

Summary of Main Powers Available

The powers potentially available to the Council for participating in the proposed joint venture arrangement include:

1. SECTION 1 LOCALISM ACT 2011

1.1 The principle overarching power the Council can rely on to participate in the scheme is **Section 1 Localism Act 2011** ("General Power of Competence") as a power of first resort.

1.2 The GPC is a very broad power and Section 1 states that:-

(1) A local authority has the power to do anything that individuals generally may do.

(2) [The power] applies to things that an individual may do even though they are in nature, extent or otherwise:

(a) unlike anything the authority may do apart from subsection (1), or

(b) unlike anything that other public bodies may do.

1.3 Section 1(4)(c) provides that where the GPC is conferred on the authority to do something, it can do it in any way whatever, including for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

1.4 The generality of the power is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.

1.5 However, there are limitations set out in Section 2 of the Act and imposed on the GPC and these are:

(1) if the exercise of the GPC overlaps with a pre-commencement power then GPC is subject to the same restrictions as that power

(2) GPC does not enable the council to do anything which it is unable to do because of a pre-commencement limitation

(3) GPC does not enable the council to do anything which it is unable to do because of a post commencement limitation which is expressed to apply to GPC.

1.6 In addition, under sections 3 and 4 of the Act there are express limitations on charging for statutory services and activities undertaken for a commercial purpose under the GPC.

1.7 The exercise of the GPC is subject to administrative law principles such as "reasonableness" and quasi fiduciary duty.

2. SECTION 123 LOCAL GOVERNMENT ACT 1972

2.1 Disposal of land not held for housing or planning purposes. Subject to certain conditions, the Council has the power to dispose of its land in any manner it wishes and receive consideration for its land under Section 123 of the Local Government Act 1972. The Secretary of State's consent is needed if the Council receives less than the "best consideration that can reasonably be obtained".

3. **HOUSING LAND POWERS - PART II OF THE HOUSING ACT 1985 (ESP. SECTION 32 AND 43):**

3.1 Under these provisions the Council is able to:-

3.1.1 acquire land for housing purposes;

3.1.2 appropriate housing land for non-housing purposes (subject to the consent of the Secretary of State under section 19 if the land consists of a house or part of a house);

3.1.3 dispose of housing land (with the consent of the Secretary of State under Section 32 of the Housing Act 1985 which provides the Council with power to dispose of land held for housing purposes and for the provision of facilities connected with housing);

3.1.4 dispose of a house not appropriated or acquired for the purposes of this Part of the Act (with the consent of the Secretary of State under section 43 of the Housing Act 1985).

3.2 There are general consents housing land, which remove the need to apply to the Secretary of State for specific consent where the criteria for the general consent apply.

4. **PROVISION OF HOUSING ACCOMMODATION - PART II OF THE HOUSING ACT 1985 (SECTION 8-57 INCLUSIVE)**

4.1 The Council is required to consider housing conditions and needs in its district and may directly provide housing accommodation or enable others to do so by disposing of houses to them or land on which the purchaser is to provide housing.

5. **PART VII HOUSING ACT 1996**

5.1 The Council has duties in respect of housing homeless people although it does not need to be the direct housing provider.

6. **POWER TO DISPOSE OF LAND - SECTION 233 TOWN AND COUNTRY PLANNING ACT 1990:**

6.1 This gives the Council the power to dispose of its land held or appropriated for planning purposes. Disposal at less than best consideration also needs the Secretary of State's consent – there is no general disposal consent at present.

7. **SECTION 111 LOCAL GOVERNMENT ACT 1972**

7.1 This gives the Council power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) to facilitate, or which is conducive or incidental to, the discharge of any of its functions. However, the Council does not have the power under this section to raise money, whether by means of rates, precepts or borrowing, or lend money except in accordance with the enactments relating to those matters.

8. **SECTION 24 LOCAL GOVERNMENT ACT 1988**

- 8.1 Section 24(1) of the Local Government Act 1988 gives the Council the power to provide financial assistance for the purposes of or in connection with the acquisition, construction-, conversion, rehabilitation, improvement, maintenance or management of any property which is or is intended to be privately let as housing accommodation (i.e. where the Council will not be the landlord). "Financial assistance" is widely defined to include the giving of grants, loans, guarantees, indemnities or acquiring share or loan capital in a body corporate.
- 8.2 The Council must obtain the Secretary of State's consent under Section 25 Local Government Act 1988 ("Section 25 consent") to exercise this power. The Council will also need Section 25 consent if it wishes to use any other powers (including the General Power of Competence) for the purposes set out in Section 24.
- 8.3 In addition the Council will need Section 25 consent if it uses the power in Section 24 or any other power for the purposes of or in connection with the matters listed in Section 24(1) to provide any person with a "gratuitous benefit" i.e. if it provides a benefit consisting land, other property, goods, services or facilities or carries out works either for no consideration or a consideration which is significantly less than the monetary value of that benefit.
- 8.4 There are general consents available for the use of these powers which in appropriate cases avoid the need for a specific application to the Secretary of State.

9. **SECTION 120 LOCAL GOVERNMENT ACT 1972 (POWER TO ACQUIRE LAND)**

- 9.1 The Council is able to acquire land inside or outside its area by agreement, either generally for the purposes of its functions or for the benefit, improvement or development of its area. This is the primary power by which it can acquire land under the CPOs for wider purposes; not limited to housing.