Bevan Brittan | Lawyers for the public, private and third sectors

TEIGNBRIDGE DISTRICT COUNCIL

OVERVIEW OF HOUSING JOINT VENTURE MODEL

1 INTRODUCTION

1.1 Teignbridge District Council (**Council**) is considering establishing a housing development vehicle as a mechanism for advancing its housing agenda. This paper has been prepared to assist discussions with potential partners who may be interested in establishing a housing vehicle as a joint venture.

2 COUNCIL'S OBJECTIVES

2.1 The Council's objectives in establishing a housing development vehicle are to:

2.1.1 increase the supply of sub-market rented housing in its area;

2.1.2 have a delivery mechanism for self-build;

2.1.3 have a delivery mechanism for new products developed off-site;

2.1.4 have a route for engaging with local builders;

2.1.5 increase the standard of housing supply;

2.1.6 provide a return to the Council's general fund.

3 PURPOSE OF THE JOINT VENTURE

3.1 The purpose of parties coming together in a joint venture would be to aggregate experience, expertise and funding in respect of a common housing agenda. For the Council this would bring together parties who could potentially provide:

3.1.1 expertise and experience in development;

3.1.2 a supply chain for development;

3.1.3 finance and with that an opportunity for sharing of risk.

3.2 In broad terms, the joint venture would be about establishing an on-going structure for coordinating and delivering housing and economic development activity. There would be flexibility about the parties who funded, controlled and were liable for specific schemes.

4 OVERVIEW OF THE STRUCTURE

4.1 The Council and its partners (**Joint Venture Partners**) would establish a joint venture company most likely with equal control (**Joint Venture Company**). Schedule 1 contains a diagram summarising how the structure could work. The diagram just shows one joint venture partner but the structure anticipates more joint venture partners and the same principles would apply.

4.2 The role of the Joint Venture Company would be to act as a vehicle for coordination of housing activity and a management company for projects being delivered. It would not itself directly undertake development or delivery activity.

4.3 Where projects are agreed to be delivered through the structure a separate joint venture entity would be established, probably as a limited liability partnership (**LLP**). The vehicle would be a special purpose vehicle (**SPV**), i.e. it would be concerned only with delivery of a particular project. The members of the SPV would be those Joint Venture Partners engaged in the particular project and the Joint Venture Company (or a related company). There is also the ability for a third party not involved with the Joint Venture Company to become a joint venture partner at the SPV level. The ownership of the Joint Venture Company and SPV could allow for the joint venture to be 'off balance sheet'.

4.4 The Joint Venture Partners involved in the SPV would fund the SPV directly rather than through the Joint Venture Vehicle and receive their share of profit from the project directly. Profit would be proportionate to investment made in the SPV.

4.5 The joint venture would have the power to acquire land from the Council or third parties. Land could be contributed to the joint venture as an investment rather than for cash consideration.

4.6 The following principles would frame the governance of the vehicle:

4.6.1 strategic control over the joint venture would be retained by the owners of the joint venture through the right to appoint directors (or LLP equivalents), approve the business plan of the joint venture and have a veto on 'reserved matters'. Strategic control would be shared between the joint venture partners, who would also have a right of veto over agreed matters, including whether to participate in (including funding and any liability for) any proposed scheme / activity;

4.6.2 the joint venture board would have the operational task of implementing the agreed business plan of the joint venture.

4.7 There would be scope for more complicated arrangements with different SPVs having different balances of control as each SPV would have a members' agreement with the participating parties and could be used to agree different levels of control.

4.8 The Joint Venture Company could be appointed as the manager of the project, who would like appoint a third party company to deliver this function.

5 PROCUREMENT AND THE JOINT VENTURE

5.1 It would be possible for the parties to form and operate the joint venture without needing to go through a competitive procurement process. There are two approaches that could potentially be used to achieve this.

5.2 First, it may be possible to structure the development of each site so that it is classified as a land transaction outside of the Public Contract Regulations 2015 (**Procurement Regulations**). This can be done if no legal obligations are imposed by a contracting authority on a third party even though it is given the right to receive or develop land owned by the Council or a joint venture partner.

5.3 Second, it may be possible to rely on what is commonly known as the Teckal exemption, set out in regulation 12(1) of the Procurement Regulations. In summary, under regulation 12(1), a public contract can be awarded by a contracting authority to a controlled legal person. This is a body:

5.3.1 over which it exercises a degree of control which is similar to that which it exercises over its own departments (the control limb);

5.3.2 where more than 80% of the activities of the body are entrusted to it by the controlling authority (the activities limb); and

5.3.3 where there is no private participation in its capital.

5.4 The Procurement Regulations also permit the Teckal exemption to be relied on where there is more than one owner of the vehicle as long as they are all contracting authorities which would be the case with housing associations and local authorities (i.e. the partners being considered).

5.5 The Teckal exemption could allow the joint venture to appoint any of the joint venture partners to deliver goods, services or works without undertaking a procurement exercise. For example, this could allow for the appointment of a housing association partner to deliver property or development management services for newly developed housing.

5.6 It could also be possible for the joint venture to make use of existing contractor frameworks that the joint venture partners may have.

6 DOCUMENTATION

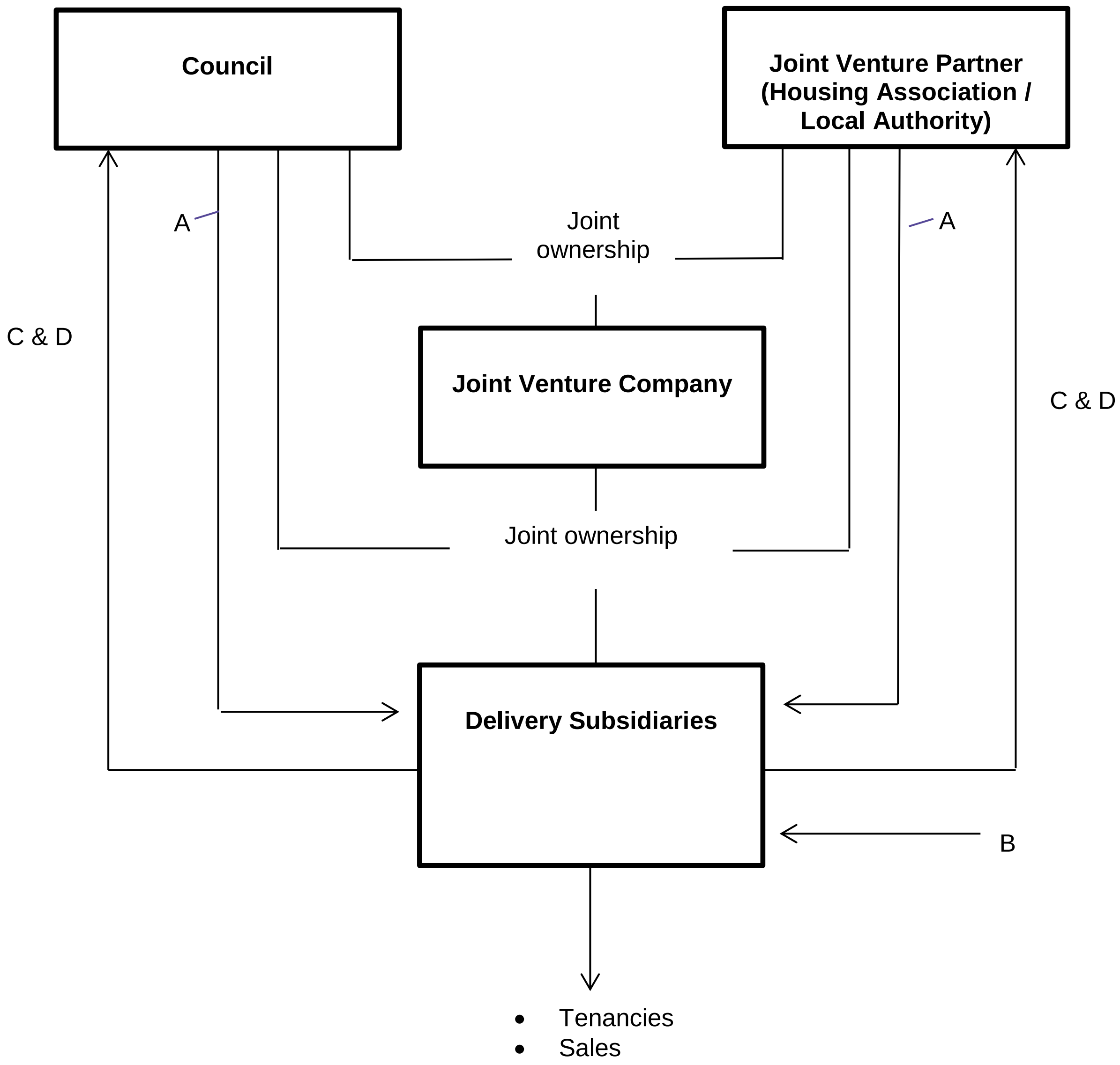
6.1 The documentation required for the joint venture approach would depend on the detail of the approach, but would be likely to include:

Document	Summary
Articles of association and shareholder's agreement for the Joint Venture Company	Governance documentation setting out the governance arrangements for the company and the control of the parties. Areas covered include board composition, basis of funding (may not be relevant depending on model taken), reporting obligations, business plan process and reserved matters.
Resourcing contract	Contract for the provision of support services and resources to the Joint Venture Company and SPV(s) in order for it to operate, for example, secondment of staff, assets (including premises from which to operate) and back office services (HR and ICT).
SPV LLP members' agreement	LLP members' agreement (constitution) between the SPV and the participating partners setting out terms of control, finance and operation for the SPV.
Working capital funding	Working capital facility to provide cash flow to the joint venture to operate.
Capital funding agreement including security	Capital contribution and debt funding from the participating joint venture partners to the SPV.
Leases / land transfers	Leases / transfers of properties to the SPV.

6.2 In addition to these documents, the SPV would then need to enter into the required contracts for the developments / works, e.g. works contracts and collateral warranties required in property developments. This would include a property management contract.

Bevan Brittan LLP
9th September 2016

SCHEDULE 1 – DIAGRAM OF STRUCTURE



<u>Key</u>

A – Potential land, debt funding, equity funding and support services
B – Potential third party suppliers of land, funding or contractors / developers
C – Repayment of debt (where relevant)
D – profits passed back and assessed for tax in hands of owner (i.e. local authority and housing association)