

Report of the Executive Manager, Transformation and Operations (DCE)

Cabinet Portfolio Holder for Economic Growth and Business Councillor A Edyvean

1. Summary

- 1.1. Cabinet received a report in November 2017 (“Rushcliffe Property Company Options”) and agreed that further investigation of the Public Sector PLC (PSP) relational partnering model should be undertaken by officers. This would be with a view to developing a Limited Liability Partnership (LLP) between Rushcliffe Borough Council and PSP to deliver discrete property development projects in the Borough where PSP could add value.
- 1.2. Subsequently, Cabinet received a report in February 2018 setting out a new “Corporate Structure and Governance Arrangements for Rushcliffe Borough Council Companies”. It was agreed that the Council would set up a holding company – RBC Enterprises Ltd – which would sit above the Streetwise companies and any other RBC companies that are set up. This structure now enables the Council to move forward on setting up an LLP with Public Sector PLC, for the delivery of future property projects.

2. Recommendation

It is RECOMMENDED that

- a) The creation of a limited liability partnership (LLP) between RBC Enterprises Ltd and PSP Facilitating Limited (PSPF) be approved;
- b) The final terms of the necessary agreements be delegated to the Deputy Chief Executive in consultation with the Chief Executive and the Leader, provided that all the due diligence checks have been carried out successfully;
- c) It be noted the LLP arrangement requires the establishment of an LLP Partnership Board with equal Council and PSPF representation. This will be supported by an Operations Board for officers;
- d) The Council representation on the Partnership Board will be determined by RBC Enterprises Ltd;
- e) Council officer representation on the Operations Board will be determined by the Chief Executive or his deputy;
- f) Insurance and indemnity be provided for Member and Officer representatives of the LLP;

- g) It be noted that the LLP will be an additional option for the Council to use to deal with its property portfolio; and
- h) It be noted that further reports will be submitted to Cabinet in respect of relevant proposals to pursue property-related projects through the LLP.

3. Reasons for Recommendation

- 3.1. The purpose of this report is to recommend to Cabinet that the Council enters into a limited liability partnership (LLP) with a private sector partner, PSP Facilitating Ltd (PSPF). An LLP between Rushcliffe Borough Council's holding company and PSPF would provide the Council with an additional option over and above those currently available to it with regard to the disposal, sale, or development or other use of its assets in order to maximise income and opportunity.
- 3.2. As part of its medium term financial planning the Council is always looking for ways to maximise its property assets. In addition, the Council and its communities have aspirations to redevelop or enhance parts of the Borough's towns and villages through the work of the growth boards but are likely to need external funding to do this.
- 3.3. Public Sector Plc (PSP) is a company formed in 2007 between the Winston Group, the William Pears Groups, and Best Value Strategies Ltd. Its funder is Cabot Square Capital. PSP approaches local authorities with whom it seeks to partner. It works in partnership using a "relationship first" approach, and requires no prior commitment or guarantee of work by the Council. PSP is already operating in 21 local authority areas and is negotiating additional localities in its current phase of development.
- 3.4. The relationship brings funding opportunities for the Council which are not traditionally available, and the LLP once formed will be required to demonstrate its value to the Council before projects are agreed for delivery. Under the partnership the Council has the assurance that it will receive the current market value of any property assets utilised in projects, whether this is in terms of revenue income from investment portfolios or capital receipts from the disposal of surplus property. Any additional revenue income or capital value generated by the LLP over and above this is shared between the partners.
- 3.5. Property initiatives through the LLP must be able to demonstrate added value over and above the Council's traditional approaches and any up-front investment is supported by private sector funding. Furthermore the LLP does not involve the commitment upfront before the partnership can be established as would be the case with other public private partnership approaches such as Private Finance Initiative (PFI) projects and Local Asset Backed Vehicles (LABV).

4. Supporting Information

- 4.1. Rushcliffe Borough Council has delivered some significant property-related projects over the last few years which include:
- Bridgford Hall
 - Rushcliffe Arena
 - Cotgrave regeneration
 - New industrial units
 - Acquisitions via the Asset Investment Strategy.
- 4.2. However, some of the Council's future aspirations may benefit from the ability to secure external private sector funding and insource private sector skills. Future aspirations may include developing complex schemes like maximising the potential of West Bridgford town centre following the feedback from the West Bridgford Commissioners' report and considering the best mix for the Council's land at Chapel Lane to support the Council's financial position as well as the future needs of the town.
- 4.3. In addition, the Council owns two sites that may be allocated for housing – Abbey Road and Hollygate Lane. The Council does not have inhouse expertise at developing housing sites and external advice either via PSP or another source would be beneficial here.
- 4.4. The outcomes and benefits of an limited liability partnership approach for Rushcliffe Borough Council are set out below:

Outcomes:	<ul style="list-style-type: none">▪ Generate new additional income through working on property-related projects to support the Council becoming financially self-reliant▪ Access to significant levels of capital investment▪ Resilience – complementing our existing resources by tapping into expertise and resources with a commercial edge▪ Community Benefits i.e. realising improvement in the local economy▪ Revenue savings and generating capital receipts▪ Utilising and strengthening the skills of the Council's staff
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Potential Benefits:	<ul style="list-style-type: none"> ▪ Highly flexible and creative in operation ▪ Additional option open to the Council - this does not remove or compromise ability to consider other options ▪ Allows projects to evolve and be assessed before any commitment ▪ Baseline value remains with the Council - it is the added value that is shared ▪ Investment of private sector funds into projects of mutual benefit ▪ Support the Council in the development of its strategic review of the property portfolio, and facilitate the preparation of a new Council Asset Management Strategy and related action plan ▪ Realise revenue savings ▪ Establish new or enhanced revenue income streams ▪ Generate improved levels of capital receipts from projects ▪ Make more efficient use of their property assets ▪ De-risk property transactions ▪ Benefit from value created by the private sector
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5. Governance and due diligence

- 5.1. A Limited Liability Partnership is a corporate entity in which two or more partners agree to go into partnership with a view to making a profit. LLPs are regulated by legislation in the same way as for a company, e.g. an LLP must file annual accounts and details of membership with Companies House. In an LLP the members have the benefit of limited liability: that is, protection from personal liability for any debts or claims made against the LLP, provided they act within the powers of the constitution of the LLP.
- 5.2. To enter into this proposed LLP it will be necessary to enter into binding legal agreements with PSPF which set out the terms of the partnership. The Members' Agreement, and the more detailed Procedure Agreement which sits beneath it, commit both parties to a number of obligations in terms of establishing management and decision-making structures, but it does not commit the Council to make any financial commitment to the LLP. It is recommended that the drawing up of these agreements is delegated to the Deputy Chief Executive in consultation with the Chief Executive and the Leader.
- 5.3. The proposed term of the partnership is ten years, but the agreement enables either partner to terminate the partnership at any time with 12 months' notice. The length of the term reflects the medium term nature of any involvement with property matters, the nature of the relationship partnership, the rigorous

process followed to establish viable propositions for consideration by the authority and that the LLP may lay dormant for a period depending on projects identified.

- 5.4. Entering into the LLP does not give rise to any EU procurement implications since there is no obligation to undertake development works to the Council's assets, and therefore no works or services contracts are being awarded through establishing the LLP. In relation to specific projects that the LLP may take forward, every potential asset disposal or development will need to be assessed individually to ensure legal compliance.

6. Infrastructure

- 6.1. The inception of the LLP model will include the creation of an LLP Partnership Board, which will consist of equal representation of RBC and PSPF nominees. One implication of this is that there will need to be equal voting by both parties for a proposal to proceed, and without this any given project would not proceed. ("Members" refers to members of the partnership, not elected councillors although they may be members of the partnership.)
- 6.2. For the first six months, the Chairman would be appointed from the Council representation, and the Vice Chairman from the PSPF nominees. Thereafter, the right to appoint the Chairman will rotate between the parties on a six monthly basis. There is no casting vote for the Chairman. Representatives on the LLP Board will collectively make decisions in respect of asset related projects. The Board is anticipated to meet two to four times per year.
- 6.3. Alongside the Partnership Board, an Operations Board of officers will be created. This will have an equal split of representation from the Council and PSP typically between three and five representatives from each party. Officer membership of the Operations Board will be determined by the Chief Executive or his deputy.
- 6.4. Prior to any projects being presented to the LLP Partnership Board, a report will be presented to Cabinet on proposed projects. This report will be written by the Operations Board of officers. It will follow the standard four stage LLP process, which involves:
 - i. a high level review of the opportunity;
 - ii. if approved, then a detailed business plan is developed for the project;
 - iii. the plan is validated; and
 - iv. the Operations Board then makes recommendations to the Partnership Board (in parallel with Cabinet approval) for agreement to move to project delivery.
- 6.5. **NB. Any project coming forward will have to demonstrate 'added value' over and above that which the traditional approaches followed by the Council could achieve.) The financial case will require sign-off by the**

Council's Section 151 Officer both individually and in terms of the impact on the Council's overall Medium Term Financial Strategy.

- 6.6. Once the proposal/project has been approved by Cabinet and signed-off by the LLP Partnership Board, a project sponsor will be nominated to take the project forward, and an agreement on the reporting of progress back to Members will be established.

7. Proposals

- 7.1. Following initial work with PSP and an informal meeting with Cabinet members, both parties believe there to be benefit in forming an LLP.
- 7.2. The purpose of the LLP would be to facilitate property-related projects for the Council, making use of private sector funding, resources and skills paid for by the LLP, in addition to those available through the Council. The Council can use the strategic partnership created to achieve a wide-range of property opportunities for the Council, including regeneration, redevelopment, property portfolio rationalisation, and property-related investment.
- 7.3. Having each contributed initial capital of £1, the Council (via Rushcliffe Enterprises Ltd) and PSPF will have an equal stake in the LLP governance, together with equal voting rights. The LLP's main purposes would be to:
- i. invest private sector funds in projects of mutual benefit;
 - ii. facilitate regeneration projects;
 - iii. provide potential capital receipts and/or revenue income streams to the Council from the development of surplus land and buildings; and
 - iv. support the Council in a strategic review of the property portfolio.
- 7.4. Projects are developed by the LLP using PSPF resources, but the final decision as to whether to proceed with a project sits with the Council. The profit share on each project will vary depending on the resources committed to the project, and PSPF guarantee at least the income currently derived from an asset, with the profit share element relating only to the amount above this level. The option might also be available to the Council to put additional resources into a project in order to achieve a larger percentage of the profit share.
- 7.5. The LLP between PSPF and Rushcliffe Enterprises Limited is an additional option for maximising the value from property assets, should be compared to alternative approaches and partnerships.

8. Implications

8.1. Finance

There are no financial implications of setting up the LLP. Each project and its financial implications will be considered as it comes forward and will be

reported to Cabinet. Any project will need Cabinet approval as well as the LLP Partnership Board approval before it is delivered.

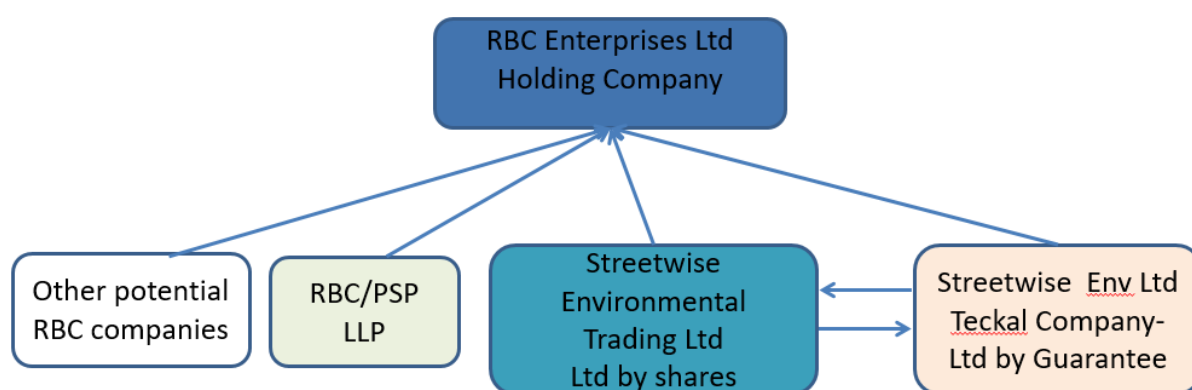
By setting up the LLP, the Council will be in a position to gain access to the PSP capital investment fund. The funder is Cabot Square Capital. Transparency will be required with regards to PSP and how their costs are charged into each project. The scope of each project will also determine the basis of accounting for, and monitoring of, such costs.

8.2. Legal

Anthony Collins Solicitors provided legal advice to RBC on the corporate structure and governance arrangements for Rushcliffe Borough Council companies. They have advised on integrating the PSP model into the Council's agreed governance structure as follows:

Integrating into the Rushcliffe Enterprises Ltd framework

- 8.2.1 PSP has agreed to its model being adapted to enable the Council's holding company for its commercial activities, Rushcliffe Enterprises Limited (REL), to be the partner in the LLP rather than the Council itself. The most significant consequence of doing this from a governance perspective is that it is REL that is the member of the LLP, not the Council. Therefore, it would be REL that makes decisions together with PSP Facilitating Limited in relation to projects undertaken, and representatives of the company who would be involved in this decision making. The Council (represented by Cabinet where appropriate) would deal with the LLP in two principal capacities directly, first as landowner of sites that could be progressed by the LLP, and second, as one of a number of potential funders of projects (for which the Council would get a financial return).



- 8.2.2 As set out above, reports would be taken to Cabinet on any potential projects.

Governance and legal implications for the Council

- 8.2.3 Under company law Rushcliffe Enterprises Limited (REL) has clear powers to be a member of the LLP. Tax implications for projects will not be the same as

when the Council is a member itself of the LLP both from a corporation tax and an SDLT perspective. Appropriate tax structures must be looked at on a case by case basis in relation to each project.

8.3 Corporate Priorities

Setting up the LLP will support the Council to deliver its three key priorities:

- Enhancing the quality of life for its residents – property-related projects that link to regeneration
- Delivering economic growth to ensure a sustainable thriving prosperous economy
- Delivering efficient and high quality services – through maximising the return from the Council's property portfolio.

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Background papers Available for Inspection:	None.
List of appendices (if any):	None.