Barnet UNISON

What is a Joint Venture?
&
What does it mean for the Development and Regulatory Services (DRS) One Barnet Project?

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What is a Joint Venture?

A joint venture is usually a company that is part owned by the council and part by a private contractor. There are different kinds of company that can be used for a joint venture but the most common are where each party invests, i.e. takes shares in the company or where each party guarantees the company's liabilities up to a fixed amount. These types of company are known respectively as Company Limited by Shares and Company Limited by Guarantee. The council's contribution could be inthe form of cash, capital, intellectual property, staff, equipment or any other form of asset. The level of ownership it has will be determined by how much it puts in or what level of guarantee it provides.

What is a Joint Venture For?

Joint venture companies can have any number of purposes but are often used to provide a service back to the council instead of a straight contract with a private sector company. The benefits are that the council can have more control over how the service is provided and also the ability to share in any profits the company might make from other trading activity.

What share would the Council have in a Joint Venture?

Joint Ventures can be owned on a 50:50 basis, but in most cases the council takes a minority share. In the past council involvement was often kept below 20% to avoid any borrowing by the company counting against the council. This is less relevant now as the rules have changed so that councils make their own decisions about what they can afford to borrow, rather than it being controlled by the government. Nonetheless, it is not usual for councils to take more than a 50% stake as to do so would lead to the company being counted as part of the public sector under national accounting rules.
The main issue for councils to consider when deciding how big a stake to take **is risk.** If they own **50%** of the company then they will be **50% liable** for its debts and obligations. In fact, **risk sharing** is the main reason for creating a JV rather than a straight contract with the private sector.

How is a Joint Venture Procured?

Most council contracts have to follow strict rules about how they are advertised and awarded. These rules also apply to creating a JV but provided that the services the JV is to supply to the council are mentioned at the start of the procurement process, there is no need to hold two competitions, i.e. one for the JV partner and another for the service provider.

Implications for the Barnet DRS Contract

The Government has published guidance for council's thinking about entering into a joint venture with a private sector company. This makes a strong argument for early consideration of some key issues *before* the procurement process begins. In setting out *'key steps in establishing a JV'*, the guidance calls for initial planning to *'assess whether the JV proposition has a sound business or service delivery rationale that is commercially viable and likely to offer the best VfM to the public sector'*. This, the guidance states, should be followed by Option Appraisal – *'it is imperative that a public sector body carries out an appropriate investment appraisal and feasibility study'* – and Business Case and detailed planning. Only at this stage should the procurement process begin.

The danger with the way that Barnet has approached the DRS contract is that the **critical decision** about whether to have a JV, as opposed to a straight contract, will be made on narrowly defined criteria and by a small group of officers, **rather** than by elected members. Members will of course always have an option to not let a contract at all but it **is unlikely** that they would have the ability to reject the JV and let a contract instead.

It has been stated in a recent Council staff communication by the council's Interim Director for Environment Planning and Regeneration that *'the joint venture would allow us to share more easily in any commercial success the organisation has'*. This is true but message also indicated that the council **would not** be taking any risk. This is difficult to understand because a joint venture **is designed** to share **risk** as well as rewards.

Critical questions for councillors and residents

1. Despite the mixed messages about the reasons for the council officers to recommend a Joint Venture Company for DRS which will allow the Council to share rewards with the private partner. UNISON

notes that the council are claiming that the private partner will be taking all the commercial risk and that the Council will have no more than a nominal stake in the Company. Common understanding of the JV concept is that it **is a vehicle for sharing risk** in proportion to the respective level of ownership/investment/guarantee. If the Council has no more than a nominal share and takes no risk how can it expect to receive more than a nominal share of the rewards?

2. The DRS business case indicates clearly that the Joint Venture option is **more risky** to the council than straight outsourcing. What level of additional benefit is now expected to flow from a JV over and above any expected savings from a straight contract with the private partner to justify taking this additional risk?

3. What level of **additional** procurement cost has been identified to put in place a JV?

4. Can a JV be concluded within the **existing estimated time frame** for the DRS procurement?

5. Treasury guidance suggests that Councils considering a JV should consider key issues and develop a robust business case before commencing procurement. Amongst other things this means developing a clear view about how the arrangement is to be structured and what kind of body the JV is to be. In the case of DRS there is **no business case supporting the use of a JV arrangement** and elected members have had no opportunity to consider the many options available. Given this can the Council now describe in broad terms what is meant by a JV in the context of DRS, i.e. **what legal** form will it take, **what level** of Council ownership/investment/ guarantee will there be?

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