

North East Derbyshire District Council

Cabinet

28 October 2015

Turning the Urban Design Academy into a Social Enterprise

Report No GBXR/16/15-16/AWC/MH of Councillor G Baxter MBE, Leader and Portfolio Holder with Responsibility for Building a Better Council

This report is public

Purpose of the Report

- To seek member approval to create a social enterprise based upon the Urban Design Academy, covering the district of North East Derbyshire.

1 Report Details

- 1.1 At the meeting of the 8th July 2015, Cabinet approved the recommendation for the Economic Development Unit to examine the possibility of turning the Council's Urban Design Academy (UDA) into a social enterprise. This report aims to present their findings and to make recommendations based upon those findings.
- 1.2 To recap, the UDA was created in 2010 with the aim of increasing design excellence across the district and progressing the place shaping agenda. It has overseen the instigation of the Building for Life scheme, the Urban Design Best Practice Group, and a host of member and officer training.
- 1.3 A social enterprise is a business that trades to tackle social problems, improve communities, people's life chances, or the environment. They make their money from selling goods and services in the open market, but they reinvest their surplus back into the business or the local community (*Source: Social Enterprise UK*).
- 1.4 It should be noted that if agreed, the Urban Design Academy would not be the first social enterprise that the Council has helped to create. In 1998, Eckington Development Company (EDC) was formed as a social enterprise to help oversee the regeneration of Eckington. They are a company limited by guarantee and are operated by a board of directors which has included Council Members. In 2002, EDC took over the empty Barclays Bank building in the town centre and through external funding, turned it into a business centre. Since then, they have expanded the business centre into a second phase. Both of these projects required external funding, which included significant funding from NEDDC, as well as significant staff support over the years for them to progress. EDC has been running successfully for a number of years and now the level of support required by them from the Council is negligible.

- 1.5 Social Enterprises can be formed under a number of different legal structures. These structures are explained below:
- 1.6 Firstly, the enterprise can be Incorporated or Unincorporated. Incorporation is the act of registering your business as a separate legal entity with Companies House. As a separate legal entity, the enterprise can then enter into contracts and agreements in its own right and can have its own separate finances, assets etc. Remaining unincorporated would not see this legal separation, but would mean less regulation to abide by. Most social enterprises become incorporated.
- 1.7 Incorporated companies can be created under two main models – Companies Limited by Shares (CLS) or Companies Limited by Guarantee (CLG). In a CLS, share capital is divided into shares of fixed amounts which are issued to shareholders. Shareholders then become the owners of the company. Social enterprises choosing this model must ensure their social mission is written into their governing documents, as well as what they plan to do with any profits. In a CLG, there are no shareholders, but members. Members act as the companies guarantors. As members do not own shares, they cannot personally profit from any increased value in the enterprise/company.
- 1.8 Once they have chosen to be either a CLS or a CLG, incorporated social enterprises also have another legal structure open to them, designed specifically for social enterprises. This is known as a Community Interest Company (CIC). CIC's offer additional forms of protection for the organisation's social mission. They are subject to an 'asset lock', which ensures that assets are retained within the company to support its activities or otherwise used to benefit the community. The asset lock also means that the enterprise cannot transfer the asset at less than market value, unless the transfer falls within a narrow range of permitted transfers, such as to another asset-locked body. Also, on dissolution of a CIC, any surplus assets must be transferred to another asset-locked body once all liabilities are met. CIC's are also required to produce an Annual CIC Report, which will show, amongst other things, the enterprise's progress against its stated social mission. This report will be put on public record. Finally, if an enterprise become's a CIC, it cannot become a charity.
- 1.9 As well as the legal structure, any organisation looking to become a social enterprise, needs to think about its governance. The enterprise is made up of its members. In a CLS, the members are usually the shareholders, subject to the provisions included in the Articles of Association. In a CLG, the members are usually the subscribing guarantors and others admitted to membership according to the Articles of Association. The ultimate control of the company and responsibility for major policy and other decisions rests with the members. The general meeting of the company's members is its ultimate decision-making body and members have statutory rights to require the company to call such meetings. The day-to-day running of the company is usually delegated by the members to a board of directors. These are the people who will help to steer and shape how the enterprise grows, and ensure that it works to meet its social mission. Therefore it is important that a board is recruited that has the necessary skills, knowledge and experience to ensure the success of the enterprise. These skills will include:

- A local champion – someone who has ties to the local area and thus has a vested interest in seeing its regeneration;
- Financial skills – treasurer should be someone with experience of managing budgets, creating expenditure profiles and preparing funding applications, who can understand audited accounts;
- Senior management skills – useful to have a board member who can oversee the development of the organisation in how it is managed and run;
- Entrepreneurial/Innovative skills – need to have board members who can be enthusiastic about new ideas, and can take risks;
- User experience skills – need to have board members who have specific skills and experiences in the field of work that the social enterprise is looking to operate in (i.e. for the UDA, this would include an Urban Design or Art background and place making, amongst others).

1.10 Therefore, in relation to the above information, there are 3 key decisions that need to be made in relation to the type of social enterprise that the UDA could become:

Decision One – does the UDA become incorporated, or remain unincorporated?

Decision Two – if the UDA becomes incorporated, does it become a CLS, or a CLG?

Decision Three – if the UDA becomes incorporated, does it become a CIC, a charity, or neither?

2 Conclusions and Reasons for Recommendation

- 2.1 It is recommended that the UDA becomes a social enterprise. The main reasons for this are that a social enterprise will have access to external funding that the Council does not, it would be able to become self-financing in future years through trading and that it can involve stakeholders and partners more than it currently does and thus bring in additional expertise.
- 2.2 In terms of Decision One, it is recommended that the UDA become an incorporated social enterprise. This will ensure that the UDA is a separate legal entity, and will provide the Council with legal separation (and therefore protection)..
- 2.3 In terms of Decision Two, it is recommended that the UDA be incorporated under the CLG model. The majority of social enterprises are formed under this model, as issuing shares is slightly more problematic for them, due to the fact that shareholders expect dividends, and social enterprises are expected to re-invest their surplus to further their social mission.
- 2.4 In terms of Decision Three, it is recommended that the UDA become a CIC. This is because the CIC model provides additional legal protections for any assets that the UDA will have, meaning they cannot be asset stripped at a later date. Also, due to these additional protections, the CIC is looked on as a favourable model by funders etc, as it provides assurances to them that the assets they are funding will continue to be used for their specified purpose. Although becoming a CIC means the UDA

could not be a charity, this does not greatly inhibit the UDA's ability to obtain external funding.

- 2.5 In terms of the governance of the UDA social enterprise, it is recommended that the Economic Development Unit draw up a list of invitees to become a Director/Member of the UDA, based upon the skill/experience requirements set out in paragraph 1.8.

3 Consultation and Equality Impact

- 3.1 The Urban Design Academy has consulted with stakeholders on numerous occasions for the various projects that it has undertaken. This consultation has always resulted in positive feedback about the work of the UDA. Consultation will continue to be undertaken on a project by project basis.
- 3.2 It is expected that an Equalities Impact Assessment will be undertaken prior to the launch of the UDA as a social enterprise. Any recommendations from the EIA will be incorporated into how the UDA is set up and operated.
- 3.3 The proposal for the Urban Design Academy social enterprise has been discussed with Social Enterprise East Midlands (SEEM). They were happy with the idea and their main relevant comment was ensuring that a Business Plan was created that included thorough market research. The creation of a business plan will be one of the first tasks of the creation of the Urban Design Academy social enterprise, once approval to proceed has been received.

4 Alternative Options and Reasons for Rejection

- 4.1 The alternative governance options mentioned above have all been considered as options, but have been rejected as they do not best fit with the type of social enterprise that the UDA is hoping to become.
- 4.2 The option to keep the UDA in its current format has also been rejected, as this would mean that there would be no mechanism for the Council to be able to access external funding that could help both the place-shaping and the growth agendas.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 To register the UDA as an incorporated company and as a CIC would incur a small fee. This would be approximately £40 to register with Companies House and £35 to register as a CIC with the Office of the Regulator of Community Interest Companies.
- 5.1.2 There would also likely be some costs incurred (either actual or in-kind) for the preparation of the UDA as a social enterprise, in terms of meeting room hire and associate costs (e.g. refreshments) to organise meetings with advisers, potential directors etc.
- 5.1.3 There would also be other set up and running costs that the Council would need to support for the initial period of the social enterprise. These include insurance costs and accountants costs for compiling the audited accounts. Discussions with

Eckington Development Company show that they pay approximately £2,600 per annum on insurances, which covers public liability, professional indemnity and buildings and contents. However, it should be noted that they operate 2 relatively large business centres in Eckington, and so it is unlikely that the insurance for the Urban Design social enterprise would be anywhere near this high.

- 5.1.4 Finally, there may be some costs incurred in terms of stationery and printing in setting up the UDA as a social enterprise.
- 5.1.5 It is expected that once the UDA is set up and running as a separate entity, it will begin to make its own income that will be able to pay for any future costs incurred.
- 5.1.6 Once the Urban Design Academy social enterprise has been created as a separate legal entity, officers will seek external funding to help cover many of the initial costs of the first year of it. However, the set up costs mentioned above will be unlikely to be funded by any organisation.

5.2 Legal Implications including Data Protection

- 5.2.1 The UDA as a social enterprise and a CIC will be governed by the Companies Act 2006 and all subordinate and related legislation, the Companies (Audit, Investigations and Community Enterprise) Act 2004 Part 2 and Schedules 3 to 7, and the Community Interest Company Regulations 2005. However, it is important to remember that, as a separate legal entity, it will be the UDA social enterprise and its members that will be subject to this legislation, not the Council (although Council representatives will be members of the UDA).

5.3 Human Resources Implications

- 5.3.1 It is expected that Council staff time will be required to help set up the UDA as a social enterprise and also to help guide and support it through its formative years. It is expected that this support from NEDDC staff will be fairly intensive at first, but will reduce as time goes by and that the board of directors and members will take up much of the burden of work in future years. However, NEDDC staff are likely to be always involved in the UDA.

6 Recommendations

- 6.1 That the Council sets up the Urban Design Academy as a social enterprise.
- 6.2 That the Urban Design Academy becomes an Incorporated Company.
- 6.3 That the Urban Design Academy becomes a Company Limited by Guarantee.
- 6.4 That the Urban Design Academy becomes a Community Interest Company.
- 6.5 That the Economic Development Unit creates a shortlist of potential Board of Directors, utilising the necessary skills set out in paragraph 1.8.
- 6.6 That members approve of paying for initial set up costs for the Urban Design social enterprise from existing budgets.

7 Decision Information

Is the decision a Key Decision? (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
District Wards Affected	All district
Links to Corporate Plan priorities or Policy Framework	Links to the Corporate Aims 'Unlocking Growth Potential' and 'Supporting our Communities to be Healthier, Safer, Cleaner and Greener'.

8 Document Information

Appendix No	Title
n/a	n/a
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
n/a	
Report Author	Contact Number
Martyn Handley Economic Development Project Officer	(01246) 217203

AGIN 5(b) (CAB 1028) Urban Design Academy/AJD