

Extraordinary (Informal Joint) Cabinet



Forest Heath
District Council

Notes of informal discussions of the SEBC/FHDC **Cabinets** held on **Tuesday 27 October 2015 at 5.00 pm** in the **Council Chamber, District Offices, College Heath Road, Mildenhall IP28 7EY**

Present: Councillors

Forest Heath District Council (FHDC)

James Waters (in the Chair for the informal discussions)

David Bowman Stephen Edwards
Robin Millar

In attendance: Simon Cole, Chairman of FHDC's Overview and Scrutiny Committee

Colin Noble

St Edmundsbury Borough Council (SEBC)

Robert Everitt Ian Houlder (present for part of the informal
John Griffiths discussions only)
Sara Mildmay-White

In attendance: Jeremy Farthing, Vice-Chairman of SEBC's Overview and Scrutiny Committee

Carol Bull Susan Glossop

By invitation: Duncan Johnson, Assistant Director of Corporate Property, Suffolk County Council

Prior to the formal meeting, informal discussions took place on the following substantive item:

- (1) Business Case to Establish a Housing Development Company

All Members of St Edmundsbury Borough Council's Cabinet had been invited to attend Forest Heath District Council's offices to enable joint informal discussions on the report to take place between the two authorities prior to

seeking formal approval at their respective separate Cabinet meetings immediately following the informal discussions.

The Leader of Forest Heath District Council welcomed all those present to the District Offices and the Interim Service Manager (Legal) advised on the format of the proceedings for the informal discussions and subsequent separate meetings of each authority.

Under their Constitutions, both Cabinets listed as standing agenda items: an Open Forum, which provided the opportunity for non-Cabinet Members to discuss issues with Cabinet, and also: public participation, which provided the opportunity for members of the public to speak. Therefore, as any matters arising from discussions held during these agenda items may have some bearing on the decisions taken during the separate formal meetings, non-Cabinet Members and members of the public were invited to put their questions/statements prior to the start of the joint informal discussions.

Members were also reminded that should discussion wish to be held on the specific content of the three exempt appendices during the informal discussions, general agreement would need to be sought to move into informal private session.

1. **Open Forum**

In addition to the information provided in Section 7 of the Cabinet report, SEBC Councillor Jeremy Farthing, Vice-Chairman of SEBC's Overview and Scrutiny (O&S) Committee provided further background on the discussions held jointly on 15 October 2015 with FHDC's Overview and Scrutiny Committee, which had led to an amendment to Recommendation (5) being put forward by both Committees.

Concern had been expressed by SEBC O&S Committee Members regarding:

- (a) the proposed governance arrangements for the Housing Development Company with particular reference to the proposed composition of the Board of Directors;
- (b) the proposed form of the company and whether this should be a company limited by shares, or whether alternative organisational structures had been fully considered; and
- (c) although acknowledged that it was likely due to circumstance, the majority of the four exemplar sites identified for the development of homes through the Company were located in the Forest Heath district.

FHDC Councillor Simon Cole, Chairman of FHDC's Overview and Scrutiny Committee, explained FHDC's O&S Committee Members' views on these concerns, including that other local authorities with housing companies elsewhere had adopted the proposed model of governance and were operating successfully.

2. **Public Participation**

No members of the public were in attendance.

3. **Business Case to Establish a Housing Development Company**

The Cabinets were presented with the business case for establishing a commercial company limited by shares for the purpose of developing housing for sale and private rent, and affordable rent and low-cost home ownership in line with the Councils' existing planning policies.

Councillor Sara Mildmay-White, SEBC Portfolio Holder for Housing and West Suffolk's Lead Member for Housing, drew relevant issues to the attention of both Cabinets, including that the company would be wholly-owned by Forest Heath District Council (25% of shares), St Edmundsbury Borough Council (25%) and Suffolk County Council (50%) and would provide revenue income to all Councils. She provided an overview of:

- (a) the strategic case, including that the establishment of the company would make a significant contribution to the West Suffolk Councils' three strategic priorities whilst generating a revenue income that would help address future revenue shortfalls such as significant reductions in central government grant funding;
- (b) the commercial and financial case, including the financial benefits for the Councils in establishing the company;
- (c) legal and governance implications; and
- (d) the background to the amendment to Recommendation (5), as proposed by the Overview and Scrutiny Committees, which suggested that paragraph 3.24, bullet point four should be reworded to remove reference to officers and that the additional directors would be independent individuals selected for their relevant expertise and experience.

The following appendices were attached to the report:

Appendix A:	Full Business Case for the establishment of a Housing Development Company, which included the rationale for exploring and proposing the setting up of a company, as previously outlined in the adopted West Suffolk Housing Strategy 2015-2018;
Exempt Appendix B:	Site Appraisal Report (Headline Numbers), produced by appointed consultants, GVA Financial Consulting;
Exempt Appendix C:	First Ten Years' Estimated Profit and Loss based on the Four Exemplar Sites;
Exempt Appendix D:	Estimated Company Expenditure in its First Year; and

Appendix E: Equalities Impact Assessment.

Councillor Mildmay-White, together with the Head of Housing, then addressed the issues raised by Councillor Farthing, as outlined in Note (1) above:

- (a) Diagram 2, contained in paragraph 3.7 of Appendix A was explained in detail, including that the Board of Directors would operate the managerial aspects of the company on a day-to-day basis and was a key element of the reasoning behind the proposal not to have elected Members appointed to the Board, as provided in further detail in paragraphs 3.12 to 3.14.

The Head of HR, Legal and Democratic Services, and Duncan Johnson, Assistant Director of Corporate Property, Suffolk County Council were both invited to speak on this matter. Mr Johnson explained how these governance arrangements had been successfully implemented through other County Council-owned commercial companies and the benefits of the monitoring and scrutinising role of Members within the Shareholder Advisory Group. It was noted, however, that subject to Recommendation (5), as amended, being approved, councillors could apply to be an independent director on the Board if they felt they had the necessary skills and expertise.

- (b) The Housing Development Company would be an entirely commercial operation with the key purpose of generating a financial return for the Councils in a business-style framework. As a trading company, the Localism Act 2011 required the company to be either limited by shares or by guarantee. The former model of governance had been tried and tested by other local authorities and this model had also been recommended by the expert legal opinion sought. A company limited by guarantee structure tended to be used by organisations that sought to re-invest their surpluses back into the operation and such a structure would not enable the Councils as shareholders to decide how best to utilise the surpluses. In addition, companies limited by guarantee could not approach the commercial financial market for loans as easily as a company limited by shares.
- (c) It was advantageous to SEBC that FHDC and SCC already had land available for development, as identified by the four exemplar sites, but other sites located in St Edmundsbury would come forward for development in due course.

Further discussion was then held on the shareholding structure (50% SCC, 25% FHDC and 25% SEBC); the potential for borrowing from outside sources and the implications of that; and a proposed amendment to Recommendation (6) to request that the Chief Executive must act in consultation with West Suffolk's Lead Member for Housing or the Leader of Forest Heath District or St Edmundsbury Borough Council, as applicable, when nominating officers to act as FHDC's and SEBC's directors on the Board. This, together with the proposed amendment by the O&S Committees to Recommendation (5), were accepted by both Cabinets.

(FHDC Councillor Colin Noble arrived and SEBC Councillor Ian Houlder left

during the consideration of this item.)

On the conclusion of the informal joint discussions at 6.06pm, the Chairman then formally opened the meeting of Forest Heath District Council's Cabinet at 6.08 pm in the Council Chamber. On conclusion of that meeting, the Leader of St Edmundsbury Borough Council formally opened the meeting as Chairman of SEBC's Cabinet at 6.09pm.

Extraordinary Cabinet



Forest Heath
District Council

Minutes of an extraordinary meeting of the **Cabinet** held on
Tuesday 27 October 2015 at **6.08 pm** in the **Council Chamber, District
Offices**, College Heath Road, Mildenhall, IP28 7EY

Present: **Councillors**

Chairman James Waters (Leader of the Council) (in the Chair)

Vice Chairman Robin Millar (Deputy Leader)

David Bowman

Stephen Edwards

In attendance:

Simon Cole, Chairman of the Overview and Scrutiny Committee

Colin Noble

By invitation:

Duncan Johnson, Assistant Director of Corporate Property, Suffolk
County Council

111. Apologies for Absence

An apology for absence was received from Councillor Andy Drummond.

112. Open Forum

This item had already been considered during the informal discussions (Item 1 above refers.)

113. Public Participation

This item had already been considered during the informal discussions (Item 2 above refers.) No members of the public were in attendance.

**114. Business Case to Establish a Housing Development Company (Report
No: CAB/FH/15/048)**

Further to the joint informal discussions held prior to the meeting with St Edmundsbury Borough Council's Cabinet on Report No: CAB/FH/15/048, *Business Case to Establish a Housing Development Company*, it was proposed, seconded and,

RECOMMENDED TO COUNCIL: (17 November 2015)

That the following be approved:

- (1) The establishment of a Housing Development Company incorporated as a company limited by shares that will be jointly owned by Suffolk County Council (50% of shares), Forest Heath District Council (25% of shares) and St Edmundsbury Borough Council (25% of shares).
- (2) Forest Heath District Council's full Council assumes the role of Shareholder in Forest Heath.
- (3) A Shareholder Advisory Group be established with the purpose of advising each Council when exercising its role as Shareholder consisting of two elected members from Forest Heath District Council, two from St Edmundsbury Borough Council and four from Suffolk County Council, with advice provided by senior officers of all Councils. The identification of Forest Heath District Council's nominations to the Shareholder Advisory Group be delegated to the Leader of Forest Heath District Council acting in consultation with West Suffolk's Lead Member for Housing.
- (4) The composition of the Company's Board of Directors to be one director from Forest Heath District Council who shall be an officer of West Suffolk Council, one director from St Edmundsbury Borough Council who shall be an officer of West Suffolk and two directors from Suffolk County Council (anticipated to be officers of Suffolk County Council), with up to an additional three directors appointed by the unanimous decision of the Shareholders.
- (5) The recommendation of Forest Heath District Council's Overview and Scrutiny Committee held on 15 October 2015 that the criteria for selection of the three additional directors as specified in the fourth bullet of paragraph 3.24 in Appendix A be amended to read *"up to three additional directors unanimously approved by the three Shareholder Councils. These will be 'independent' individuals selected for their relevant expertise and experience"*.
- (6) Authority to nominate Forest Heath's director be delegated to the Joint West Suffolk Chief Executive, in consultation with West Suffolk's Lead Member for Housing or the Leader of Forest Heath District Council.
- (7) That the approval of the Memorandum and Articles of Association be delegated to the Head of Housing and the Monitoring Officer acting in consultation with West Suffolk's Lead Member for Housing and Suffolk County Council's Director of Resources, who will act in consultation with Suffolk County Council's Cabinet Member for Finance.

- (8) Authority to negotiate and finalise the Shareholder Agreement be delegated to the Head of Housing and the Monitoring Officer, acting in consultation with the West Suffolk's Lead Member for Housing and Suffolk County Council's Director of Resources, who will act in consultation with Suffolk County Council's Cabinet Member for Finance.
- (9) That the naming of the Housing Development Company be delegated to the Head of Housing acting in consultation with the Service Manager (Corporate Communications), West Suffolk's Lead Member for Housing and Suffolk County Council's Director of Resources, who will act in consultation with Suffolk County Council's Cabinet Member for Finance.
- (10) Authority to complete and submit the necessary documentation for incorporation be delegated to West Suffolk's Monitoring Officer acting in consultation with West Suffolk's Head of HR, Legal and Democratic Services and Head of Housing and officers from Suffolk County Council.
- (11) That *in principle agreement* is given to the disposal of Forest Heath District Council's assets (land and/or buildings) to the Company at market rates.
- (12) That *in principle agreement* is given to provide to the Company funding through state aid compliant loans in line with Forest Heath District Council's existing Loans Policy.
- (13) A contribution of £125,000, funded from Forest Heath District Council's Strategic Priorities and Medium Term Financial Strategy reserve, to a total working capital loan of £500,000 subject to contributions from all Councils in the following proportions; Forest Heath District Council (25%), St Edmundsbury Borough Council (25%) and Suffolk County Council (50%).
- (14) That authority to negotiate and approve any staffing or TUPE matters arising in the future in connection with the Company's operations be delegated to the Head of HR, Legal and Democratic Services acting in consultation with the Head of Finance and Resources (s151 officer) and appropriate Suffolk County Council officers.
- (15) Once the Company's first Annual Business and Delivery Plan has been submitted to Shareholders (Forest Heath District Council, St Edmundsbury Borough Council and Suffolk County Council) and approved by the Shareholders (Forest Heath District Council's full Council, St Edmundsbury Borough Council's full Council and Suffolk County Council's Cabinet), the Company may start trading.
- (16) The detailed financial modelling contained in the exempt Appendices B, C and D, be noted and the financial viability of the exemplar sites appraised, be noted.

115. **Exclusion of the Press and Public**

See minute 116 below.

116. **Business Case to Establish a Housing Development Company - Exempt Appendices (para 3) (Report No: CAB/FH/15/048)**

The Cabinet considered Exempt Appendices B, C and D to Report No: CAB/FH/15/048 under Agenda Item 4, however no reference was made to specific detail and therefore this item was not held in private session.

The meeting concluded at 6.09 pm

Signed by:

Chairman
