

SCRUTINY

13 SEPTEMBER 2021

Teckal Consideration

Cabinet Members: Councillor Bob Evans – Deputy Leader and Cabinet member for Housing & Property

Responsible Officers: Deputy Chief Executive (S151) – Andrew Jarrett

Reason for Report: To provide Scrutiny with a copy of the report requested by the Homes Policy Development Group (PDG) considering the need for a Teckal vehicle in order to help facilitate a step change in the delivery of social housing.

RECOMMENDATION: That Scrutiny notes the update and passes its comments on to the Homes PDG. These comments will help shape any recommendations, if made, by Cabinet and ultimately the decision that will be required at Full Council.

Relationship to Corporate Plan: The delivering of additional social housing units is a key priority in the Council's Corporate Plan.

Financial Implications: None directly arising from this report. But clearly, there would be potential short term costs of setting up such a trading vehicle and longer term financial advantages. This would be further appraised/examined in subsequent reports, if required.

Legal Implications: Legal advice will be provided during these considerations and in order to reach the current and any future decision points.

Risk Assessment: Future reports, if required, would identify and explore potential risks and would need to consider any mitigation measures if practical.

Equality impact assessment: No equality issues identified for this report.

Impact on climate change: None.

1.0 Introduction

1.1 At the previous meeting of the Homes Policy Development Group (PDG) two reports were considered that are directly relevant to the one before this meeting. Firstly, the overarching Housing Strategy 2021-25 and secondly a brief report providing an update on Teckal considerations. The latter report sought permission from the PDG to provide an all member briefing on the need/suitability/rationale of a Teckal vehicle to help assist in delivering a step change in social housing delivery.

1.2 On the 2 September 2021 Anthony Collins Solicitors (ACS) facilitated an all Member briefing on the basics of Teckal as requested. This briefing included

examples of how other Councils are utilising this process and importantly gave all Members the opportunity to ask any questions that they had. In order to provide the wider membership and other interested parties with access to the presentation, it has been attached as an appendix to this report.

- 1.3 The introduction to the presentation highlighted that well in excess of 100 Councils have some form of Teckal vehicle being used to undertake a wide variety of Council activities, including housing delivery.

2.0 Teckal

- 2.1 Although the general concept of Teckal is explained in the attached presentation, I have attempted to summarise the key/pertinent issues below:

- 2.2 Where a Council wishes to purchase services, supplies or works then it must do so in accordance with its own standing orders and the Public Contracts Regulations 2015 (PCR 2015). As such the Council's relationship with any wholly owned or joint venture entity that it directly or indirectly has an interest in will only be caught by the rules on public procurement if the Council enters into a public contract (as that term is defined in the PCR 2015) with the entity.

- 2.3 Where a Council does wish to purchase any of the above from its own company, then it must follow a compliant procurement process unless its relationship with the entity it is purchasing from is established in accordance with Regulation 12, PCR 2015 (Teckal).

- 2.4 A Teckal relationship can exist where:

- the entity is itself a contracting authority;
- the Council exercises control over it, which is similar to that which it exercises over its own departments (e.g. the Council exercises decisive influence over the strategic objectives and significant decisions of the entity). This control can be exercised directly or through another controlled legal entity;
- more than 80% of the entity's activities are carried out in the performance of activities entrusted to it by the Council or other entities controlled by the Council; and
- there is no direct private capital participation in the entity.

- 2.5 If there is an intermediate legal entity between the Council and the Teckal compliant entity, then that intermediate entity does not have to be a contracting authority or meet the 4th bullet point criteria shown above, provided that it is "controlled". Tasks can be entrusted by other controlled entities within the "group" and those entities can themselves be contractors of the Teckal compliant entity.

- 2.6 A Teckal compliant entity, does not need to comply with the procurement rules when procuring works/services/supplies from the Council and any other controlled entity. As such it can contract directly with those entities for the delivery of services, supplies and works to it without the need to run a procurement process in accordance with the PCR 2015.

3.0 The next steps

- 3.1 As referred to in the all member briefing, on a number of occasions, setting up and then operating a Teckal vehicle will take some time, resource and hence financial commitment. Therefore, the Council needs to ask itself a few key questions in order to clarify/determine its next actions on Teckal. Here is just a flavour of some of the issues that will require consideration; what are we trying to achieve, are there other means, do we have the necessary skills, have we already identified sites/projects, what kind of governance arrangements will it need, are we clear on the terms of reference that we would want to set, how it could be used in conjunction with prevailing Housing Revenue Account legislation, is there a long term commitment and well established programme of work that could be delivered, etc.

- 3.1.1 Some of the above questions are complicated and potentially interrelated. Therefore, discussion with other Councils who already have mature Teckal vehicles would be wise/recommended.

- 3.2 At this juncture it would be very helpful to obtain a policy steer from Members that can be used to assist Cabinet/Council deliberations regarding whether we want to set up a Teckal vehicle, and if so, what the parameters, outputs, objectives would be.

- 3.3 In order to progress any future considerations, if Members were to provide a positive steer or at least an appetite to explore Teckal in more detail, further contact and then advice could be sort from ACS to help shape what kind of Teckal vehicle (including governance arrangements and an overview of desired outcomes) would be the most appropriate.

4.0 Conclusion

- 4.1 Comments from this meeting and that of the Homes Policy Development Group will be utilised in the decision making process of Cabinet and Full Council.

Contact for more information: Andrew Jarrett, Deputy Chief Executive (S151)
(ajarrett@middevon.gov.uk)

Circulation of the report:

Leadership Team and Cabinet