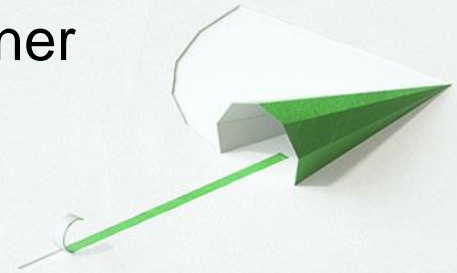


CIPFA Regeneration Conference 2019 Delivering New Homes – Rising to the Challenge

Judith Barnes, Partner Local Government

Matthew Waters, Commercial Partner

10th July 2019



Coverage

- Context
- Powers to provide housing
- Case studies
 - Self delivery;
 - Brighton & Hove Council and Hyde Housing
 - Asset Vehicle
- Discussion

Context

- Austerity, Brexit, Transformation, staff reductions, Commercialisation.....

Housing supply shortage

- National problem – but needing local solutions

Capital v Revenue

Government policies – increase home ownership; deal with non-compliant landlord and promote new development; simplify planning?



Context

- **Role for LAs** – Strategic and operational – shaping the local market by development and ownership of housing stock (of all tenures); planning
- **Change of approach by LAs** – using capital assets to reduce costs and generate revenue (whilst re-shaping the local housing market)
- **Use of Alternative Delivery Vehicles** – wholly owned or joint venture models, including companies and LLPs

Housing White Paper

"Fixing our broken housing market"

- planning for the right homes in the right places
 - building homes faster
 - diversifying the market
 - helping people now
-
- Progress?



Government Initiatives



BRIEFING PAPER

Number 06416, 1 December 2017

Stimulating housing supply - Government initiatives (England)

By Wendy Wilson

- Contents:
1. A crisis in housing supply
 2. New local authority & housing association provision
 3. Direct Commissioning
 4. New Homes Bonus
 5. Infrastructure for housing
 6. Home Building Fund
 7. Housing guarantees
 8. Accelerated Construction
 9. Disposal of public sector land
 10. Home ownership initiatives
 11. Private rented housing
 12. Real Estate Investment Trusts (REITs)
 13. Self-build/custom build schemes
 14. Bringing empty homes back into use



BRIEFING PAPER

Number 07671, 9 June 2017

Tackling the under-supply of housing in England

By Wendy Wilson
Cassie Barton
Louise Smith

- Contents:
1. How much new housing does England need?
 2. Trends in UK housing supply
 3. Increasing supply in England: barriers and solutions
 4. Housing White Paper: additional proposals and responses



Powers for Delivery of Housing

- Housing Act 1985 – S.9 power to:
 - acquire or erect houses or convert buildings into houses for the purposes of Part II of the Act
 - alter, enlarge, repair or improve a house which is erected, converted or acquired or which is disposed of under the section
 - Land may be disposed of to others to provide housing accommodation
- Key workers
- County Councils S.29

Powers for Delivery of Housing

- S.12 incidental powers to provide shops, recreation grounds and other buildings considered beneficial, roads, streets and open spaces
- S.14 local authorities may “for supplying the needs of their district” exercise powers outside of their area but in advance need to notify the relevant Councils
- Sections 24-26 Local Government Act 1988 – provide financial assistance, subscribe for shares in companies for privately let housing

Land and Property Development Powers

- Buy & sell land including:
 - S.120-123 Local Government act 1972 for the benefit improvement or development of the area;
 - Town and Country Planning Act 1990;
 - for planning purposes
- Local Authorities (Land) Act 1963 (development for the benefit or improvement of the area)
- S.1 Localism Act 2011 (if required)
- Appropriation

Land and Property

- Powers to Invest:
- S12 Local Government Act 2003
 - Functions
 - Assets
 - Treasury management
- CIPFA Prudential Framework
 - Borrowing in advance of need
 - Professional advice



Commercial trading through a company – Section 95 Local Government Act 2003

- Doing for a “commercial purpose”ordinary functions
 - Not where “required” to do something i.e. duty
 - Not where existing commercial activity
 - Must be through a company or community benefit society
- Trading Guidance
- Trading Order

Developing a Business Case Local Government (Best Value Authorities) (Power to Trade) Order 2009 (2006 in Wales)

Business case must contain:

- Objectives of the business
- Investment and other resources needed
- Risks and how significant these are
- Expected financial results and other outcomes expected to achieve

No subsidy

– Council to recover staff and other costs



Section 1 Localism Act 2011: General Power of Competence

“Power to do **anything that individuals generally may do**
“including things “unlike anything” that public bodies do

Power may be exercised in any way whatever:

- Anywhere in United Kingdom or abroad
- For a commercial purpose or otherwise, for a charge or without charge
- For the benefit of the authority and its area of persons resident/present or otherwise

Power to **charge (s3)** limited to cost recovery

Power to **trade for a commercial purpose (s4)** through a company/community benefit society like s95

Property Objectives?

- What does the market want/need?
 - PRS – Executive homes – all types?
 - Temporary accommodation – reduce B&B?
 - More affordable/shared ownership?
- Disposal of surplus assets or develop?
 - One Public Estate?
- Development and regeneration
 - Benefit or improvement of the area?
- Manage an investment portfolio
- Act like a commercial developer – trading co?

- A combination of the above?



Self Delivery

- Many LAs are doing it for themselves:
 - Estates renewal
 - Mixed tenure with market sale to deliver a proportion of social or affordable housing
 - Using s106 &/or CIL
 - Pure social housing e.g. LB Southwark
 - HRA and GF
- Or setting up housing delivery vehicles

Establishing a Housing Company

Key questions:

- What do you want to do?
- Why?
- What is the best way to achieve it?



....there is usually more than one way to skin a cat

Why set up a housing delivery vehicle?

- ✓ Because you **have to** in order to trade like any other housing developer under S.95/S.4 or for private sector tenancies (need to be a separate legal entity) or

- ✓ Because you **want to** in order to
 - Operate more commercially
 - Move away from political influence
 - Deliver a joint venture e.g. with an investor, RP or developer
 - Employ people more flexibly
 - Firewall against risk and liability



Constraints on new models



Strength
of
business
case

Skills and
capacity

Council
support

Powers
and legal
issues

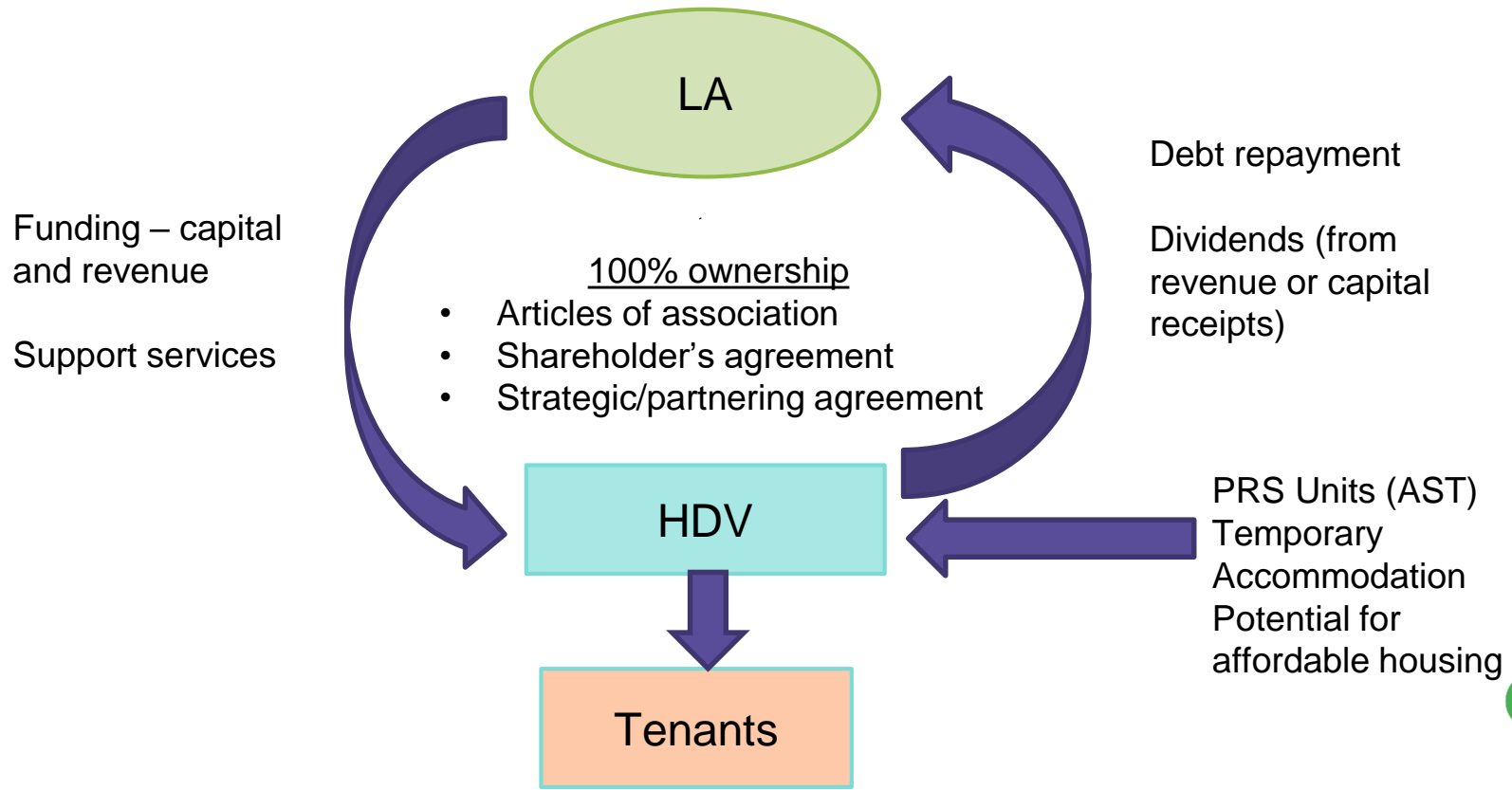
(not
usually the
problem)

HDV – Purpose and Activities

Activities:

- Own housing stock (for difference purposes)
- Develop Council-owned assets to create income generating assets
- Acquisition of stock developed/owned by others
- Act responsively and commercially, including where appropriate without the constraints of the Public Contracts Regulations 2015
- Create a structure that is scaleable and can attract 3rd party investment, potentially self sustaining

Housing Delivery Vehicle – Wholly owned and controlled

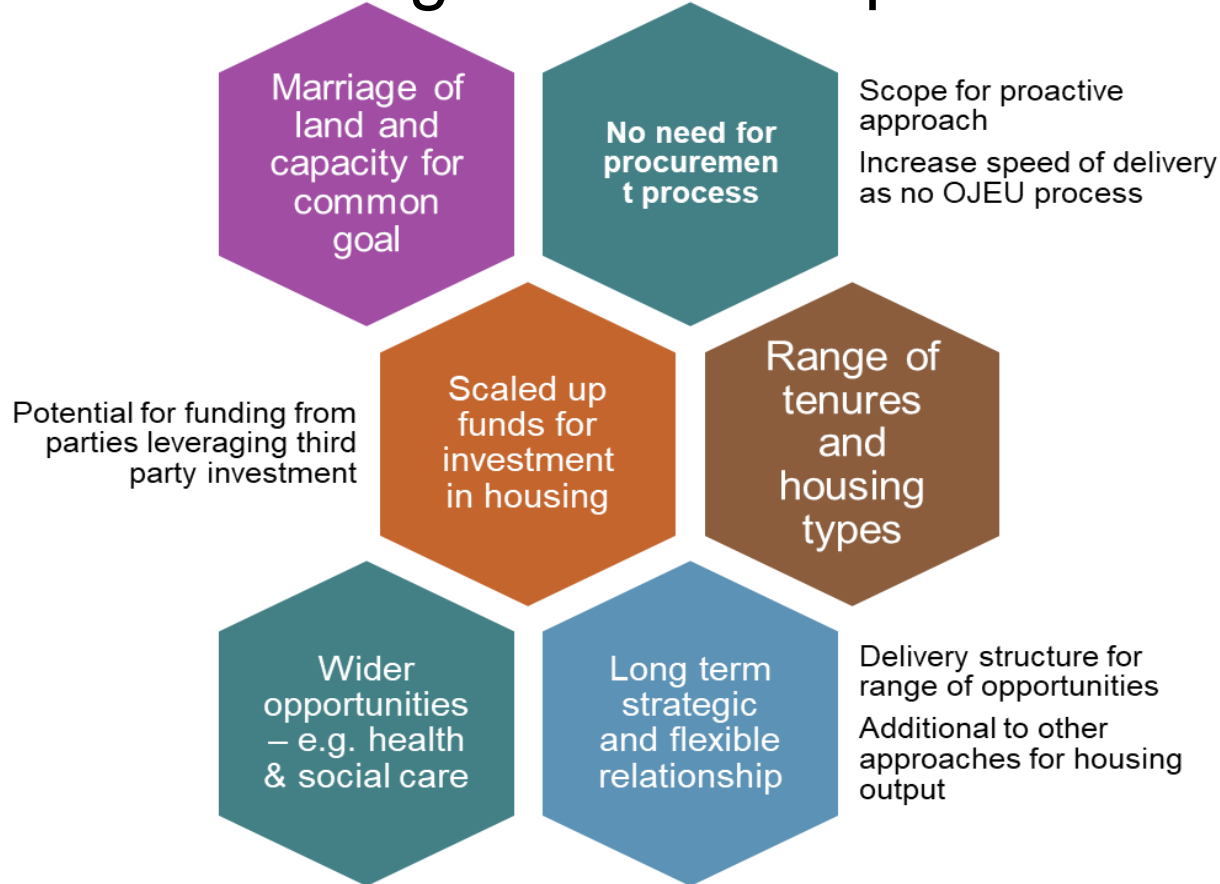


Housing Vehicles Case Studies

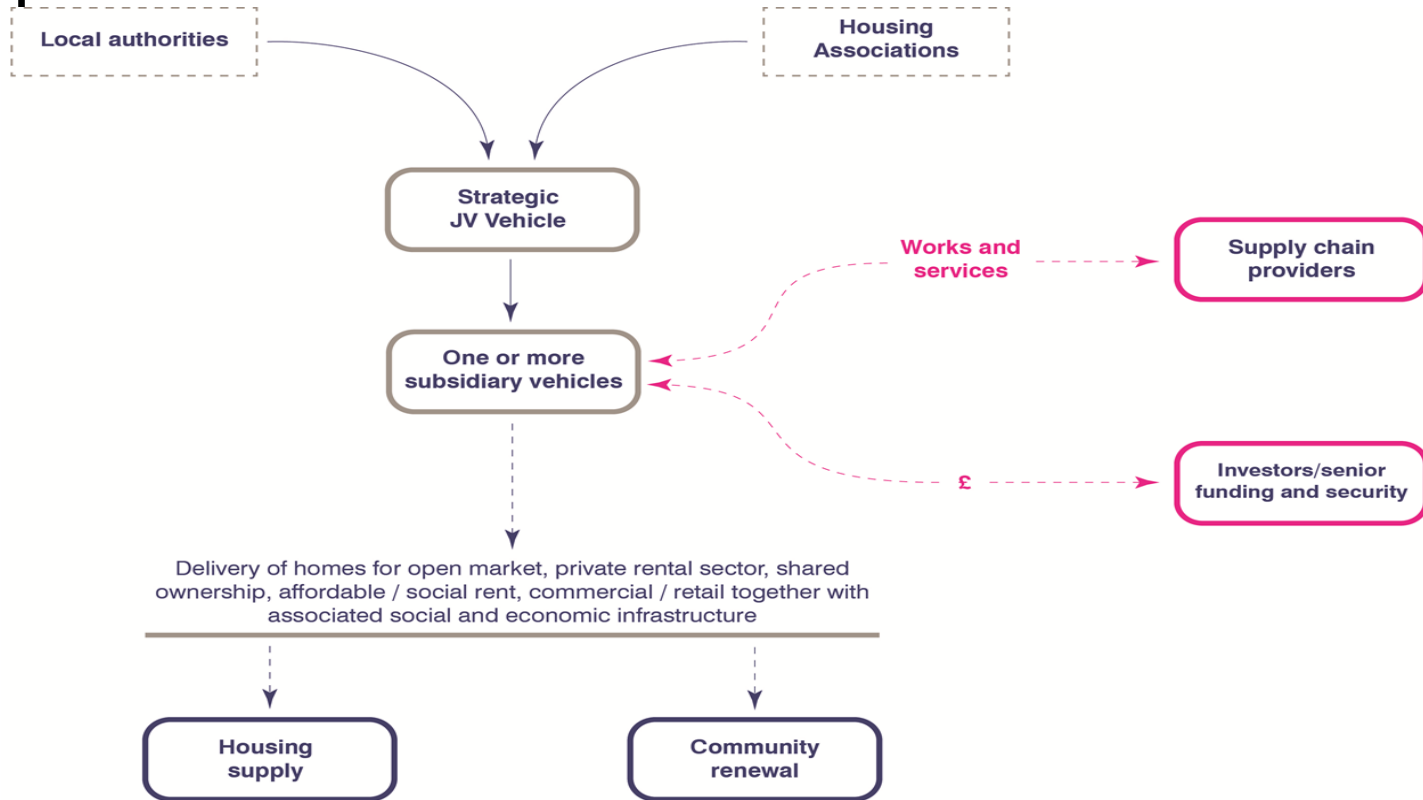
- Royal Borough of Greenwich – Meridian Homes Starts
 - Established 2011
 - Wholly owned company to independent IPS
 - RTB receipts
 - Affordable rent – 65% market rent
 - Building 200 homes
- Stoke-on-Trent City Council – Fortior Homes
 - Established 2016
 - Wholly owned company – dev co and rent co model
 - Purchasing developed units and build to rent
 - 400 homes by 2021



LA / RP Strategic Partnerships



Option: LAs and RPs



Case Study - LA and RP strategic partnership

- £120m joint venture
- 1,000 affordable homes
- Linked to National Living Wage



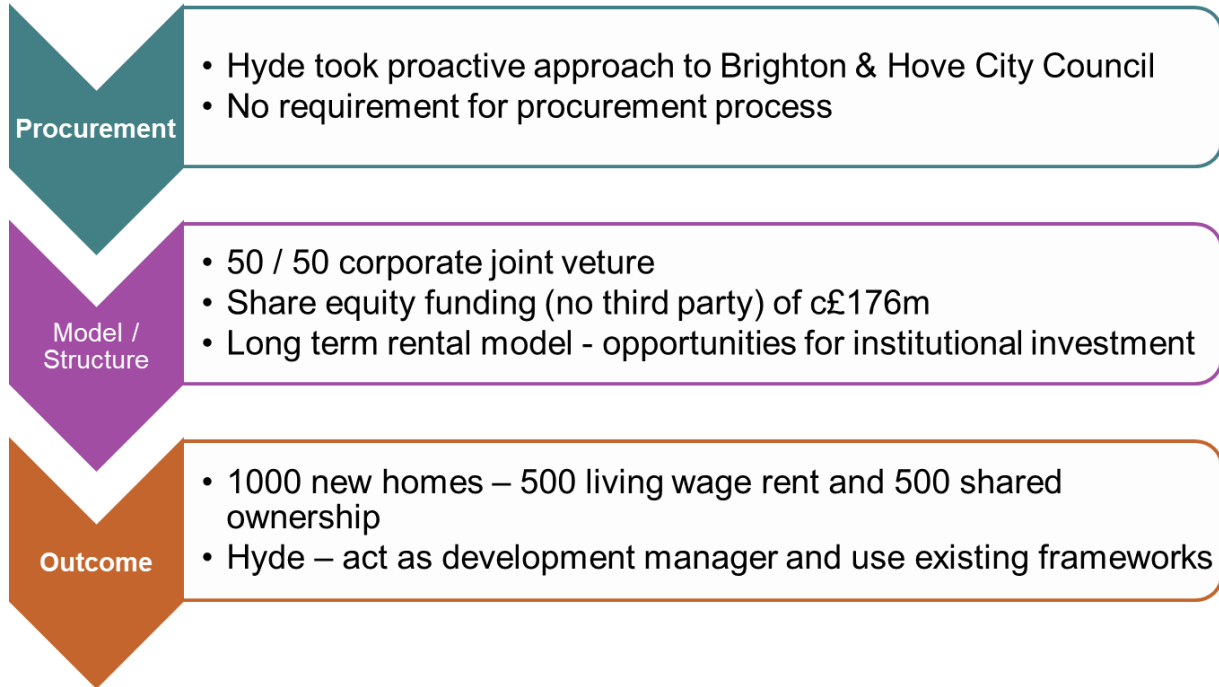
"We would like to thank Bevan Brittan for their valuable help and assistance to deliver this project."

"This is the biggest commitment to affordable housing in the city for a generation and its taken a lot of work to make sure the venture's business and financial models are robust"

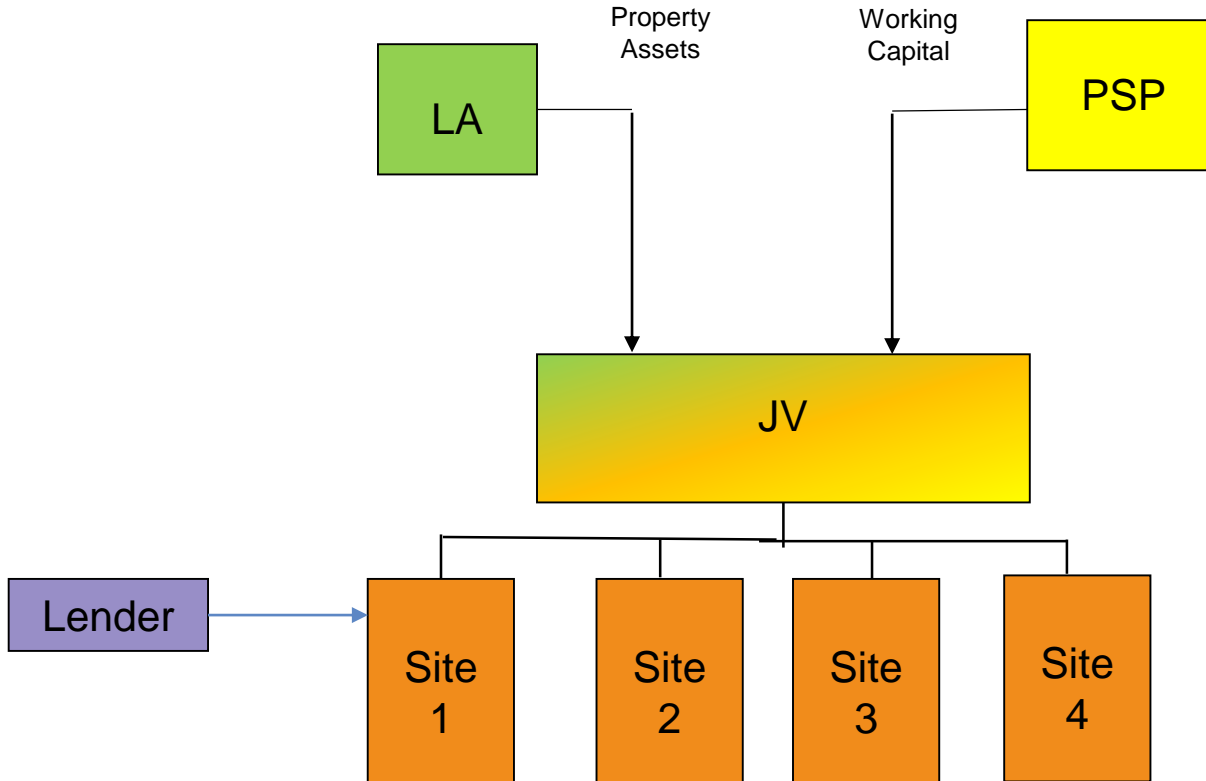
Anne Meadows
Housing Chair - Brighton & Hove City Council



Brighton and Hyde JV



Joint Venture – Model Option - LABV



LABV: Features

- Limited liability vehicle – LLP/company
 - 50/50 shareholding and deadlock
 - Equity stakes
 - Finance
 - JV control over development and delivery
 - Authority protection
 - No exclusivity but 10/15/20 year arrangement
 - Working capital as and when required
 - Developer risk often lies with private sector partner
-
- Examples: Croydon, Slough, Bournemouth, Torbay, Wirral



Legal Issues

- **Vires/Powers**

- HRA or GF (and RTB considerations)?
- Acquisition, sale and development of land?
- Investment in land and property?

- **Corporate Structure**

- Choice of vehicle – Company or LLP?
- Group structure?
- Governance and Directors?



Legal Issues

- **EU Procurement**

- Contracting Authority Status? Or not
- “Teckal” Exemption? Or not
- Land transfers? Or more
- Resourcing and supply chain arrangements?

- **Land**

- Consideration and Best Consideration?
- Consents?
- Appropriation?



Legal Issues

- **Funding**

- HRA (cap) or General Fund?
- PWLB or 3rd party finance?
- Equity or debt?

- **State Aid**

- Land transfers and corporate resources?
- Funding via on-lending from PWLB?

- **Tax**

- Charity, SDLT, VAT and Corporate Tax?

Capturing roles and responsibilities

Roles of the council	Documentation
Owner of the business	Articles of the company Members' Agreement Reserved matters
Guarantor/funder of the business	"Parent company" guarantee Loan or revolving credit agreement
Client/customer of the business	Strategic contract Service contracts Client management arrangements
Provider of services and assets to the business	Service level agreements (e.g. ICT, HR, FM) licences
Provider of land, premises	Lease or licences for premises Transfer of Freehold/leasehold Option/Development Management Agreements



Questions and Discussion



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Thank you

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