



Delivering housing through companies

Mark Cook

Anthony Collins Solicitors LLP

The legal framework

YOUR SPEAKER TODAY



Mark Cook
Partner

Contact Details

T: 0121 214 3636

E: mark.cook@anthonycollins.com

Anthony Collins
solicitors

Today's content

- The context for Mid Devon
- Reasons why local authorities use companies to deliver housing
- Hertsmere Council – an example
- Blackpool Council – an example
- Council powers
- Procurement implications
- What exactly is a Teckal company?
- Other considerations
- Business cases and business plans
- Examples from elsewhere
- Actions



The context for Mid Devon

- Draft Housing Strategy for Mid Devon 2021-2025
- “How and where we procure and deliver new Council Housing can be done in several ways and the benefits of each will be weighed up and assessed on a business case basis for each site.”
- Options include: “Direct award to a ‘Teckal’ company”.



Reasons why local authorities use companies to deliver housing

- To intervene in the local housing market
- To build new housing for sale and also housing for rent (market or affordable)
- To generate a revenue stream
- To optimise development consistent with the Local Plan
- To establish a local responsible landlord of repute
- To enable access to Homes England grant (especially if it is a registered provider)
- To influence the development to a degree greater than possible with a sale of the site to the market
- To fulfil council priorities e.g. attract young people with skills to support the local economy
- To optimise environmental benefits around carbon neutrality
- To enable council-owned sites that are marginal in commercial viability to be developed



What happens in practice

- Council forms development company
- Council sells a site to the company
- Council lends the company the money to buy the site and to build the houses – at commercial rates
- Majority of houses are sold into the market for sale
- Some houses are sold to a parallel landlord company for renting out at market or sub-market levels
- Real social housing is acquired by the Council or sold to a registered provider (which might be a further vehicle established by the Council)
- Borrowing repaid from sale proceeds
- Profit reinvested in further developments or distributed as dividend to the Council



Examples from elsewhere

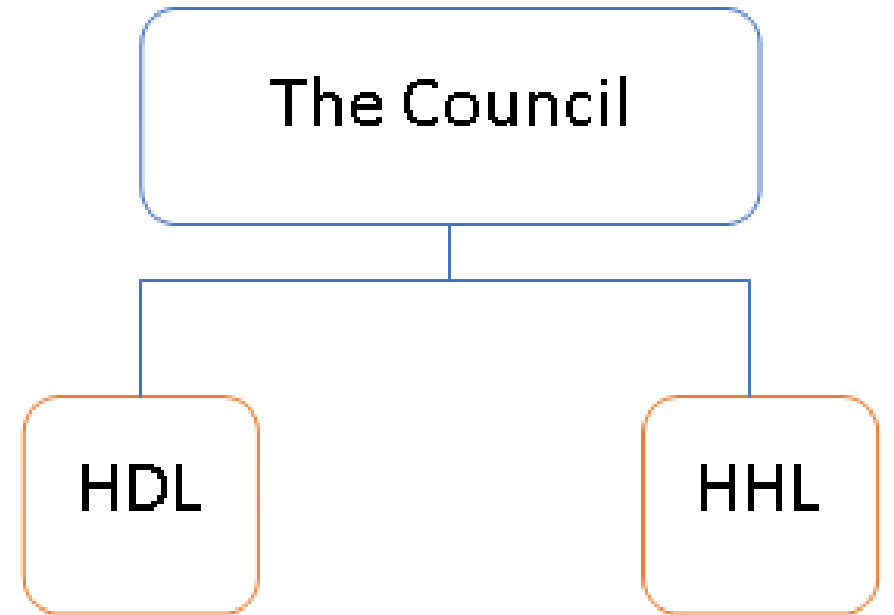


Anthony Collins
solicitors

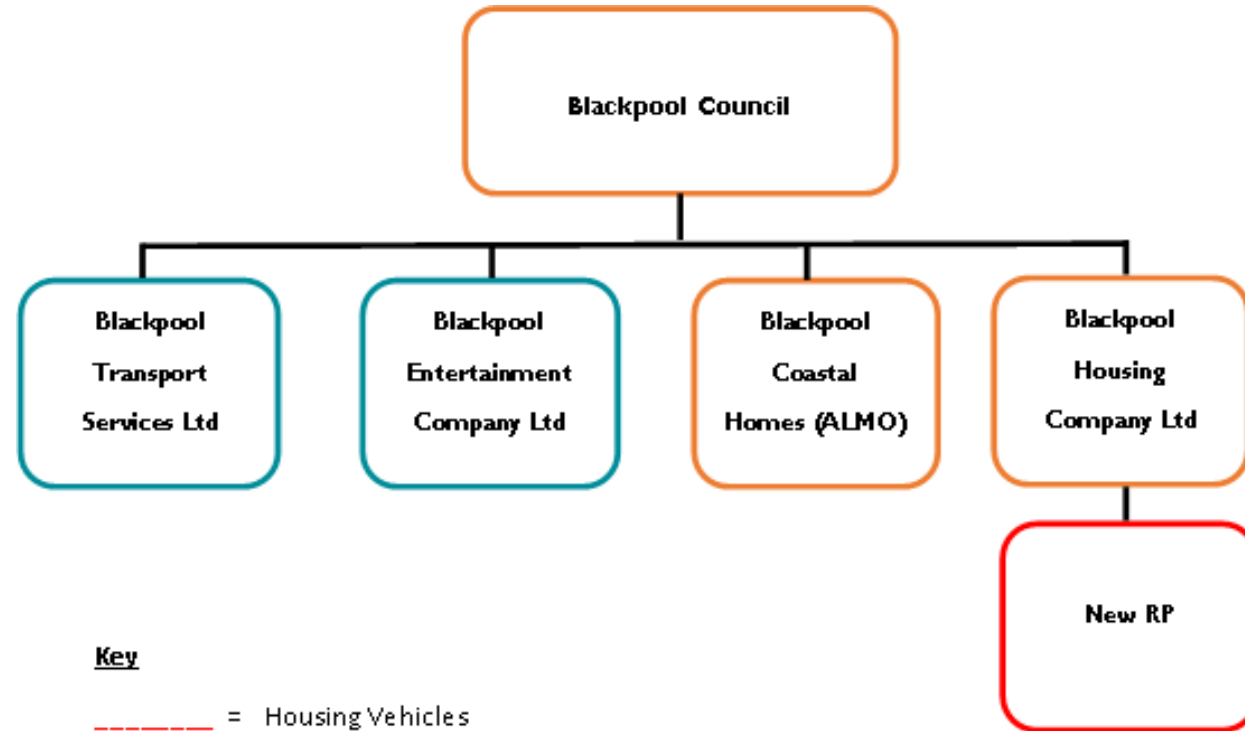


Example- Hertsmere Borough Council

- Hertsmere Developments Limited
- Hertsmere Homes Limited
- Exploring a registered provider
- Considering joint ventures



Example- Blackpool Borough Council



Council powers

- General power of competence
- Power to trade
- Power to borrow
- Power to invest
- Power to acquire land
- Power to dispose of land
- Power to provide housing accommodation
- Power to provide financial assistance for “privately let housing”



Procurement implications

- Public Contracts Regulations 2015
- Is the Council procuring works, services or goods?
- Is the Council acquiring land?
- Key definition- public works contract – especially (c) “the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work”
- Council standing orders



What exactly is a Teckal company?

- 3-pronged test:
 - Control similar to that over its own departments
 - More than 80% tasks entrusted by the controlling authority or “other persons controlled by that” authority
 - No “direct private capital participation”
- Control = decisive influence by the authority or an entity it controls in the same way



Flexibilities with local authority companies

- To Teckal or not to Teckal?
- The Teckal vehicle can provide works, services etc to its controlling authority without PCR 2015 tenders and any other controlled company (even non-Teckal if no private capital) - and vice versa
- Any controlled company (even non-Teckal) in the Council's group can entrust to the Teckal vehicle works and services which will therefore fall within the 80% limit



Other considerations

- Best consideration
- Subsidy controls (formerly state aid)
- Tax (esp.VAT)



Business cases and business plans

- Business cases - by the Council
- Business plans - by the Company



Actions

Anthony Collins
solicitors





Anthony Collins
solicitors

QUESTIONS?

Anthony Collins Solicitors
134 Edmund Street
Birmingham
B3 2ES
United Kingdom
Tel: 0121 200 3242

Anthony Collins Solicitors
76 King Street
Manchester
M2 4NH
United Kingdom
Tel: 0161 470 0310

info@anthonycollins.com
anthonycollins.com
Twitter: @ACSLLP

Disclaimer: Whilst every effort has been made to ensure the accuracy of these materials, advice should be taken before action is implemented or refrained from in specific cases. No responsibility can be accepted for action taken or refrained from solely by reference to the contents of these materials. © Anthony Collins Solicitors LLP 2021