

SPECIAL CABINET

DATE	22nd September 2017
REPORT OF	Cllr Peter Wheatley, Portfolio Holder for Regeneration, Assets, Skills and Housing
RESPONSIBLE OFFICER	Angela Blake, Director of Economy and Growth
SUBJECT	Proposed merger of Shoreline Housing Partnership with Boston Mayflower
STATUS	Open
FORWARD PLAN REF NO.	GENERAL EXCEPTION Not included on the Forward Plan therefore, to be considered under the General Exception provisions of the Constitution.

CONTRIBUTION TO THE COUNCIL PLAN/ STRATEGIC AIMS

The Council has two clearly stated strategic objectives. Stronger Economy and Stronger Communities. The proposed merger of Shoreline Housing Partnership with Boston Mayflower will impact upon these.

EXECUTIVE SUMMARY

This report sets out the framework of the Shoreline merger and the options available to Cabinet in supporting (or not) the proposal.

RECOMMENDATIONS

It is recommended that Cabinet:

1. Receive and consider any recommendations made to it by Full Council at its meeting of 21st September 2017
2. Authorises the Director for Economy and Growth in consultation with the Director of Finance, Resources and Operations and the Portfolio Holder for Regeneration, Assets, Skills and Housing to settle terms with Shoreline Housing Partnership to confirm its intentions towards the Borough of North East Lincolnshire so far as its responsibilities, investment, growth, strategic development and partnership are concerned;
3. Delegates authority to the Chief Legal and Monitoring Officer to give formal written notification to Shoreline Housing Partnership of the wish to appoint the Director for Growth and Economy as Authorised Representative to the Board of Members;
4. Authorises the Director for Growth and Economy, as Authorised Representative, to call for a poll; and

5. Subject to Recommendation 2 above being implemented instructs the Authorised Representative to vote as decided by Cabinet.

REASONS FOR DECISION

The Council has representation at board level of Shoreline Housing Partnership (SHP) as two councillors serve as directors.

Directors of a company are obliged by law (sections 171 - 177 Companies Act 2006) to act and vote within the powers of and in the interests of the company. Directors cannot be influenced or instructed by any third party as to whether and how their vote is cast as they are required to exercise independent judgement.

In the absence of an Authorised Representative any vote defaults to the directors.

The articles of association of SHP permit the Council to place an Authorised Representative at member level in order to be the conduit for the Council's vote on any matter.

Further, such articles reflect that subject to a poll being called, in writing by the Authorised Representative, the Council will have the benefit of two votes rather than the usual position of one member, one vote.

Such Authorised Representative is free to act without the fetters placed on directors and therefore Cabinet is able to direct the Authorised Representative to vote and how to vote.

There are five member votes out of which the Council, through its Authorised Representative (and subject to a poll being called) has two. Therefore a voting power of 40%.

The merger of SHP and Boston Mayflower will be by Special Resolution. Such resolution ordinarily requires a 75/25 majority.

1. BACKGROUND

1.1 The social housing stock formerly owned and managed by the Council was transferred to Shoreline Housing Partnership (SHP) under the terms of a Large Scale Voluntary Transfer in March 2005. That document placed an embargo on any merger activity for a period of seven years without the Council's express consent. That period has now expired.

1.2 SHP and Boston Mayflower (BM) have been in dialogue for some time regarding a proposed merger. The strategic aims identified as flowing from such a merger are set out in the closed redacted Full Business Case identified in Background Papers and circulated to all Members

- 1.3 In July 2017 SHP resolved to become a Community Benefit Society (CBS) so as to align itself with the corporate governance and identity of BM making any approved transition an easier process. The intention is to form a single CBS with a new, unified governance and management structure. A CBS is a new legal entity established under the Cooperative and Community Benefit Societies Act 2014, replacing the former 'Industrial and Provident Society' model. A CBS may apply for charitable status and could be subject to 'asset lock' in that if the CBS is dissolved, the assets must be transferred to another organisation with similar objects.
- 1.4 SHP has engaged in a public consultation commencing on 27th July 2017 and closing on 4th September with the focus on engagement with SHP's 8,761 tenants. This took the form of postal consultation, public consultation events, social media, and engagement with various tenant groups.
- 1.5 There was a very low level of response - 2.2%. Of the 2.2%, 1.4% were in favour of a merger, 0.5% were against and 0.2% were neutral.
- 1.6 Section 93 of the Housing and Planning Act 2016 is a factor. The anticipated secondary regulations under this provision are yet to be enacted but once in place they will limit a local authority's influence over registered providers of social housing. For example, in terms of voting rights, these are expected to be limited to 24% effectively taking away any control. Originally timetabled for implementation in Spring 2017 the regulations have been put on hold and it is not known when and if they will be implemented.
- 1.7 So as to protect investment and to capture commitments around strategic development, growth and partnership in North East Lincolnshire, officers are in the midst of negotiating terms with SHP which will survive and endure through any merger process.

2 RISKS AND OPPORTUNITIES

Key issues are deemed to be:

- the impact of the merger on SHP's local presence and specifically in relation to frontline services including tenant engagement and repairs/maintenance activity;
- whether the merger is predicated on retaining current SHP stock levels (post demolition of the Albion Street towers) or assumes further reductions;
- whether the merger will have implications for the operation of the existing Home Choice joint lettings system, and if so how these can be managed
- understanding the degree of commitment for the new organisation to roll out tenant support services that are not currently delivered in this form in North East Lincolnshire, for example telecare and warden services for all older residents;

- establishing the impact of the new organisation's greater borrowing capacity for development activity in North East Lincolnshire and whether a commitment to increased delivery in the area can be achieved; and
- whether the Council will be invited to become a member of the Board of the new merged Registered Provider, and if so how any implications arising from section 93 of the Housing and Planning Act 2016 will be managed.

3 OTHER OPTIONS CONSIDERED

3.1 Options available to Cabinet are:

3.1.1 To vote in favour of the proposed merger;

3.1.2 To vote against the proposed merger;

3.1.3 On the basis of appointment of an Authorised Representative, to abstain;

3.1.4 Not to appoint an Authorised Representative and permit the vote to fall to the directors to exercise based upon their perception of the best interests of the company.

3.2 It is suggested that options 3.1.3 and 3.1.4 are not considered as this will result in uncertainty so far as the merger is concerned and the standing of the local authority.

4 REPUTATION AND COMMUNICATIONS CONSIDERATIONS

4.1 In terms of Place this is a significant issue and with the prospect of the dilution of the Council's influence by virtue of s93 Housing and Planning Act 2016 is an opportunity for the Council to galvanise its position with SHP and remain an influencer and facilitator in terms of social housing across the borough.

5 FINANCIAL CONSIDERATIONS

5.1 The financial impact for North East Lincolnshire is very much dependent upon the future strategic direction of any new organisation. A decision to invest in new stock or dispose of existing properties could have an impact upon Council funding levels through council tax receipts and New Homes Bonus. The business case shared with the Council suggests that the direction of travel is to consolidate current stock levels and create capacity to invest in up to 60 new properties within the Lincolnshire area.

5.2 At present, SHP has a local presence within North East Lincolnshire which has positive economic impact through the provision of employment and the generation of business rates for the Council from office premises. The merger business case does not include any savings arising from the consolidation of corporate office infrastructure at present and there is no reference to any plans to relocate activities from North East Lincolnshire.

5.3 SHP are obligated to pay the Council 50% of receipts from the sale of properties that were transferred to them as part of the original stock

transfer agreement. It is expected that this obligation would transfer as part of any merger.

6 CONSULTATION WITH SCRUTINY

- 6.1 On 12th July 2017 the matter of the proposed merger was considered by the Economy Scrutiny Panel.
- 6.2 On 19th September an all-Member briefing session will take place where clarity and assurance around the merger will be sought from representatives of SHP.

7 FINANCIAL IMPLICATIONS

- 7.1 As stated within the financial considerations section above, the financial impact for North East Lincolnshire is very much dependent on the future strategic direction of any new organisation and the decisions it takes to either invest or indeed disinvest within the area. However, it is noted that the merger business case suggests that the new organisation has increased financial capacity to invest in new housing over and above current plans.

8 LEGAL IMPLICATIONS

- 8.1 To a certain degree the legal issues arising from the proposed merger have been addressed within the report.
- 8.2 Constitutionally, amongst the functions reserved to Full Council, is the appointment of representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council.
- 8.3 Further, insofar as Local Choice Functions are concerned, these too are reserved to Full Council (including the appointment of any individual to any office other than an office in which he is employed by the authority or to any body other than the authority) or to Cabinet where the appointment relates to a Cabinet function.
- 8.4 It is clear that the proposed merger of SHP and BM is part and parcel of the Housing strategy agenda, sub-regional investment and local enterprise and growth. Therefore squarely falling within the remit of the Portfolio Holder with responsibility for Regeneration, Skills and Housing. Therefore a Cabinet function and a matter to be decided by Cabinet.
- 8.5 The decision around the proposed merger is a Key Decision as defined by the Constitution and should be taken by Cabinet.

9. HUMAN RESOURCES IMPLICATIONS

9.1 There are no direct HR implications arising from the contents of this report.

10. WARD IMPLICATIONS

10.1 Borough wide.

11. BACKGROUND PAPERS

11.1 CLOSED Redacted Full Business Case (*Not for publication*)

12. CONTACT OFFICER(S)

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