

<p style="text-align: center;">London Borough of Hammersmith & Fulham</p> <p style="text-align: center;">CABINET</p> <p style="text-align: center;">4 JULY 2016</p>	
<p style="text-align: center;">CREATION OF A LOCAL AUTHORITY TRADING COMPANY</p>	
<p>Report of the Cabinet Member for Commercial Revenue and Resident Satisfaction : Councillor Ben Coleman</p>	
<p>Open Report</p>	
<p>Classification - For Decision</p> <p>Key Decision: Yes</p>	
<p>Wards Affected: None</p>	
<p>Accountable Director: Michael Hainge – Commercial Director</p>	
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1. EXECUTIVE SUMMARY

- 1.1. Since December last year significant progress has been made in developing the commercial opportunities available to the Council. In order to continue that development, the Council needs to be able to trade profitably with bodies other than public authorities. In order to do so, it must trade through a limited company. This report seeks Cabinet approval to set up a company to fulfil this purpose.

2. RECOMMENDATIONS

- 2.1. That approval be given to the Commercial Director to establish a private limited company to be owned wholly and exclusively by the Council with initial up-front funding of £5,000.
- 2.2. That the company shall be called LBHF Ventures Limited or such other name as the directors of the Company may determine in consultation with the Cabinet Member for Commercial Revenue and Resident Satisfaction.
- 2.3. That the Commercial Director be appointed as the Managing Director of the Company and that the Cabinet Member for Commercial Revenue and Resident Satisfaction, the Cabinet Member for Finance, the Strategic Finance Director and the Director of Delivery and Value are appointed as Directors of the Company.

- 2.4. That approval be given to the Commercial Revenue Board (at its discretion) to approve business cases for delivery through the Company.
- 2.5. That authority be delegated to the Strategic Finance Director to procure the necessary insurance cover for the Council officers and members as appropriate acting on the Council's behalf in a management capacity for the Company and the Council officers who will be embedded in the Company in a non-managerial capacity.

3. REASONS FOR DECISION

- 3.1. To create a company through which the Council can trade with external bodies (other than public bodies) in order to maximise profitable income.

4. PROPOSAL AND ISSUES

- 4.1. In common with other councils in the UK, Hammersmith and Fulham charge for a range of services across most departments. Current legislation allows the council to make charges either in line with statutory fees or on a cost recovery basis. The only exception to this is when dealing with other public bodies where there is no restriction on making a profit where the provision is for administrative, professional or technical services. A summary of the current legal regime is at Appendix 1.
 - 4.2. In order to trade commercially, other than with another public body, the Council must do so through a trading company.
 - 4.3. Establishing a local authority trading company will assist the Council in delivering its corporate aims and priorities through the generation of profitable income.
- #### **4.4. Business cases**
- 4.5. The Local Government (Best Value Authorities) (Power to trade) (England) Order 2009 requires that before exercising the power to trade through a trading company, the Council is required to approve a business case in support of each venture when the power is exercised. The Council must approve the business case before trading through the Company starts.
 - 4.6. The purpose of the Commercial Revenue Board is to consider business cases presented to it, determine if they are viable taking into account a wide range of factors, determine whether they need to be progressed through a limited company and to ensure they deliver in financial terms according to forecasts. The members of this board are the same as the proposed directors of the Company.
 - 4.7. The Company will offer services set out in individual business cases (once approved by the Commercial Revenue Board). As such, the Memorandum of Association and Articles of Association of the proposed company need to be sufficiently broad.
- #### **4.8. Conflicts of interest**
- 4.9. Conflicts of interest will be dealt with by following statutory guidance and LBHF codes of conduct.

4.10. Any conflicts of interest will be reported to the Company Board, along with the means by which those conflicts are to be resolved, and recorded as part of Company records.

4.11. Staffing

4.12. This report does not seek authority to transfer any staff to the Company. Rather, as business cases demand, staff would be seconded to work on behalf of the Company to fulfil contracts secured by the Company on an as and when basis.

4.13. State Aid

4.14. Any and all costs or provision of services or facilities by the Council to the Company will be recharged to the Company at full cost.

4.15. Profits

4.16. Any surpluses generated by the company would be subject to corporation tax. The board would make the decision on what happens to profits although the clear expectation is that post-tax profits would be distributed to the sole shareholder (the council) as a dividend.

4.17. Head Office

4.18. The Company's head office shall, for the time being, be Hammersmith Town Hall. The Company will operate from the head office.

5. OPTIONS AND ANALYSIS OF OPTIONS

5.1. Given the legal requirements set out in section 4 above, the options are essentially to either create a trading company to allow profitable trading with those other than public bodies or to not do so. By not establishing a company the opportunity to generate profits for the Council will be diminished.

6. CONSULTATION

6.1. Consultation with senior officers and cabinet members has been carried out.

7. EQUALITY IMPLICATIONS

7.1. The company is subject to the same policies and procedures in respect of equalities that apply to the Council. The Board is responsible for ensuring these policies are complied with.

8. LEGAL IMPLICATIONS

8.1. The Council has various powers to set up a company in order to trade for a profit. The Localism Act 2011 provides powers for local authorities to do anything that individuals may generally do. This would permit it to provide services to public bodies not covered by the Local Authorities (Goods and Services) Act 1970 or, to the private sector and charge for those services.

8.2. Further reliance could be placed on the powers conferred by the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 and the Local Government Act 2003. This allows the Council to do for a commercial

purpose anything it is authorised to do for the purpose of carrying on any of its ordinary functions. In order to exercise this power the Council is required to:

8.2.1 prepare and approve a business case;

8.2.2 exercise the power through a company within the meaning of Part 5 of the Local Government and Housing Act 1989; and

8.2.3 recover the costs of any accommodation, goods, services, staff, or any other thing that it supplies to the company.

8.3 Any loans granted to the company by the Council should be provided on commercial rates so as to avoid any potential State Aid challenges.

8.4 Legal Services will be available to assist officers with incorporating the company limited by shares at Companies House.

Implications completed by: Kar-Yee Chan, Solicitor (Contracts), Shared Legal Services, 020 8753 2772

9. FINANCIAL IMPLICATIONS

- 9.1. Very limited upfront financing is required to establish the company as the company will have very few costs. However, a loan facility should be provided by the Council, at commercial rates, available on a draw down basis for a maximum of £5,000.
- 9.2. Accountancy and company secretarial services etc. will be provided by LBHF and recharged to the Company. Appropriate governance and audit requirements will need to be put in place.
- 9.3. Investment agreed as part of any business case approved by the Commercial Revenue Board will be repaid by the Company (whether the Company receives the investment in cash or as services provided) at a commercial rate in order to avoid State Aid issues.

Implications completed by: Andrew Lord, Head of Strategic Planning and Monitoring, 020 8753 2531, Corporate Finance.

10. IMPLICATIONS FOR BUSINESS

- 10.1. The Commercial Revenue Board is mindful of the potential impact on local businesses of any business case brought to it. As a general rule, the Commercial Revenue Board would not approve business cases where a negative impact on local businesses is likely to occur.

11. RISK MANAGEMENT

- 11.1. The risks of establishing a company are practically zero. Risks associated with individual business cases are addressed within the business case and considered as part of the approval process by the Commercial Revenue Board.

12. PROCUREMENT IMPLICATIONS

12.1. There are no procurement implications that arise from establishing the Company.

13. IT STRATEGY IMPLICATIONS

13.1. None

LOCAL GOVERNMENT ACT 2000 LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	None		

LIST OF APPENDICES:

Appendix 1 – Local Authority trading Powers

APPENDIX 1 LOCAL AUTHORITY TRADING POWERS

POWER	DESCRIPTION	FREEDOM	RESTRICTION
Local Authorities (Goods and Services) Act 1970	Allows a local authority to supply goods or materials, or technical administrative or professional services to a public body (as defined in the Act) and charge for the supply	<ul style="list-style-type: none"> ➤ Can trade with other public bodies without setting up a company ➤ Great opportunity to test the demand and to confirm if there is strong business opportunity for a commercialised service ➤ Scope to generate a profit 	<ul style="list-style-type: none"> ➤ Trading can be limited due to other public bodies being subject to the public procurement rules ➤ Can trade only with public bodies as defined in the Act ➤ The Act defines which bodies are or can become Public Bodies for the purposes of the Act e.g. London Boroughs
Section 38 Local Government (Miscellaneous Provisions) Act 1976	Allows the council to make any spare computer capacity it has available to others whether in the public or the private sectors. The facilities the council can make available are those for using the computer or of services provided by means of the computer.	<ul style="list-style-type: none"> ➤ The terms on which the computer capacity is made available are up to the council and the other party to agree but must be those which a commercial provider would be expected to agree ➤ The spare capacity can be provided to anyone whether private or public sector ➤ Scope to make a profit 	<ul style="list-style-type: none"> ➤ Limited to spare computer capacity ➤ A public sector body may have to comply with the public procurement rules to purchase the services / spare capacity

Section 93 Local Government Act 2003

Empowers the council to charge for discretionary services, i.e. services which it has power to provide but not a duty. This facilitates the provision of services to bodies other than public authorities for a charge

- Can provide services to public sector
 - Can provide services to private sector
 - Can recover full costs
- The charge may only cover the council's costs and can not include any element of profit, but can still be an advantage in so far as it helps off set general running costs and overheads.
 - Private bodies and individuals don't have to go through a public procurement process to acquire services
 - Public bodies would be subject to procurement rules. The fact that the service supplier may not be seeking a profit does not exempt the transaction from the public procurement rules
 - Cannot use this to charge for services that the council is required to provide to someone

Section 95 Local Government Act 2003

Empowers the council to trade. Specifically it can do for a commercial purpose anything it is authorised to do for the purpose of carrying out its ordinary functions

- Can trade with public sector
 - Can trade with private sector
 - Can generate a profit
 - Private sector bodies can award contracts directly
- The powers can only be exercised through a company or a co-operative or Community Benefit Society
 - Public bodies who wish to purchase services would have to comply with the public procurement rules so could not simply award work to the company

**Chapter 1 Part 1
of the Localism
Act 2011**

The council can use this power to do things anywhere in the United Kingdom or elsewhere and for commercial purposes or otherwise for a charge or without charging. The council can use the power either for its own benefit or the benefit of its area or the people resident or present in its area, but is not restricted to using the power only for those purposes. Specifically permits the Council to trade

- Can trade with public sector
 - Can trade with private sector bodies
 - Can generate a profit
 - Can market directly to private sector bodies, who can award contracts directly
 - It is a power of first resort designed to limit restrictions placed by other statute or case law under previous statutes.
 - This legislation is aimed at enabling Councils to be innovative
- The council and the Company's directors would have to comply with the Companies Act 2006.
 - Restricts the power to charge for discretionary services (i.e. in the same way as s93 LGA 2003 above does).
 - The power can only be exercised through a company or a co-operative or Community Benefit Society
 - Private clients don't have to go through public procurement but other public authorities would