Sedgefield Borough Council

Coalfield Housing Market Renewal Study

Delivery Mechanisms Review

Annex 7

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Delivery Mechanisms – Review

The following table illustrates how role can define the range of legal structures available:

Overall Role	Role of Vehicle	Options	Implications/Possibilities
Involvement in housing ownership/ management	Owning Housing Stock	New Stand alone RSL	Needs to own sufficient units for Housing Corporation to register Financial Viability Likely to be either charitable Industrial and Provident Society (IPS) or charitable Company Limited By Guarantee (CLG)
		Subsidiary of existing RSL	More flexible in terms of units Again would need to register with Housing Corporation Financial viability remains issue Again likely to be charitable IPS or charitable / non charitable CLG Some flexibility as to form
		Non-registered housing company	Unlikely to succeed in current climate – ODPM likely to require on HC registration
	Not owning stock	Involvement in housing management	Non registered subsidiary managing housing on behalf of RSL owner; or TMO model exercising right to manage
Neighbour-hood Management Organisation	Resident service organisation Regeneration delivery body	Fully mutual co-op	Unlikely to easily facilitate stakeholder partners Popular structure with resident activists Able to deliver services
		CLG	Non charitable CLG will give maximum flexibility but may be less tax efficient Charitable CLG will be restricted to charitable purposes
		Community benefit IPS	Much the same possibilities as CLG though at present less flexibility as to structures
Wider Strategic	Urban regeneration company	Often CLGs	Would require approval from ODPM and require a wider strategic approach
	Urban Development Corporation	Created by government legislation	Only recently revived by ODPM; unlikely to be an option here due to scale of area; also politically contentious

Despite the wide array of descriptions, there are in reality a relatively small number of distinct structures available to any new organisation.

The first key decision when considering a new organisation is the question of whether or not to incorporate the new body in some way.

1 Advantages of Incorporation

The main advantage of incorporation is that it creates a new legal identity and therefore protects the members of the organisation from liability. It can therefore enter into contracts and own assets without exposing members to personal liability.

Incorporation can also increase confidence in the new organisation. If the new organisation were a company then it would be regulated by Companies House. If it becomes a charity, it will be regulated by the Charity Commission. Both of these increase the transparency of the organisation as the public have a right to inspect certain documents of both companies and charities and regulation introduces a further degree of confidence.

Incorporation also creates a new identity, which other organisations and residents may take more seriously.

2 Disadvantages of Incorporation

Incorporation can take time and there are costs involved. There are fewer administrative burdens for an unincorporated body as there is no requirement for publishing information or making returns to a regulator. In certain circumstances informality can be an advantage.

If the new organisation wishes to enter into contracts, acquire assets (particularly property), employ people, provide or buy services or deliver major projects itself then it will be better protected in all of these circumstances if it is incorporated as a separate organisation. Incorporation is often a significant step for fledgling neighbourhood governance vehicles that adds to their ability to make an impact.

3 Options for the Regeneration Vehicle

The main options to consider are as follows and are outlined in greater detail below:

3.1 Unincorporated Bodies

- Unincorporated Association
- Trust
- “Legal” Partnership

Unincorporated Association

An unincorporated association is an organisation of two or more people who are working together for a common purpose, not for profit. Many clubs, societies and other informal groups would fall into this category. The association can have a constitution, may have a management committee and can even be suitable for registering as a charity.

In this option, no new separate legal body is created and so any property will be held by the members of the association and any contracts will be entered into by individual members of the association who will therefore be liable under those contracts. Where the new organisation is proposed to have substantial activities, this is therefore not a suitable form to be used. Many residents’ associations are unincorporated associations, and this clearly limits their potential role.

Trust

A trust is formed where a number of people who are known as “trustees” hold money or property on “trust” for a specific purpose for the benefit of others.

There will generally be some governing instrument or deed which will set out the responsibilities of the trustees and the purpose of the trust. The trustees have a personal duty to make sure that the money or property is used only for the purposes laid down in the governing instrument. Trusts are subject to a fairly complex legal regime. They can be registered as charities if the purposes of the trust are recognised by the Charity Commission as being charitable. This is a suitable form for grant making organisations but not those carrying out commercial or service delivery activities as again in those circumstances the trustees will be personally liable.

Legal Partnership

A legal partnership is formed where two or more individuals come together to operate as a business with a view to making a profit. Each of them will be entitled to a share in that profit. This arrangement is subject to some legal regulation, but there is no requirement for publishing any information about the partnership. It is only suitable for an organisation which intends to trade for profit making purposes and where the individuals involved are prepared to be liable.

3.2 Incorporated Bodies

- Private Company Limited by Shares
- Private Company Limited by Guarantee
- Industrial and Provident Society
- Limited Liability Partnership

Company Limited by Guarantee

This is the usual vehicle for non-profit making organisations, including charities which are companies. It is a well known vehicle which is recognised by funders. A company limited by guarantee cannot distribute profits to its members. The members of the company undertake to pay a nominal sum (usually £1) in the event of the company being wound up and this sum is the limit of their liability. It has a two-tier structure with members making up those who “own the company” and directors who are responsible for its management.

A limited company can hold property, can employ staff and carry out the full range of legal functions. It is relatively straight forward to set up, but will be regulated by Companies House and subject to company law. If it is registered as a charity, it will also be subject to regulation by the Charity Commission. It can form part of a group structure.

Many community based organisations have chosen this structure. The structure provides a means of undertaking the full range of regeneration initiatives, with a separate legal identity giving a strong focus for the community.

Company Limited by Shares

This is the usual vehicle for profit making trading organisations. There is a similar two-tier structure except that, with a share company, the owners of the company are referred to as “shareholders” and their liability will be limited to the extent of their share in the company. There will be directors who will manage the company. This is not a form which is suitable for charitable registration. It may, however, be appropriate in some regeneration contexts as an alternative to a guarantee company where, for example, commercial companies wish to establish joint venture vehicles for regeneration purposes.

Community Interest Companies

Community Interest Companies (CICs) are a new variation on the company structure with 2 key new features; an “asset lock” to prevent conversion to a profit distributing body, and the ability to raise some equity finance in a non profit making context. It appears likely from the draft regulations that CICs may be subject to significant intervention by the proposed regulator, which may be a disadvantage of this new format.

Industrial and Provident Society

There are two types of industrial and provident society (“IPS”); the co-operative and an organisation set up for the benefit of others in the area. As with companies limited by guarantee an IPS must be a non-profit making body. It will have a similar two-tier structure with members and a committee who are responsible for management.

An IPS is, however, less flexible than a company limited by guarantee in that it has a less flexible membership structure. Registration is a costlier and more complex process, and often model rules must be used to satisfy the regulator, the Registrar of Friendly Societies. It should be noted that recent changes to the law mean that assets owned by a IPS set up for the benefit of the community can be “locked in” to prevent them ever passing back into private ownership.

Limited Liability Partnerships

Limited Liability Partnerships (LLPs) are a kind of hybrid between traditional partnerships and limited companies. They offer some of the protection of limited liability in that a new body corporate, the LLP, is created, and it is this body corporate that enters into contracts with third parties. Like a company, the LLP has to file annual accounts with Companies House, and company insolvency rules apply to the LLP. However, the LLP also has some characteristics of a partnership, in that the LLP itself is not liable to tax; the members are liable for tax on the income that they draw from the LLP. The constitution of the LLP can remain confidential between the members and it is for the members to decide how decisions are taken.

Some organisations involved in housing and regeneration have begun to use the LLP vehicle, particularly in relation to joint ventures with the private sector. If tax efficiency and the ability to draw an income from the work of the LLP were to be significant factors in choosing the vehicle, then the LLP model would merit further consideration.

The key principle in establishing any vehicle is that the form (outlined in the list above) must follow function. In helping to consider its function the following questions are worth considering:

- What activities are proposed and is the vehicle suitable to achieve them?
- Will the new vehicle be entering into contracts and, if so, how will members be protected from liability?
- Will the new vehicle be involved in owning housing stock, or in managing housing?
- Will a new identity help focus those involved?
- How easy will a new organisation be to set up and keep changing?
- Will the new organisation be trading, and thus need to be tax efficient?
- How will the new organisation be accountable to the community?

In considering leadership we would also include the prioritisation of delivery. The management of concurrent projects presents difficulties. The resource demands are often underestimated, with active and continuous community engagement a factor to specifically address.

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