

<b>Title:</b>	<b>Porters Place Southend-on-Sea LLP Update</b>
<b>Meeting:</b>	Shareholder Board
<b>Date:</b>	27 February 2024
<b>Classification:</b>	Part 1
<b>Policy Context:</b>	Compliance
<b>Key Decision:</b>	No
<b>Report Author:</b>	Alan Richards - Executive Director for Environment and Place

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## **1. Executive Summary**

- 1.1. To update on the current and future administrative arrangements for Porters Place Southend-on-Sea LLP and to ensure that the company meets the necessary compliance requirements now that Sanctuary / Swan BQ are no longer involved.
- 1.2. Most significantly, to consider a recommendation to bring Southend Housing Ltd alongside the Council itself as the other LLP Partner, a situation which must be resolved before 27 May 2024 for compliance reasons.

## **2. Recommendations**

### **It is recommended that Shareholder Board:**

- 2.1. Agree that Southend Housing Ltd be incorporated as the Council's LLP Partner in Porters Place Southend-on-Sea LLP.
- 2.2. Agree that all the necessary administrative arrangements to formalise the above in paragraph 2.1 before the 27 May 2024 deadline, and the future compliance matters set out in paragraph 7.1 of this report, are delegated to the Executive Directors for Finance & Resources and Environment & Place and in the event of any conflict of interest arising, to another Executive Director for the Council.
- 2.3. Note that the South East Local Enterprise Partnership funding of £4.2m has now been fully drawn down and paid in to Porters Place Southend-on-Sea LLP's recently set up bank account and this payment settles the loan outstanding to the Council. All remaining funds in the previous bank account controlled by Swan BQ have now also been transferred to the new account.

- 2.4. To delegate authority to the Chief Executive to confirm existing, change, or make new appointments to Southend Housing Ltd and/or Porters Place Southend-on-Sea LLP.

### 3. Background Information

- 3.1. Porters Place Southend-on-Sea LLP<sup>1</sup> (“**The LLP**”), Company number OC427026, was constituted and registered during the procurement process through which Southend-on-Sea City Council (“**the Council**”) partnered with Swan Housing Association (“**Swan HA**”) with the shared intention to deliver the Better Queensway development.
- 3.2. A Limited Liability Partnership (LLP) must have at least two members, and at least two must be 'designated' members. In the case of this LLP, Swan HA established Swan BQ as a subsidiary company to enter into the LLP. The Council and Swan BQ were the two founding members of The LLP and were both designated members. Designated members, in the LLP context, are the equivalent of company directors in limited companies (and do not have to be natural persons).
- 3.3. Following a negative judgement from the Regulator of Social Housing, Swan HA entered into discussions, initially with Orbit Group and later with Sanctuary Housing Association (“**SHA**”). SHA completed a merger with Swan in early 2023 but later confirmed to the Council that it would not continue with the Better Queensway project, instead focusing its efforts on investment and commitment to existing homes and communities and focus on the delivery of schemes where construction has already started.
- 3.4. Sanctuary, via Swan BQ, exited the LLP on 28th November 2023 leaving the Council as the sole member of the LLP. This situation is permitted to continue for a maximum of 6 months at which point, either the LLP must be wound up, or a new designated member must be incorporated. This must therefore be done and notified to Companies House before close of business Monday 27th May 2024.
- 3.5. It is recommended that the Council keeps all options open in relation to the future development of the Better Queensway project. The Council has continuously demonstrated to external funders and residents that there is still a strong commitment to delivering Better Queensway, but that the Swan proposals must be revisited, and alternative development arrangements explored and agreed.
- 3.6. The most pragmatic way of maintaining the LLP and all the intellectual property which it owns relating to the huge amount of work done to date, is to insert one of the Council’s other companies into the LLP as the other designated member. The most logical option is to use Southend Housing Ltd (company number 10181058) to do this. This would mean that the Council

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<sup>1</sup> Limited Liability Partnership (LLP)

controls 100% of both partners in the LLP and therefore also has complete control over the LLP. The LLP structure and intellectual property is also retained as the Council moves into alternative delivery models which helps to keep all possible options open.

- 3.7. Through dialogue with Sharpe Pritchard, it is recommended that the Council owns 99.9% of the LLP and Southend Housing Ltd. owns 0.1% to ensure that the LLP remains as tax efficient as possible in the interim period until a new longer-term partner, or partners can be secured to support the Council in the delivery of development at Better Queensway.
- 3.8. It is further recommended that because these arrangements are essentially administrative at this point in time and due to the need to have these arrangements in place before 27<sup>th</sup> May 2024, the completion of the necessary arrangements to achieve this are delegated to the Executive Directors for Finance and Resources and Environment and Place to complete.

#### **4. Reasons for Decisions**

- 4.1. The recommendations, including the use of Southend Housing Ltd and the delegation to Executive Directors are made to ensure the LLP's compliance with company legislation with regard for the need for the Council to be joined by an LLP partner within 6 months of Sanctuary's exit to ensure that all options for future arrangements remain open to the Council into the future.

#### **5. Other Options**

- 5.1. The Council could opt to wind up the LLP however in order to do this, another designated member would need to be incorporated first in any event and any winding up would take significantly longer than the 27 May 2024 deadline. There may also be issues with the number of assignments of intellectual property rights available.
- 5.2. The Council could use an alternative Council owned company to partner the Council in the LLP. As the ownership stake is minimal, the purpose of Southend Housing Ltd is the closest match the Council has to this sort of activity and the company is already active this would seem to be the simplest and most logical match.
- 5.3. The Council could look to procure a new partner straight away however this would not be achievable within the timescale required and this option is not excluded by following the recommendations made, in fact preserving the LLP now leaves all options open for future partner procurement of the whole or, more likely, parts of Better Queensway.

## **6. Financial Implications**

- 6.1. Swan BQ is no longer part of the LLP. The original bank account of the LLP was being accessed and managed by staff at Swan BQ. This has now been closed and the fund transferred to a new LLP bank account which can be accessed and managed by staff at the Council. The SELEP £4.2m funding had been paid by SELEP to the Council and has now all been paid onwards to the LLP to help manage its financial position. The LLP has used these monies to pay off the majority of the loan that it had outstanding with the Council.
- 6.2. The LLP unaudited accounts up to 31 March 2023 have been submitted to Companies House and are attached at Appendix 1 for the information of the Shareholder Board. These accounts were developed principally by Sanctuary's finance team prior to being handed over hence why they have been submitted in an unaudited form; waiting for an external audit to be completed would have delayed the Sanctuary transition arrangements by an unknown but significant length of time.
- 6.3. The accounting work for The LLP will be undertaken by the Council's finance team for the 2023/4 accounts and until further notice.
- 6.4. There are no financial implications directly and immediately related to the recommendations in this report.

## **7. Legal Implications**

- 7.1. The designated members of any LLP have various compliance issues which need to be met, which are similar to those required of company directors. Specifically, designated members must:
  - register the LLP at Companies House (this was done at the time of incorporation)
  - appoint an auditor - if one is needed
  - prepare and sign the accounts
  - deliver the accounts to Companies House
  - notify Companies House of any membership changes, or of a change to the registered office address or name of the LLP
  - prepare, sign and deliver the annual return to Companies House
  - act on behalf of the LLP if it is wound up and dissolved
- 7.2. Designated members are legally accountable if they fail to carry out their duties properly.
- 7.3. The recommendations and specifically the delegations identified will enable the relevant Executive Directors to facilitate the relevant changes.

- 7.4. Whenever a public body adjusts its ownership interest in a corporate entity, the impact on decision making and corporate governance should be a key consideration. The LLP structure affords a helpful degree of flexibility in this regard. Under the previous arrangements with Swan BQ, the LLP agreement set out that the day-to-day operation of the LLP was delegated to a management board composed of two Council representatives and two Swan representatives. The dissolution of the partnership with Swan ended the LLP agreement and, with it, the management board. It is advantageous from a governance perspective that a new management board be created under the terms of a simple replacement LLP agreement (the parties to which will be the Council and Southend Housing Ltd). Such an arrangement will enable appointed Council officers to discharge the administrative arrangements that form the basis of the recommendations set out in this report. Decisions relating to the overall strategic direction of the LLP will remain those of the Council and Southend Housing Ltd as LLP members, thus ensuring the Council retains ultimate control.
- 7.5. Unlike company directors, members of a management board are not subject to specific statutory duties and are not, at law, required to act in its best interests (i.e. they can consider the interests of other bodies, including the body that appoints them (in this case, the Council) provided there is an agreement that says that they can). The required behaviours of the management board will be set out explicitly in the LLP agreement, which is a document over which the Council will have overall control. This is helpful from a conflict of interest perspective as it means that the individuals appointed to the management board can freely execute their administrative duties in the best interests of the Council.
- 7.6. The directors of Southend Housing Ltd (being the Executive Director of Finance and Resources and the Council as a body corporate) are subject to a more rigid statutory governance regime that requires directors to act in the best interests of the company. This requirement often presents governance challenges to local authorities as conflicts of interest can easily arise, but in this case the Council can take comfort from the fact that, as a wholly owned subsidiary of the Council, it has been established to fulfil the Council's own objectives. Where the Council's objectives are aligned with those of the company (which in this case they will be, evidenced by board minutes of Southend Housing Ltd executed at the time it takes the membership interest) then the directors will not find themselves in a position where they breach their statutory duties to the company.
- 7.7. The legal and governance arrangements can therefore be managed effectively within a prescribed regime over which the Council has overall control.

**8. Carbon Impact**

8.1. None arising from this report.

**9. Equalities**

9.1. None arising from this report.

**10. Consultation**

10.1. None arising from this report.

**11. Appendices**

**Appendix 1 – Porters Place Southend-on-Sea LLP unaudited accounts to 31 March 2023 - [application-pdf](#)**

**12. Background Papers/links:**

Porters Place Southend-on-Sea LLP: [PORTERS PLACE SOUTHEND-ON-SEA LLP people - Find and update company information - GOV.UK \(company-information.service.gov.uk\)](#)

Southend Housing Ltd: [SOUTHEND HOUSING LTD overview - Find and update company information - GOV.UK \(company-information.service.gov.uk\)](#)