Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

Report to Housing SPC

Date: Wednesday 10th March 2021

Item No. 5

Report on the possibility of establishing a DCC Building Company.

Members agreed the following Notice of Motion last year at the Housing Strategic Policy Committee:

That Dublin City Council SPC recognises the over-reliance of DCC housing projects on contracting private development and construction companies to develop and particularly build local housing projects. This situation inevitability adds cost to and reduces control over projects. Therefore, the Housing SPC asks the DCC Housing section to conduct an initial viability study into the establishment of a DCC Building Company that would work with DCC Housing section to site manage and build DCC housing projects and ultimately maintain DCC housing stock - examples of such Council building companies include City Building (Glasgow City Council) and Goram Homes (Bristol City Council). That this initial viability study consider legislation, financing, structure, management and recruitment/staffing and report back to the Housing SPC.

The objective of this report is to consider the viability of establishing a City Council owned Building Company that could carry out the objectives set out in this Motion.

The suggestion of establishing a Building Company or Arms-Length External Organisation (ALEO) has been discussed before but the idea has not been progressed. Dublin City Council has previously established arms-length type structures such as Ballymun Regeneration Ltd, Temple Bar Cultural Trust, the Dublin Culture Company etc. but the purpose of those structures was to provide overall management of a task or function but all building work etc. would be procured in the normal way by such companies.

Any decision by Dublin City Council to set up a DCC Building Company would have to flow from a detailed appraisal of all the options available based on a robust business case.

Options appraisals would have to consider the risks involved, the financial implications, and governance arrangements/requirements and have good-quality information on costs that allows valid comparisons between options.

If DCC did decide, following the robust options appraisal, to set up an ALEO, we would have follow the principles of best business practice set out below:

- Have a clear purpose in funding an ALEO or Company.
- Set out a suitable financial regime.
- Monitor the ALEO’s governance arrangements, financial and service performance.
- Maintain audit access to support accountability.

Furthermore, DCC would need to consider the following implications of establishing a DCC Building Company:

The Irish public procurement regime is based on the EU regime that has as its objective the free movement of goods, services and works within the EU. The award of contracts which have the potential for cross-border trade must be conducted in accordance with general principles of EU law including the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

In order to ensure transparency and competitiveness with the private sector and, importantly, to avoid breaching the EU rules, a DCC Building Company (ALEO) must not be subsidised by DCC and thus given a competitive advantage". This means that DCC must recover the costs of any accommodation, goods, services, employees or any other support it supplies to the company. It would be necessary to set up suitable systems and financial controls to ensure that this is the case and to demonstrate independence of the company from DCC.

The primary source of funding for Dublin City Council to construct and acquire social housing is via the Social Housing Investment Programme (SHIP). SHIP funding is provided by the Department of Housing directly to Local Authorities. Dublin City Council's capacity to secure funding for the establishment of an ALEO to construct social housing is limited. Its commercial rates, local property taxes and housing rents funding capacity are limited with other services being dependent upon such funding.

In contrast to the AHB sector who secure loan finance from DHPLG, HFA and commercial banks, they are able to repay the loans via CALF funding and the Payment and Availability Agreement. Dublin City Council has no such funding mechanism or source of funding to repay any loan finance that it might secure. The current only guaranteed source of funding would be the differential rent paid by the tenant for the rental of the property that would not be adequate to repay the loans. Funding for the construction of social housing is 100% funded from Government therefore borrowing by the Local Authority is not required.

In the UK, Central Government do not directly fund Local Authorities to construct social housing so there was a rationale there for the establishment of Local Authority Building Companies who could borrow for such developments. Some of the Companies in the UK now have significant debt issues to deal with. In Ireland, there are other options such as Approved Housing Bodies, and soon the Land Development Agency.

The Common Forms of Legal Entities of ALEOs (Companies) are detailed in the table below:

Legal Entities	Key Features
Limited Company	Can be a company limited by shares or guarantee. The Articles of Association set out the rules for decisions, ownership and control between the company and the council, who formed the company.
Limited Liability Partnerships (LLP)	As with the company, a separate legal entity offers limited liability to its members. Governed by a partnership agreement, it offers greater flexibility than a company does over internal arrangements.
Community Interest Company (CIC)	A form of company (limited by shares or guarantee) created as a social enterprise to use its profit and assets to benefit the community
Joint Ventures	A general term for a commercial venture between partners, typically the council and the private sector.
Trust	A body governed by "trustees" through a trust deed. Unlike companies, they do not offer limited liability. Any organisation wishing to operate as a charity in the Republic of Ireland must apply to the Charities Regulatory Authority (CRA) It is possible to become both a Company Limited by Guarantee and register as a Charity.

Staffing:

A DCC Building Company would have to be resourced largely through external recruitment including all the various specialities in construction. This would be a very significant upfront cost. DCC Building Company, a DCC wholly owned company may be deemed an "associated/ group employer and therefore comparisons for equal pay purposes would be made. DCC would have to address the issue of Union recognition and representation.

Risks to DCC of establishing of a Building Company.

It is important that DCC are risk aware and have systems in place to monitor and manage risks. DCC would have to set up a risk register that covers all activities delivered by the DCC Building Company. The key risks identified in respect of DCC establishing a DCC Building Company are set out in the table below together with a proposed mitigation for each risk:

RISK	MITIGATION
Risk Management	**DCC would have to ensure that the board establish and regularly review risk registers for all activities of the DCC Building Company.**
Government Policy	**DCC would have to engage with the government to ensure the rationale for establishing a Building Company is fully understood and to minimise the possibility and/or impact of any future government interventions.**
Housing Policy	**A DCC Building Company would have to determine and manage the risk of compliance with National Housing Policy e.g. current density guidelines.**
Failure of the company	**Companies can and do get into financial difficulties.** **Therefore, DCC would have to should ensure that there was an exit strategy written into the company's constitution covering what will happen if the company becomes insolvent.**
Compliance with legal and regulatory requirements	**DCC would have to source expertise in legal, business and operational matters e.g. in relation to company set-up, company constitution, tax related matters such as VAT, procurement compliance, and Health/Safety.**
Dilution of governance	**DCC would own 100% of the Building Company and be able to control its governance and activities.** **DCC would have to establish a Scrutiny Committee to monitor the performance of the Company.** **DCC would have to ensure that no members serve on the Scrutiny Committee if they are on the board of the Building Company.**
Conflict of Interests	**The board would keep a register of interests.** **Board members would have to declare any interest even if the board member is unsure of its relevance and potential impact.** **Board members would have to be aware of the potential for conflict of interest.** **Board members would have to get all the support and training required to carry out their responsibilities.**
Reputational Risk to DCC	**The Building Company would be seen as an extension of DCC and there could be potential reputational risks to DCC from its association with the Building Company.** **DCC would have to establish robust monitoring, review and reporting arrangements within and from the Building Company to ensure that any failings are identified and addressed at the earliest possible point of time so that appropriate corrective actions could be taken.**

Skills Shortage	**There is a critical shortage of professional, management, craft-people etc. in the construction sector in Ireland.** **DCC would have to consider the cost/ benefits and options of sourcing the required scale and skills of personnel required.**
Equality	**DCC would have to complete an equality impact assessment e.g. equal pay.**
Setting up a Building Company may increase costs	**Detailed business cases would have to be developed.** **An annual financial business plan would have to be prepared and approved by the Building Company Board with regular reporting on performance against the plan.**

In considering the establishment of a DCC Building Company, DCC must consider that:

- Governance for a Building Company would be complex and that strong and effective governance would be required from the outset.
- Clarity about roles and responsibilities is vital, and
- Monitoring of a Building Company would have be risk based and proportionate.

Governance structures and processes would be required to ensure the activities of the Building Company are developed, implemented are adequately controlled and should include approval of the company constitutional documents and the business plan.

Good Governance Arrangements of public affairs and management of public resources- is encapsulated in the following Principles of Good Governance:

Principle	‘’A DCC Building Company’’
Defining and Evaluating the Role and Responsibilities of an effective Board	**The board must be properly constituted.** **An effective board must understand their role in relation to:** **Their legal duties.** **Their stewardship of assts.** **The provisions of governing document.** **The total structure of the organisation.**
Delivery of Company’s Purpose	**The board would have to ensure that the company delivers it stated purpose by:** **Ensuring the company proposes remain relevant and valid** **Developing and agreeing a long-term strategy.**
Behaving with Integrity	**The board would have to:** **Safeguard the company’s reputation.** **Act accordingly to high ethical standards**. **Deliver impact that meets the needs of the community.**
Performance and Outcomes	**DCC would have to consider the arrangements for performance and monitoring systems before the DCC Building Company is operational, including performance and outcome indicators.** **DCC performance management and monitoring would have to cover all activities and risks involved.**
Standards, Systems and Control	**The board would have to prepare and approve detailed Financial Policies and Procedures Manuals that covers all areas of good governance and operations.**

	The board should ensure that delegated authorities to management, staff and volunteers work effectively and that the use of delegated authority is properly supervised. **All staff must be trained on these policies and procedures.**
Risk Management	**The board would to ensure that they:** **Identify and review the major risks to which the company is exposed and has systems to manage these risks.**
Accountability and Transparency	**The funding relationship between DCC and the DCC Building Company would have to set out in a Service Level Agreement. (SLA)** **The SLA would cover the accountancy and audit requirement that must follow the legal requirements for companies.** **The SLA would state the arrangements for DCC audit access to the records held by the DCC Building Company.** **The SLA would also cover other aspects, to ensure that business practices and standards DCC expect in the direct delivery are observed by the DCC Building Company in spending public funds.** **The SLA would include criteria for DCC withholding its funding, or for terminating its relationship with the Company.** **DCC would have to have clear criteria for the number of, skills and experience required of board members.** **DCC would need a clear and transparent selection and removal process for board members.** **DCC would have to set a clear policy for any payments to board members.** **The board would as part of their governance structure, set up an Audit and Risk Committee. (ARC)** **The ARC would be chaired by a non-executive member and ensure that the board is aware of, and acts on, risks, and other financial and performance information.** **The board would have to appoint external auditors.** **The board would have to prepare and share with DCC their annual business and operational plan.** **The board would have to effectively review and amend the plan and budget as appropriate.** **DCC would have be fully aware that Data Protection and FOI regulations would equally apply to the DCC Building Company.**

Acting as a director can be an onerous task. Understanding their legal duties, managing risk and ensuring the company stays compliant means directors of boards would require regular training to keep them up to date with changes.

The company would have to ensure that management have the wide range of business, construction expertise required to effectively and efficiently run the company in times of rapid technology changes.

The company would have to carry out annual effective management performance appraisals. A Local Authority should make decisions to use ALEOs based on a sound business case that covers projected financial performance and risks.

Extensive reskilling/upskilling of construction professional, site supervisors, craft-persons and operatives will be required to ensure quality standards and housing regulations are fully complied with.

The company would have to ensure that all relevant staff receive required training, assessment, certification and registration required for occupations in the construction sector e.g. CSCS, Safe-Pass.

UK Experience:

It is important that the Dublin City Council would learn from the UK experiences of establishing ALEOs where there has been some successes and failures.

The UK experiences highlights:

- The need to "get it right from the start" and keep it right as well as ensuring that effective governance arrangements are in place.
- The creation of an arm's length external organisation can be a complex means of trading and therefore their suitability, as a service delivery model, depends on the circumstances specific to individual local authorities.
- The need for carrying out a rigorous options appraisal and
- That councils should be well aware of the "pros and cons" of forming an arm's length external organisation, that these are investigated thoroughly before key decisions are taken.

In the UK, councils have powers under the 2003 Local Government Act (Section 95) to set up companies to trade which is solely concerned with delivering a service back to the council but does not trade significantly with other external organisations.

Some Key Points in UK Audit Reports on ALEO's:

- Increasing budget pressures and service demands presented risks and challenges to councils. This has required councils to review their services and consider delivery options and offer improved value for money. They needed to find other ways of funding the provision of social housing because central government were no longer prepared to fund them directly unlike in this country.
- One option was the establishment and funding of an arm's-length external organisation (ALEO).
- ALEOs are defined as companies, trusts and other legal bodies that are separate from councils but are subject to their control or influence. Control or influence can be through the council having representation on the board of the organisation, and/or through the council being a main funder or shareholder of the organisation.
- Any decision to use an ALEO to deliver services involved an appraisal of the options available and a sound business case.
- Options appraisal would consider the risks involved, the financial implications and governance arrangements. Having good-quality information on costs that allows valid comparisons between the options is essential
- ALEO's offer an alternative to more traditional "in-house" and usually take the form of companies or trusts. They are arm's-length because the council retains a degree of control or influence, usually through a funding agreement, and external because they have a separate identify to the council.
- ALEOs by their nature are one-step removed from council control and are as a result, governance and financials arrangements can be complex.

Some Scottish audits have stated that it has seen councils struggle to exert good and effective governance well after the ALEO was set up and, as a result, services and public funds were exposed to risk. One consequence of using more complex delivery structures involving ALEOs is that the public may be less clear about who is responsible for services. Maintaining transparency is a key objective in good governance.

A number of concerns have been identified over the management of ALEOs in specific cases including:

- Poor governance
- Financial risks to public funds
- Scottish audits have shown that risk management is generally not well developed in councils.
- Delivery through ALEOs can involve greater risks. This can be due to more complex governance structure, the financial environment in which they operate, or because of the type of service, they deliver. It is important that councils are risk aware and have systems in place to monitor and manage risks.
- Service performance
- Reputation of Councils
- Staff recruitment
- Conflict of interests
  Conflicts of interest do arise that can make it difficult for councils to govern their ALEOs effectively. Representation on the boards of ALEOs by its nature introduces the potential for conflict of interest for individuals who have roles in both the council and the ALEOs.

ALEOs can bring financial and operational advantages. However, it is not always clear, whether these are realised in practice or if they are sustainable over time. Councils need to review whether ALEOs provide their intended benefits such as cash savings or improved customer satisfaction and, overall, assess whether they can demonstrate value for money for the money and other resources provided by the Council.

The context in which ALEOs operate is changing and cost pressure remain. Councils must have clear reasons for establishing ALEOs and consider alternatives. In doing so, they should be clear on the risks involved, and work closely with local communities and businesses. Some Companies in the UK are moving back in house.

The Bristol Experience of Arm's Length External Organisations

Goram Homes is a limited company business set up and wholly-owned by Bristol City Council. It operates as a separate legal entity to the council, with its own officers to run it, but under the control of the city council and the councillors who are elected. Goram Homes will be able to do things that, because of legal restrictions on local authorities brought in over the years, the city council cannot do.

Goram will submit planning applications, draw up housing schemes and get the houses built, before either selling them to people or renting them out as part of a social or affordable housing scheme.

Using a joint venture arrangement on development sites means the council share in the financial returns from the project, which could then be reinvested to accelerate further developments of new homes. Their first schemes will be joint ventures with development organisations.

Bristol City Council will borrow money from the UK Public Works Loans Board, the central pot of money that all UK local authorities and other publicly owned bodies can borrow from.

The borrowing is always at a lower rate of interest than any commercial loan from the bank.

The Council will then lend the money to Goram Homes at a commercial rate-which means the council will make its own return when the money starts coming back into council coffers. Bristol City Council owns more land around the city than any other single landowner. It will look to council-owned sites to develop more homes. The city council does not have an army of architects, quantity surveyors, brickies etc. There will be a need to enter into joint ventures with other companies-that could be a developer, a construction firm or a housing association – and split the profits 50-50.

A council-owned housing developer is not exclusive to Bristol-around half of the local authorities in the country have one already, although many are small scale or have stopped doing anything. However, it is new to Bristol and it is too early to fully evaluate the benefits that may emanate from Bristol's experience in this area. It appears that the Company ultimately tenders out the actual construction work by way of Joint Ventures with other parties rather than actually building themselves.

Conclusion:

The supply of social/affordable housing in Dublin cannot keep pace with demand. The risk of insufficient housing across Dublin, that is affordable by residents, is one of the Dublin City Council's biggest challenges over the next several years.

The aim is to ensure that, from the most vulnerable and low-income households to those middle-income households, all have access to the type and quality of accommodation to meet their needs. However, whilst much activity is underway, Dublin City Council needs to do more and we need to explore additional means of expanding on new housing provision and all potential options must be considered to deliver the council's ambition to accelerate and deliver more.

This report sets out the complexity that would be involved in the establishment of a Building Company and there is no real evidence that such a proposal would add any benefit to the challenges facing us on housing in the city at present.

Rigorous option appraisals require specialist expertise e.g. legal and can be time-consuming.

Dublin City Council must be aware of, that all the implications of control, monitoring, performance management, integrity, openness, risk management and accountability and transparency apply equally to an arm's length external organisation as to Dublin City Council run services.

There would be substantial set-up costs and additional operating costs for a DCC Building Company.

The creation of a Building Company by DCC for the construction of social housing is not a viable proposition in our view because:

It would be a cumbersome and be a very difficult task to implement with many Governance, Legal, Financial and Bureaucratic implications to overcome and maintained into the future. Such a Company would have to tender for construction projects in the same way as ordinary private contractors. There is no certainty at all that it would achieve more positive construction costs.

With the supply of land (owned by DCC), reducing rapidly over the next few years the opportunities for direct build by DCC will also reduce significantly. There are several other methods of ensuring the provision of social housing in the city in the years ahead many of whom are already making a significant contribution e.g.

- Acquisitions
  Turnkeys
  Part V
  Approved Housing Bodies

The establishment of the Land Development Agency is a welcome initiative by Government and it will have great potential to harness social and affordable housing on non-DCC lands in the city to augment our own programme. It has particular potential to develop cost rental housing at volume.

In order to get better value from the construction of social housing and to move away from the traditional methods of Public Procurement we need to consider more innovative ways of getting social housing built e.g. Joint Ventures with adjacent land/property owners

Direct build by the Local Authority will continue and we do have a strong pipeline of delivery over the next few years but if the focus is solely on this way of doing it, we will never resolve the current housing crisis. The focus should be on the necessary provision of social using whatever is the most efficient and quickest way of doing it. The households who sign up every day for their new DCC home do not care who built it or how it was built.

10th March 2021