

WARRINGTON BOROUGH COUNCIL
RECORD OF DECISION TAKEN BY AN OFFICER

DECISION TITLE: Housing Company

Cabinet Decision No and/or Forward Plan No (Executive decisions only)	CAB 59 / CAB 67 (FP No 067/18) Cabinet 9 th September 2019
Directorate Ref No (Non Executive decisions only) If applicable	N/A
Decision detail	<p>Further to the Cabinet report of 9 September 2019, approval was obtained for:-</p> <ol style="list-style-type: none"> 1. Council to make an equity injection of £11m into Incrementum Housing Development Company Limited (“DevCo”); 2. DevCo to issue £11m worth of shares to the Council as sole shareholder in return for the £11m injection. 3. Council to dispose of the sites at Sycamore Lane and Chatfield Drive (“the Sites”) to DevCo, subject to compliance with s.123 Local Government Act 1972 (“best consideration duty”); 4. DevCo to purchase the Sites using the equity injection. <p>The above matters were delegated to Director of Corporate Services (s.151 Officer), the Head of Legal and Democratic Services (Monitoring Officer) (now Director of Law and Governance) and Director of Growth in consultation with the Cabinet Member for Housing Public Health and Wellbeing (Cllr Maureen McLaughlin), and it is intended that these delegations are now formally exercised.</p> <p>To confirm, the Council has already made a commercial loan to the DevCo in order that it is able to acquire and develop the Sites, however in order to comply with State aid rules, the Council could not make a loan for 100% of the acquisition and development costs. The Council will therefore make the equity injection in order that the DevCo has 100% of the costs required to acquire and develop the Sites, in compliance with State aid requirements.</p> <p>At the time of its set up the DevCo was incorporated with 100 shares of £1 and at this time the value of the company has not changed, as such the value of each share being issued is still to be £1. This will mean DevCo will issue 11m ordinary shares of £1 to the Council and the share issue will be documented at Companies House.</p> <p>Once DevCo has the equity injection it will formally acquire the Sites from the Council and the Cabinet approved (in the Council’s role as shareholder) the DevCo acquisition of the Sites.</p> <p>In respect of the disposal of the Sites, open market valuations have been commissioned from Knight Frank and Council will now dispose of each Site in line with the valuations. The disposal amounts are £2,025,000 for Sycamore Lane and £310,000 for Chatfield Drive, less the cost of abnormalities that included the remediation of playing fields at Sycamore Lane and indemnity insurance for deficiencies in the title of the sites. The Council is therefore in full compliance with the best consideration duty and the delegation can be exercised.</p> <p>It is also worth noting that as of the date of transfer a portion of land at the access point of the</p>

Foxwood Site is owned by Your Housing Group (“YHG”). The Council and YHG have agreed that this will be dedicated to the Council and this will then in turn form the access to the Foxwood Site. DevCo is to proceed with the acquisition of the Foxwood Site in full knowledge of the matter and that there is a risk, however remote, that the dedication may not take place, which would impact access to the Foxwood Site.

Cabinet also approved the Council and the DevCo entering into the Accelerated Funding Agreement with Homes England (“HE Agreement”) in respect of the Sites and for all required documents to be finalised. The HE Agreement has been negotiated between the Council and the HE and is intended to be entered during the week commencing 17 August 2020. Whilst the Council and DevCo are both parties to the HE Agreement, there is no mechanism for the grant funds to “flow down” to DevCo. In this regard, the Council’s solicitors Sharpe Pritchard have prepared a “Flow Down Agreement” between the Council and DevCo, this is being reviewed by DevCo’s appointed lawyers Acuity Law and is required to be entered to ensure the flow of funds. The Flow Down Agreement is considered to be an integral part of the HE Agreement and as such the Shareholder approval of Cabinet in respect of entering the HE Agreement (which was granted pursuant to sections 17 and 18 of DevCo’s Delegation Matrix) covers the entry of the Flow Down Agreement.

Finally the Council and DevCo will be entering a s.106 agreement in respect of both sites in line with planning obligations.

Officers will therefore now proceed with:

1. The equity injection of £11m into the DevCo and acquisition of 11m £1 shares in DevCo;
2. The disposal of the Sites to the DevCo in line with the best consideration duty as set out above and entering:
 - a. Sale Agreement – Sycamore Lane
 - b. Sale Agreement – Former Foxwood School
3. Entering on the Council’s behalf:
 - a. S.106 Agreement – Sycamore Lane
 - b. S.106 Agreement – Former Foxwood School
 - c. Homes England Grant Agreement – Sycamore Lane
 - d. Homes England Grant Agreement – Former Foxwood School
 - e. Flow Down Agreement – Sycamore Lane
 - f. Flow Down Agreement – Former Foxwood School

Whilst not a matter for Officers, this ODN also confirms that the DevCo will in turn:

1. Issue 11m £1m shares to the Council;
2. Acquire the Sites from the Council and enter:
 - a. Sale Agreement – Sycamore Lane
 - b. Sale Agreement – Former Foxwood School
3. Enter on the DevCo’s behalf:
 - a. S.106 Agreement – Sycamore Lane
 - b. S.106 Agreement – Former Foxwood School
 - c. Homes England Grant Agreement – Sycamore Lane
 - d. Homes England Grant Agreement – Former Foxwood School
 - e. Flow Down Agreement – Sycamore Lane

	f. Flow Down Agreement – Former Foxwood School
Reason for decision	<p>Cabinet delegated responsibility for agreeing the terms of all matters to the Director of Corporate Services (s.151 Officer), the Head of Legal and Democratic Services (Monitoring Officer) and Director of Growth, in consultation with the Cabinet Member for Housing Public Health and Wellbeing (Cllr Maureen McLaughlin).</p> <p>This ODN confirms the decisions have been taken by the relevant officers in line with the Cabinet delegation.</p>
Decision Maker/Responsible Officer	<p>Lynton Green - Director of Corporate Services (s.151 Officer) Matthew Cumberbatch – Director of Law and Governance (Monitoring Officer) Steve Park – Director of Growth</p>
Directorate	Corporate Services/Growth
Lead Cabinet Member consulted (if applicable)	Cllr Maureen McLaughlin
Decision Date	13 August 2020
Date Decision was published / notified (normally within 2 clear working days of decision being made)	17 August 2020
Summary of options considered	The only other option would be to not proceed with the matters set out above, however this would mean that the DevCo would not be able to meet its aims, specifically the development of the Sites.
Interests declared	None
Background Papers (if applicable) <i>(period expires after 4 years from date of decision)</i>	Part 1 Cabinet Report
Confidential / exempt information Category (if applicable)	Part 2 Cabinet Report - exempt by virtue of categories 3 and 5, Local Government Act 1972, schedule 12A.

NB. This form expires after 6 years.