

Anthony Collins

LEGAL MODELS FOR DELIVERING AFFORDABLE HOUSING

BUCKINGHAMSHIRE COUNCIL

Maximising the best range of good quality affordable housing

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1. INTRODUCTION AND CONTEXT

1.1 Affordable housing solutions are a major priority for Buckinghamshire Council ("the Council"). This is an update of a report written in March 2024 as a response to a request by the Council's overview and scrutiny committee which was an outstanding piece of work which is required to be undertaken as soon as possible.

1.2 On 9th December 2020 a motion was passed by the Council, in the following terms:

"It is essential that a range of good quality affordable housing, including social housing is available at affordable rents; we are all aware Buckinghamshire is an expensive place in which to live, leading to a serious hurdle in the recruitment of key workers such as teachers, nurses and GPs and other key council staff. This has the potential to depress future growth and to have a negative effect on the physical, mental and economic well-being of our residents. By maximising the provision of good quality affordable housing, including social housing at affordable rents, we can ensure this risk is minimised.

Council calls on Cabinet to instruct Officers to commission a report detailing both current and future possible affordable housing delivery models, including local authority owned social housing, which will maximise the provision of the best range of good quality affordable housing appropriate to the needs of our residents."

1.3 In April 2023 we advised on the legal and regulatory issues relating to accessing funding to enable accommodation to be secured by the Council in discharge of its homelessness functions. Our previous report touched on looking at the benefits and risks of the Council providing the accommodation itself or when a housing company does. The Council's focus since has been primarily focussing on resolving the immediate outstanding regulatory issues, and any additional residential accommodation acquired in the meantime has been let to and is currently managed by registered providers ("RPs").

1.4 Our report is therefore written in response to the request by oversight and scrutiny committee but, with the time elapsing since the original Council resolution, has the benefit of covering matters as they are now. This has been a year of significant change with a new

Government with its own direction of travel in housing policy, mostly notably in tasking councils in their capacities as local planning authorities with driving the building of 1.5 million new homes over the next 5 years. Many of the new Government's plans are still emerging and so it remains the case that to a degree the Council will be taking a "wait and see" approach, on its medium-term plans.

1.5 The Council is working to reflect good practice in the "Partnership Engagement Approach" that it has been developing. This sets out some important activities that are intended to create fertile soil with which to pursue positive working both *within* the Council but also with *externa*l parties, whether they are in *existing* relationships with the Council or being identified as *potential* future partner organisations.

1.6 The Council has finalised its Affordable Housing Enabling Framework ("AHEF") which is in place (in particular) with all the registered providers who hold housing stock transferred from council ownership, all prior to local government reorganisation within Buckinghamshire. There is undoubtedly significant progress in addressing the detail of the partnership approach to be taken especially with the 4 housing associations that own and operate the stock transferred by the originating 4 district councils.

1.7 The Council's Housing Strategy has been published since our initial report was issued in March 2024.

1.8 We have been in confidence provided with:

1.8.1 documents pertaining to the Councill's "Partnership Engagement Approach";

1.8.2 documents relating to the business plan submitted by the Council's development subsidiary company Consilio Property Limited ("Consilio");

1.8.3 a report with Appendices issued on 30th September 2024 recommending the Affordable Housing Enabling Framework for Buckinghamshire;

all of which inform our findings.

2. EXECUTIVE SUMMARY

2.1 The Housing Strategy sets out the actions to realise the Council's vision, namely, "A strong housing offer that provides affordable, accessible, sustainable and suitable choices for all life stages".

2.2 The Housing Strategy complements the Council's Regeneration Framework for the County and the specific plans relating to Aylesbury, Chesham and High Wycombe.

2.3 The supply of land, the availability of finance, the costs of construction, the capacity of local supply chains, the advancement of new technologies, well-resourced planning professionals and the state of the housing market are all factors in delivering affordable housing.

2.4 If the Council were to invest in becoming a RP with a Housing Revenue Account, it would need to embrace its tenants being in the main on secure tenancies and also the regulatory standards that are of a much more enhanced level applicable to RPs owing to recent reforms. The Council does not have the maturity or capacity to embark on this path, both in terms of the skills sets and financial resources required to build and manage the dwellings, without considerable upfront investment.

2.5 There are good examples of councils establishing RPs linked to their development companies, but these are successful where the enterprises have established a strong record and a dedicated officer team which enable further momentum to be achieved.

2.6 More can be made of the fact that Consilio is an unregulated vehicle outside the domain of the Regulator of Social Housing. It can look at models such as Help to Own, which is briefly described in this paper.

2.7 The Council does not have the capacity or the resources to develop affordable housing by itself. Instead, co-working with RPs and with Consilio offers it the best way of achieving the long terms aims of the Housing Strategy, following the Partnership Engagement Approach.

2.8 Consilio enables the Council to do more with sites that the Council owns but it is unable to do more than to be the Council's developer arm for affordable housing, and it would be prudent for Consilio to continue working with existing RPs on an incremental project by project basis.

2.9 Many of the new Government's initiatives are summarised in this updated report. Whilst they change the context within which the Council drives its affordable housing strategy they do not yet materially alter the line of direction that the Council can take about delivering more affordable housing which is determined more by the supply of land, economic conditions, the availability of Government grant, the capacity of the construction industry and the focus of housing associations which is principally improving the homes of their own tenants.

2.10 A short tabular analysis is set out below to summarise the findings of this report:

	Pros/Strengths/Opportunities	Cons/Weaknesses/Threats	Ranking
Direct by the Council	➢ Direct control	➢ Lack of maturity in delivery or capacity ➢ Limited funding available ➢ Too resource intensive when the council has other pressing priorities	4
Partnership with RPs and developers	➢ Council as enabler ➢ Skills and resources of local RPs ➢ The Partnership Engagement Approach ➢ The AHEF ➢ Optimum opportunities delivered through collaboration	➢ Pipeline of sites in Buckinghamshire (but this applies to all the possible routes) ➢ Regulatory changes reducing RPs' development capacity ➢ Rising costs (but this applies to all the possible routes)	1
With Consilio	➢ Consilio as an unregulated vehicle doing new models	➢ Consilio's financial position ➢ Consilio's lack of resources ➢ Limited funding available from the Council	2
In a JV with single organisations	➢ Direct role for the Council	➢ Resource intensive which the Council lacks the capacity for	3

3. HOUSING STRATEGY

3.1 The Housing Strategy is a well-written document that sets out the actions proposed to realise the Council's vision, namely, "A strong housing offer that provides affordable, accessible, sustainable and suitable choices for all life stages" and is the first integrated plan for the County since local government reorganisation.

3.2 As well as describing its statutory duties, the Housing Strategy emphasises the enabling role that the Council plays in "supporting our registered housing provider partners to develop new affordable homes and to improve their existing homes", given that the Council "does not own or directly manage affordable housing stock", certainly to the degree that its legacy district councils did prior to their respective housing stock transfers.

3.3 Whatever legal models that the Council chooses to use, they should be consonant with role of the strategy which is to:

"I) Ensure a co-ordinated approach for the council and key partners to the housing offer in Buckinghamshire.

II) Provide a framework for identifying and agreeing key priorities across the council and partners in order to facilitate delivery and/or allocation of resources.

III) Promote the role of housing in delivering wider priorities and objectives including improved health and wellbeing, tackling homelessness, and supporting sustainable economic growth.

IV) Ensure that Buckinghamshire Council meets its obligations under the Equality Act 2010 and other relevant legislation.".

3.4 Considerable information is provided about the people and places in Buckinghamshire, with, for example, "25% of the economically active population … employed in the lower paid sectors of care, leisure, sales and customer services, machine operatives and elementary occupations".

3.5 The Housing Strategy must be read alongside the statutory and policy plans that it lists, including the Local Plan which is still in gestation.

3.6 The Council's housing offer is the basket of statutory functions that it must discharge but also the alignment of its disparate housing related powers and duties, strategies and policies, now that the housing strategy does not have the statutory footing used to have in England under section 87 Local Government Act 2003.

3.7 The Housing Strategy Priorities bring out the following points directly relevant to this report:

3.7.1 **Priority one:** Responding to the needs of our diverse population – the Council "will identify, specify and deliver housing options for groups with particular needs";

3.7.2 **Priority two:** Better homes: good quality, sustainable and matched to need – "the introduction of a new Decent Homes Standard is progressing, which, when introduced, has the potential to have a significant financial implication for all landlords";

3.7.3 **Priority three:** New homes: affordable, accessible and appropriate – where the commentary is particularly relevant:

(a) "Explore the use of local authority assets and resources for the purposes of delivering additional new housing" –

(i) "New Temporary Accommodation development."

(ii) "Using Section 106 monies to support the development of Affordable Housing."

(iii) "Incorporating Council held assets in redevelopment proposals (Target 500 by 2028)."

(iv) "Consider different delivery vehicles (e.g., Joint Ventures or other collaborative models)."

(b) "Our Action" –

(i) "We are working with Registered Providers to facilitate delivery of new schemes, helping to identify sites and secure funding as appropriate."

(ii) "We are supporting Registered Providers with funding for garage-site developments."

(iii) "We are ensuring that housing (including affordable housing) is included in regeneration plans by the Council and partners."

(iv) "We will work proactively to ensure that the planning process accelerates delivery of affordable housing applications in acceptable locations."

(v) "We will explore opportunities for 'build to rent' schemes, including the use of institutional investment."

(vi) "We will explore opportunities for the Council to deliver more housing utilising its land, property and financial assets, including any potential role for Consilio, the council's property company. (Consilio was set up by South Bucks Council in 2017 as a wholly owned local authority trading company to allow the council to facilitate income generation. It has now transferred to Buckinghamshire Council. It owns a limited number of property assets)."

(vii) "We will identify three Council-owned sites to bring forward for new development and complete these developments by 2027. Three new developments completed and let by December 2027."

(viii) "We will agree priorities for capital funding (including commuted sums) and implement a list of priorities for section 106 monies to be developed.":

3.7.4 The Housing Strategy notes that a number of key issues require further dialogue, namely, planning, regeneration, sustainability and overall funding.

3.7.5 The Appendices to the Housing Strategy contain supporting data, notably for the purpose of this report in Appendix Two a list of registered providers with affordable housing development programmes in Buckinghamshire, listing those with the biggest development programmes and highlighting which ones are clustered in the north or south of the County. The same Appendix describes the conventional affordable housing products, and ways of funding them.

3.7.6 The Housing Strategy has to be read alongside the Council's Regeneration Framework for the County and the specific plans relating to Aylesbury, Chesham and High Wycombe, which emphasise the Council's place making role and its pursuit of local economic development to create the basis for sustainable growth and the conditions for house building, with targets set for each of the towns, with particular note of Aylesbury's Garden Town status, Chesham's town centre residential growth and High Wycombe's pivotal role with new industries.

4. THE CONTEXT PROVIDED BY THE PARTNERSHIP ENGAGEMENT APPROACH

4.1 This report is not exhaustive of the routes that could be taken or the structures that could be used to develop affordable housing in the area served by the Council.

4.2 The Report with the title "Partnership Engagement Approach" to PGSMT dated 14th December 2023 ("the PEA Report") proposes "to create a collaborative arrangement between key stakeholders. It is not highly revolutionary, but rather focuses on the key principles that manage sensible communication and agreement of genuine partnership behaviours, yield better results for both parties.". Its Annex A and Appendices Two to Seven provide for a matrix of charters setting out protocols of behaviour both within the Council and with third parties, with common themes across all of them. The Action Plan in Appendix Seven sets out a series of steps which if undertaken certainly should lead to better co-working and thereby more effective delivery across the range of partner organisations engaged within the County.

4.3 Annex A to the PEA Report sets the scene for the Council's role as follows:

"2. Buckinghamshire Council is not a stock holding authority and it relies on Registered Provider (RP) partners to deliver affordable housing and there is no current plan to introduce an in-house development function at this time. We as a Council are reliant on external partners delivering the outcomes proposed in the Housing Strategy. Without managing this relationship, and that with other providers more carefully, we will not be able to deliver the Housing Strategy outcomes or any outcomes within key strategies that are relevant to this approach.".

"2.1 We need to demonstrate and educate the council on how, why, where and how much investment is made by partners in the housing economy of Buckinghamshire. There needs to be a sea change in approach to derive mutually beneficial outcomes for our customers. Without improving general understanding and enhancing (not destroying) our relationships with partners, we will not deliver improvements.".

4.4 The rest of this report looks at structures for delivery by the Council itself, with Consilio and with RPs, with the greatest detail provided for structures with RPs. The County needs a mixed economy of deliverers, including the possibility of working with community land trusts and private developers, neither of which are covered in this report, but should be borne in mind.

4.5 The supply of land, the availability of finance, the costs of construction, the capacity of local supply chains, the advancement of new technologies, well-resourced planning professionals and the state of the housing market are all key factors in delivering affordable housing. The Partnership Engagement Approach should enable all these matters to be addressed through collaboration with the Council's burgeoning alliance of co-deliverers.

4.6 The Council's enabling role which is amplified by its targeted approach to regeneration is pivotal in securing sustainable development as the basis for a concerted approach to more affordable housing.

5. THE AFFORDABLE HOUSING ENABLING FRAMEWORK ("AHEF")

5.1 The AHEF is an operational document that:

5.1.1 implements the three mechanisms within it (grants for section 106 contributions, disposals through open market sales, release of restrictive covenants);

5.1.2 establishes and sets the terms of reference for the Affordable Housing Investment Group; and

5.1.3 sets out a scheme of delegation for lifting restrictive covenants on a case-by-case basis with the LSVT RPs.

5.2 Perhaps its most far-reaching innovation is the policy set for evaluation and/or releasing restrictive covenants with the LSVT RPs (Fairhive, Paradigm, Red Kite and L&Q) relating to the development of new ***affordable homes*** in return for Council nomination rights and an overage agreement should the site be sold at a later date. This is an arrangement for the continuous improvement of the delivery of the Council's functions in line with its Best Value duty under Part 1 Local Government Act 1999.

5.3 By way of example the application of this new policy is exemplified with a case study about garage sites held by Paradigm.

6. DELIVERY BY THE COUNCIL

6.1 The Council has responded to the opportunity to acquire and develop housing for Ukrainian and Afghan refugees. This has resulted in the Council consolidating its position with the dwellings that it does hold (for a variety of its functions) so that with the agreement of the Secretary of State it keeps them below a number that requires the authority to open a Housing Revenue Account or necessitates the Council itself seeking to register as a RP.

6.2 The Council is not in a position to develop more affordable housing itself or to develop the capacity and resources to open its Housing Revenue Account – and scale up as a RP landlord in its own right. This is at a time when the focus on meeting tenants' needs and responding to them requires increased resource from existing RPs. From a starting position of limited expertise within the Council, developing this resource from scratch is a tall order, especially when the Council's own development activity has yet to gain traction. This is clearly reflected in the Partner Engagement Approach, where the Council's focus is finding organisations that it can work with, each playing to their strengths.

6.3 If the Council were to invest in becoming a RP with a Housing Revenue Account, it would need to embrace its tenants being in the main on secure tenancies and also the regulatory standards that are of a much more enhanced level applicable to RPs owing to recent reforms. Existing RPs are already having to contend with these forthcoming changes, and the Council's standpoint of engaging with the wider field of RPs as set out in the Partnership Engagement Approach should be cognisant of these significant reforms.

7. DELIVERY WITH CONSILIO

7.1 Consilio have been developing housing that is built on land acquired from the Council typically at an undervalue, allowed within the ambit of the General Disposal Consent given by the Secretary of State pursuant to section 123 Local Government Act 1972. But Consilio's innovative approach of using commercial investment to fuel development is untenable.

7.2 Consilio have been preparing a business plan that aims to put it on a better financial footing by disposing its one housing development and retaining its commercial developments which have a rental stream although the underlying properties have depreciated in value. Consilio would then proceed with the development of other sites owned by the Council for affordable housing. Consilio is in a better position to take forward such proposals through its management by senior officers. The draft business plan suggests that its board and overall governance would benefit from a review so that both are on a sounder footing, with a minimum of 3 directors appointed.

7.3 Looking forwards the draft business plan envisages the following possible actions:

"Schemes currently under consideration could deliver 100 new homes for private rental and affordable housing generating revenue as well as a potential for unit sales to realise capital receipts.

Those elements of schemes set aside for rental will be targeted for acquisition by Consilio Property Ltd and will form the foundation of an expanding residential portfolio. Timescales forecasted for the delivery of these developments is 1-5 years.

In the future, to be able to offer Social Housing in tandem with developing a residential investment portfolio Consilio will consider forming a new entity/company to become a not-for-profit Registered Housing Provider entity if not having that facility proves a barrier to being an effective provider of increasing numbers of social housing. Professional financial advice and tax advice will be sought at all times to ensure the best financial outcome for both entities. N.B. Consilio is not currently at this stage.

Where the regulations around registered affordable housing make it advisable, Consilio will look to work with existing RPs (registered providers) in development opportunities. These RP's will take the statutory AH (Affordable Housing) housing with nomination rights

provided to the Council Housing department. Consilio will retain the remaining housing to operate as AH regulated housing but retaining the Freehold benefitting from increased development control, the rental income and ability to benefit from capital appreciation and if required by the shareholders dispose of the property at a later date.".

7.4 There are good examples of councils establishing RPs linked to their development companies, but these are most successful where the enterprises already in place have established a strong record which enables further momentum to be achieved. They also work well in areas where the number of RPs active is relatively low, in contrast with the County which has a strong and active presence of several RPs not least because its legacy authorities all have local stock transfer landlords. But, by way of example, we have helped Blackpool Council establish a RP, as described next.

Registered provider within a council company group

7.5 We advised Blackpool Council on the establishment of a RP to work alongside these two companies that the Council owns in connection with the provision and development of housing:

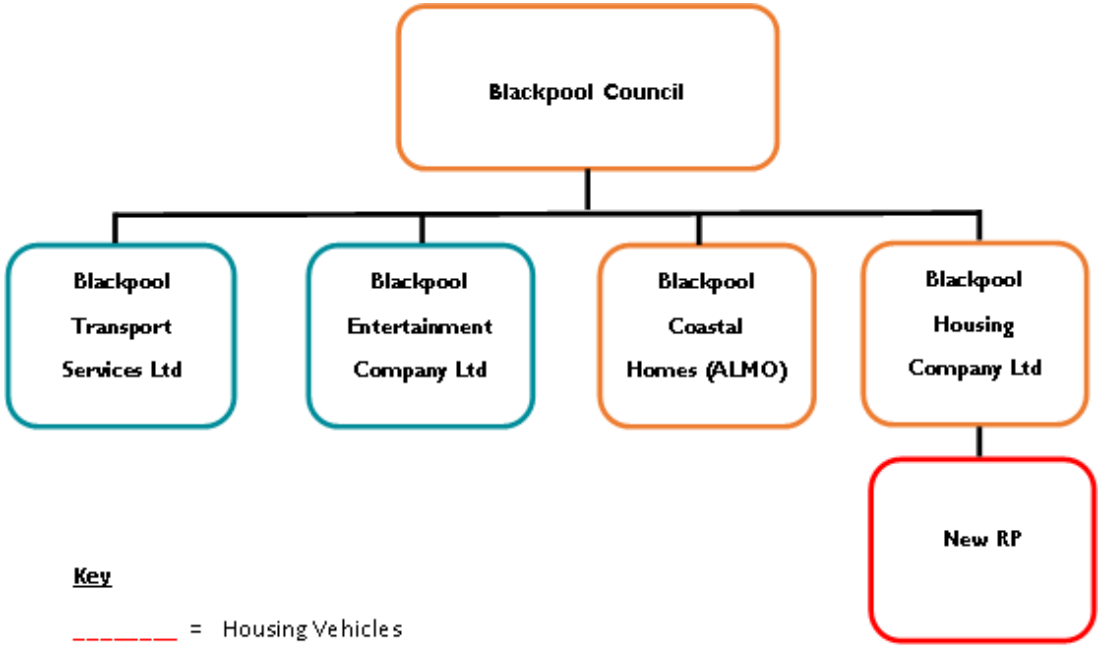
7.5.1 Blackpool Housing Company Limited ("BHC") – this was established for commercial purposes similar to those of Consilio but targeted at the particular problem in Blackpool of poor-quality multi-occupancy housing let by disreputable landlords. BHC bought up many of these properties and refurbished them to be a responsible landlord of such accommodation on affordable terms;

7.5.2 Blackpool Costal Housing Limited ("BCH") is the arm's length management organisation ("ALMO") that manages all the social housing that is held by Blackpool Council as council housing within its Housing Revenue Account.

7.6 The new RP was established on the encouragement of Homes England to access grant funding and is a charitable community benefit society whose parent is BHC. It has begun its activities with a new development that is available for letting. Its activities are resourced by BHC and BCH both of whom employ staff with requisite skills. The fact that the new RP (Lumen Housing Limited) is a charity means that it does have to operate within a framework that is independent of the council (which is true of all charities). However, as it is a subsidiary of

BHC which is wholly owned by that council, step in rights are retained for BHC that the council is comfortable with. There is also on the board of Lumen a councillor appointed alongside the other directors who are independent and largely from the social housing sector.

7.7 All three housing companies sit within a family of companies owned by Blackpool Council, a selection of which (in addition to BCH and BHC) are set out in the diagram below by way of example.



7.8 Blackpool Council seeks to create an approach to all its companies whichever type of activity they are engaged in which is consistent and attracts on to the boards of such companies independent directors of high calibre to protect the companies' interests and thereby those of

the Council. It appoints a single officer to address the governance of all its companies who is accountable to that council's monitoring officer.

7.9 The prime reasons why a new RP may still be attractive to the Council are:

7.9.1 It may allow access to additional funding;

7.9.2 If it were a subsidiary of Consilio, the Council would still have considerable influence via the business plan for the new RP (which it will have approved at the outset), the retained step in rights that Consilio would be able to have and the presence possibly of a member or officer of the Council alongside a majority of independent directors;

7.9.3 It allows the Council to develop an approach to developing more social and affordable housing, increasing the options available for delivery that are within the Council's immediate purview.

Help to Own and other strategic approaches to unregulated status for Consilio

7.10 Given that the focus of the Partnership Engagement Approach is to work with established RPs and to draw upon their resources, capacity and track records, it is perhaps better to understand what Consilio does bring by way of benefit to the Council, beyond being a vehicle that develop the Council's land and assets. The biggest benefit to make more of is that it is an unregulated vehicle outside the domain of the Regulator of Social Housing – and to understand what it can develop further by way of affordable housing models, which, for example could be by way of sub-market rent offerings or models that enable residents to own their own homes on a more affordable basis.

7.11 One such model that we advised on is the Help to Own programme, details of which can found on https://help-to-own.com/ - and which is a local authority backed initiative with its first site up and running in Wolverhampton. We would be pleased to introduce the Council to My Generation Asset Management Limited to ascertain whether piloting it with the Council and Consilio might be a viable proposition. As the model is the property of that company, we suggest that the best way of taking this further is for us to make the necessary introduction.

7.12 If it can be made to work in the County it could provide a clear way of utilising Consilio that can be distinguished for the RP offering already in play locally.

8. JOINT VENTURES WITH RPs

8.1 The established presence in the County of so many RPs with both the capacity and experience but also a Affordable Housing Partnership relationship with Homes England means that the developing role of the Council as an enabler of projects is one that is most likely to develop with pace.

8.2 As highlighted above RPs are having to contend with the new regulatory framework under the Social Housing (Regulation) Act 2023 and consider the practical and cultural changes they need to make. Many providers are concerned that a lack of resources could leave them at risk of regulatory downgrades and further undermine their operating margins. Based on the act's framework, some key regulatory changes are due to be introduced on 1 April 2024:

8.2.1 the Regulator of Social Housing (RSH) will undertake proactive consumer regulation and gain new enforcement powers to take action if registered providers don't come up to scratch. Performance will probably be assessed based on a new consumer standards rating backed up by a more intensive inspection regime; and

8.2.2 the Housing Ombudsman is introducing a new statutory code to ensure that tenants' complaints are dealt with in a more consistent manner, and have greater board-member ownership.

8.3 Finding sufficient cash to complete development programmes while increasing investment is a major challenge, with some housing associations scaling back such programmes and rethinking their operational footprints.

8.4 For more detail see this article written by Anthony Collins managing partner Peter Hubbard in Inside Housing https://www.insidehousing.co.uk/comment/the-new-climate-of-accountability-is-a-resourcing-challenge-that-housing-associations-must-

get-right-84582. The Council will need to use the Partnership Engagement Approach to ascertain the actual capacity of RPs within the County to develop a pipeline of affordable housing that the Council can have overall sight of.

8.5 On a one to one basis there are various options available to the Council as to how it might work together with a RP on a pipeline of projects harnessing the skills and resources that they would each bring to the collaboration, but it must be said that some of these would be alternatives to working with Consilio, especially where the Council's land bank is the principal asset that a RP may be interested in. These would go beyond the typical one-off project that is usually effected by the transfer of land from the Council to a RP and which that RP then develops at its own risk, with the Council benefitting from a market price paid for the site in question. The RP would scope and develop such a site and ensure it meets local planning conditions, but beyond that the authority has no further interest or influence.

8.6 This report describes two approaches that we have advised on, one which is purely contractual and the other which entails the establishment of a joint venture vehicle between a RP and a local authority. There are other permutations that we can advise on, but these two examples bring out many of the key factors that should be considered when considering the best way forwards. It may be that the two parties start with the contractual model (MoU) until they have developed the degree of confidence and commitment to take the corporate structure (JV with corporate vehicles) forwards. There are pros and cons to each of these models.

8.7 The two alternative models of delivering affordable/social housing are described with reference to actual projects that we have advised on, as follows:

8.7.1 the first is a detailed memorandum of understanding ("MoU") which for the most part is stated as not being intended to be legally binding, with the parties entering into the MoU intending to honour all their commitments set out in the MoU by the RP taking options over a collection of sites and then developing them out;

8.7.2 the second is a corporate joint venture between a council and a RP leading to the development of sites that were in the ownership of that council.

8.8 Under either of these routes, nomination rights may be exercised by a council under a nomination agreement, and these are rehearsed in this report for a more complete picture. These are models used for with not-for-profit RPs. (For profit RPs are geared differently, and, noting that there are a few that have established a degree of activity within the County, it is important to understand that they have different drivers and skills that need to be understood).

The hybrid non-binding / contractual route with a memorandum of understanding

8.9 Under the MoU the parties agree to work together to:

8.9.1 maximise the potential of the parties' land holdings in the borough through the development of new housing whether for affordable, shared ownership or private market housing;

8.9.2 achieve significant delivery of sustainable housing, say, over a 5 (five) year period;

8.9.3 achieve a commercial return for the council through capital and/or revenue receipts;

8.9.4 stimulate economic activity in the local area through direct and indirect activity;

8.9.5 encourage apprenticeships and training.

8.10 The parties promise to establish a Project Board to:

8.10.1 develop and implement a strategy for reviewing potential development schemes and overseeing the delivery of sites brought forward for development; and

8.10.2 consider opportunities for maximising the parties' land holdings in the borough, including opportunities to release the development potential of sites which may not work individually but which can be made to work by the parties collaborating regarding land in their ownership.

8.11 Development sites may be considered individually or collectively in terms of what they deliver, for example where commercially strong sites may support the viability of less affordable sites.

8.12 Once an initial development proposal for one of the development sites has been approved by the Project Board (comprising a sketch scheme including the number of units and tenure mix, an initial development appraisal and the land price) (an "Approved Scheme"), the parties will commit the land within their ownership to the project and the council will grant to the RP an option to purchase the land within their ownership in order to bring forward the Approved Scheme.

8.13 The option is in an agreed form attached to the MoU or such other form as the parties may agree (the "Option Agreement").

8.14 The initial purchase price to be included in the Option Agreement and payable on transfer of the relevant land is typically:

8.14.1 the market value of the relevant land at the date of the Option Agreement (based on the designated use for the proposed development). Payment may be deferred (with interest) to when the site has been built out; plus

8.14.2 overage calculated on the basis of 50% of any surplus profit after deduction of actual costs and a developer's profit of 20% of actual costs and all of which is on an 'open book' basis and the detail of which will be set out in the Option.

8.15 The RP develops a delivery plan for each Approved Scheme for scrutiny by the Project Board. The delivery plan should include:

8.15.1 detailed development proposals;

8.15.2 an application for detailed planning permission;

8.15.3 detailed financial appraisals including cashflows and details of grant contributions; and

8.16 there is a presumption in favour of payment of land values and repayment of Homes England grant/3rd party funding in advance of distribution of surpluses.

8.17 The RP has the final choice as to how it proceeds with any development as it is important to ensure that the council does not have a decisive influence on the type or design of the work.

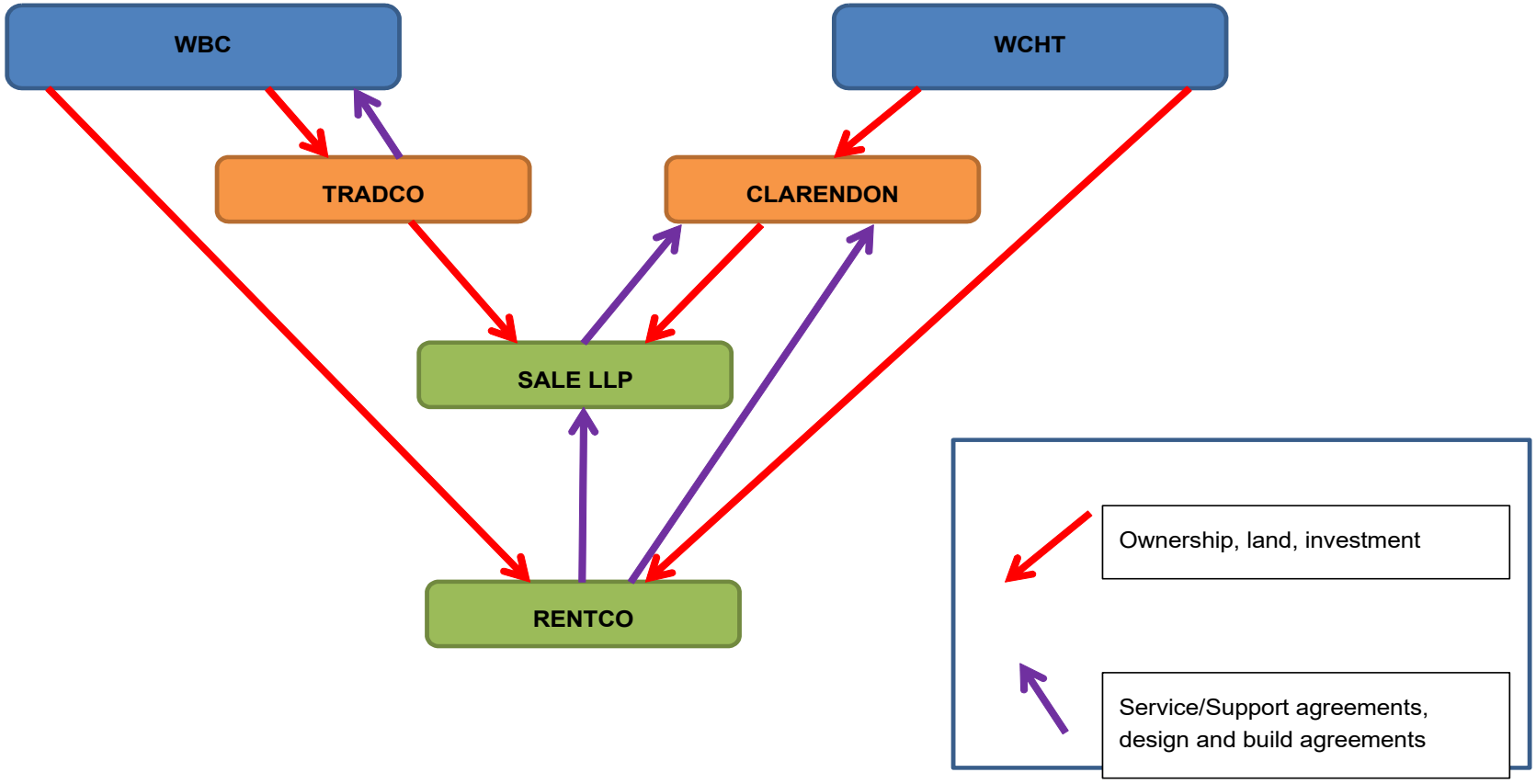
8.18 The AHEF case study about Paradigm garage sites could be implemented by this kind of process.

Joint venture vehicle with an RP and a council

8.19 We advised Watford Community Housing Trust (WCHT) and Watford Council on the establishment of two joint venture vehicles for development of housing for market sale, market rent and affordable rent, one for the development and construction of the new housing and the other to be a private sector landlord of market rent and also sub-market rent affordable housing which is not social housing. WCHT is the stock transfer landlord established to own and manage council housing that was previously council housing of Watford Council. The joint venture enabled the council to utilise and benefit from the development resources that are now based within WCHT.

8.20 The first of these vehicles is called “Sale LLP” in the diagram on the next page and it was established as a limited liability partnership to allow for the most tax effective treatment of profit in the hands of the council and WCHT. The council established a trading company of its own to be the member on its behalf of Sale LLP, in large measure to address uncertainty at that time as to whether local authorities could participate in limited liability partnerships. This uncertainty has been clarified by case law developed since then so that councils can be members provided that the prime purpose of the limited liability partnership is not commercial, but, for example, directed to the provision of housing as its main aim. The second vehicle (RentCo) was established as a company to give it focus as a landlord business and to be able to hold other assets that were strategically useful for both parties (for example, a hostel for the homeless once it was built).

8.21 The principal reason for creating two vehicles was to enable the most VAT efficient treatment of the overall structure, under which land would be sold by the council to Sale LLP which would build it out, sell units for market sale direct to the market, and then sell on to RentCo to operate as market housing or sub-market as appropriate. Any social housing developed under a section 106 agreement would be acquired by WCHT. We know that this is a model that has been or is similar to those used by RPs active within Buckinghamshire, in other parts of the country. The arrangement is summarised by this structure set out below:


WBC
WCHT
TRADCO
CLARENDON
SALE LLP
RENTCO
Ownership, land, investment
Service/Support agreements, design and build agreements

8.22 The prime reasons why a JV with a RP using a structure like that described above may still be attractive to the Council are:

8.22.1 it allows more housing to be developed using the resources and expertise of the "partner" RP, with profit shared on an equal basis, after paying the council its land value and repaying loans provided by either or both of the joint venture partners;

8.22.2 the establishment of a market rent and/or sub-market rent landlord would allow for some income stream to be generated in due course for the Council.

Nomination agreements

8.23 We see nomination arrangements between local authorities and landlords set up in one of two ways:

8.23.1 most commonly, a nominations agreement. The agreement can cover the position generally and/or for specific schemes. The key elements of this agreement are:

(a) the proportion of stock over which the local authority has nomination rights;

(b) timescales for making nominations and rights of the landlord to fill the void after a specific period of time; and

(c) eligibility for the stock and crucially who has the ultimate decision over the nomination, i.e. can the landlord refuse a nomination and if so, if what circumstances. There has to be clarity here over whose eligibility criteria take priority. i.e. does the applicant also have to qualify under the landlord's own eligibility policy.

In some cases, particularly scheme specific agreements where there the scheme is specialised housing (e.g. a high level support scheme), there can also be provisions about dealing with void costs.

8.23.2 a choice-based lettings system, where a landlord subscribes to the system and residents bid on available properties. There should be a policy and agreement in place which deals with similar points to those that we would expect nomination agreements to cover.

8.24 The position of the local authority and the landlord can be in conflict on the key aspects of a nominations agreement or choice based lettings agreement:

8.24.1 the local authority would ideally want full nomination rights and have ultimate say over whether a nominee is eligible or not;

8.24.2 the landlord however would want to limit the number of nominations a local authority can make and have ultimate say over incoming tenants. The parties therefore frequently have to negotiate to identify a position they are both happy with.

9. AFFORDABLE HOUSING UNDER THE NEW GOVERNMENT

9.1 The reforms being introduced by the new Government impact on affordable housing both directly but also indirectly because they affect all tenures and the wider developer-led market. The reforms include:

9.1.1 The reform of planning committees so that decisions that comply with local plans can be made faster is the latest aspect of the Government's overhaul of the planning system through a consultation on reforms to the National Planning Policy Framework, including new mandatory housebuilding targets for councils;

9.1.2 The independent New Towns Taskforce, set up as part of a long-term vision to create large-scale communities of at least 10,000 new homes each, with a call for evidence to explore opportunities for large developments (this closes at the end of Friday 13th December);

9.1.3 The Budget confirming that government investment in housing includes £500 million in new funding for the Affordable Homes Programme to support efforts in delivering "tens of thousands of new affordable and social homes across the country" as a step towards achieving the Government's programme of building 1.5 million safe and decent homes, which seems to be a longer term target given that the Government itself now says: "The number of new homes delivered will start to rise significantly in the third year of the Parliament";

9.1.4 An additional £3 billion in housing guarantees to help builders (especially SMEs) to apply for more accessible loans from banks and lenders;

9.1.5 The Renters' Rights Bill that seeks to overhaul the experience of renters, banning Section 21 'no fault' evictions across new and existing tenancies at the same time, thereby tackling one of the leading causes of homelessness. This will give 11 million private renters security and assurance so they can stay in their homes for longer. It will also clamp down on unfair rent increases and extend the Decent Homes Standard and Awaab's Law to the private sector for the first time. Councils will be given stronger powers to crack down on unscrupulous landlords. Maximum fines will be increased to up to £40,000 for serious offenders. A

new database for landlords to share important information on their property standards, showing their compliance with the law and helping councils drive out the minority of criminal landlords;

9.1.6 32 new Homebuilding Skills Hubs to deliver fast-track training to local areas that need more housing, while giving apprentices vital skills to boost housebuilding in the UK. The Government says that the purpose-built hubs will provide a realistic working environment for training for key construction trades, including bricklayers, roofers, plasterers, scaffolders, electricians, carpenters and more;

9.1.7 a new Remediation Acceleration Plan that is expected to introduce new measures to get buildings fixed quicker, ensure rogue freeholders are held to account, and put the end in sight for affected residents. It will set clear target dates for making buildings safe and will propose to introduce significantly tougher penalties for refusing to act: so that by the end of 2029, all 18m+ (high-rise) buildings with unsafe cladding in a government-funded scheme will have been remediated, and by the end of 2029, every 11m+ building with unsafe cladding will either have been remediated, have a date for completion, or the landlords will be liable for severe penalties;

9.1.8 Reform of property law especially:

(a) Measures in the Leasehold and Freehold Reform Act to allow more leaseholders to buy their freehold or extend their lease without having to wait two years from the point they purchased their property. It will also allow homeowners to take over the management of their building, and ensure they have more transparency of costs and can challenge unfair service charges, along with other changes to bolster homeownership;

(b) A new draft Leasehold and Commonhold Reform Bill in the second half of 2025, a crucial step towards the next generation of homeowners benefitting from a more modern, functional and fit-for-purpose commonhold system;

(c) Further reforms will be made to tackle unregulated and unaffordable ground rents, end ‘fleecehold’ where homeowners on freehold estates pay fees and remove the draconian threat of forfeiture. These changes, together with strengthened regulation of managing agents, will provide existing leaseholders with greater protection;

9.1.9 Hidden amongst the Government's launch of its consultation on the next phase of reforming Right to Buy was the important statement: "The government has also confirmed today that it will not be extending Right to Buy to housing associations because of the substantial costs to the taxpayer and the likely reduction in social housing stock.";

9.1.10 The Government will shortly launch its consultation on a new Decent Homes Standard for the rented sectors.

9.2 These are all measures that should in time assist people to have better homes and bring regulation to all tenures (with the possible exception of freehold!), but they will not by themselves create the necessary capacity and momentum to build more housing in the short term, certainly the next three years. After that period more affordable housing should be built, if all the other required conditions are right.

10. MAINTAINING THE PIPELINE: RISK AND REWARD

10.1 The Council does not have the maturity, the capacity or the resources to develop affordable housing by itself, because it is not set up to be a stock holding authority. Instead, co-working with RPs and with other organisations with direct access to grant funding offers it the best way of achieving the long terms aims of the Housing Strategy, for example, the Partnership Engagement Approach and/or the AHEF is instigated and followed through.

10.2 For now, 500 dwellings is the number that is established as being deliverable according to existing partner RPs. To develop more affordable housing requires the Council keeping Consilio in place, putting it on a better financial footing and devising projects that are "oven ready" for investment when the financial headroom is available. Consilio also offers the Council the opportunity to try out complementary approaches to enabling people to rent or buy a home that they can afford, beyond what the current stable of RPs has to offer.

10.3 In a mixed economy of development, it is the pipeline of sites that can be taken forward that is critical. We suggest that the Council looks at this as a way of catalysing greater provision. Other councils have clear plans that bit by bit they are implementing, and lessons can be learned from such authorities, in taking this forward.

10.4 Consilio enables the Council to do a bit more with sites that the Council owns but it is not in a position to do more than to be the Council's developer arm for affordable housing, and it would be prudent for it to continue working with existing RPs on an incremental project by project basis.

10.5 It remains to be seen what difference the reforms to the planning system will make in Buckinghamshire given the level of sites with protected status in the County.

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