

Lawyers in Local Government

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The Importance of Place and Revenue Growth for Local Government

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1 INTRODUCTION

- 1.1 No one working in local government can have failed to recognise the scale of cuts, transformation and change affecting the sector arising from the Government's austerity programme. In particular, whilst local government is recognised as probably the most efficient part of the public sector, deeper cuts have been imposed than on other public organisations including the police and more particularly health. Additional funds are poured into the NHS (even at the expense of preventative measures under public health budgets that have been cut) yet waiting times continue to increase and health budgets continue to overspend, due to the demands of an ageing population that is living longer with more complex needs.
- 1.2 The National Audit Office (NAO) report '*Financial Sustainability of Local Authorities 2018*' published in March 2018 confirmed that the financial health of local authorities across England is getting worse. Despite some short term freedoms to increase Council tax bills and one off short term funds from government local authorities are struggling to juggle higher service demands (particularly for social

care, both adult and childrens) and cost pressures against significant central government funding cuts of nearly 50% since 2010/11.

- 1.3 The NAO report recognises that local authorities have been relying on reserves and services are overspending their budgets, neither of which is financially sustainable¹.
- 1.4 Ironically some of the problems have been caused by the Coalition government from 2010 and the subsequent Conservative Governments freezing and capping council tax levels, meaning that base levels have not kept pace with inflation or the needs of local populations. Yet one of the original purposes of the council tax setting process was to bridge the gap between raising funds and spending to enable local authorities to set budgets that would ensure that they could meet their statutory obligations.
- 1.5 Numerous local authorities have over the last few months warned that they are unlikely to be able to meet even basic statutory duties over the next few years without radical change and more funding from central government (e.g. East Sussex, Northamptonshire and Somerset County Councils).

2 OPPORTUNITIES

- 2.1 However, it is not all doom and gloom. The government has incentivised local authorities through the ability to retain increases in business rates for their areas. Although a number of pilots pooling business rates are ongoing, the detail of how central government will legislate to deliver the arrangements in due course have yet to be worked out (protecting those that would lose subsidy from those that are likely to gain significantly). The key to driving increased revenue from business rates must be a concentration on Place - making the area attractive to business, bringing inward investment, ensuring that the area is attractive to individuals to live, work and play, to have effective public service delivery across all public services, decent housing of the right type and an eye to becoming as self-sustaining as possible across the whole area.
- 2.2 The development of a strategy for growth that is relevant to Place is essential, however that is defined. In some areas the focus might be on a Combined Authority area - in others more specifically to the boundary of a local authority. The boundaries need to make geographic and economic sense and relate to communities of interest on the ground. Connectivity, both through ICT infrastructure and transport, as well as culture, heritage and indigenous industries (e.g. advanced manufacturing; research or financial services) will shape the future strategy for an area to develop and grow and ensure long term sustainability.
- 2.3 Strategies need to embrace not only demographic, funding and service pressures but other challenges and opportunities such as the environment, including flood risk management and energy; Brexit; the impact of internet shopping on the high street; the creation of new communities, rather than just housing, to meet housing demand; influencing the shaping of new sustainable communities; and engaging more effectively with local businesses and the community and voluntary

¹ Some of the statistics set out in the National Audit Office report are set out in the Appendix, which quantify some of the pressures faced by local authorities.

sector. All these issues are important in the context of seeking to provide quality outcomes for residents.

- 2.4 Generally speaking local authorities are not shy to innovate (although some are held back by the lack of or inadequate risk assessment). For example, Westminster City Council requested voluntary council tax donations from higher rate council tax payers and received over £1m on a no strings basis). Supporting innovation is key, but can be challenging. What is clear is that there is no one size fits all solution, solutions need to be driven by strategic thinking, the needs of the area and its relative strengths and opportunities.
- 2.5 The strategic Vision for a place needs to be relevant across all sectors and agreed or supported by the major players in the area, to ensure that resources, time, effort and opportunities are identified and driven forward.
- 2.6 Local Enterprise Partnerships (LEPs), may not have been welcomed by many, however, they have now been in existence for seven or eight years and have the support of Government. The MHCLG published a paper in July 2018 headed "*Strengthened Local Enterprise Partnerships*" that requires LEPs to improve governance; develop Local Industrial Strategies with an economic Vision for the area based on local consultation; and develop a strong evidence base of economic strengths, weaknesses and comparative advantages within a national and international context that will be supported by robust evaluation of individual projects and interventions. The government is encouraging LEPs to have or create a separate legal personality as a company or be part of a Combined Authority (where they exist) and break free where they are currently hosted by local authorities, by April 2019. The geographic basis of LEPs also needs to be realigned to remove overlaps and to ensure that geographies reflect real functional economic areas.
- 2.7 LEPs are here to stay and will be expected to drive industrial strategies locally to provide the long term Vision to make 'Britain the world's most innovative economy' – at least until the next election. Whilst local authorities have representatives on LEPs and it is important to work closely with local business through LEPs, local authorities are still best placed to develop and facilitate and deliver elements of a wider Vision for the Place and develop that Vision into objectives and outcomes for the area over the short, medium and longer term. How will the authority know when it has been successful in delivering the Vision? Key elements will include what does success look like over three - five - ten years – the more aspirational the more likely people are to work together to deliver the aspirations as well as the detailed outcomes desired.
- 2.8 Key roles for local authorities include:
 - **Facilitator**, which could include promoting social value, addressing market failures, spend to save, support for transport and improved communications, strategic commissioning and incubator for growth;
 - **Investor** to promote development; address market failure; to deliver financial returns; or assist in facilitating by sharing risk and reward which could be on market terms (take care over state aid);

- **Delivery** for example creating smart cities that are technology enabled, creating housing companies as part of a wider solution to address market need (whether affordable or market rented or for sale) or with a joint venture partner whether through One Public Estate or public/private JVs;
- **Custodian of public realm** and public interests including the skills agenda and inclusive and connected communities.

3 NEW WAYS OF WORKING

3.1 Local authorities have been exploring ways of operating more efficiently and effectively over many years. This has included consideration of a wide range of models of operation, not just for improved service delivery, but to generate revenue and capital from major projects. These new ways of working often include:

- Ceasing to provide services that are loss making or may be provided elsewhere more cost effectively;
- Using charging policies strategically to influence demand for services;
- Greater income generation including from the use of existing assets;
- Transformation through the use of ICT and digitising services so that there can be far more self-service and reduced cost through Smart-phone technology;
- Delivering functions through alternative service delivery vehicles, including:
 - Housing delivery vehicles;
 - Asset vehicles;
 - Shared services partnerships/vehicles;
 - Teckal or trading companies or charities e.g. for Leisure libraries and culture;
 - Social enterprises and mutuals;
 - Delivery of renewables and sale of electricity through energy service companies etc;
 - Social investment bonds, investment vehicles/partnerships;
- Supporting business growth and productivity through economic social and environmental regeneration.

3.2 One area where local authorities may have opportunities to shape their Place and deliver growth as well as improved financial returns is through the better use of assets particularly land and property – as well as using their powers to acquire manage and dispose of land.

4 DEVELOPMENT OF LAND AND ASSETS

4.1 Local authorities have wide ranging powers to buy, sell and develop land. Their powers are set out in various statutes including:

- Local Government Act 1972;
 - Housing Act 1985;
 - Town and Country Planning Act 1990;
 - Local Authorities (Land) Act 1963.
- 4.2 Local authorities also have explicit powers that allow them to provide financial assistance and subscribe for shares in companies to provide privately let housing under sections 24-26 Local Government Act 1988.
- 4.3 Local Authorities also have powers that enable them to appropriate land, in particular for planning purposes, or to acquire land for planning purposes to secure the proper planning of the area. When land is acquired or appropriated for planning purposes then an authority may dispose of that land under section 203 Housing and Planning Act 2016 in a way that converts any easements, covenants or other significant encumbrances into monetary consideration - thereby enabling and facilitating development.
- 4.4 In exercising their powers local authorities may take a long term view and may acquire land under section 120 Local Government Act 1972 even where land is not immediately required for the purposes for which it is acquired. It is therefore open to local authorities to promote regeneration by acquiring land (either by agreement or compulsorily) to facilitate land assembly and strategic long term development that will support capital appreciation and growth, as well as potentially through development of revenue streams from those developments. Land acquisition and development generally needs to be for the benefit or improvement of the area, but does not necessarily have to be within the authority's area.
- 4.5 Incidental powers are usually sufficient to rely upon to form a company or other corporate vehicle, if required, depending on the purposes for which the corporate vehicle is being formed, for example, regeneration purposes or to improve the area, or to generate cash through a trading company. Additionally or in the alternative reliance could be placed upon the general power of competence in section 1 Localism Act 2011 that enables local authorities to do anything that an individual can do, so long as that it is not constrained by other legislation.
- 4.6 In setting up any corporate vehicle there will be many legal issues and requirements to cover including:
- The form of vehicle (contractual), corporate or joint venture;
 - The constitution;
 - Governance and accountability arrangements including who appoints whom to the board;
 - Procurement;
 - State aid;
 - The need to obtain best consideration;

- Clarity on directors roles and responsibilities and potential for personal liability;
 - Insurance and indemnity arrangements;
 - Information governance and GDPR requirements;
 - Assessment of any tax and VAT implications;
 - Staff and pension issues;
 - Potential competition law issues;
 - The impact of the local authority Companies Order 1995; and
 - Don't forget the need for a legal review of the business case and "critical friend" challenge of the assumptions.
- 4.7 It is important to avoid conflicts of interest between those who sit on the Board of an alternative delivery vehicle and those taking decisions about that vehicle from within the authority. Whilst some conflicts are inevitable there may be a need for protocols to ensure that proper declarations are made by individuals at the relevant time covering appropriate requirements.
- 4.8 Another key consideration is the expectation that the authority will retain certain controls over the operation of the alternative delivery vehicle. As well as agreeing an annual and longer term business plan, we would normally expect to see a list of "reserved matters" where decisions are required by the parent(s) as well as the board of the alternative delivery vehicle. Authorities often like to put in place appropriate governance to enable decisions on reserved matters to be taken quickly so as not to impede the business of the alternative delivery vehicle. This may involve delegation of functions (usually executive) to a cabinet member or to a "shareholder committee" of the cabinet (or relevant committee in an authority that does not have executive governance).
- 4.9 Whether procured or not it will be important to ensure that there is clarity over the appropriate documentation between the authority and the alternative delivery vehicle, whether owned and controlled by the authority or established on a joint venture basis. At a high level those roles and responsibilities can be captured along the following lines:

Roles of the Council	Example Documentation
Owner of the company and its business	Articles of Association or Partnership Constitution for the company/LLP Shareholders'/Members'/Partnership Agreement (including "Reserved Matters" requiring Council approval)
Guarantor/funder of the company's business	"Parent company" guarantee Loan or revolving credit agreement Security documents/Debenture
Client/customer of the business	Strategic delivery contract

	Service contracts
	Client management arrangements
Provider of services to the business	Service level agreements e.g. ICT, HR, legal, payroll
Provider of premises and assets to the business	Lease or licence of premises Licence of ICT

- 4.10 When we establish alternative service delivery vehicles we would normally expect officers to be on the Board of those vehicles, rather than members, however, such matters remain decisions for local choice.
- 4.11 Although establishing a "client function" may sound "old-hat", over bureaucratic or even grandiose, someone within the authority needs to have the role of monitoring what the vehicle does and reporting when expectations are not being met. This client role is important to evaluate the ultimate success or otherwise of any alternative delivery vehicle and, where necessary to put in place alternative arrangements, should delivery not be successful. The client would then oversee the exit strategy, preferably agreed in advance, to extricate the authority from the vehicle.

5 CONCLUSION

- 5.1 As mentioned above there is no one size fits all. Of the fifty or so housing companies we have established over the last few years, no two are exactly the same, from a significant non-procured joint venture with an RP, Hyde Housing in Brighton delivering affordable housing, through to housing for private rent and housing for sale in a number of other authorities - all arrangements are bespoke.
- 5.2 Although resources within local authorities are thin on the ground, unless authorities invest in the Place and promote growth, the prospect of a self-inflicted downward economic spiral increases, particularly with the uncertainties of Brexit.
- 5.3 With a positive mind-set and collaboration as appropriate with partners there are significant opportunities to control the future destiny of the area - never has it been more important to invest time, effort and energy in agreeing and working towards delivery of a Vision for Place.

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Financial sustainability of local authorities 2018

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Full report [Financial sustainability of local authorities 2018](#)

"...Continued increases in demand for social care and tightening resources are pushing local government towards a narrow remit centred on social care. From 2010-11 to 2016-17, the estimated number of people aged 65 and over in need of care increased by 14.3%, and the number of children being looked-after grew by 10.9%. Social care now accounts for 54.4% of local authorities' total service spend, up from 45.3% in 2010-11.

Despite growing demand, spending on social care still fell by 3.0% from 2010-11 to 2016-17. However, this compares with a 32.6% reduction in spending on all other service areas including: reductions of 52.8% on planning and development; 45.6% on housing services; 37.1% on highways and transport; and 34.9% on cultural and related services.

There is further evidence that these spending reductions are impacting frontline services. Since 2010-11, 33.7% fewer households have their waste collected at least weekly, the number of bus miles subsidised by local authorities outside London has fallen by 48.4%, and the number of libraries has reduced by 10.3%.

The Ministry of Housing, Communities and Local Government (the Department) has made improvements in understanding the sector's financial position since the NAO's last report in 2014 but, because responsibility for services is spread across departments, there is no single view of how funding cuts are impacting the whole of local authority services. At a time when social care spending is being prioritised by local authorities, failing to understand how funding and demand pressures affect the full range of local authority activities risks unintentionally reducing services to a core offering centred on social care.

The government has given local government several short-term cash injections in recent years, but most of this funding has only been available for adult social care. Uncertainty remains over the long-term financial plan for the sector. The government has confirmed its intention to implement the results of the Fair Funding Review in 2020-21 and to allow local authorities to retain 75% of business rates, but the implications of these changes for local authorities' finances are not yet clear.

"Current funding for local authorities is characterised by one off and short-term fixes, many of which come with centrally driven conditions. This restricts the capacity of local authorities and yet the weight of responsibility to respond to increased demand and maintain services remains very much on their shoulders. The Government risks sleep walking into a centralised local authority financial system where the scope for local discretion is being slowly eroded."

Amyas Morse, head of the National Audit Office, 8 March 2018

Notes for Editors

49.1% real-terms reduction in government funding for local authorities, 2010-11 to 2017-18

28.6% real-terms reduction in local authorities' spending power (government funding

plus council tax), **3.0%** real-terms reduction in local authority spending on social care services, 2010-11 to 2016-17

32.6% real-terms reduction in local authority spending on non-social-care services, 2010-11 to 2016-17

£901 million overspend on service budgets by local authorities in 2016-17

66.2% percentage of local authorities with social care responsibilities that drew down their financial reserves in 2016-17

10.6% percentage of local authorities with social care responsibilities that would have the equivalent of less than three years' worth of reserves left if they continue to use their reserves at the rate they did in 2016-17

13 number of departments asked by the Ministry of Housing, Communities and Local Government to provide information as part of the Spending Review 2015

1. Central government funding to local authorities has fallen by 49.1% from 2010-11 to 2017-18. This equates to a 28.6% real-terms reduction in spending power. In the 2015 Spending Review and the 2017 Budget, the government provided extra funding to relieve growing spending pressures in adult social care. Consequently, the rate of spending power reductions has levelled off since 2016-17 for social care authorities (single tier and county councils) and is predicted to remain relatively flat until 2019-20.
2. Total overspending on services by social care authorities in 2016-17 amounted to £1.023 billion. District councils, who do not have social care responsibilities, did not overspend in aggregate. Combined overspends of both social care and district councils were £901 million.
3. 10.6% of single tier and county councils would have the equivalent of less than three years' worth of reserves left if they continued to use their reserves at the rate they did in 2016-17. A further 9.9% would exhaust their reserves within four to five years – reference figure 24 in the report