

## **REPORT TO EXECUTIVE**

Date of Meeting: 3 October 2023

## **REPORT TO COUNCIL**

Date of Meeting: 17 October 2023

Report of: Chief Executive

Title: Review of Exeter City Living

### **Is this a Key Decision?**

No

### **Is this an Executive or Council Function?**

Council

### **1. What is the report about?**

1.1 This report reviews the current position of Exeter City Living (ECL), a wholly-owned council housing delivery vehicle which was incorporated in June 2018. The review was commissioned by the Council following the failure to secure a contract for the redevelopment of the Clifton Hill site and the continued uncertainty around development given the difficult current economic climate. These difficulties highlighted issues relating to the financial position of ECL and its continued ability to repay its loans to the Council.

1.2 The recommendations set out within this report are supported by an independent review by Local Partnerships. The Local Partnerships Report can be found in Appendix A.

### **2. Recommendations:**

That Executive recommends to Council:

2.1 That the findings of the Local Partnership LLP report be noted.

2.2 That ECL's achievements to date be noted;

2.3 That Members note that notwithstanding the recommendation from Local Partnerships to wind down operations of ECL, officers recommend that the company be retained for the limited purpose of holding and managing property.

2.4 In order to facilitate the recommendation in paragraph 2.3 above, that delegated authority be granted to the Chief Executive, in consultation with the Leader of the Council, to reduce ECL's activities as follows:

- a) the Council enters into a business sale agreement with ECL, whereby the Council acquires all of ECL's assets (with the exception of the 6 leasehold flats in the Guildhall Shopping Centre ), including any work in progress in return for proper consideration, in the form of a release of ECL from its obligations under the Loan

Agreements. The sale agreement shall include a novation of all contracts save those that may be terminated by ECL with the Council's agreement.

- b) In the likely event that the value of the assets to be acquired from ECL is not sufficient to repay the loan to the Council, then delegated authority be granted to the Chief Executive, in consultation with the Leader and Section 151 officer, to write off any shortfall.
- c) Thereafter, ECL, in a much reduced capacity shall continue for the purpose of holding and managing property and in particular the 6 Guildhall flats.

2.5 That the Council deals with any staff implications in accordance with its Organisational Change Policy;

2.6 That the ECL appointments of the Interim Managing Director and the two non-Executive Directors are extended until such time as they are no longer required to assist with the reduction of the company's activities. The termination of those appointments be delegated to the Chief Executive;

2.7 That authority to amend the Management Agreement to reflect the changes to the remit of ECL be delegated to the Service Lead - Legal Services;

2.8 That SMB reflect on the Local Partnerships report as well as work being undertaken by the District Councils Network on commercial companies owned by local authorities to produce a report in due course setting out principles for how the council will enter into any commercial ventures in the future.

2.9 That the Chief Executive be tasked to liaise with One Public Estate to negotiate an amendment to the grant conditions with the aim of retaining the Brownfield Land Release Funding (BLRF) funding where possible.

2.10 If necessary, Members agree to receive a report setting out a site disposal strategy in the likely event of a shortfall on the ECL loan after the Council acquires ECL's assets.

### **3. Reasons for the recommendation:**

3.1 To minimise financial risk to the Council and to put the Council's development activities on a sustainable footing.

### **4. What are the resource implications including non financial resources**

4.1 Excluding any loan shortfall highlighted in paragraph 2 (4) (b) above, the resource needed to reduce ECL's activities should largely include officer time. At this stage, it is too early to know what impact this will have on the staff at ECL. Work will be done to identify if those staff can be redeployed elsewhere in the council.

### **5. Section 151 Officer comments:**

5.1 The objectives and intentions of ECL were ambitious and in line with Exeter's aspirations. The challenging environment caused by external factors, have meant that a reduction in the capacity of the Company is financially prudent at this time. The financial implications have been set out in the finance section below and demonstrate the impact

on the Council. It is important that the Council has regard to the future management of the flats located within the Guildhall Shopping Centre. At this stage it is not envisaged that the debt will require the sale of any assets that were not already earmarked for re-development.

## **6. What are the legal aspects?**

6.1 There is a reasonable prospect of ECL avoiding an insolvent liquidation if arrangements are made now in line with the recommendations set out in paragraph 2 above. Without intervention from the Council, ECL would be insolvent.

6.2 The recommendation to acquire ECL's assets, enables the Council to retain ownership of the land at Clifton Hill and therefore control of any redevelopment proposals for that site.

6.3 The recommendation in relation to retention of the 6 leasehold flats protects the Council's commercial interest in the Guildhall Shopping Centre. In short, this ensures that the Guildhall Shopping Centre remains free of any encumbrance that may restrict or negatively impact on its future use as a commercial interest.

## **7. Monitoring Officer's comments:**

7.1 Unless the actions proposed in this report are acted on swiftly, ECL is at risk of going into insolvent liquidation. Therefore, the Council's review has been both prudent and timely.

7.2 ECL was set up with the very best of intentions but as a commercial venture, it was susceptible to market forces which have had a significant, negative impact on its viability for the reasons set out in this report.

## **8. Report details:**

### **Background**

8.1 The review of ECL was initiated in April 2023 due to the following concerns:

- Failure to secure a contract for the development of the Clifton Hill site and concern about the viability of the existing development pipeline in the face of a challenging development environment;
- Concern about ECL's ability to repay its loan from the Council; and
- A need to ensure that there was appropriate governance relating to ECL's future direction and activity.

8.2 ECL is a housing delivery vehicle which was incorporated in June 2018 and is a wholly- owned subsidiary of Exeter City Group (ECG). The vehicle was established to provide much needed housing in the city to help tackle the housing crisis. The idea was that the company would also generate an income stream for the council at the same time as unlocking sites that other developers were unable to.

8.3 ECG and ECL were established at the time when the Housing Revenue Account cap was still in effect. At that time, provision of council housing was constrained by national policy regarding the ability of councils to borrow against the HRA, a policy which was

reversed in October 2018. The intention had been that affordable housing would be delivered by ECL through the planning process.

8.4 The five years since the incorporation of ECL have been the most unstable market conditions since the 1940s with a series of events:

- A global pandemic;
- The invasion of Ukraine;
- Significant rises in interest rates; and
- Prolonged uncertainty relating to the terms of the BREXIT deal.

8.5 These factors have created enormous uncertainty in the market with significant inflationary pressures in the economy which have increased the cost of materials, labour and transportation.

8.6 When ECL was established, potential development sites were identified and work began on understanding the viability of bringing these sites forward for development. Two key sites originally identified for potential development were Northbrook Golf Course and Clifton Hill.

8.7 In July 2019 Executive decided to put the future of the Northbrook Golf Course out to public consultation, a site that had been assumed would come forward for development. Subsequently Executive formally resolved not to bring forward Northbrook Golf Course for housing but instead to include the land as strategic green infrastructure. This removed a potentially profitable site from the development pipeline early on in the programme.

8.8 With regards to Clifton Hill, in early 2019 there was a Council resolution to sell the whole site. By the autumn of 2019 there was a commitment from the Council at that time to keep the green space including the Golf Driving Range and Ski Centre and only develop the smaller brownfield section at the front of the site (the area of existing buildings).

8.9 The procurement of a building contractor to build the Clifton Hill development has been unsuccessful to date. Following a two-stage tender process, the successful contractor from stage one of the process was unable to submit a fixed price, in the second stage of the tender. Without a fixed price, there was a risk that the anticipated construction costs would be too high to enable the development to deliver a financial return suitable to cover the normal development risks, such as fluctuations in selling prices. The project has therefore been put on hold until more certainty and competition return to the construction sector, and a new procurement process for a contractor can be carried out with more confidence.

### **ECL Achievements:**

8.10 Despite a challenging backdrop, ECL has been successful in completing three sites providing 22 homes and has two developments under construction which will provide 56 homes by the end of 2024.

8.11 Future phases on one of these sites can provide a further 56 homes with construction continuing without further procurement or delay, subject to viability and instruction from the HRA.

8.12 A further site to provide 41 homes is cleared and ready to start construction when economic conditions improve. A full summary of ECL activities and achievements can be found in Appendix B.

**Current work being done by officers to ensure the Council continues to deliver its housing aspirations and reduce the financial impact on the Council of the proposals within this report.**

Without pre-empting Members' decision, officers, mindful of the need to work to move at pace have undertaken the following work:

1. Finance

The report from Local Partnerships refers to the risk that the Council has breached the Prudential Code as ECL have been using borrowing to finance their running costs, and to repay the loan and interest. The Prudential Code governs capital spend in Local Authorities under the Local Government Act 2003 and must be followed by a Council. At this point in time, there has not been a breach by the Council, as ECL has generated a turnover in its five years of existence more than the total of running costs, interest and loan repayments. However Local Partnerships are correct to recognise the fact that with the absence of open market sales in the near future, there would come a point where this would become unsustainable and the Company would likely require an equity injection to continue trading, whilst avoiding a breach of the Prudential Code.

Members will recall that Council has approved loans with a value of £24.950m for ECL. To date, ECL has borrowed £10.850m from the Council and has repaid £0.754m leaving £10.096m outstanding. The Council has taken a cautious approach to lending the funds to the Company to ensure that risks to the Council are minimised, whilst ensuring that the Company has sufficient funds to operate. Due to a range of factors, including the limited scale of development and the uncertainty of securing a future pipeline of sites, ECL no longer anticipates generating capital receipts for land, and only nominal development profits.

In order to address the loan, the Council can negotiate a value for the assets of the Company. The assets are held as work in progress, debtors and cash. The only debtor is the Council as the majority of their sale transactions at this stage will be in respect of the Vaughan Road development. The work in progress will include the value of the land at Clifton Hill.

Based on the Company's latest accounts, they have work in progress totalling £4.04m and cash in the bank stands at around £1.8m. The work in progress figure will be subject to change as we are updating the valuation of Clifton Hill. The amount in the bank will also change as the Company ensures that any outstanding creditors are paid and an amount is left in to allow the Company to continue to operate.

If the Council agrees a managed reduction in the size and type of activity of ECL as recommended, then the Council will be required to write off any remaining outstanding element of the loan. This will leave ECL as a Company with a small amount of positive assets that could continue to hold the flats at the Guildhall Shopping Centre.

In terms of financial implications for the Council, the transfer of the assets of the Company will be used to either pay down the debt associated with the loan (in the case of cash) or the associated debt will remain part of the Council's repayment of debt calculation but attached to the new asset. Repayments will be made in lieu of the loan repayments over the remainder of the 25-year loan.

In respect of any write off in respect of the loan, there will be no immediate impact on the Council Taxpayer, other than for the Council to make repayments in lieu of the loan repayments from the Company. However as there is no longer an asset associated with this debt, the Council will need to make arrangements to repay the debt as soon as is practicable. The options for this are to sell assets to generate capital receipts or to set aside revenue resources. Depending on the value of debt outstanding, it is likely that the sale of an asset (or assets) will be required.

Valuers have been appointed to appraise the sites which have been identified for redevelopment. The outcome of this work will help to identify the sale of site(s) to address the debt.

ECL also provides an income to some of the General Fund Services - Finance, Legal, Planning - for staff or service support. Work will be done to address this loss of income. It is important for Members to remember that this income has offset the need for further reductions in council services, that otherwise would have been required from 2018.

The financial implications for the General Fund are as follows:

- Additional repayment of debt      £340,000
- Loss of interest                      £530,000
- Loss of income to services        £160,000
  
- **Total**                                    **£1,030,000**

Whilst most of the impact of loss to the services can be mitigated through utilising vacant posts, the debt repayment and loss of interest will only be mitigated when the asset sale occurs. At this point the PWLB loans will be reallocated to fund part of the existing approved capital programme (and Members will note that these existing loans are at a much lower interest rate than we can currently receive). As mentioned earlier, these cost pressures have been avoided during the period of ECL and essentially relate to savings that were required to be made in the late 2010's.

## 2. Securing and retaining BLRF funding

The Council has been successful in receiving grant funding from the Government's One Public Estate (OPE) programmes, including the BLRF. The grants have been awarded to enable housing development on 8 Council owned sites across the city. A key milestone is the securing of 'Land Release' and this has already been achieved on two sites, Clifton Hill and Vaughan Road. Clifton Hill was sold to ECL and has planning permission. Vaughan Road is being developed for social housing under the name of `The Gardens, Whipton`, with construction commencing on the first phase of 35 homes in March 2023.

The Belle Isle, Exeter Water Sports Association and Mary Arches Car Park sites are part of ECL's current Business Plan and are in its development pipeline. The BLRF grant funding for these three sites is approximately £2.5m. ECL has been developing scheme designs, addressing delivery challenges and modelling viability for the sites. All three sites have a Land Release deadline of 31st March 2024 with previous intention that land release would be achieved by selling the sites to ECL.

It will be necessary to engage One Public Estate to explore whether the terms of the Funding Agreement terms can be altered (particularly the Land Release milestone deadline) in order to attempt to retain the funding secured on these sites until an appropriate, alternative land release mechanism can be activated.

### 3. ECL staff

The consideration of the impact of the proposals on staff working at ECL will be addressed through the Council's organisation change policy.

It will be important that the Council continues to work closely with officers from ECL to implement any recommendations agreed by Members. It is therefore proposed that the ECL appointments of the Interim Managing Director as well as the two non-Executive Directors are extended in accordance with the recommendation set out in paragraph 2.6 above to assist with the reduction of the company's activities.

### 4. Developing delivery plans for current ECL sites

The Director of City Development and Housing leads an officer Delivery Team that works across the Council to unlock major brownfield regeneration sites for homes and identified in the Exeter Plan.

The Team has prioritised the preparation of delivery plans and business cases for infrastructure investment and funding for the ECL portfolio of sites, in particular Clifton Hill, Mary Arches car park, Belle Isle and EWSA Canal Basin.

### 5. Working with the ECL Board

Throughout the duration of this review, the Council has worked closely with the ECL Board to set out the specification for the Local Partnership Review as well as consideration of the findings. ECL staff have been appropriately engaged.

## **9. How does the decision contribute to the Council's Corporate Plan?**

9.1 This decision will contribute the Council's strategic priorities of 'Housing and Building Great Neighbourhoods and Communities' and 'Leading a Well-Run Council'.

## **10. What risks are there and how can they be reduced?**

10.1 That ECL continue to accrue debts and therefore increases the amount of its outstanding loan to the Council without a plausible repayment strategy.

10.2 The risk to the Council of the failure of ECL to repay the loan provided by the Council.

10.3 The Council will need to provide an equity injection into the Company to avoid a breach of the Prudential Code. An equity injection will mean that the additional cost will fall on the Council with no prospect of income to offset the cost.

These risks can be mitigated by approving the recommendations at the beginning of this report.

## **11. Equality Act 2010 (The Act)**

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In relation to this report, no potential impact has been identified on people with protected characteristics as determined by the Act because the proposals do not reduce or change services to the extent that they will impact on any individuals including those with protected characteristics.

## **12. Carbon Footprint (Environmental) Implications:**

12.1 Regardless of the future delivery model for housing development by the Council, the Council intends to deliver homes to a high environmental standard. .



### **13. Are there any other options?**

13.1 The Council could continue to fund ECL but introduce more rigorous governance arrangements such as the establishment of a Members Shareholder Committee to enable more transparent scrutiny of ECL. However, the financial projections in the latest ECL Business Plan clearly show that there is no likelihood of ECL being able to repay the debt owed to the Council in the foreseeable future and therefore retaining ECL in its current format is likely only to incur more costs the Council.

13.2 For ECL to continue in its current form, further financial assistance would be needed during the current financial year. Given the challenges with delivering open market developments, as outlined in this report, this is not recommended.

**Chief Executive, Bindu Arjoon**

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### **Local Government (Access to Information) Act 1972 (as amended)**

Background papers used in compiling this report:-

None

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