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Date: 19th February 2024

Dear Sir/Madam,

Cabinet – 21st February 2024

I refer to **Agenda Item 15 – REGENERATION UPDATE** and attach the report that was marked to follow on the agenda. The item was originally marked as exempt on the agenda but will now be considered in public session.

Yours faithfully,



BRENT DAVIS

Chief Executive

To: Members of the Cabinet

Councillor K. Wilson (Leader of the Council and Business and Regeneration)
Councillor C. Golby (Deputy Leader and Housing and Communities)
Councillor S. Croft (Finance and Corporate)
Councillor S. Markham (Public Services)
Councillor R. Smith (Planning and Regulation)
Councillor J. Gutteridge (Health and Environment)

Observer

Councillor C. Watkins (Leader of the Main Opposition Party)

Report Summary Sheet

Date: 20 February 2024

Subject: Regeneration Update – Capital Programme and Hotel Local Authority Trading Company

Portfolio: Business & Regeneration

From:

Strategic Director – Economy and Transformation

Strategic Director – Finance and Governance

Summary:

To seek authority from Cabinet to establish a Local Authority Trading Company to support the management of the Hotel at Grayson Place, and to provide an update to Cabinet, on the proposed revised Regeneration programme.

Recommendations:

1. Cabinet approves the proposed revised Capital Regeneration Programme for the purpose of budget setting, and that delegated authority be granted to the Strategic Director – Economy and Transformation to enter associated contracts to support the delivery of the programme.
2. Delegated authority granted to the Strategic Director – Economy and Transformation and the Strategic Director – Finance and Governance to adjust the Regeneration Capital Programme, within and up to the total level of capital borrowing detailed, to allow for any new funding sources secured, or variance within the programme.

3. Cabinet approves the establishment of a company which would be limited by shares and owned wholly by the council for the purpose of the Hampton by Hilton hotel operation.
4. Cabinet approves that the company trading name will be registered as “Grayson Place (NBBC) Ltd”.
5. Delegated authority granted to the Strategic Director – Economy and Transformation and the Strategic Director – Finance and Governance to implement governance and board membership arrangements, to establish the local authority trading company and any other activities required in association with the set-up of the trading company.
6. Cabinet recommends to the Council the revision of the NABCEL Shareholder Committee, to Shareholder Committee with amended terms of reference to include Grayson Place (NBBC) Ltd and any future company(ies) that the Council may establish/ jointly establish.
7. The report be marked not for call in as provided for in paragraph 15(f) of the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution.

Options:

Continue without either setting up a Local Authority Trading Company or revising the Capital Programme.

Recommend an alternative action.

Reasons:

The Council requires a Local Authority Trading Company to support the management relationship of the hotel operations.

The Regeneration Programme has required revision following changing economic conditions.

Consultation undertaken with Members/Officers/Stakeholders

Cabinet

Strategic Management Team

Project Partners

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Subject to call-in: No The report is marked not for call in as provided for in paragraph 15(f) of the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution.
Ward relevance: All
Forward plan: Yes

Building a Better Borough Aim: Building a Better Borough Aim: 3 (Visit)
Building a Better Borough Priority: Building a Better Borough Priority: All
Relevant statutes or policy: Local Government Act 2003 Localism Act 2011

Equalities Implications:

N/A

Human resources implications:

As detailed in the report.

Financial implications:

As detailed in the report.

Health Inequalities Implications:

N/A

Section 17 Crime & Disorder Implications:

The regeneration of the Borough is likely to have a positive impact on social factors such as crime and disorder.

Risk management implications:

As detailed in the report.

Environmental implications:

N/A

Legal implications:

As detailed in the report.

Contact details:

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AGENDA ITEM NO.15

NUNEATON AND BEDWORTH BOROUGH COUNCIL

Report to: Cabinet

From: Strategic Director – Economy and Transformation

Subject: Regeneration Update – Capital Programme and Hotel Local Authority Trading Company

Portfolio: Business & Regeneration

Building a Better Borough Aim: 3 (Visit)

Building a Better Borough Priority: All

1. Purpose of Report

- 1.1. To seek Cabinet approval on the proposed revised Regeneration Capital Programme.
- 1.2. To seek Cabinet's agreement in principle to the creation of a local authority trading company to allow the Council to explore trading in a way that optimises the potential of its resources, reduces liability against the Council as well as contributing to the medium-term financial planning and sustainability of the Council's financial affairs.

2. Recommendations

- 2.1. Cabinet approves the proposed revised Capital Regeneration Programme for the purpose of budget setting, and that delegated authority be granted to the Strategic Director – Economy and Transformation to enter associated contracts to support the delivery of the programme.
- 2.2. Delegated authority be granted to the Strategic Director – Economy and Transformation and the Strategic Director – Finance and Governance to adjust the Regeneration Capital Programme, within and up to the total level of capital borrowing detailed, to allow for any new funding sources secured, or variance within the programme.
- 2.3. Cabinet approves the establishment of a company which would be limited by shares and owned wholly by the council for the purpose of the Hampton by Hilton hotel operation.

- 2.4. Cabinet approves that the company trading name will be registered as “Grayson Place (NBBC) Ltd”.
- 2.5. Delegated authority be granted to the Strategic Director – Economy and Transformation and the Strategic Director – Finance and Governance to implement governance and board membership arrangements, to establish the local authority trading company and any other activities required in association with the set-up of the trading company.
- 2.6. Cabinet recommends to the Council the revision of the NABCEL Shareholder Committee, to Shareholder Committee with amended terms of reference to include Grayson Place (NBBC) Ltd and any future company(ies) that the Council may establish/ jointly establish.
- 2.7. The report be marked not for call in as provided for in paragraph 15(f) of the Overview and Scrutiny Procedure Rules in Part 4 of the Constitution.

3. Background

Capital Regeneration Programme

- 3.1. The Council has been successful in securing Government funding from Future High Streets Funding, Towns Fund and Levelling Up Fund.
- 3.2. The business cases for the projects were completed and based on conditions in 2018/19. Since these were approved in 2020, national and international forces have negatively impacted the economic context. This is particularly evident in the substantial increase in inflation and interest rates. A number of local authorities have experienced challenges in regard to the delivery of capital projects, particularly relating to Future High Streets, Towns Fund and Levelling Up funding.
- 3.3. The original capital commitments totalled approximately £134.63m, with £51.48m available from the three Levelling Up Funds, £10.35m available from other public sector sources, and a balance of £72.8m which is expected to come from the Council through borrowing.
- 3.4. This level of borrowing would be far in excess of NBBC’s current borrowing level against the General Fund of £8.7m (excluding housing) and would almost double the Council’s overall level of borrowing from c.£85m to c.£144m (including housing). The cost of servicing this debt would also be very significant given interest rates at the Public Works Loan Board (PWLB) loans.

- 3.5. Across the country, many local authorities are suffering from significant budgetary pressures, with a number in the Midlands issuing Section 114 Notices
- 3.6. Due to these pressures, the Cabinet directed Officers, in Summer 2023, to engage the services of a strategic finance advisor to review the affordability of Capital Regeneration Programme, and to identify financially viable options to enable the delivery of a Capital Regeneration Programme.

Hotel Provision

- 3.7. A key part of the Regeneration Programme is the Hampton by Hilton Hotel. It is an anchor for future business and regeneration in the borough of Nuneaton and Bedworth and will allow the Transforming Nuneaton Master Plan to continue throughout its life.
- 3.8. The Council entered into a 'Branding and Management Agreement', following receipt of specialist advice. This advice confirmed that the Council was not required to establish a separate company, however, it may do so if it wished.
- 3.9. The hotel construction is now approaching completion, with expected practical completion June 2025. As part of its ongoing review processes, the Council has identified that a strategy is required for it to support its management obligations.
- 3.10. The Local Government Act 2003 allows local authorities to do anything for a commercial purpose that they are authorised to do for the purpose of any of their ordinary functions. The Localism Act 2011 includes a general power which allows local authorities to do anything that individuals generally do.
- 3.11. Under the Localism Act 2011, specifically regulation 4, a local authority is permitted to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose. Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company. Furthermore, the act provides General Power of Competence allowing the local authority to expand their trading activities into areas not related to existing functions.

4. Options Considered

Capital Regeneration Programme

- 4.1. The results of the strategic financial advisor review indicates that the scale of the current programme, would place an unbearable pressure on the Council's General Fund, through Minimum

Revenue Provision (MRP) and interest payment contributions. To support this level of borrowing the Council would need to cut services.

- 4.2. The Council is now engaging with key stakeholders, Department of Levelling Up & Communities (DLUHC) and construction partners to reprofile the programme to reach a level of financial sustainability, whilst still providing the regenerative benefit to the Borough.
- 4.3. With respect to the Capital Programme the Council has three principle choices:
- i. To continue the Regeneration Programme as currently planned, borrowing as required and bear the revenue pressures of MRP and interest repayment. This would likely require service cuts to balance the Revenue Budget.
 - ii. To seek a revised the Regeneration Programme, to bring it in line with affordability calculations, whilst concentrating development to key projects and outcomes. This is the recommended option.
 - iii. To seek alternative funding sources. This scope of this is limited but will be explored in conjunction with option 2, to either deliver further outputs, or further reducing borrowing levels.
- 4.4. Based upon Option 2, the proposed Regeneration Capital Programme is detailed in the table below. Though the table is subject to DLUHC approval, it does present the maximum level of capital borrowing by the Council for 2024/25 and into the medium term and will form the basis of capital budget setting.

	FUNDING			
	Project Cost £'000	Grant Funding £'000	Borrowing £'000	Total Funding £'000
Grayson Place	50,819	22,520	28,300	50,820
Bridge to Living	8,117	8,117	0	8,117
Parks Revival	1,750	1,750	0	1,750
Wheat Street Junction	390	390	0	390
George Eliot Visitor Centre	223	223	0	223
The Saints	1,870	1,870	0	1,870
Corporation Street/Queens Road Junction	390	390	0	390
Visiting Nuneaton Changing Perspectives	87	87	0	87
E-mobility Hub	303	303	0	303
Bedworth Physical Activity Hub	30,600	22,120	8,480	30,600
	94,549	57,770	36,780	94,549

NB Table shows proposed positions post reallocation of grant funding to priority projects, accounting for any spend to date.

- 4.5. The proposed revisions to the Regeneration Capital Programme will concentrate grant funding onto a number of priority projects. This will produce a rephrasing and change to the programme outputs.
- 4.6. Grayson Place will be reprofiled to deliver:
 - Phase 1 – Hotel
 - Phase 2 – College, Cinema, Food Hall, former India Red refurbishment, surface carparking and public realm.
 - Phase 3 preparation – Explore residential opportunity on the remaining land once car parking has been identified.
- 4.7. The Bridge to Living project will be replanned to deliver residential outputs in line with market conditions.
- 4.8. The Parks and Museum project will be reprofiled to deliver the parks elements only, with Museum refurbishment plans paused.

The BPAH, E-Mobility Hub, George Elliot Visitor Centre and The Saints will continue as planned.

- 4.9. NBBC held grant funding will be withdrawn from Wheat Street Junction, Corporation Street/Queens Road Junction and the Weddington Road Cycle Link. These are Warwickshire County Council Led schemes, who will determine the impact of the withdrawn funding.

Hotel Provision

- 4.10. Following ongoing review, a number of issues were identified, which, without a Local Authority Trading Company (LATC) in place, would incur liabilities for the Council.
- 4.11. In order to mitigate these liabilities, the following options were considered:
 - i Continue without the use of a LATC – however this option, though technically viable would, create a direct employment relationship between the Hotel operation and NBBC, generating extended employment and tax liabilities:
 - ii Creation of a LATC – to provide separation between the NBBC and the operation of the Hotel, limiting direct employment and tax liabilities:
 - iii The sale of the hotel, or transfer to alternative organisation as would not be commercially viable for NBBC:
 - iv Terminate the Branding and Management Agreement and enter an alternative contractual arrangement to operate the Hotel –

though technically feasible, this would expose the organisation to the liabilities associated with the premature termination of the contact. Equally NBBC would then need to find an alternative operating arrangement, potentially delaying income generation from the asset.

4.12. It is therefore proposed that the Council establishes a LATC, acting as the operating arm of the hotel, should be established for the following reasons:

- i. To ensure trading activities, which are of a commercial nature, are undertaken in accordance with regulation 4 of the Localism Act 2011;
- ii. To remove employee liability and cost against the Council;
- iii. To ensure no claims of equal pay and/or employment conditions;
- iv. To remove the liability of corporation tax against the Council;
- v. To mitigate procurement risk and contractual liability against the Council;
- vi. As the LATC would be a trading company outside the Teckal rules as it wouldn't be in scope (as the LATC wouldn't be providing a service to the Council but instead the general public), it wouldn't be required to procure contracts in accordance with the public procurement regulations allowing more flexibility when/if appointing suppliers to support the operation (including those appointed by Hilton on behalf of the LATC);
- vii. As a separate legal entity from the Council, any debts accrued by the company will stay with the company and creditors would not have recourse to the council or any of the company directors, save in certain defined cases, for example, fraudulent or wrongful trading.

4.13. To exercise the power to establish a company and trade, Nuneaton and Bedworth Borough Council must approve a business case. This report fulfils this requirement and includes a comprehensive statement covering:

- The objectives of the business;
- The investment and other resources required to achieve those objectives;
- Any risks the business might face and how significant these risks are;
- The expected financial results of the business; and
- Any other relevant outcomes that the business is expected to achieve.

5. Local Authority Trading Company

- 5.1. It is proposed that Grayson Place (NBBC) Ltd be established as the LATC to undertake all trading activities for the hotel. The objective of the LATC is to work together with the Owner (The Council) and the Operator (Hilton) to run the hotel in the open market for members of the public to utilise. It is not intended to be run as a Council service or function of the Council but would fall within the Council's enterprise and commercial portfolio.
- 5.2. The LATC should at the very least operate on a cost neutral basis and over its term, generate revenue for the Council to support its financial position in the medium to long term.
- 5.3. To ensure a level playing field with the private sector and to avoid breaching Subsidy Control rules, any company established by the Council must not be subsidised by it. This means that the local authority is expected to recover the full costs of such things as accommodation, supplies and support services that the company may use.
- 5.4. In order to establish the LATC, a business case is required. This report fulfils that requirement. In addition, a business plan will be established and updated and submitted for approval each year to a meeting of the Local Authority Trading Company (LATC) shareholder board, to guide the company in carrying out its continuing activities.

Risks

- 5.5. The LATC will face many risks over its life, predicted to be at least 20 years, which will include both internal and external risks. The key risks include:
 - i. Financial sustainability
 - a. The LATC would effectively operate subject to the revenue generated through the hotel trading activities.
 - b. The operation of the hotel would be dependent on customer demand which is influenced by external factors.
 - ii. Tax
 - a. Further detailed discussions and advice will be sought in the lead up to the commencement of trading but at this stage guidance on VAT and Corporation Tax has been made available and is outlined below:
 - iii. VAT
 1. If the income of the company exceeds £85,000 in any 12 month rolling period, it will have to register for VAT, which would mean:-
 - a. The company would have to charge VAT to its customers where appropriate.

- b. The company would have to know when, and when not, to charge VAT.
 - c. VAT invoices would have to be issued by the company where appropriate.
 - d. The company would be able to reclaim VAT on expenditure relating to its publicity and printing services, assuming it has VAT invoices from its suppliers for those services.
 - e. The company would have to account for VAT to HMRC and send it a quarterly VAT return.
- iv. Corporation Tax
- 1. This is a tax on the taxable profits of limited companies and some organisations including clubs, societies, associations, co-operatives, charities and other unincorporated bodies.
 - 2. There are currently two rates of Corporation Tax, depending on the company organisation's taxable profits:-
 - a. The "small profits" rate.
 - b. The main rate.
 - 3. The "small profits" rate is for profits not exceeding £50,000. Tax would be charged at 19 per cent.
 - 4. The "main rate" of Corporation Tax is 25% for profits exceeding £250,000. If profits fall between £50,000 and £250,000 a "marginal relief" rate is calculated somewhere between the "small profits" rate and "main rate".
- v. Reputational risk
- a. The establishment of a company in itself does not generate additional reputational risk to NBBC. However the organisation will need to ensure that all company law and returns are complied with. This will be managed through governance arrangements.
- vi. The operational risks
- a. The establishment of a company in itself does not generate additional operational risk to NBBC. The risk has been acquired by the organisation at the point that the BAMA contract was entered into. The establishment of the company is a management strategy in this respect to ensure that liabilities, as far as possible, are limited to that of the company and not NBBC as a whole.
- vii. Controls
- a. Organisational control will be managed through a combination of organisational policies, shareholder committees and board governance and audit.

6. Financial and Resource Implications

- 6.1 During the review of the feasibility of a hotel operation to be funded by the Council, a financial model was developed by external consultants to verify the assumptions and forecasts being presented by Hilton.
- 6.2 The forecasts were drawn up in 2018 and looked very positive with the initial assessment concluding that the hotel would generate approximately £845k per annum in profit prior to any corporation tax.
- 6.3 Interest rates at this time were extremely low with the Bank of England base rate sitting at 0.75% in August 2018. This is in stark contrast to today where the base rate is 5.25%.
- 6.4 The impact of such changes in interest has resulted in the overall financial viability of borrowing for regeneration far more risky and less affordable.
- 6.5 At this stage, Hilton are unable to provide an update to their original forecasted profit for the site but will provide monthly reporting on performance and will issue their anticipated budget for the hotel in October each year for challenge and inclusion in the Council's main budget for approval by Cabinet.
- 6.6 For the purposes of the budget setting process, income has been built in for 2024/25 but at a limited level and only to cover the interest costs expected in year for borrowing and the MRP of the hotel build. The hotel performance has also been included as a financial risk.
- 6.7 Setting up a company on Companies House incurs minimal costs but the set-up of the governance arrangements, Articles of Association, bank accounts, VAT registration number etc will be time consuming for existing staff. Although additional resource is not expected to be required at this stage, once the company and process around performance management of the contract with Hilton is understood, further support may be necessary. This will be reported separately if required.

7. Governance Arrangements

- 7.1. It is noted that subject to Cabinet approval, the following documents and governance arrangements would be required and implemented as per recommendation 2.2:
 - I. Business Case (Fulfilled through this report)
 - II. Shareholder's agreement or Articles of Association
 - III. Terms of Reference for boards.
 - IV. Members' agreement
 - V. Business Plan
 - VI. Any financial agreements (covering any support or services provided by either party to the other)

- VII. Governance and structure charts including key roles and responsibilities
 - VIII. Risk Register
 - IX. The policies and processes to manage conflicts of interest for the council and the entity
- 7.2 In regard to the oversight from the Council as the shareholder, it is recommended that the NABCEL Shareholder Committee is revised to “Shareholder Committee”. This then allows for other companies the Council is a wholly owned and/or jointly owned shareholder of to have oversight of performance and financial data.
- 7.3 In addition, there would also be a requirement to have a Board made up of key personnel for operation and strategic matters. It is worth noting that the LATC would employ staff, under Hilton Terms and Conditions, but they would not be employees of the Council. The Board members would be made up of Council officers acting as Board Members and/or Company Directors and representatives from Hilton.
- 7.4 Furthermore, there would need to be appropriate exit arrangements and strategy in place showing how the trading activities could cease and the impact that would have upon the future.
- 8.0 Equality Impact Assessment
- 8.1 The review of the Capital Programme and establishment of a LATC, is not considered to have any disproportionate impact or disadvantage on the seven protected characteristics detailed in the Equalities Act (2010).
- 8.2 The operation of the company will have due regard for how its associated activities or externality may impact on individuals with any of the seven protected characteristics detailed in the Equalities Act (2010). This will be managed through the associated company boards.
- 9.0 Background Papers (if none, state none)
- 9.1 None.

VICTORIA SUMMERFIELD
TOM SHARDLOW