ASSETS AND INVESTMENT COMMITTEE: MINUTES

Date: Friday 27th May 2016

Time: 9.30am – 11.20am

Present: Councillors Boden, Bullen, Harford, Hickford, Jenkins, Sales and Tew (substituting for Councillor Dent)

In attendance: Councillor Frost

Apologies: Councillors Dent (Councillor Tew substituting)

1. ELECTION OF CHAIRMAN/WOMAN AND VICE CHAIRMAN/WOMAN

Having been duly moved and seconded, it was unanimously resolved to appoint Councillor Hickford as the Chairman of the Assets & Investment Committee.

Having been duly moved and seconded, it was unanimously resolved to appoint Councillor Bullen as the Vice Chairman of the Assets & Investment Committee.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. TERMS OF REFERENCE

Members noted the report that had been approved by full Council on 10th May 2016, establishing the Assets & Investment Committee, and setting out the Terms of Reference. Full Council had agreed the following changes:

- Membership – any seven Members, subject to political proportionality;
- Delegated Authority – last point to be amended to read *“To consider and make recommendations to Council for property rationalisations proposals that are outside of the agreed Business Plan”.*

Members were reminded that the role of the Assets and Investment Committee was much broader than the Investment Review Group, which had primarily focused on housing development. A further report on the full scope of the Committee’s responsibilities, resources and manpower would be presented at the next meeting.

Members discussed frequency of meetings. It was agreed that for the foreseeable future, due to workload the Committee would schedule monthly meetings, which could be cancelled if not required.

It was resolved to note the report.

4. ACTION NOTES OF INVESTMENT REVIEW GROUP (22ND APRIL 2016)

Members resolved to note the action notes of the Investment Review Group on 22nd April 2016.

The Chairman advised that reports 5-7 had not been available for public inspection five clear days in advance of the meeting. He proposed to exercise his discretion under Section 100B(4) of the Local Government Act 1972 to allow discussion of the reports, on the basis that it was important that the Committee was able to receive these report to progress, and timescales had not allowed for the reports to be available at an earlier date.

5. ESTABLISHMENT OF A COMPANY AS A HOUSING DEVELOPMENT VEHICLE (HDV) FOR PROPERTY DEVELOPMENT

Members received a report setting out the rationale and outline business case for the establishment of a company or companies owned by Cambridgeshire County Council for the purpose of identifying and developing potential sites for residential and commercial use.

A Member observed that the report confused two issues, specifically (i) whether the Council should develop land for housing, for which there was already general support, and (ii) the best way to undertake that development. Officers acknowledged this point, and pointed out that some Assets & Investment Committee Members had sat on the Investment Review Group for many months, so were familiar with the debates on the merits of developing land for housing. However, as there were also completely new Members who did not have that background, it was necessary to provide the context in which the Committee planned to move forward. The principle of developing housing on County Council land was already in the Business Plan, the issue was now what the most appropriate vehicle was to deliver that development. There were a number of options, including the Council retaining ownership, but as the Council is a public sector body, any tenants would have the Right To Buy. Whilst that had its merits, from a commercial perspective, it was not the most commercially advantageous. If the Council undertook the housing developments, it would also have all the upfront infrastructure costs, which would mean a heavy cashflow before any financial returns were realised. By developing a Housing Development Vehicle (HDV), there were two immediate benefits for the Council: (i) the HDV would be a wholly owned company, but sit outside the Local Authority confines, so would not have to offer RTB. The HDV would not own any land, and would not have any cash. The Council would sell the land to the company, for which it would get a capital receipt. The Council would have to lend the HDV money to facilitate this sale, and to also finance the other costs (construction and infrastructure). The HDV would lend at the market rate (7.5%), which the Council would borrow from government at 3.5%. In summary, the profit/income to the Council arose from the profit on the margin, with the security on the loan provided by the land and houses. It was confirmed that based on previous discussions, the HDV would be a wholly owned company, and the HDV would need to be based on a very detailed business case being agreed. A Member observed that whilst the interest rate gap looked attractive, a longer term view needed to be taken, especially given the costs which would eat in to that margin, including tax liabilities.

A Member commented that whilst understanding the rationale, as housing was being developed on Council owned land it should be eligible for RTB. Whilst acknowledging that other authorities had already done this, and it was legally permissible, there was a risk that the current or any future government would take a different political view: the legal landscape could change, and there was no way of quantifying the risk of that occurring. Officers agreed that it was possible that legislation could change to capture these types of project, and that it was difficult to predict the likelihood of that occurring.

It was clarified that the RTB issue arose because of the Council's status i.e. as a local authority and therefore as a housing authority, even though the County Council does not currently operate any housing functions. The majority of land would be developed as private housing with the appropriate proportion of affordable housing.

With regard to risk, it was noted that in their early discussions, the Investment Review Group looked at sharing risk but had opted for a wholly owned i.e. the HDV not being wholly owned, but shared with a developer. It was also noted that the HDV remit would be wider residential housing for rental, to embrace both residential and commercial property.

A Member spoke in favour of the direction proposed, given his experience as a member of another property board for a LA with considerable assets. However, he felt that the risk already highlighted of government changing legislation, and ultimately the returns to the LA reducing, was a very real one, which needed to be evaluated. He also pointed out that the simple business model presented gave the impression of "making money out of nothing", which may appear to be the case for the Council's revenue account, but it did have significant cashflow implications. He asked if enough was known about the Council's future cashflow predictions, and sought reassurance that the Council would not go illiquid. Officers commented that this was a valid point, and the level indebtedness would significant increase, albeit to an acceptable level, as construction costs would require upfront funding, and this would be reflected on the Balance Sheet.

A Member asked, on the basis of forecasts already undertaken on borrowing, repayments and income streams, how long it would be until there was net income. Officers advised that they did not expect the HDV to make a profit for some time, maybe even for decades, although the income for the Council would be realised straight away. Much depended on the shape and length of the development pipeline.

A Member asked if the HDV would be open to legal challenges by other developers i.e. as a result of the Council selling land to its own company. Officers advised that experience around the country to date showed that land had successfully been transferred in this way, and there had been no legal challenges to date. Members noted the potential issues where there could be challenge, around selling at less than best consideration. However, the model proposed would protect the Council from such challenges, as it was proposing to transfer land at market value to the HDV.

A Member commented that future discussions and reports need to be clear whether they were referring to the County Council or the HDV. He also queried if making a return on money borrowed from the government in the way proposed was completely legal. Officers advised that it was, although it was noted that the government may introduce a cap on prudential borrowing in the future, at which stage the Council would need to look at other potential mechanisms.

The Committee noted the example set out in the report, with the caveat that it was predicated on a large number of assumptions, e.g. all units being rented. This would very much depend on the location and nature of the sites, and demand in those areas, and the location of the first ones to come forward were noted. Each project would have a detailed business case, which would come back to the Committee. The key issue was that whilst the land would be sold to the HDV and the necessary borrowing arranged, the detailed operational arrangements would be managed by the HDV. The Council would be the shareholder, but have no operational involvement. There would be clear and absolute separation between the Council, as shareholder, and the individuals running the HDV, who would be responsible for operational management. This would maintain the requisite checks and balances, and offer transparency and overview of the process, with the shareholder board keeping an overview and effectively having a veto. Mixing up the two roles i.e. Company (HDV) Board and Shareholder (Council) Board, especially by having Councillors on the Company Board, had led to problems for other Councils – the company needed to be free and agile enough to run its own business. A Member was pleased to note that it would be the Committee, not individual officers and Members, exercising their vote on behalf of the Council.

Members noted that one of the non-financial benefits included the ability to boost housing supply, support economic growth and provide affordable homes: however there was a balance to be struck – if too many conditions or caveats were put on developments, it would affect the profitability and therefore the return realised from the HDV.

The proposed form of the HDV was a company limited by shares (CLS), which was the form of corporate entity being used by other local authorities pursuing similar scheme. It was noted that the other companies that had been established had been running for up to five years in relation to housing, although local authorities had been running other types of trading companies for decades. A Member agreed that a HDV company limited by shares was the best option, but for completeness, asked what alternatives had been considered. It was noted that these options had been explored at IRG and was available in the documents referred to in the Source Documents section of the report. Officers agreed to email these to Councillors Boden, Dent, Harford, Jenkins and Sales. **Action required.**

A Member commented that the corporate governance surrounding this proposal was absolutely crucial, and needed to be right from the start, clearly separating out the interests and legal obligations of the County Council and HDV, and their respective Directors. Officers commented that in terms of decisions and the governance process, this Committee would be acting as the shareholder, and would not be involved in the HDV's operational decisions. The relevant statutory corporation would be the Council, and the Committee would exercise control on behalf of CCC as a shareholder. It was pointed out that the potential conflict of interest for Council officers needed to be recognised, specifically the Director of Finance and the Director of Law & Governance, who would also be directors of HDV initially. Officers reassured Members that whilst they would have a role once the HDV was being set up, it was envisaged that professional directors with no connections to the County Council would be in post as soon as possible. It was also noted that officers were in a slightly different position to County Councillors, not being bound by the Members' Code of Conduct. Any potential conflicts on the Board by officers could be declared, so that the decision could be taken by fellow directors on the HDV Board whether or not they could participate in decisions on specific issues. There was a discussion on the important of independence, quality and experience of the directors of the HDV.

In terms of HDV documentation that the Committee would need to monitor, it was noted that this would need to be specified, i.e. specific financial reports for quarterly and annual monitoring, including the Profit & Loss account, Balance Sheet, etc. The focus would be very much on keeping an oversight on what was happening.

A Member commented that it would be helpful for the HDV Directors to know as much as possible about the County Council and the land it owned. It was confirmed that the intention would be for the Directors to be proactive with suggestions on development options, and there would be some division of functions between the HDV and the existing County Council assets team, i.e. reviewing land and strategies would be a function that would remain in house, but there would come a point where the HDV could act on the Council’s behalf once they have the necessary skills and capacity.

The Committee discussed tax implications, noting that the HDV would be SDLT (Stamp Duty Land Tax) exempt, because the Council was, and the HDV would be the wholly owned body of that body corporate, but other taxes such a CGT (Capital Gains Tax) would be an issue longer term. There was also the issue of VAT registration being done as early as possible, because there would be huge outgoings up front.

It was noted that start up costs would be mitigated as far as possible, and to date all work had been done in-house. There was no intention to put forward a transformation bid.

Members noted that around thirty proposals for name of HDV had been received so far from Members and officers. The Director of Finance would be checking them to see if they were registered with Companies House, and then emailing them to Committee Members. **Action Required.**

Officers were asked to arrange a meeting with the Chairman and Vice Chairman as soon as possible, to expedite the actions listed in section (iii) of the recommendations.

It was resolved unanimously:

i) Approve the principle of and business case for a wholly owned company or companies to be established and operated by

Cambridgeshire County Council for the purpose of identifying, developing and managing residential and commercial property developments within the UK with a view to generating capital and revenue income for Cambridgeshire County Council.

ii) Request the Director of Law & Governance to incorporate a company or companies, limited by shares, to be wholly owned by Cambridgeshire County Council for the above purposes.

iii) Authorise the Director Law & Governance, in consultation with the Chairman/woman and Vice Chairman/woman to

a. Agree the final form of the company Articles.

b. Agree the arrangements for the exercise of the shareholder functions.

c. Agree and appoint the initial directors of the company.

6. SITES SCHEDULE/HIGHLIGHT REPORT

A report was presented identifying progress and issues with sites. Members noted a number of updates, particularly on the Soham Eastern Gateway site.

All Members agreed that due to the commercially sensitive nature of much of the information in these reports, that they should be considered in confidential session at future meetings.

It was resolved to note the report.

7. COMMITTEE AGENDA PLAN

Members agreed to utilise the monthly Investment Review Group dates up until November 2016, with a 10am start, and identify dates for the rest of the Municipal Year. The Meeting Card would be updated accordingly.

Members noted the agenda plan.