Housing Company Brief

Date: 13/7/23

Author: Chris Brook and Isabel Blake

Background

SHDC transferred its housing stock to what is now Livewest in 1998. As such it has not been a stock holding authority, with the relevant resource, expertise, and governance arrangements to undertake the activity at a large scale for 25 years.

This subject was revisited by the previous administration in the context of a potential delivery pipeline of development undertaken by the authority, which includes the St Anns scheme of 8 affordable rented properties which the authority will own and manage.

The question asked then, as now, was how the Council could own and rent property and avoid right to buy legislation.

For absolute clarity, a housing company in not required for the Council to undertake construction and development work for housing schemes, nor is it required for the Council to rent out, manage or operate housing schemes (including temporary accommodation). The Council already has the power to do that.

Context: The housing company question is only relevant to homes built or acquired by the Council. Delivery of social rented housing accommodation will always be far higher in aggregate "by others" and so the Councils strategic planning policy levers will make a greater impact on housing outcomes.

Can the right to buy be avoided or mitigated?

As the right to buy legislation is set out in law, it is not possible for the Council to avoid the right to buy on property that it owns and rents out. This is because it is required to let houses on Secure Tenancies, instead of Assured Short Hold Tenancies, the former attracting the right to buy (RtB). The Council therefore needs to relinquish ownership of the houses in order to avoid the RtB.

The RtB does not apply to temporary accommodation, so is not a concern for the properties that the Council is acquiring under the LAHF schemes, nor its existing housing stock that it uses for temporary accommodation.

The likely impact of RtB can and is mitigated due to the cost floor mechanism within the RtB legislation. This ensures that the maximum discount that can be applied is never so great that the receipt paid for a property is less than the cost to build it. This provides two mitigations:

a) The real cost of a property even after discount remains high, so is in real terms out of reach of most tenants of social housing.
b) The Council would be in a position to realistically re-invest in housing stock from the receipt it received.

How much impact does RtB have and what is the cost floor rule?

Authority	Housing Stock No.	RTB losses/yr (3yr ave)	% stock loss/yr
Mid Devon	3000	15	0.5%
East Devon	4200	18	0.43%
Live West (South Hams stock)	3342	4	0.12%

St Anns RtB Example

Property Detail	Total cost (inc land)	Market value	Max discounted value
2 Bed	£217,088	£345,000	£249,000
3 Bed	£224,9750	£385,000	£289,000

*The Cost Floor rule applies to both construction costs and acquisition costs

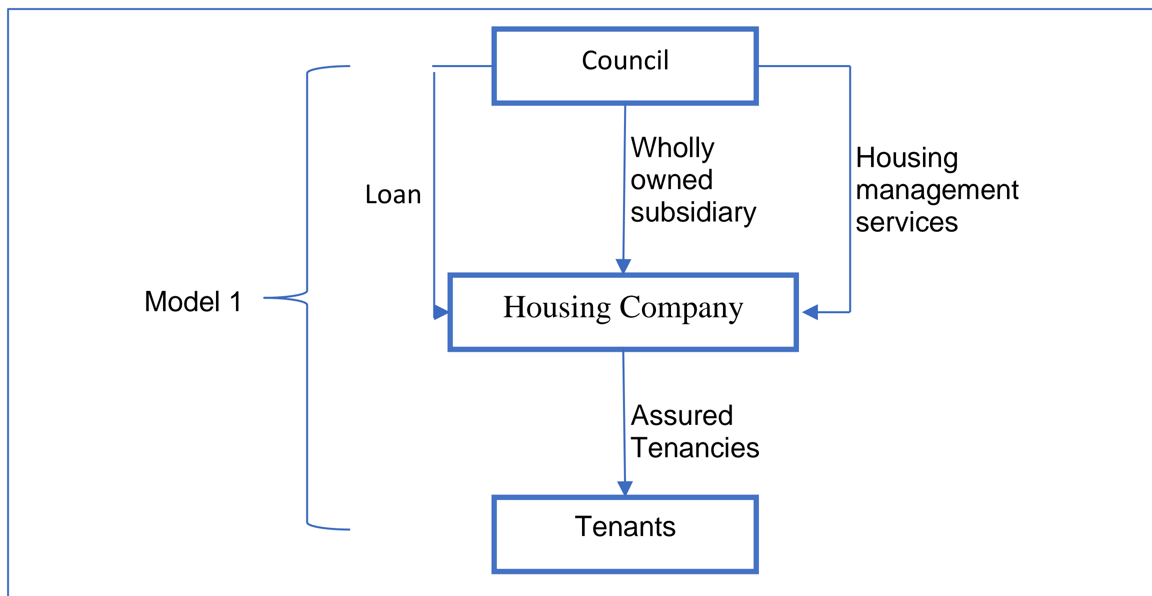
** Right to Buy maximum discount is linked to CPI for this year stands at £96,000

Can the Council relinquish ownership off property to avoid the right to buy?

To an extent yes. It is possible for the Local Authority to set up an arms length company, which can acquire properties from the Council and then in turn can rent out the properties on assured shorthold tenancies and thus, avoid the right to buy. Housing held in a company also mitigates the need for a Council to have a Housing Revenue Account if it holds more than 200 homes (a significant resource and regulatory burden).

In doing so, the Council would need to set up a genuinely arms length company which would therefore follow its own agenda, within the constraints of the articles of association defined when the company is formed. Put simply, the company has to have autonomy: An independent board of directors, staff resource, its own budget, accounts and work plan.

There are different types of company that can be set up, but they all require funding and follow the following principals:



The housing company funding comes from a loan from the Council. The type of company and activity it undertakes, determines if the loan has to be "at a commercial rate"- it may need to be. A commercial loan would need to be at about 9% interest, where as PWLB borrowing over 50 years is currently 5.26% (and rising).

It is a legal requirement for the company to set a balanced budget, so it must repay the borrowing from rental income, after the cost of governance, management, maintenance and repair.

Modelling a scenario:

Acquiring 100 theoretical properties from an RP that are being disposed on the open market using PWLB loan rate (not commercial loan rate).

Term		Value
Property Value Average	A	£250,000
No properties	B	100
Current EPC	C	D (or lower)
Required EPC	D	A
Upgrade cost	E	£65,000
No. Beds	F	40 x 2b, 40 x 3b, 20 x 1b
Social Rent income	G	£579,280
Costs @ 25%	H	£144,820.00
Net income	(G - H) = I	£434,460.00
Cost of acquisition	(A x B) = J	£25,000,000.00
Cost of upgrade	(B x E) = K	£6,500,000.00
Acquisition costs @ 2%		£500,000.00
Cost upgrade management costs @ 18%		£1,170,000.00
Total costs	**L**	**£33,170,000.00**
PWLB borrowing rate over 50 yrs		5.30%
Cost of borrowing and repayment / yr	M	£1,901,806
Net profit / deficit per year	**(I - M) = N**	**-£1,467,346.00**
Capital deficit to achieve a balanced budget		£25,570,000.00

The above does not include the cost of running the company, the accounting requirements, governance or monitoring.

Subsidy control issues come into play, preventing the Council selling properties to the housing company at a discount to market value, so as to set a balanced budget.

If the above example was re-calculated to only uplift properties to EPC band C, not band A, the net deficit per year reduces, from -£1,467,346 to -£1,238,000.

What are the costs of a housing company?

Initial outlay is of the order of £100k, with an ongoing accountancy cost of £50k. The governance arrangements and staffing would all be on top of that, including the cost of non-executive directors and the board all of whom would be required to ensure the company was appropriately governed and “skilled”. The ongoing costs are therefore dependant on scale, but could be in the order of £200k / yr with respect to the scenario above.

What are other authorities doing?

Setting up housing companies was quite a common undertaking by Councils in the last 7 years, as they sought to take advantage of low interest rates, respond to government support for Councils to "start building again" whilst protecting housing stock from right to buy.

There has been a spread of success and failure, including locally:

Council	Commentary
East Devon	East Devon Homes was incorporated in Oct 2017 and was dissolved in 2021. It was set up to manage, maintain and expand the councils social housing portfolio as well as other "community assets" and was set up as profit making.
Mid Devon	3 Rivers housing company set up in 2017 to deliver high quality homes. It is currently the centre of a political row as it is making a large loss and has underperformed.
Cornwall – Treveth LLP	Treveth is a partnership business set up in 2019 and operates as a Teckal Company, wholly owned but independent of the Council. They have RP status through Perran Housing LLP and an estate management service. They also undertake commercial and mixed-use development.
Lambeth	Lambeth Council folded its housing company in December 2022, Homes for Lambeth (HfL), back in-house. A review of the company, carried out by Lord Kerslake, slammed its "very poor delivery" rate. HfL had started only 65 homes. This came despite £30m being spent on the organisation since its inception.
Liverpool Council	Liverpool Council's Foundations, which promised to build 10,000 homes, was mothballed 18 months later after delivering just 18. The company also recorded losses of £700,000.
Croydon	There was also the failure of Brick by Brick, Croydon's housing company. Brick by Brick became the poster child of this brave new world of council housing companies, and promised 500 homes a year in perpetuity. The council backed the venture and put in £200m. However, only 460 homes were ever built and the money pumped into it, as well as a myriad of other issues at the council, led to the south London authority declaring itself effectively bankrupt in 2020.
Barking and Dagenham	Have a very successful development housing company that is delivering 100s of homes a year. They are operating a different scale aligned to the urban nature of the location.

Can right to buy be avoided in other ways?

Yes! CLTs are exempt from the right to buy, so consideration should be given to supporting this across the District (including on our own land) to achieve positive housing outcomes. This point was raised and supported in the recent Housing Advisory Group.

RPs are also exempt. There are examples of Councils working in partnership with a RP to deliver homes in their area including on their own land. There are other benefits of this approach, including: expertise, risk share, resource and delivery acceleration.

It is also possible to lease properties direct to existing RPs, which achieves RtB avoidance, but has proved to be unviable financially and suboptimal in quality of service.

There are some technicalities which allow certain classes of homes to be owned and rented out by Councils and not be caught by the RtB legislation. An example of this is older persons accommodation.

What are the next steps?

1. Clarity of outcomes. Understanding in more detail what the Council wishes to achieve will shape the direction of travel
2. Legal work to refine the company structure should that be deemed necessary
3. Finance work to refine the revenue costs aligned to the strategic ambition, the Councils buying power, rather than an simple example.
4. Developing alternative proposals that achieve housing outcomes and avoid the right to buy (CLTs for example)
5. A further discussion at Executive with the benefit of this further work.