

MUNICIPAL YEAR 2013/2014 REPORT NO. **209**

**MEETING TITLE AND DATE:**  
**Cabinet 12 March 2014**

**REPORT OF:**  
Director of Regeneration  
Leisure and Culture

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**Agenda – Part: 1**

**Item: 12**

**Subject: Market Gardening – Community Interest Company for Enfield Veg Co.**

**Cabinet Members consulted: Cllr Goddard**

## **1. EXECUTIVE SUMMARY**

- 1.1 Under previous Key Decision 3617, signed on 12 July 2013, it was agreed that the Council enter into a Grant Agreement with the Greater London Authority (GLA) in the amount of £600,000 to deliver the Market Gardening project.
- 1.2 Built into the GLA Agreement are a number of milestones which LBE is obliged to deliver, including the formation of an appropriate community focused corporate vehicle to run an organic vegetable box scheme LBE therefore propose to set up a Community Interest Company (CIC) (the Enfield Veg Co.).
- 1.3 Forming the CIC will meet a key commitment under the GLA Agreement.

## **2. RECOMMENDATIONS**

- 2.1 That Cabinet agrees that Enfield Council be authorised to take all steps necessary to form a Community Interest Company (CIC) for the Enfield Veg Co.
- 2.2 That Cabinet delegate authority to the Director of Regeneration and Environment, acting in consultation with the Director of Finance, Resources and Customer Services, to agree appropriate Terms of Reference, Memorandum of Articles and Shareholders Agreements for the CIC, subject to the completion of a satisfactory business plan.

### **3. BACKGROUND**

- 3.1 Previous Key Decision 3617, signed on 12 July 2013, agreed that the Council enter into a Grant Agreement with the Greater London Authority (GLA) in the amount of £600,000 to deliver the Market Gardening project.
- 3.2 Key Decision 3617 delegated authority to the Director of Regeneration and Leisure and Lead Member for Business and Regeneration to support delivery arrangements and procurement processes for the Market Gardening project.
- 3.3 The GLA agreement includes a schedule of milestones against which LBE will be obligated to deliver to draw down the funding. One of these milestones is to establish and launch a vegetable box scheme as a social enterprise, Community Interest Company (CIC) or other appropriate corporate vehicle.
- 3.4 A food growing project commenced this year at Forty Hall Farm operated by Capel Manor, also a milestone in the cooperative growing model, has been operating since May 2013. The project has created three acres of new food growing, providing a wide variety of very high quality organic vegetables.
- 3.5 Part of the produce from the farm will supply a vegetable box scheme, known as The Enfield Veg Company.
- 3.6 The concept of the vegetable box is that customers receive a bag of vegetables weekly for 50 weeks of the year, with the most seasonal vegetables available. There will be two sizes of bag, small (five types of vegetable) or medium (seven types of vegetable). The bags will be dropped at one of three pick up points near to the customer base, in order to economise on delivery costs and add to the scheme's sustainability credentials, by reducing unnecessary delivery kilometres.
- 3.7 Professional expertise for setting up the box scheme has been provided by Growing Communities, a highly experienced and successful box scheme which has been going for 20 years, and is considered to be the ideal business model.
- 3.8 Any costs arising from the setting up of the CIC will be met by the existing GLA funding allocation.
- 3.9 Although what is envisaged is of relatively modest proportions, a robust business plan for the Enfield Veg Co. is being prepared by consultants and viability established as part of the due diligence necessary before forming the company; amongst other things this will propose a suitable Board structure for the

Council's consideration. This is provided for in the proposed delegated authority set out in Recommendation 2.2.

3.10 Forming a CIC based on a food growing business model is consistent with milestones in the GLA Funding Agreement. In general terms, the CIC will operate in the following manner:

3.10.1 CICs are a type of limited company for organisations or people wishing to establish businesses which trade with social purpose (social enterprise), or to carry on other activities for the benefit of the community. A CIC cannot be used solely for the financial advantage of a group of people, for political purposes, or for the benefit of the employees, directors or members of a single organisation. A CIC must satisfy the community interest test at formation and continue to do so for as long as it remains a CIC. A CIC will satisfy the community interest test if it can show that a reasonable person might consider that its activities are being carried on for the benefit of the community. A company will not satisfy the test if its activities only benefit members of a particular body or if its activities are political. Not all of the activities carried on by a CIC need to have a direct benefit to the community to which it serves but everything a CIC does should somehow contribute to benefiting the community that it is set up to serve. For example, a sports club for employees of a business will only satisfy the community interest test if it provides a wider community benefit by making its facilities available to the local community

3.10.2 A CIC has to deliver to the Registrar of Companies an annual community interest company report with its annual accounts. This report should record the CIC's activities for that year including any details on assets transferred for less than market value, dividends paid and the remuneration of directors.

3.10.3 A CIC must be a limited company whether by shares or by guarantee. An unincorporated association cannot be a CIC.

3.10.4 CICs are formed under the [Companies Act 2006](#) (2006 Act) like any other limited company. It is proposed that Legal Services will instruct external lawyers to set up the CIC; funding is available for this.

3.10.5 The CIC Regulator has produced various forms of model memoranda and articles of association for CICs.

### 3.11 Proposed Company Structure

3.11.1 It is proposed that the company is initially established as soon as possible with the name Enfield Veg Co. an off-the-shelf name from Companies House.

3.11.2 It is recognised that the structure of the company may change and develop over time according to decisions made by the Company Management Board or by the Council, in line with the Scheme of Delegation. Initially it is proposed that the company is formed of Members, officers and two non-executive appointments. The Company Management Board will be guided by the company's Terms of Reference and Articles of Association. The Board positions will not be remunerated, with the exception of the non-executive director positions.

3.11.3 The Company Management Board will be responsible for the overall management of all aspects of the company. This will include making sure that the company upholds all legal requirements, such as submitting annual accounts and sending notifications of changes in personnel to Companies House. In addition the Company Management Board will oversee the management of the property asset portfolio, ensuring that any equipment is purchased in accordance with agreed criteria and regular reviews of the financial model are undertaken.

3.11.4 The company will have a Company Secretary whose duties would include maintaining the statutory registers including:  
Register of Members  
Register of Directors and Secretary  
Register of Director's Interests  
Register of Charges

3.11.5 Initially it is envisaged that the board membership could be as follows:

Two Cabinet Members  
One Director, Company Managing Director  
One Assistant Director, Company Secretary  
2 Non-Executive Directors

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The option to not incorporate the vegetable box scheme as a company was considered and but it was not in accordance with the Council's legal agreement with the GLA.
- 4.2 The methodology recommended for selecting the Community Interest Company used the toolkit published by Co-operatives UK for selecting the most suitable legal format. Co-operatives UK is the national trade body that campaigns for co-operation and works to promote, develop and unite co-operative enterprises and has a unique role as a trade association for co-operatives.
- 4.3 The toolkit suggested that a CIC (limited by guarantee) is the most suitable legal form for the Enfield Veg Co., based on membership, financial risk, initial funding costs, and funding distribution.

#### **5. REASONS FOR RECOMMENDATIONS**

- 5.1 It is recommended that Cabinet agree that the necessary steps to form a CIC, in accordance with the extant GLA Agreement, be taken in order to meet the terms of the agreement and establish a food-growing social enterprise.
- 5.2 The Enfield Veg Co. will be an exemplar social enterprise for other community groups and food growers who aspire to establish a business vehicle for growing projects.

#### **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

##### **6.1 Financial Implications**

- 6.1.1 The £600,000 grant acceptance and agreement signed between the GLA and Enfield includes a schedule of milestones which LBE is obligated to deliver the creation of a social enterprise vegetable box scheme.
- 6.1.2 The grant agreement requires that a company be set up to enable the box scheme, a Community Interest Company (CIC) is proposed for this purpose.
- 6.1.3 The Community Interest Company will be appointing two directors from LBE to the board. As the CIC will be limited by guarantee, a member's personal liability will be limited to the guarantee amount, normally £1. It will

be a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit. This can be done by ensuring that all revenue from the box scheme is reinvested into the company, for the long term viability of the business.

- 6.1.4 External lawyers will be appointed to set up the CIC and is estimated to cost £5000, which will be funded from the GLA grant.

## **6.2 Legal Implications**

- 6.2.1 Section 1 of the Localism Act 2011(the Act) includes a 'general power of competence'. It gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited. This power can be for the benefit of the authority, its area or persons resident or present in its area. Further, Section 4(2) of the Act states that where, in exercise of the general power a local authority does things for a commercial purpose, it must do so through a company. A CIC falls within the meaning of a company within section 1(1) of the Companies Act 2006.
- 6.2.2 CICs must adhere to the principles of company law, and are subject to the Companies Act 2006, Companies (Audit, Investigations and Community Enterprise Act 2004, and the Communities Interest Company Regulations 2005.
- 6.2.3 Failure by LBE to set up a CIC or similar corporate vehicle would be a breach of its agreement with the GLA.
- 6.2.4 The GLA Agreement is predicated on the general state aid de minimis principle which does not reflect the agricultural nature of the market gardening project. The Council should consider seeking a variation to address this.
- 6.2.5 The legal documentation is to be in a form approved by the Assistant Director of Legal Services.

## 7. Key Risks

**7.1 Risk:** A key risk for the CIC is viability and the long term sustainability of the business.

**Mitigation:** Mitigation measures include:

7.1.1 Conservative figures for profit margins have been set;

7.1.2 A full time dedicated horticultural grower and apprentice to manage the scheme have been employed;

7.1.3 Prospective directors appointed will go through a robust recruitment process to ensure that they have the appropriate experience and expertise to guide the company;

7.1.4 There will be close monitoring of company performance to enable appropriate and timely management actions.

**7.2 Risk:** Inclement weather and subsequent crop failure is a risk to the business.

**Mitigation:** Mitigation measures include:

7.2.1 Planting out an additional 20% crops to take account of unforeseen loss;

7.2.2 The use of protective growing structures, which includes the provision of two robust poly tunnels will help ensure the success of less cold and frost hardy crops.

## 8. IMPACT ON COUNCIL PRIORITIES

### 8.1 Fairness for All

**8.1.1** Through the process of developing food growing at Forty Hall Farm to supply the box scheme, volunteers of all ages, including secondary school children, retirees, unemployed persons, and college students. They will have the chance to participate in a safe environment, improve basic life skills as well as horticultural and business skills.

**8.1.2** The lessons from this growing model will be valuable in establishing additional growing spaces in other parts of the Borough. More residents will be able to participate in

food production and share the health, social and economic benefits that can be achieved.

## **8.2 Growth and Sustainability**

**8.2.1** A key driver for the overall Market Gardening project is the creation of new businesses and local jobs for local people. The Enfield Veg Company will be the first such small business enterprise, and will contribute to the Enfield's aim of reaching full economic potential through small business creation. The learning will be transferred to other parts of the borough and to other potential food-related social enterprises.

## **9. PUBLIC HEALTH IMPLICATIONS**

9.1 The overall impact of the project including the delivery of a local, organic vegetable box scheme, will improve and impact upon the health and well-being of the public in Enfield. Through the delivery process, the scheme will encourage healthier lifestyles, be inclusive across a broad cross-section of the population in volunteering, improve the skills base of residents and reduce food miles.

### **Background Papers**

None.