

CABINET 4 JANUARY 2022

Teckal Considerations

Cabinet Members: Councillor Bob Evans – Deputy Leader and Cabinet Member for Housing & Property, Councillor Andrew Moore – Cabinet Member for Finance

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

Reason for Report: To consider the need to create a Teckal company

RECOMMENDATION: That Cabinet notes that, at this point in time, there is no need to pursue the creation of a Teckal company to deliver the Council's objectives as per the issues and current landscape referred to in paragraph 3.3.

Relationship to Corporate Plan: The Council should always consider alternative ways of service delivery in order to demonstrate/achieve value for money and embed a culture of continuous improvement.

Financial Implications: There are a number of positive and negative financial advantages/disadvantages of operating a Teckal company. At this current time it has been determined that the advantages do not significantly outweigh the short term investment required to create and then operate a Teckal company.

Legal Implications: "Teckal companies" or "Teckal exempt companies", as they are often known, are ones which enable public authorities to benefit in the public interest, from an exemption from the usual competition requirements when procuring works, services or goods over certain values. The criteria for such legal entities are set out in the Public Contracts Regulations 2015 (Reg 12) and are summarised in the report.

Risk Assessment: Officers have considered the risks associated with the creation of a Teckal company and evaluated this against the benefit that such an entity could potentially deliver.

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

Impact on climate change: None.

1.0 Introduction

1.1 Discussions and considerations as to whether the Council should create a Teckal company in order to take advantage of the ability to make direct contract awards to its own company have ebbed and flowed over the past few years. Recently, Members have received an all member briefing from Anthony Collins Solicitors (ACS) and have subsequently received reports at meetings of both the Homes PDG and the Scrutiny Committee in order to assist the deliberations of the Cabinet.

- 1.2 These reports attempted to explain what Teckal is, the advantages that it could accrue and importantly gain a clear steer on whether members supported the basic concept and then establish the outcomes they were looking to achieve.
- 1.3 As these reports were presented at Council meetings in September it is useful to remind ourselves of the general concept/rationale of Teckal.

2.0 Teckal

2.1 Subject to some exceptions, where a Council wishes to purchase services, supplies or works over a certain value, then it must do so in accordance with the Public Contracts Regulations 2015 (PCR 2015). There is also a specific exemption from these procurement requirements in Regulation 12, PCR 2015 (known as the Teckal exemption).

2.2 By way of example, a Teckal exemption is available where:

- the Council exercises control over the relevant entity, 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 (eg 3 Rivers Developments Ltd);
- 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.

2.3 Further, if for example 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. Tasks can be entrusted by other controlled entities within a relevant "group" of companies and those entities can themselves be contractors of the Teckal compliant entity.

2.4 A Teckal compliant entity does not need to comply with PCR 2015 rules when procuring works/services/supplies from the Council and any other controlled entity.

3.0 Teckal considerations

3.1 During the all member briefing on Teckal and further explored in some of the subsequent committee meetings, discussions focused around the perceived benefits (eg additional revenue resource, commercial trading opportunities), timetables to create (eg 3-6 months depending on complexity), on-going governance requirements (eg support services which the entity would need and might be provided by the Council or otherwise need to be addressed) and administration (eg regulatory annual returns, etc) and importantly the outcomes that needed to be agreed (eg the company's purpose and its business/strategic plan).

3.2 It is potentially fair to reflect that the potential of a Teckal company was not met with universal Council support/understanding and there appeared some differences of opinion on what the desired outcomes could/should be.

3.3 Since the meetings of the Homes PDG and the Scrutiny Committee, we have commissioned further advice from ACS to help further explore the potential of Teckal and help the Cabinet with their deliberations. At this juncture it is also appropriate to reflect on some of the more recent changes with regard to the emergent Council housing strategy, availability and criteria for use of current Right-to-Buy and s106 affordable housing monies, changes in Government legislation and funding. These have all directly impacted our Teckal considerations/decision. The list below, is not exhaustive, but attempts to give a flavour of these issues/changes that have shaped the current recommendation.

- Set up and ongoing costs to operate
- What kind of new governance arrangements would be necessary
- Existing Teckal knowledge/skills in the Council
- New housing strategy and the associated delivery programme
- Timelines for set up and associated Council schemes/projects (current progress/sequencing on Post Hill)
- How to transparently demonstrate value for money for all parties
- Size and confidence in future housing delivery programme – how much traditional build?
- Availability of local/suitable development sites (at scale)
- Changes to Govt. legislation on Right to Buy (time periods and amounts that can be retained)
- Available Homes England funding programmes and timetables
- Concerns expressed by 3Rivers with regard to size and timeliness of potential housing programme and existing Teckal experience
- Corporate overhead of Teckal – sunk costs if no long term need
- Member overarching support of the need for Teckal and long term commitment to it?

4.0 Conclusion

4.1 At the current time the Council has a pressing need to decide how it plans to deliver and hence procure the arrangements for Post Hill. But, importantly can't guarantee a significant pipeline of further projects to justify the short term set up costs, the ongoing corporate overhead and the time delay in setting up a Teckal company.

4.2 On that basis, it is recommended that the Council does not pursue the creation of a Teckal company in the short to medium term, but keeps this decision under review, if future circumstances are such that it dictates a change in this decision.

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

Circulation of the report: Leadership Team and Cabinet