# How To Set Up A Local Housing Company

A practical guide

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2016

## Introduction

This is a practical guide to setting up a housing development company, owned or sponsored by a local authority. A few years ago there were few such companies. In the last five years a handful of councils have led the way; now there are a large number of authorities getting started or seriously considering it.

This guide is written for elected councillors, senior managers, policy officers, development teams, and anyone who is taking on the practical tasks of getting things started and making them work.

The book is drawn from my own experience of setting up and running housing companies since 2010 in the London boroughs of Greenwich and Sutton, as well as practical research and dialogue with colleagues in other places such as Croydon, Enfield, Ealing, Newham, Barking and Dagenham, Lambeth, Broxbourne, Wokingham, Reading and many more.

With the constraints on delivering new build Council homes within the Housing Revenue Account (HRA), a growing number of authorities are establishing special purpose vehicles outside the HRA to pursue housing and other property development, holding assets on behalf of the authority to deliver commercial returns. There are a range of delivery models reflecting different local financial contexts and political priorities.

This guide offers a step by step process to help you make the right decision for your authority and then effectively turn your vision into a reality.

## Why set up a Local Housing Company?

The first question to address is the council's purpose in setting up a company to acquire, develop or manage homes. In reality, there are typically a number of different purposes, sometimes reflecting a plurality of people involved in the process of deciding to commit local authority time and money to set a company up.

Traditionally councils developed housing directly, funded by Government borrowing, held by law within the Housing Revenue Account (HRA) and in most cases legally required to be let on Secure tenancies at Social Rent levels (determined by a Treasury formula) with all Secure tenants benefiting from the Right To Buy (currently eligibility starts after 3 years, with tenants entitled to a discount of up to £104,000 in London and £78,000 outside London). But council house-building largely ended in the 1980s, with the Thatcher Government's policy then shifting to housing associations as the main developers of social housing.

Even though HRA Reform in 2011 introduced self-financing principles, enabling long term asset management and capital strategy planning over 30 years, the Treasury's insistence on an HRA debt cap, an ongoing hold over the use of Right To Buy receipts and control over annual changes in social rents (to keep the Housing Benefit bill down) means that the HRA is a highly constrained financial context for new build activity. Over the last 5 years, many authorities have thrilled local politicians and public sector tenants by building the first new Council homes for 20 to 25 years, but the Government-imposed rent decreases in 2016-2020 are already prompting many councils to wind up or curtail their HRA new build plans.

So many councils first became interested in setting up companies because they want to develop new **social housing** which can be let at low rents, akin to traditional Council housing. The main reason for doing this outside the HRA is to access debt finance outside the HRA borrowing cap (with many authorities having very limited headroom to borrow and facing competing demands on HRA debt to complete the Decent Homes standard and other improvements to existing stock). There is also an obvious commercial benefit to having flexibility over rent-setting and freedom from other aspects of the Secure tenancy regime, most notably avoiding the Right To Buy. The Government has made it clear that it will not support this kind of housing company, although there is currently no legislation ruling this approach unlawful. Rules on the use of Right To Buy receipts and the sale of Council land are clearly designed to prevent or deter this approach.

Some councils want to provide a more affordable alternative to the privately rented or leased housing they use as **temporary accommodation** for homeless people (where there is a statutory duty to provide a home in an emergency). General Fund housing development or acquisition is allowed for provision of temporary accommodation, without requiring a company structure. However, councils need to set up a company where trading results in a commercial profit. It seems the Government is more amenable to companies set up to tackle and prevent homelessness.

Others are specifically aiming to complement and expand the **private rented sector** by providing homes at full market rents. The primary objective here may be to drive up standards in the sector, with a council-owned company setting out to deliver exemplary tenancy management services across a large portfolio of homes, in contrast to the majority of private landlords in the UK who each own only one or two properties on average. From an investment perspective, the council could potentially deliver a product that can later be sold on to institutional investors such as pension funds. A good understanding is needed of the scope for growth of the local private rented sector. It is not a given in every part of the UK that an opportunity exists for local authority intervention in the market; even where there is demonstrable demand for private rented homes, commercial profitability will depend on availability of land, equity investment and construction methods and costs. Some authorities have also set up "social lettings agencies" which are companies that let homes on behalf of private landlords, typically at cheaper rates than privately-run high street agents. Again the Government seems less opposed to councils working in the private rented market.

Many councils choose to pursue a **mixed tenure** approach, the most flexible including a mix of affordable rent and sale, plus open market rent and sale. Even where the over-riding priority is to meet local need for affordable housing, this can usually only be achieved through significant levels of grant or other subsidy and on its own is unlikely to offer a revenue return to the Council. Hence mixed tenure, where market priced products cross-subsidise affordable homes, is the most viable approach for most companies to pursue. In this context, an authority can argue that their company is principally commercially-driven and only provides affordable housing to meet Planning requirements to support a mixed community.

There are some wider strategic purposes that are typically used to justify forming a company:

New homes and other property developments support **economic growth**, both through immediate construction jobs and the longer term support for local businesses by providing for a larger pool of employees to live in the district. This can be particularly relevant as part of an area-based regeneration programme, where investment in new homes has a multiplier effect in the local economy, as the new residents work in local businesses and spend in local shops and services. There may be particular concerns about housing key workers in health, education, social care and other public services.

A company's commercial growth can be seen as a direct response to **demographic trends**, expanding housing supply to meet growing demand, both from an increasing overall population and an ongoing long term shift towards smaller households. The local context will include evidence from the sub-regional Strategic Housing Market Assessment which summarises projected levels of housing need and demand, including the required mix between property sizes (numbers of bedrooms), tenure types and rent levels v incomes. This strategic rationale is particularly relevant where the private market is under-performing, failing to provide sufficient housing supply to meet demand.

In many cases the opportunity to generate a long term **income** stream into the council's General Fund is a major incentive to invest in a development vehicle. Where profitability is essential, then homes for private sale and let at full private market rents are likely to form the core of the output delivered, with affordable homes included where necessary to fulfil Planning policy requirements.

In the light of the Government's policy emphasis on home ownership and the Right To Buy for all social housing tenants, there is a strong argument for focusing development activity on **commercial** return rather than social purposes that could fall foul of new legislative restrictions. From a commercial perspective, the strategy for a housing company is straightforward – borrow money cheap, invest it in residential property, watch the money roll in. (If only it were that simple…)

This approach also offers advantages in relation to exemptions from public **procurement** rules. In general terms, where a company is fulfilling a social purpose or a statutory function, it is regarded as a public authority for procurement purposes and the full European Union regulations apply. However, where a publicly-owned company is pursuing a purely commercial purpose then it may well be exempt from public procurement regulations.

Another motivation for councils is a growing **distrust of housing associations**. Registered providers are moving closer and closer to becoming independent commercial private companies, (despite the ONS ruling in 2015 that RPs are currently to be regarded as public bodies, which the Government is now legislating to overturn by deregulating RPs). So whereas in the past many councils transferred their homes and land to housing associations, with guarantees about future rent levels and a commitment to house families nominated by the council, there is now a move away from council influence over housing associations. The sense of distrust has also been fed by the shift to higher "affordable" rents (up to 80% of market rents), which was introduced to enable major reductions in Government grant to housing associations. The most fundamental sense of betrayal came from the RP sector's deal with the Government to introduce a "voluntary" Right To Buy scheme for housing association tenants, funded by the forced sale of higher value local authority homes.

**Tensions and trade-offs**

There is never likely to be a perfect resolution of a council company's purpose, given the complexity of interests that a local council represents and the diverse range of objectives it seeks to achieve. Particular tensions are likely to arise during the process of deciding to establish a company and as its activities are pursued in the thick of the real world trading environment. There will be a trade-off between commercial return to the company (and the council) versus social outcomes, such as complying with Planning policy on the proportion of affordable housing developed and at what prices or rent levels. Perhaps the company could achieve a faster return through a higher level of market sales rather than hold completed homes and generate longer term yield and capital asset growth through a market rented portfolio. These tensions need to be recognised and managed, with purposes and policies reviewed as the company undertakes its activities and generates results.

**Summary**

**Given current and projected pressures on local authority General Funds, the core strategic purpose for most councils in pursuit of new build options is likely to be income generation, with economic growth and housing supply to meet demographic trends as important complementary purposes, whilst recognising that the need for affordable sub-market rents will largely be met within the HRA and by Registered Providers rather than a Council-owned special purpose vehicle.**

**Experience with these companies to date shows that, whilst inherently entailing commercial risk, this kind of initiative offers councils an exciting and realistically achievable opportunity to become more financially self-sufficient whilst demonstrating a willingness to intervene effectively to benefit the local community and economy.**

**Exercise 1: Purpose**

Read the statements below, a whole range of reasons why you might set up a company to build or acquire homes. Tick every statement that you agree with in your particular circumstances. Then rank your top five reasons in order (1 for the top priority, 5 for the fifth highest priority).

*Our HRA has insufficient borrowing headroom to meet our future stock investment needs, let alone invest in new build.*

*We have a growing pot of Right To Buy receipts retained for new build.*

*We have lots of council-owned land available and suitable for building housing on.*

*We need more, better quality and more affordable temporary housing for homeless people who we have a duty to house, and to prevent others becoming homeless in the first place.*

*We want to set an example of excellence to raise standards in the local private rented sector.*

*We want to promote home ownership by building starter homes and selling them at a discount on market prices.*

*We want to make a commercial profit on housing development, sales and lettings to become more self-sufficient as a council (to pay for council services not affordable with council tax, business rates and Government grant).*

*We want to promote employment and economic growth and we recognise that new housing is an integral part of achieving this.*

*We used to rely on housing associations to provide new homes to meet local needs but now we are less confident that they will continue to follow our strategic leadership.*

# Finding a way through the maze

This section of the guide begins to explore the complex web of financial and legal options that you need to negotiate in order to find the housing company approach that best suits your purpose.

### Financial and Legal Flexibilities and Constraints

Whilst council companies have existed for many years, with trading powers previously set out in Section 93 of the Local Government Act 2003, the recent diversification of new companies was prompted by the General Power of Competence introduced in the Localism Act 2011. Whereas previously councils could only trade their existing activities, this legislation in essence allows a local council to undertake any commercial activity that an individual or private company can lawfully undertake, provided this activity is not explicitly ruled out or constrained for councils by another piece of legislation. This opens up purely commercial trading in services not provided by councils before, such as building homes for open market sale and full private market rent.

### Finance and resources

Direct new build by councils is constrained by projected HRA borrowing headroom, revenue contributions to capital outlay (RCCO) and competing HRA capital investment pressures. Moreover, HRA new build requires homes to be let at sub-market levels and on secure tenancies which provide the Right To Buy, risking forced loss of these new homes at discounted prices. Under current rules, RTB receipts can only be invested in affordable rented homes, these funds cannot directly support shared ownership, market sale or market rent.

If a council decides to pursue a market rented housing new build model with an emphasis on revenue to the General Fund, the commercial viability of this venture will be an equation based on income vs costs and the mix of debt and equity capital. **Equity** investment could comprise Council capital reserves (if any are available) or funds borrowed prudentially in the General Fund for investment activity.

**Debt** can be raised either on the private money markets or via the Public Works Loans Board (PWLB) under the prudential borrowing regime. PWLB funds borrowed by a council can be lent on to a subsidiary company with an interest rate margin providing a revenue stream to the General Fund. The level of margin will have a significant effect on the business model, given the need for rental income to provide interest cover after management and maintenance costs have been met. There are State Aid issues in relation to on-lending; generally a more commercial margin on the PWLB debt will satisfy State Aid as well as ensuring the income stream to the Council.

**Land** availability is a major consideration for a new build programme. Every council that remains a landlord should review HRA land holdings, in particular the scope to build on infill sites such as poorly used or redundant garages, as well as the potential opportunities to increase density through demolition or estate remodelling. A council's corporate asset register will capture the land and property held in General Fund ownership, enabling a similar process of identifying under-utilised assets with the potential for new build housing or mixed use development. Sites suitable for residential development should also have been identified by the Planning Authority within the Strategic Housing Land Availability Appraisal (SHLAA).

There are General Consents available allowing the disposal of GF and HRA assets; there is also the possibility of securing specific Secretary of State's Consent where the general provisions do not apply. In particular, there is a question of sale at discount or even nil value transfer into a Council-owned subsidiary company. The regulations are different for HRA and GF transfers, so expert advice is needed to ensure the correct Consent is being used or sought. State Aid rules may require land to be bought by the company at market value where there is no "service of general economic interest" (i.e. not for social / affordable housing). So it is prudent to assume land will generally be transferred at market value, given earlier comments about focusing on commercial purposes, although land for affordable housing may sometimes be transferred at below market value.

There will be a number of **tax** issues to consider – Stamp Duty Land Tax (SDLT) on land acquisitions; VAT on services procured by the subsidiary company; Corporation Tax on Company profits; Capital Gains tax on future portfolio disposals. Expert tax advice is essential before committing to any investment or settling on a particular corporate structure.

**Company Options**

Having considered the purpose and the constraints, what are the various corporate options?

**Council-owned Company** – There are a number of legal forms that could be used. The simplest approach is to establish a Company Limited by Shares in which 100% of shares are held by the Council (with the flexibility to issue shares to a future Joint Venture partner in exchange for equity investment - e.g. a private developer or institutional funder). This form would suit a non-charitable profit-making business designed to deliver a revenue stream to the General Fund, both through a margin on debt (on-lending by the Council) and a dividend on future company profits. Other forms such as a Company Limited by Guarantee, a Community Interest Company and a Community Benefit Society would be more suited to a charitable or not-for-profit entity, or a mutual ownership social enterprise, which will better suit other purposes.

**Joint Venture Company** – On larger sites there may be a preference to share risk and reward, as well as benefiting from the experience, specialist skills and equity investment of a development partner. This could be partnering with an affordable housing provider to benefit from development expertise and investment in shared ownership; or with a private developer for development and marketing expertise and investment in market sale. This could take the form of a Company Limited by Shares in which the Council might hold a 50% (or other) share, or a Limited Liability Partnership.

**Independent Registered Provider** – In order to make use of RTB receipts that cannot be match-funded within HRA debt / capital / revenue constraints, RTB receipts could be invested in an RP outside Council ownership and control to deliver affordable rented homes, either on privately acquired sites or land transferred from the HRA or GF. This approach would not deliver a direct revenue return to the Council unless the authority holds an equity investment (which would need to be less than 50% of the scheme value to ensure no local authority control).

**Council-owned Group of Companies** – A number of authorities, wishing to invest in multiple trading and development activities with varying investment and return profiles, are setting up group structures with an umbrella holding company and several subsidiaries beneath it, such as separate housing, energy, care and support, regeneration, town centre retail and leisure trading vehicles.

A group can be tax efficient in relation to VAT and can enable an element of cross-subsidy, where profitability varies over time between the subsidiary businesses.

**What if we already have a trading company or subsidiary?**

Some councils already have arms-length management organisations (ALMOS) which manage existing council housing in the HRA and can take on a housing development or acquisition role; others have already established regeneration companies to purchase and develop properties, for example to revitalise town centres or local industrial zones; there are many other examples of local authority trading companies (LATCs) set up to provide a wide range of services (e.g. energy, transport, catering, care and support, social lettings agencies, home improvement agencies). It would be possible (depending on the articles of association) for any of these existing companies to take on a housing development role, rather than forming a new company; however, there is generally a commercial sense in creating separate corporate entities to carry out discrete activities and keep risk and liabilities distinct.

You will find more on how to select the best option and how to set up a company in the section on practical steps later.

**Tenure Options**

The council will need to set clear expectations for the housing tenure mix to be achieved, both from a Planning policy perspective for development sites but predominantly in terms of commercial return linked to the financing approach. Here are the options:

**Social Rent** – the lowest rents, such as council tenancies and old-style housing association rents. Given Ministerial comments about not supporting council companies set up to avoid HRA rules, it is not recommended that a Council-owned trading vehicle be established solely to provide social rents. This would, in any case, be least viable in commercial terms. Companies owned by councils cannot legally provide Secure tenancies (these are now only created within the HRA), so even if a council company wanted to offer lifetime tenancies with broadly the same rights as council tenants, the legal status of tenants would be Assured tenants, technically within the private rented sector.

**Affordable Rent / Intermediate Rent** – housing associations are now expected to set new-style rents at up to 80% of full market rent, which of course varies enormously between places. Council-owned companies typically offer a similar product where they are required by Planning rules to build sub-market rented homes. These could be Assured tenancies or Assured Shortholds. Commercially use of Shortholds is preferred in relation to liquidity (i.e. being able to get vacant possession if the home needed to be sold to repay the company's debts). Shortholds are particularly suitable as shorter term lets, for example providing temporary accommodation or to prevent homelessness.

Whilst some companies have been set up solely to provide affordable rented housing, the tenure is more often regarded within a local authority trading vehicle as a minority product across a commercially viable portfolio. The key factor here will be the level of subsidy or grant input to meet the costs of the affordable housing, and the extent to which market product profits provide a cross-subsidy.

**Private Market Rent** – from a commercial perspective, where Planning consent allows, the business will be more viable with a large proportion of homes let at the full local market rent level (based on RICS valuation). Again commercial principles would favour letting on Assured Shorthold tenancies, albeit that long term investment should allow for longer tenancies where there is demand for them, rather than the 6 month or 1 year tenancies that predominate in the private rented sector.

**Shared Ownership** – housing associations are the main providers of this tenure, where the occupier purchases an equity share with a mortgage and pays rent to the freeholder on the remaining share, with scope to staircase equity shares upwards, eventually to full 100% outright ownership. Council companies could certainly provide shared ownership as a minority product to meet Planning requirements for affordable housing. However, to take advantage of Government grant the company would need to become a registered provider and comply with the relevant regulations. Otherwise the subsidy needed would have to be met by company profit from market sale products or equity input from the council.

**Starter Homes** – at the time of writing, the Housing and Planning Act has yet to be fully enacted and the precise requirements to be imposed in Planning regulations are not yet clear. The intention of the Government appears to be that residential developers (including council companies) will be required to provide Starter Homes, sold at 20% discount on market prices, and may not be required to provide any other affordable housing. The impact on new provision of affordable rented homes and shared ownership remains to be seen, but could be severe. Council companies need to prepare plans in readiness to respond to this challenge to their flexibility in providing affordable homes.

**Private Market Sale** – the traditional development model for private sector housebuilders is to buy land, build homes and sell them as quickly as possible to turn a profit and reinvest the capital outlay into further development for sale. Whilst council companies are more likely to be seeking long term revenue income and return, rather than maximising short term profit, there may be a commercial logic to selling some product, for example to cross-subsidise affordable housing required by Planning. Homes can be sold leasehold or freehold at full local market price. Of course, sales viability is very sensitive to location and local markets, so council companies with a diverse portfolio of sites may seek to target build for sale in the highest value locations. This approach may create a tension with the social policy ethos of delivering mixed and sustainable communities; that ethos would seek to spread subsidised and full market value homes more equally across geographical areas. Commercially though, companies need the flexibility to sell homes to generate receipts to reduce the company's peak debt profile, particularly if revenue profits perform below forecasts.

**Mixed use sites** – where authorities face wider regeneration challenges, sites suited to a number of uses are likely to include retail + residential; leisure + residential; education/community + residential. Mixed use sites could be held in council freehold ownership with residential elements leased to the subsidiary company. Alternatively, the company could develop the whole site and hold the freehold, whilst leasing back relevant elements to the council. Experience suggests most councils prefer to hold onto freehold interests, enabling long term strategic leadership of more complex mixed use development sites.

**Office conversion** – relaxations to Planning rules have been introduced to encourage conversion of redundant office blocks to residential use. There may be sites, either in council ownership or held privately, that could be leased to a council company and then converted and let as a mix of rented homes. Under these permitted development rules there are reduced requirements for affordable housing, presenting a clear commercial advantage.

**Geographical scope**

It is also important to consider the company's geographical area of operation. Owning a portfolio across a wider area spreads risk in terms of differential rental and house price growth between localities. However, there are clear economies and efficiencies in managing and maintaining stock in a proximate local area.

At the political level, there is a question over whether a local authority company buying homes or development land in another local authority area should notify the host council, or even offer them the chance to pursue the opportunity themselves? Where companies are active across other authority areas, it also raises the risk of multiple council companies competing for land or properties, which would simply push up the price of a scarce resource. (Also consider competition with first time buyers, buy to let landlords, housing associations, and private developers.)

Where homeless families or people needing care and support are being housed in another district, there is a particular political concern about "cost-shunting" where the host borough becomes responsible for ongoing social care, health and education services, which were previously the responsibility of the "exporting" council whose housing company has acquired homes elsewhere. This has historically been a concern with temporary accommodation placements; it has yet to emerge as a significant issue with housing companies, whose activities are less directly open to public scrutiny, being often considered protected by commercial confidentiality. So consider whether to focus on housing people already resident or employed in the owning authority district.

**Exercise 2: Legal, Finance and Tenure Options**

Answer these questions to help you narrow your scope and select options that suit your purpose:

*Does the council have available land in the HRA or GF that is suitable for housing development?*

*Do you have HRA resources and borrowing headroom to develop new council homes?*

*Does the council have resources to invest: Right To Buy receipts? S106 commuted sums? Other capital receipts or reserves that could be invested as equity?*

*Does the council already own any subsidiary companies?  If so, what type of company? Is there an existing group structure that the new housing company could fit into?*

*Would it make sense to use an existing arms-length management organisation (ALMO)?*

*Does the council want to make a revenue income from the housing company?*

*Do you want to invest in the community without making a commercial profit?*

*Do you want to attract a private investment partner to share in your business?*

*What tenures do you aim to provide? Social rent / affordable rent / market rent / affordable ownership / open market sale?  If a mix of tenures, what proportions do you want to achieve?*

*Are you interested in mixed use development opportunities or just purely residential?*

*Do you want to trade in a particular local area or are you open to operating in other councils' local areas?*

# Making it happen

**Practical tasks - Summary**

Here is an outline of the six key steps you will need to follow. The following sections provide detailed guidance on each step.

**Step 1 – Outline business case** – explore and recommend strategic purposes, scale of ambition, type of vehicle, basic principles of ownership, governance, scope, timescale.

**Gateway: Secure political approval to progress**

**Step 2 – Detailed business case** – including the following:

2(a) Identify sites / potential acquisitions

2(b) Research rental / sale values, build costs, acquisition costs, management and maintenance costs

2(c) Explore financial resourcing including debt, equity and grant/subsidy

2(d) Build business model using cost/value assumptions, test out commercial viability (profitability)

2(e) Sensitivity testing to consider risk of variability in key assumptions (e.g. inflation)

2(f) Evaluate and recommend a suitable corporate legal form

2(g) Evaluate and recommend a suitable governance structure

**Gateway: Secure political approval to progress**

**Step 3 –Establish the company** – include the following:

3(a) Memorandum and Articles of Association and Shareholding Agreement

3(b) Appoint Directors

3(c) Register Company

3(d) Apply for a company bank account

3(e) Appoint company auditors, solicitors, valuers, etc. as needed

3(f) Set up financial systems

**Step 4 – Secure finance** – include the following:

4(a) Loan facility agreement agreed between Company and lender (Council or external lender) and ensure State Aid compliance

4(b) Equity input agreed by the Council

4(c) Provide business modelling, viability appraisal, other due diligence needed before drawdown of funds can be approved

4(d) Funds drawn down as and when required to commence acquisitions, development expenditure

**Step 5 – Agree Company policies and procedures**

**Step 6 – Commence trading operations**

**Step 1 – Outline business case**

The first step is a short piece of work to secure approval for a more detailed business case. This may be prompted by politicians raising questions, perhaps becoming aware of successful companies set up elsewhere, or might flow from a strategic discussion within the council's corporate executive team or a departmental senior team, such as the Housing or Regeneration directorate.

At this stage you will explore and recommend the strategic purposes (see Exercise 1 on page 7), outline the broad scale of ambition, indicate the possible types of vehicle to adopt (without selecting one option yet), consider basic principles of ownership, governance, finance, tenure, scope (see Exercise 2 on page 15) and set out a tentative timescale.

**Gateway: Secure political approval to progress to step 2**

**Step 2 – Detailed business case**

Having got the green light to do a more detailed business case, you now need to explore all the elements already highlighted in greater depth, testing options out and modelling scenarios using the best data you can obtain from the real world context in which you will be developing and operating.

You need to consider in more depth the local context, the financial constraints, housing need and demand, social and market housing, the local economy, growth prospects, the need for regeneration in specific localities, the existing social housing stock mix and condition, the options for estate regeneration, densification, tenure diversification, etc. You need to devise a strategy that addresses local political priorities, that works within financial constraints, that responds to market conditions.

You also need to explore in depth the options for the legal form of the company and how governance will work.

**2(a) Identify sites / potential acquisitions**

If the focus is new build housing development, the first question is whether there is available land on which to develop and whose ownership the land is in. For most councils, the starting point is land already owned by the authority, whether in the Housing Revenue Account or the General Fund. The ambition to build must be grounded in site availability and suitability. Questions to consider include the current value of the site, the Planning status and scope for securing permission to build, any competing proposals for the use of the land, if outside council ownership, whether the current land owner is willing to sell, whether the council could use Compulsory Purchase powers to secure the site, whether several adjacent sites in multiple ownerships need to be secured to assemble the site.  Most councils will develop on their own land or in partnership with other public bodies, before pursuing sites in private ownership.

There also needs to be an outline appraisal of what can be built on the land, such as flats, houses, the density and mix of bed-sizes, and the tenure mix (all likely to be speculative, prior to securing Planning consent).

If the focus is acquiring existing properties, the type of housing stock available and the current range of local market values needs to be researched.  There also needs to be clarity over the rental market demand in the area so that the company acquires homes that it can be confident of letting.  This will include considering property types, sizes and conditions as well as specific locations, for example proximity to public transport is typically important to younger professionals renting at market prices.

**2(b) Research likely rental / sale values, build costs, acquisition costs, management and maintenance costs**

Having considered the properties to be built or acquired, you need to look at recent rental and sale values in the area, as well as estimate to what extent values are likely to rise in future.  Putting together a commercial viability model also requires estimated build costs, acquisition costs (including SDLT and legal fees), and projected costs of managing and maintaining the homes into the future.  You may need specialist industry cost consultancy advice or talk to other council companies, housing associations and private developers and landlords.  The design, components, quality and finish of the homes will have an impact on the costs, so you need to have an idea of where in the range of products on the market your homes will be.

**2(c) Explore financial resourcing including debt, equity and grant/subsidy**

At the modelling stage, you need to explore how you will fund the company. Assuming your company is interested in developing housing and/or investing in and owning property assets, then you need to consider the sources of capital finance you will deploy.  In simple terms, a private enterprise typically relies on a mix of shareholder funds (equity) and borrowed money (debt). The principle of gearing or leverage refers to the proportional mix between debt and equity.  In most cases, depending on how risky the business is, lenders will only lend part of the capital finance needed, requiring the shareholders to fund the rest with their equity.

Clearly you won't yet have a loan facility in place and probably won't know precisely how much equity the council has available to invest in the company. More detail on finance, particularly debt and on-lending, will come in step 4 below.  At this point you will make some assumptions about the lender, any security for the loan, the gearing ratio (debt : equity) and the potential interest rate, which will partly depend on whether State Aid rules are likely to apply (i.e. is the purpose mainly commercial or to deliver a social benefit?) if the loan is coming from the council itself.

Where you are developing or acquiring to provide affordable homes (rented or owned), the subsidy can be made up of direct publicly funded grant or cross-subsidy within the company (in effect using the profitability of the market product to fund the costs of the affordable homes).  Grant from the Homes and Communities Agency (or the GLA in London) will only be available if your company becomes a registered provider.  Other grant subsidy could come direct from the council, making use of s106 Planning commuted sums (paid by private developers to pay for affordable housing off-site) or other council capital grants from receipts on other land or asset disposals.

Councils also accumulate Right To Buy receipts which can be given as grant to provide affordable housing. However, use of these receipts is governed by the DCLG agreement with councils, which features a number of constraints.  It requires retained receipts to be used to develop or acquire only affordable rented housing (not shared ownership, not market rent or sales).  Restrictions include that the total value of receipts used cannot exceed 30% of total scheme costs and the funds must be spent within 3 years of the receipt.  Most significantly here, it is not permitted to grant the receipts to a company in which the council has a controlling interest.

So if the key driver for your financial strategy is to spend retained RTB receipts, the options are as follows:

**(i) Within the Housing Revenue Account on permanent affordable rented homes** – only viable if the council has sufficient HRA borrowing headroom and

revenue surpluses to provide the 70% match funding.
**(ii) Within the General Fund on temporary rented homes for the homeless** – in this case the match funding would come from GF prudential borrowing, outside the HRA debt cap; however, these homes cannot generate a profit, otherwise they should be transferred into a trading vehicle.
**(iii) With a Housing Association on affordable rented homes** – in this case the council grants the funds to the registered provider which uses private finance and cross-subsidy to match fund. The council may require grant conditions such as limits on rent levels and lettings to council nominations.
**(iv) With an organisation providing affordable rented homes in which the council has a minority interest or none at all** – this could be a joint venture partnership with an investor or developer bringing equity finance, or a Community Benefit Society funded through council on-lending or private finance.
Several authorities are known to be exploring the last option here, typically driven by their lack of borrowing headroom within the HRA. The Royal Borough of Greenwich agreed in 2014 to convert its wholly owned company Meridian Home Start Ltd into a Community Benefit Society, although at the time of writing this conversion has yet to take effect. [check with RBG / Trowers] [See more in 2(f) below.]

**2(d) Build business model using cost/value assumptions, test out commercial viability (profitability)**

There are a number of development appraisal software packages available as well as a host of consultants offering to build you a bespoke business model for your proposed programme. The basics of a financial appraisal model are a series of assumptions about the economic context (e.g. house price/rental inflation rates, build cost inflation rate) and estimated inputs based on your research into current prices, rents, build costs, management and maintenance costs, land values, likely cost of debt, etc. In simple terms, the appraisal model is a mathematical equation that results in a sum that is either positive or negative:

Land costs + build costs + on-costs + finance costs – income – subsidy (if available) = profit/loss

This equation is more complex for a long term rental scheme, because the income depends on the interplay of rental revenue less management and maintenance costs and debt repayments over perhaps 30 to 60 years.

Clearly to secure approval to proceed with the company, you will need to propose a scenario that results in a positive net position (at least over the long run) and is based on well-reasoned and credible assumptions.

**2(e) Sensitivity testing to consider risk of variability in key assumptions (e.g. inflation)**

Given the likelihood that the real world will not perfectly match your model scenario, it is vital to test the model's sensitivity to changes in the core assumptions, looking at alternate scenarios such as low and high inflation in key costs and prices. Other factors to evaluate include the void rate (how much rent is lost when rented homes are unoccupied), the cost of debt (the loan margin), the impact of changes in taxation, slower "absorption rates" (the speed with which homes for sale are actually sold in a particular location).

**2(f) Evaluate and recommend a suitable corporate legal form**

I have already set out above the main types of company that exist and Exercise 2 sets out some of the questions you need to ask to narrow down your options. Here is some more detail on options:

**Company Limited By Shares** – the usual legal form for profit-making private companies where shareholders buy shares and can earn a share of company profits, called dividends. Most council companies are this type, with the council the sole shareholder owning the equity in the company and able to receive dividends when the company is profitable. The basic point of a limited company is that it creates a separate legal entity which limits the liability of the council (or any other shareholder) if the company becomes insolvent.

**Company Limited By Guarantee** – this form of company has no shareholders so there is no distribution of dividends; instead the company has members who each guarantee to pay up to £1 towards the company's debts, but all surpluses are re-invested in the company or the community. This is a common form of company for not-for-profit social enterprises. It is unlikely to suit a council housing company except where there is no intention to receive a return on investment. For example, an Arms-Length Management Organisation (ALMO) is usually a company limited by guarantee, with the council as sole member but holding no share capital.

**Community Interest Company** – this form of company is designed for a social enterprise that intends to use its profits and assets for the public good. The company is registered with Companies House and also with the Regulator of Community Interest Companies.

**Community Benefit Society** – this corporate form, which replaced Industrial and Provident Societies, has members rather than shareholders, there is no share capital and no distribution of dividends. These organisations are registered with the Financial Conduct Authority rather than Companies House. They can be charitable, which offers tax advantages, but are not required to be registered with the Charities Commission.

**Limited Liability Partnership** – where two or more parties are working together to a common end, combining their resources and expertise, there can be tax advantages to forming a LLP rather than create a company limited by shares that is taxed as a separate entity. For example, a Council inputs land assets, a private partner inputs equity capital and development expertise and staffing resources, to undertake a joint development producing homes for sale and long term rent. Typically the partnership would share profits from the joint venture proportionate to the value of their investment in the arrangement. Each partner is taxed separately in relation to their investment in the LLP, rather than the company paying taxes in its own right. The LLP structure can also make it easier to make changes to the partnership, as opposed to issuing or selling shares in a limited company. An LLP is registered at Companies House and regulated like a separate company.

You will probably bring in an expert legal adviser to help you evaluate and recommend the most appropriate Company type based on the strategic purpose you have chosen to pursue and the specific business activities, tenures, and delivery arrangements you intend to adopt. There is not necessarily just one suitable legal form in each case, there will be pros and cons of each company option.

You need to consider the relationships with any other entities that already exist in your authority (e.g. trading companies, ALMO, regeneration vehicles, etc.) and take into account the financial constraints and opportunities. Key factors will be ownership, control, flexibility to adapt to future changes in the business, how finance will be input and value extracted, tax efficiency.

In particular, if the council intends to use retained Right To Buy receipts, the DCLG rules require the recipient company to be outside council control, i.e. through an entity in which the council is a minority shareholder or partner.

If the council considers being a minority partner in a joint venture company or LLP, the key questions are who the majority shareholder / JV partners are and how the council's views will influence business decisions, whilst not having effective control. If the council is inputting land and grant or loan finance, then there may be adequate influence through covenants on the land, a charge on any properties or leases transferred, and conditions within the grant or loan agreements.

If the council considers being a minority member of a Community Benefit Society, the key questions are who the other members are and how the council's views will influence business decisions, whilst not having effective control. Again if the council is inputting land and grant or loan finance, then there may be adequate influence through covenants on the land, a charge on any properties or leases transferred, and conditions within the grant or loan agreements.

**2(g) Evaluate and recommend a suitable governance structure**

There will be certain legal requirements depending on the type of legal form you choose. In addition it is possible that you will enhance the governance arrangements beyond the legal basics, given this is a publicly-owned and financed body which needs to be seen to be accountable and open to perhaps a higher degree of scrutiny than a normal private company.

A limited company only needs one director by law, but typically a Board comprising several directors would be recommended to ensure a mix of relevant skills and expertise as well as reducing the risk the company cannot operate effectively in the absence of directors from Board meetings. One key consideration for a council is whether the company directors are elected Members, council officers or independent experts. The relationship between the company and the council's Executive also needs to be considered, to avoid conflicts of interest and clarify which decisions sit with the company Board and which with the council.

Where elected politicians are included on the Board, consider whether to include a cross-party mix and be aware of the implications of changes in both individual elected members of the council and an overall change in political control. One of the key long term risks for a council company is that a political change of control results in a shift in the purpose of the company that undermines the commercial viability.

A shareholders agreement will set out which matters are delegated to the Board of directors and which are reserved for decision by shareholders. Where the council is the sole shareholder, there needs to be clarity over where shareholder decisions sit - with the Executive, a special Committee of some kind, or with Full Council meetings? In practical terms it is more effective to delegate most day to day decisions to the directors, either at Board level or through an executive managing director (MD) or chief executive officer (CEO). Reserved matters for the shareholder may be significant strategic decisions such as undertaking new business, diversifying the business, taking on new debt facilities, deviating from or changing the agreed business plan, substantial disposals and acquisitions, or entering into long term partnerships. The point of reserved matters is to limit actions that would fundamentally shift the business purpose or take on significant new risk, not to restrict or constrain the normal day to day operation of the business.

There is no legal requirement to have a Company Secretary or any other specific roles such as Finance Director / Treasurer or Chairperson. However, it makes sense to have more than one director registered at Companies House so that the company can continue to trade normally if one director resigns, dies or is simply unavailable to act when needed (such as signing company documents and returns). It also makes sense for a business such as a housing development company to have a range of experts involved in governance, typically by appointing non-executive directors with finance, legal, property and commercial expertise. On the other hand, this input can be procured from professional advisers, though directors are likely to demonstrate more long term commitment to the company's interests and objectives.

**Gateway: Secure political approval to progress to step 3 and beyond**

NB: Specialist legal and financial advisors may be needed to inform the final decision to progress with establishing a company and to effect the set-up and registration.

## Step 3 –Establish the company

### 3(a) Memorandum and Articles of Association and Shareholding Agreement

There are standard documents available for setting up a company limited by shares or a company limited by guarantee; as a minimum you will need a Memorandum and Articles of Association. You may also need a Shareholding

Agreement.  Community Interest Companies and Community Benefit Societies have different model rules.

The Memorandum and Articles of Association set out written rules about running the company agreed by the shareholders, directors and the company secretary.

The Shareholding Agreement sets out how the company will be run and defines how important decisions will be made, in particular what is delegated to the Board of directors and what decisions are Reserved Matters to be decided by the shareholders (in many cases this will be the council as sole shareholder, perhaps through a committee, the Leader or the relevant Cabinet Member).

Examples from Sutton Living Ltd are available on Sutton Council's website, see the following link:
https://moderngov.sutton.gov.uk/ieListDocuments.aspx?CId=557&MId=4163&Ver=4

**3(b) Appoint Directors**

Directors are appointed when the company is registered.  There are some simple forms to complete.  Some councils have constitutional rules about who appoints directors of council-owned companies, so check that these rules are complied with.

**3(c) Register Company**

Registering a company at Companies House is quick and easy, provided you have the right documents in place. You only need one director to get started, you can always add more later on.

If you decide to set up a Community Benefit Society, this is not registered at Companies House but with the Financial Conduct Authority.

Once trading commences, you will need to register with HMRC for Corporation Tax and VAT.  If you are operating as a charitable organisation, you need to apply to HMRC for the relevant tax exemptions.

**3(d) Apply for a company bank account**

Setting up a company bank account often takes several weeks, because of the various identity and fraud checks that banks carry out before an account becomes live.  Typically you will also be asked for a business plan, to give a sense of the scale and ambition of the trading operation. In my experience, high street banks need regular chasing calls to ensure progress in setting up a new business account.

### 3(e) Appoint company auditors, solicitors, valuers, insurers, etc. as needed

These appointments may not all be needed at first, depending on the activities the company pursues, but it is sensible to put arrangements in place before you actually need them. You may want to consider procuring services from local firms, if this fits the ethos of the council in promoting the local economy. You need to consider whether to appoint the same or different firms from those already employed by the council. You are likely to need different lawyers so that there is no conflict of interest in advising or representing the company as a separate legal entity from the council.

### 3(f) Set up financial systems

Before the company commences trading you need to be confident it can adequately process its commercial transactions and manage its accounts. Remember that most council-owned companies will not only produce their own accounts, these will also feature in the authority's consolidated accounts. So in many cases it makes sense to use existing council accounting systems to process and track expenditure and income. Then as the company expands it may be more inclined to purchase a stand-alone accounting system, linked to the company bank account, and manage its finances separately from council systems, simply providing a year end set of accounts for consolidation.

## Step 4 – Secure finance

Once the company is set up and has a bank account, to commence trading activity you will need some cash. Whether for acquisitions or development, getting the finance in place can involve quite a lot of paperwork and a complex approval process.

### 4(a) Loan facility agreement agreed between Company and lender (Council or external lender) and ensure State Aid compliance

Once established, the company will need to draw down a mixture of equity and debt finance to commence operations. Whilst the company as a private entity can borrow from any private finance source, the likelihood is that the quickest and simplest arrangement will be a loan from the council.

The principle of a council borrowing, usually from the Public Works Loans Board (PWLB), and then on-lending to another organisation or company is well-established.  They key issue for the council is compliance with State Aid rules, where these apply.

There are no restrictions on loan rates for developing affordable housing, because this satisfies the social purpose requirements for exemption from State Aid rules.  So this element of a loan can be priced well below commercial loan rates, although it still presents the council with the opportunity of making a revenue return by charging a small margin on the council's own cost of debt.

It is debt finance for housing products that are purely commercial, private rented and market sale homes that are intended to make a profit, for which State Aid rules come into play.  This is a complex area of law for which specialist advice is needed.  The principle is that the council should charge a commercial loan rate for debt that will be used for profit-making purposes. The tough question is how to decide on what loan terms, conditions and interest rate can be considered commercial? How would another lender appraise the new council company in terms of credit worthiness?  Factors include the company's track record (in most cases, none), security / collateral (again there may be none at first), what level of risk the lender considers the planned company activity constitutes, the length of the term / loan period.

There may be an argument for taking out a short term development finance loan at a higher rate and then refinancing post-completion at a lower rate, reflecting the greater security and lower risk post-completion.

Experience indicates a fair amount of variation between councils in deciding what the appropriate interest rate for on-lending should be.  Ultimately it is a matter of judgement (this usually sits with the council's finance director) and the risk is that the arrangement could be challenged and over-turned by the Courts.  Local authority finance directors have in the past been generally characterised as highly prudent, verging on risk averse.  So securing a workable loan rate that is viable for your company and palatable for the council's finance director may be quite an involved negotiation.

In terms of documented challenges, there is not a mountain of relevant case law.  One worth looking at is the judicial review of Coventry City Council by Coventry Football Club, in which the council was found to have complied with State Aid rules when loaning funds for the purchase of the Ricoh Stadium.

Beyond on-lending by the council, there are of course other sources of finance to consider:

The **European Investment Bank** lends at competitive rates to fund projects which satisfy its social purpose criteria. This may contradict the emphasis of many council housing companies on pursuit of commercial purpose. However, there may be scope to secure EIB funding for the affordable elements of developments, or where it may be argued that expanding the private rented sector fixes a flaw in the housing market that has a positive social impact on employment opportunities.

**Institutional investment**, such as insurers, pension companies and overseas sovereign wealth funds, are increasingly interested in the residential sector. Looking for reliable long term yields on investment, rather than short term profits, these funders are a good match with rented housing vehicles. They can invest on an equity share basis, provide loans or perhaps what they most prefer are lease-back and amortisation arrangements. Generally these investors prefer a finished product rather than taking on development risk and will be seeking a rental income guarantee to underwrite the risk of future volatility in demand and rental values.

**Bond finance** has in recent years been the preferred source of private finance for the bigger players in the housing association sector. Generally bonds are issued in large values (hundreds of millions), likely to dwarf the early ambitions of your council company. Groups of housing associations have secured bonds across a portfolio of developments, so there may be scope for a group of council companies to take the same approach to tap into the bond markets.

**Joint ventures** with private developers, housing associations, or even other public authorities would involve combining resources, such as land, capital and expertise, to mutual commercial benefit. For example, a joint company limited by shares or limited liability partnership would typically draw on shareholder loans from each of its shareholders / partners. These are usually junior debt, treated as equity and based on long term maturity, often with lower rates and deferred interest payments.

#### 4(b) Equity input agreed by the Council

Equity could come from existing council capital reserves, receipts from the disposal of land or funds borrowed prudentially and invested by the council in the company. In the latter case, the council needs a robust strategy for paying off the debt and interest on the loan. If the council is on-lending to the company at a commercial margin, then part of the income from this margin could be used to pay the interest on the council's own debt finance (typically from the Public Works Loans Board) that is being input as equity.

#### 4(c) Provide business modelling, viability appraisal, other due diligence needed before drawdown of funds can be approved

Having developed a sound business model as part of the detailed business case (step 2 above), the company will need to provide updates and detailed scheme-based financial appraisals each time it wants to draw down a tranche of debt finance (whether from the council or another lender). Other financial due diligence will be needed to ensure the investment being made fits within the risk profile on which the loan and equity finance has been agreed. Typically the overarching business model will set hurdle rates of return which must be achieved by the appraisal before funds can be released. For example, the lender may set targets based on using a discounted cashflow over the lifetime of the project to calculate net present value and the project's internal rate of return.

#### 4(d) Funds drawn down as and when required to commence acquisitions, development expenditure

A simple process is needed for the release of funds from the council into the company accounts. You need to make sure you have factored in the time it takes for the council to secure and free up funds as well as transfer them, before you sign legally binding contractual commitments with vendors, contractors or suppliers on behalf of the company.

### Step 5 – Agree Company policies and procedures

Now you have a company and cash in the bank, you need to manage the business in an efficient and effective way. Given the scrutiny a publicly-owned company may well attract, it will pay to have clear policies and procedures for the company to follow. These may mirror the parent council's own policies, but the more commercial the operation aims to be, the more it will need distinct ways of working that reflect its business purpose rather than its public sector ownership.

**Governance scheme of delegations to company directors/officers/staff**

Beyond the separation of shareholder reserved matters and functions delegated to company directors (see section 3(a) above on Articles of Association and Shareholders Agreement), you will need to clarify how decisions will be taken by the Board of Directors, what is delegated to individual directors or members of staff, basic financial controls (e.g. cheque signatories). Some companies choose to directly employ staff, others make use of council staff whose time is recharged to the company. Clear lines of control and communication, with well-documented decisions, will protect all involved, providing transparency and engendering consistency.

**Procurement procedure**

In order to progress a new build development programme, the company will need to appoint a range of consultants: architects / Planning consultants / Employer's Agent and constructors. In some cases, these appointments may be made by the council and then contracts novated to the company at a later stage. Alternatively, the company may make these appointments to deliver its own developments. It is also possible that a council company could in parallel act as a development agent for HRA new build sites.

The company could outsource the whole project management of development, rather than recruit in-house project management. However, this approach would undermine profitability within the company, with development agents taking a profit margin.

In terms of procurement, where a purely commercial purpose is being pursued it is possible that European Union public procurement rules will not apply. However, where mixed use schemes include elements of direct social purpose then it is likely that public sector regulations will take effect, even if other internal Council standing orders may not be required within the Company.

The company's procurement procedure needs to set out how it will approach suppliers for competitive quotes or tenders, under what circumstances it will procure without competition and the level of decision-making appropriate to different values or types of contract.

Alongside the procurement procedure, it is advisable to have an **Anti-Fraud** policy. It also makes sense to have a specific **Acquisitions** procedure for land and property purchases.

In relation to the homes acquired or developed, there will need to be a range of policies:

- **Lettings** policy for both affordable and market rented homes (and any commercial property)
- **Rent setting** policy
- **Rent collection** arrangements and arrears / **debt recovery** policy
- **Sales** policy for affordable ownership and market sale homes
- Property **management and maintenance** policies

Will the Company provide its own lettings, marketing, management, repairs and maintenance or procure these services from others (including contracting with the Council itself)? Where the residential product is predominantly not affordable housing, then there is a strong argument for a separate management arrangement that differentiates these homes from mainstream council housing. It may make sense to make use of council management resources at the outset and then directly employ or procure management for the company as the portfolio expands to a sufficient economic scale.

Another question is whether the company aims to **promote homeownership** to its tenants. Although not legally required, you might want to offer your tenants a Right To Buy, with or without a discount (paid from company profits). The commercial impact would need to be looked at carefully, depending on the volume of take up.
An alternative home ownership incentive would be a mortgage deposit savings scheme (for an example, see Meridian Home Start), using company surpluses to match tenant savings and so facilitate a mortgage deposit for a move into home ownership, without losing the rented property from the company's portfolio and asset base.

The company may also set out a range of ethical principles and how it will behave, including:

- **Equality**, diversity and anti-discrimination policy
- **Environmental sustainability** policy
- **Corporate social responsibility** policy

**Step 6 – Commence trading operations**

So now you are ready to start trading and delivering the objectives and outcomes in your company business plan. Perhaps there is another whole practical guide book to be written on how to run a housing company once you've got started. Here are some specific starting points to consider:

Put together a clear **development strategy**, setting out long term objectives, recognising the wider impacts of your development activity in the economy and the community. Plan ahead for each stage of the development process, including:

**Land appraisal** - capacity, feasibility, density, public transport accessibility, unit mix, tenure mix;

**Land acquisition** - legal Title, restrictive covenants, site condition, surveys, neighbouring land, properties and occupiers, security, demolition, site preparation, drainage and flood risk;

**Financial viability appraisal** - land cost, SDLT, build cost, consultants fees, on-costs, debt costs, cost of sales and marketing, grant, sales income, rent stream against debt repayment, management and maintenance costs, developer profit, residual land value calculation, impact of delivery slippage on financing costs;

**Design** - consider your specification, quality, components, finish; difference in design for affordable housing, market sale and homes designed specifically for the private rented sector (e.g. two bed flats with equal sized double bedrooms, both with ensuite bathrooms, for professional flat-sharers);

**Planning** – pre-application discussions, public consultation, submission, permission, JR period;

**Procurement** – whether to follow OJEU rules or not, using framework agreements, setting employer's requirements, selecting contract type, requiring performance bonds, warranties, influencing the supply chain, using Modern Methods of Construction;

**Construction –** administering the contract on site, employer's agent, clerk of works, monitoring, KPIs, site inspections, CDM health and safety requirements;

**Post-completion** - snagging, defects period, lettings and sales;

**Risk** - management and mitigation throughout the process.

For homes completed or acquired, put in place practical arrangements to deliver your policies and procedures:

**Tenancy management and maintenance** – decide whether these functions will be delivered by the council's in-house team, new company employees, or out-sourced to a housing association or private management company or lettings agency.

**Sales and marketing** for new homes for sale, again decide whether done by the company's in-house team or out-sourced to a housing association or private estate agency.

**Lettings** – if included in your policy, work out how to carry out income checks, affordability tests, verifying leave to remain, validating local connection or local employment, taking up references (bank? employer? previous landlord?), taking deposits (using the national protection scheme), requiring rent in advance, whether or not to use letting agents, putting in place tenancy agreements, deciding rules on pets, flat-sharers, white goods, etc.

# The future of local housing companies

Before diving in and establishing a company to acquire or develop homes, it seems wise to question what the long term prospects are for these organisations. What does the future hold? Will local authority housing companies survive and prosper, or be a short-lived anomaly?

Much depends on central Government and how it chooses to legislate - the Localism Act currently provides the general power of competence that, more broadly than the well-being powers that preceded it, enables local authorities to do almost anything they want to, unless explicitly ruled out elsewhere in the law. Trading offers councils a route towards self-sufficiency through commercial activity that can supplement local taxation and business rates to meet the costs of essential local services, without calling on central Government grant support. This must be a trend welcomed by the Treasury, provided the risks taken by fledgling council companies do not result in losses or bankruptcies.

Arguably there are unlikely to be any outright business failures in this sector, given the reputational impact in a political environment; councils will carefully bail out any of their wholly owned companies that fail to become profitable, and then quietly dissolve them.

With the consolidation and merger trend in the housing association sector creating mega-mergers of multi-billion pound landlords, will there be pressure on local authority housing companies to rationalise and combine efforts to achieve efficiencies and economies of scale? This looks unlikely, given the rather parochial local political motivation and control of these entities. Perhaps the likeliest consolidation would come from small sub-regional groupings in urban and metropolitan areas that cross local authority boundaries, particularly where there is political alignment between neighbouring councils.

Maybe a London-wide conglomerate of council companies, or a GLA owned or sponsored approach, could be achieved (but I have seen so many previous proposals of this kind come to nothing). Perhaps, rather than mergers, there is better scope for collaboration to share land and resources (e.g. S106 cash, RTB receipts, receipts from sale of high value empty homes), or efficiencies in sharing development, management and maintenance services.

# About the author

I am working as an independent consultant, following 25 years in UK public housing and regeneration, over 15 years of which were at a senior level. I am currently working with local authority clients to deliver estate renewal, town centre regeneration and Council-led new build delivery programmes, including setting up council housing companies.

My previous experience included leading on major housing investment strategies and programmes, including stock improvement and new supply. I have had a strong focus on resident involvement, promoting equality and diversity, piloting new delivery models and partnership working.

In 2011 I was the project director responsible for setting up Meridian Home Start Ltd for the Royal Borough of Greenwich. This was one of the first council companies set up under the general power of competence in the Localism Act 2011. In 2015 I became the Managing Director of Sutton Living Ltd, with approval to invest £60M in an acquisition and new build programme in support of one of the Mayor of London's Housing Zones.

In September 2016 I was appointed by the London Borough of Tower Hamlets to establish housing companies to deliver an ambitious programme of new build, estate regeneration and acquisition of temporary accommodation.