are some small scale discussions around the potential to set-up a regeneration & property management company into the future.</p> |