

Appendix A

REPORT TO: CABINET

DATE: 14 JUNE 2018

TITLE: HTS GROUP 2018-2020

PORTFOLIO HOLDERS: COUNCILLOR MARK INGALL, LEADER OF THE COUNCIL
COUNCILLOR MARK WILKINSON, PORTFOLIO HOLDER FOR HOUSING

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This is a Key Decision
It is on the Forward Plan as Decision Number I008741
Call-in Procedures may apply
This decision will affect no ward specifically.

RECOMMENDED that:

- A** The Council undertakes a further programme of building Council houses.
- B** HTS (Property & Environment) Ltd be appointed subject to acceptable business cases being submitted to undertake the associated construction works for those schemes detailed within the report, and that the current HTS (Property & Environment) Ltd's Business Plan be amended accordingly.
- C** A wholly owned subsidiary of HTS Group to undertake housing and regeneration projects is established.
- D** Authority is delegated to the Managing Director, in consultation with the Leader of the Council to complete all necessary legal and financial formalities to progress the above.
- E** Authority is delegated to the Section 151 Officer, in consultation with the Leader of the Council to select and purchase a financial modelling scheme to assist with the Council's housing development processes.

REASON FOR DECISION

- A** To enable the future direction and governance of the HTS Group of Companies to continue to deliver the Council's corporate aims and objectives.
- B** To create a division of the HTS trading group to act as a delivery vehicle for Council housing and wider regeneration and development activity and projects.

BACKGROUND

1. On 1 February 2017 the Council's Local Authority Trading Company HTS Property & Environment Ltd (HTS) commenced trading to deliver the services previously provided by Kier Harlow Ltd.
2. HTS is part of a wider group company structure, created under the umbrella of a Council owned holding company. The trading group was created to position the Council in response to the changing national and local environment when delivering corporate plan priorities.
3. Governance arrangements for the trading group of companies were agreed by Cabinet in November 2015.
4. The current group structure comprises of a holding company called HTS Group Limited and one wholly owned subsidiary called HTS (Property & Environment) Limited. Both boards have the same Councillor Directors and Non-Executive Chair appointed to them. In addition, HTS has a Managing Director appointed to the Board and a Company Secretary. Both were recruited from Kier Harlow Limited.
5. They are held to account by a politically balanced Shareholder Sub-Committee (SSC), which is a sub-committee of Cabinet. The SSC has express terms of reference and retains overall strategic decision making powers enshrined in an approved delegation matrix for both the holding company and HTS.
6. The SSC consists of the Leader of the Council, the Portfolio Holder for Housing, and the Portfolio Holder for Environment, together with and two opposition councillors (currently the Leader of the Opposition, and the Deputy Leader of the Opposition). Both the Managing Director and Non-Executive Chairman of HTS attend and report to each SSC meeting.
7. Decision making powers for Shareholder to Board and to Managing Director levels for HTS are delegated and reviewed annually by the Council as Shareholder.
8. The HTS Board is required to produce an annual Business Plan for approval by the Shareholder.
9. The changing environment at Harlow which includes: the establishment and delivery of a new Local Plan with stretching housing targets; the establishment

of the new Harlow and Gilston Garden town; and the urgent need for housing of all tenures coupled with a need to regenerate the town centre, requires the Council to explore new ways to overcome the barriers and challenges it faces. This will require the exploration and formation and use of a range of appropriate delivery vehicles, together with the establishment of effective partnerships, and potentially major investment.

ISSUES/PROPOSALS

Building New Council Housing

10. In 2014/2015 the Council built its first council homes in over 25 years. Eighteen, two bedroom homes were built across three former garage sites, providing much needed homes for people from Harlow's Housing Needs register.
11. Within the 2017 – 2047 HRA Business Plan, approved by Full Council in February 2018, were further proposals to increase the supply of council owned homes during 2018/19 through enhancements and refurbishments at Sumners Farm Close, Partridge Court, Hare Street Springs and Collins Meadow. These Schemes will deliver an additional 11 new council housing units once complete to supplement the Council's existing housing stock funded through the Housing Revenue Account (HRA). It is also proposed to build three additional Council homes on the derelict garage site at The Readings.
12. In addition, the Council has also developed a pipeline of sites and linked in some cases back to the HRA garage strategy with the potential to deliver in the region of 80 new homes over the next three years, subject to planning and suitable funding being identified.
13. Under the current trading regulations HTS may be used as a vehicle to deliver important Council priorities over and above those for which it is currently contracted. This additional work could include the building or refurbishment of Council housing and, as a vehicle created and operated within the Teckal exemption, work solely for the benefit of the Council may be awarded directly to HTS, subject to approved governance and best value principles.
14. A Business Case process already exists and is utilised for the award of existing capital works to HTS. The purpose of the business case process is to evaluate and ensure that the Council achieves best value in the award of the packages. In the event that best value cannot be achieved, the Council has the right to advertise the Schemes in the open market, and HTS may resubmit a bid should it wish to.
15. It is proposed that the Council apply the business case process for the purposes of the delivery of the schemes identified in paragraph 11 above and that HTS be invited to submit a response to deliver the schemes.
16. Under its current corporate governance, HTS is able to deliver a range of works packages to meet Council priorities. However to position HTS to fully service the

Council in the future, minor amendments are required to the annual HTS Business Plan to give HTS a wider Shareholder approved mandate to continue and respond to opportunity both within and outside of HRA scheme development.

Setting up a New Housing/Regeneration Company (“Company”)

17. The Council is committed to the regeneration of Harlow and in particular the Town Centre, and continues to make the case for investment in Harlow. This is particularly important in the context of the development of the Local Plan and the development of the Harlow and Gilston Garden Town project. There are now several ongoing major projects which potentially support regeneration activity and the opportunity to draw these together must be grasped.
18. To enable the opportunities that exist to move forward with specific focus, and potentially open up alternative funding mechanisms to those currently available to the Council, it is recommended that a Company Limited by Shares with open purposes in its Articles of Association be established, thus enabling a wide scope of activity without restricting the Company to a particular sector of regeneration or housing delivery. The Company will be wholly owned by the Council, established to directly deliver housing and regeneration programmes. If created it could form part of a wider range of potential delivery vehicles that may be required to achieve the corporate objectives for estate regeneration, town centre regeneration, and the provision of more and better housing.
19. The HTS Group structure gives a corporate platform for the creation of a subsidiary commercial trading company to serve the Council and deliver schemes outside of the HRA. The Company will be created as a wholly owned subsidiary of HTS Group, answerable to the Council as the ultimate shareholder.
20. It is proposed that the new Company is created to complement existing arrangements. It is anticipated that in the short to medium term the Company will undertake the majority of its work for the Council and will be able to take advantage of the ‘Teckal’ exemption in regulation 12 of the Public Contract Regulations 2015.
21. The initial creation of a parallel ‘Teckal’ vehicle will provide trading synergy to work with and alongside HTS. This could provide a platform for the existing trading arms to provide services within the wider group for the Council subject to public procurement rules to ultimately serve the Council as Shareholder.
22. Setting up a local housing and regeneration company provides for a greater stewardship role in place-shaping, and potentially a financial return to the Council. It is anticipated that the Company will provide the Council with greater freedoms and flexibilities to take innovative steps to meet local housing needs.
23. It is proposed that the board serving the new housing/regeneration company will comprise of three Councillor Directors, and one Council senior manager. with an option to appoint a Managing Director if required and mechanisms to appoint a Chair holding a casting vote where appropriate. The new

housing/regeneration company will require bespoke Articles together with a scheme of delegation. It is anticipated that independent professionals both externally sourced and from other trading arms within the HTS trading group will act in an advisory capacity to support the board of the new Company.

24. Additionally, in order to safeguard the Council's interests and to ensure ongoing influence is demonstrated over the new subsidiary it is proposed that the Terms of Reference of the SSC are revisited and revised where appropriate to enshrine shareholder role and the required level of control and influence.

Next Steps

25. The establishment of a new housing/regeneration company is the next step in the development of the wider Council owned trading group. Shareholder terms of reference, Articles of Association, and a Scheme of Delegation will be required to support the actual incorporation of the Company.
26. It is proposed that further analysis is undertaken to test and evaluate all the elements already highlighted in greater depth, including initial resourcing and financing. The testing options and modelling scenarios, together with outlining in more detail the required relationships with existing HTS Group subsidiaries.
27. Further evaluation will also be required which will include detailed financial appraisals on identified housing and regeneration sites. Exploring financial resourcing, testing out commercial viability, undertaking sensitivity analysis, and the potential use of currently retained 'Right to Buy' receipts in support of the overall housing delivery programme. Officers have located a financial tool kit to assist with viability studies and provide a platform for Officers to appraise and manage developments, stock reinvestment projects and reporting. The contract value is estimated at approximately £32,000.
28. Before commencing trading operations, there is a need to establish a longer term housing and regeneration strategy, setting out long term objectives, recognising the wider impacts of the development activity in the economy and the community.
29. In addition, there will be a requirement to review the current Board structures and their relationships with each other and ultimately the Council as shareholder.

IMPLICATIONS

Place (Includes Sustainability)

As contained within the report.

Author: Graeme Bloomer, Head of Place

Finance (Includes ICT)

The establishment of the company will be met from within the Councils approved budget. The proposal to award the specific business cases set out in the report to

HTS (P&E) Ltd will be financed from existing HRA repairs and capital budgets or funding secured under legal agreements for the delivery of affordable housing. Further expansion of the house building programme and any proposed regeneration schemes will be subject to normal viability and financial assessments in conjunction with appropriate due diligence and best value assessments.

Author: Simon Freeman, Head of Finance

Housing

The creation of HTS Group Ltd and its subsidiaries must enable the Council to utilise flexible arrangements to support the delivery of the Council's Corporate Plan objectives for more and better housing and the wider regeneration of the town. Proper governance, stewardship and control mechanisms must be in place to ensure the appropriate levels of commercialism whilst demonstrating accountability to its local community as a public body that applies public funds

Author: Andrew Murray, Head of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

The establishment of a housing/regeneration company will provide an option for delivering new housing and regeneration schemes. This will also help address health and wellbeing issues through improvements to housing and the public realm and through policies addressing employment and skills which will be adopted by the company.

Author: Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

Section 1 of the Localism Act 2011 provides Local Authorities with the power to do anything that an individual may do subject to a number of limitations (this is referred to as the "General Power of Competence"). Where a local authority uses the General Power of Competence for a commercial purpose, it must do so through a Company.

The Council must comply with Regulation 2 of The Local Government (Best Value Authorities (Power to Trade) (England) Order 2009 which requires a business case to be prepared and approved prior to trading.

The Council has a public sector equality duty (Equality Act 2010 s149) to effectively minimise disadvantage to people who share protected characteristics. This proposal positively supports the duty by seeking to improve the provision of Council housing increasing the availability of decent accommodation for those qualifying for such assistance.

Author: Colleen O'Boyle, Interim Head of Governance

Appendices

None.

Background Papers

None.

Glossary of terms/abbreviations used

HRA – Housing Revenue Account

LATC – Local Authority Trading Company

SSC – Shareholder Sub-Committee