The concept

The term 'Local Housing Company' has been used before but its current use derives from the government's Green Paper in July 2007. As part of the drive to produce three million new homes by 2020, the government is encouraging the use of innovative models, involving both the public and the private sector. A key model is the Local Housing Company (LHC) and, although 14 'pilots' were identified in the Green Paper, there is no one, prescriptive model. Not only are the 14 pilots at various stages in the development and assuming different forms, but other local authorities are exploring and developing their own LHCs in their different ways.

It is therefore open to all local authorities and their new build partners to develop LHCs in ways which suit them best. Opportunities abound for all the potential 'players', but there are some significant challenges which need to be addressed before any LHC can play the role envisaged for it in the Green Paper.

Opportunities for local authorities

In many ways the LHC concept derives from the government's desire to encourage local authorities to release land for new build. There is a recognition that local authorities need to be reassured that public assets will be put to effective use and that they want to do more than simply transfer or sell their land to private developers or registered social landlords (RSLs). At the heart of the LHC concept, therefore, is a partnership between local authorities and the other stakeholders. This might take the form of an equity investment vehicle (perhaps a limited liability partnership) or it might take a simpler form, perhaps a (charitable) company limited by guarantee or even a subsidiary of the local authority itself.

At one end of the spectrum the local authority plays a significant but less-than-majority role in a vehicle which makes returns for its partners, while at the other end the local authority is the sole or dominant partner (but with less scope for private investment or finance). Depending on the nature of the vehicle, the local authority ensures that its land is used for the delivery of the affordable or other housing which its local communities need. Provided the landlord is not the local authority itself the new housing will be outside the Housing Revenue Account (HRA) and not subject to the right to buy. Nor will it be subject to rent restructuring, save to the extent that the Council decides it will be appropriate to limit rents contractually.

Opportunities for ALMOs

Arms Length Management Organisations (ALMOs), in many cases, have completed or are nearing the completion of their decent homes programmes. They are investigating ways in which they can develop or otherwise make their businesses sustainable. As a subsidiary of the local authority they ‘automatically’ provide an extra-HRA option (no right to buy) and for this reason are attractive to their local authorities as vehicles for or facilitators of new build. For tax reasons they are often creating subsidiaries (with
charitable status) to act as a LHC or they might play an ownership and/or management role in a wider LHC (investment) structure.

The housing they produce on their own account or through a subsidiary will often be regarded as Council housing by both the Council and local residents and it is easy to under-estimate the fillip this provides to local housing officers and local politicians who have found themselves unable or certainly discouraged from building new Council houses for very many years.

Opportunities for RSLs

RSLs have various roles to play in LHC structures. They might well be the recipients or indeed developers of affordable housing units if the LHC is an off-balance sheet finance vehicle (but not a landlord). Alternatively they might have a development agent role in providing services to the local authority or its LHC (including the ALMO/subsidiary) because they have acquired expertise in new build over the years (since the Housing Act 1988) when, effectively, only RSLs have been able to develop new affordable housing. Or they might simply manage, on behalf of the LHC (or other stakeholders), the new affordable housing.

Opportunities for developers/contractors

The new build programme provides obvious opportunities for house builders. Many LHC schemes involve the use of upfront and/or subsequent payments for 'for sale' units to subsidise the production of affordable housing units. At the same time the developer/contractor could, as part of the overall financial arrangement, agree to build the affordable units to an agreed specification. In the more ambitious LHC models the developers would play an investment role, looking to secure a long-term return rather than the usual developer profit.

Challenges for all

There are inevitably challenges in making the LHC concept a reality. For local authorities there are the usual issues of ‘vires’ (or powers) since a local authority is a statutory body and can only do what it is permitted by statute to do. New powers are more flexible than they were but ensuring that the LHC delivers for example the local community strategy is of fundamental importance.

ALMOs too have to recognise that they are wholly owned subsidiaries of the local authority and their resources are statute-based (through the HRA) and that imposes financial constraints. If they were to create a charitable subsidiary there are Charity Commission and other requirements to observe. RSLs, particularly if charities as well, have regulatory and also business risk issues to address; while developers/contractors need to decide, particularly in a softer market, what financial exposure is appropriate.

All parties need to be aware of the role of Communities and Local Government (CLG) and its grant/investment ‘partners’, English Partnerships (EPs) and the Housing Corporation, soon to be partners themselves in the Homes and Communities Agency (HCA). EPs are playing a gate-keeper role for a number of the LHC projects and they have particular requirements which need to be understood and satisfied; and it may well be that the scheme depends on grant/investment in the future and, given that the new HCA regime is as yet not fully developed, anticipating its ‘rules’ is critical.

Then there are a number of, often competing, tax pressures. Creating new vehicles often creates new taxable entities and striking the optimum balance between stamp duty land tax (at 4% over £500,000), VAT and Corporation Tax is not easy. Checking that the legal relationships and the land and money flows which derive from those relationships is crucial so as to ensure that value is being created in the right place and that the proposition to developers/contractors and also to banks is attractive. Nevertheless, as work on the models gathers pace, solutions are being found and, though each project is different, there is increasing confidence that all the different scenarios can be accommodated in one way or another.

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More information

As a leading local authority and housing practice, Trowers & Hamlins is uniquely placed to find the optimum LHC structure and we would encourage you to make contact with the specialist lawyers in our team. Not only are the team specialists in the area but they also bring expertise in all the requisite areas to bear on the problems which need to be resolved.

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