



ADUR & WORTHING COUNCILS

Joint Strategic Committee
10 April 2018
Agenda Item 10

Key Decision: No

Ward(s) Affected: All

Worthing Borough Council's Relationship with Worthing Homes

Report by the Director for Communities

Executive Summary

1. Purpose

- 1.1. The report advises Joint Strategic Committee of the statutory changes affecting the relationship between Worthing Borough Council and Worthing Homes Limited.
- 1.2. The Joint Strategic Committee is asked to note the impact of the statutory changes on Board Membership and voting rights.
- 1.3. The Joint Strategic Committee is asked to authorise and instruct the Director for Communities to renegotiate the contractual agreement between Worthing Borough Council (WBC) and Worthing Homes (WHL) in light of the changes, ensuring continued engagement and the promotion of a positive relationship between WBC and WHL.

2. Recommendations

It is recommended that the Joint Strategic Committee:

- 2.1. Notes the statutory changes impacting on Worthing Borough Council's relationship with Worthing Homes Ltd as a result of the new Regulations effective from 16 May 2018.

- 2.2. Delegates to the Director for Communities, in consultation with the Leader, to negotiate with Worthing Homes Ltd and enter into contractual arrangements relating to the number of Worthing Borough Council Elected Members on the Board, the position of the Council in relation to attendance/feedback from shareholder meetings, and any other matters that are pertinent to the future of this relationship.
- 2.3. Notes the change to be made to the Scheme of Officer delegations by the Monitoring Officer under her delegated powers removing the Head of Housings' authority to cast the Council's vote at meetings of WHL with effect from 16th May 2018, and delegates authority to the Monitoring Officer to make other consequential amendments to the constitution.

3. Background

- 3.1. The Office for National Statistics (ONS) has, in 2015, classified Private Registered Providers (PRP's) of Housing as public bodies, due to controls over their business being exerted by central government through the Homes and Communities Agency (HCA) and local authorities. As a result, the debt arising from commercial borrowing of all 1,600 PRP's in England, appears on the Government's balance sheet.
- 3.2. The Government, whilst having a general drive towards deregulation, has a specific objective of removing PRP borrowing from its balance sheet. The ONS aims to reconsider the classification of PRP's from public bodies to private sector bodies and consequently Parliament has introduced a package of deregulatory measures aimed at reducing public sector control over PRP's.
- 3.3. The Housing and Planning Act 2016 introduced some changes to the existing legal regime and in particular section 93 conferred on the Secretary of State a power to make regulations that limit or remove the ability of local authorities to exert influence over PRP's of social housing.
- 3.4. In exercise of those powers the Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017 were implemented and came into force on 15th November 2017. The

purpose of the instrument was to retain a role for local authorities whilst reducing their influence and control over PRS's.

3.5. In summary the key points of the legislation are as follows:

- It restricts the percentage level of Officers a Local Authority may nominate as Board Members of a PRS;
- It removes any requirement that a Local Authority board member be present at a meeting of the Board for that meeting to be quorate;
- It removes a Local Authority's ability to hold voting rights as a shareholder of a PRP;
- It provides that from an appointed day (16th May 2018) PRP's no longer have to seek the permission of a Local Authority to amend their constitutions; and
- It provides that where the regulations conflict with any contractual requirements, the regulations will prevail.

4. Worthing Homes

4.1. In 1999 Worthing Borough Council entered into a stock transfer agreement with Worthing Homes Ltd. (WHL). As part of this agreement Worthing Borough Council has the ability to appoint local authority representatives to WHL Board. In agreeing a stock transfer, the Council and WHL entered into a contractual agreement which covered all aspects of the transfer including the sale of the housing and the future relationship between the Council and WHL.

4.2. WHL is currently a company limited by shares, registered at Companies House; is a registered charity regulated by the Charity Commission; and is registered with the HCA as a not-for-profit registered provider of social housing (PRP). It is governed by its Articles of Association and Memorandum, its Constitution, and the stock transfer agreement with the Council. Given the passage of time, a number of changes to the agreement have been made utilising WBC and WHL governance processes.

5. Proposals

5.1. Board Membership

- 5.1.1. Section 3(1) of the Regulations provides that, as of 16th May 2018, the number of Local Authority Board Members of the PRP cannot exceed 24% of the total Membership of the Board.
- 5.1.2. The Board of a PRP of social housing is responsible for managing and leading the strategic direction of the PRP. The Regulations reduce public sector control by local Authorities over PRP's by limiting the ability of local authorities through the nomination of board members. This will still allow a Local Authority to be represented on the Board and to participate in any voted business, whilst preventing it from blocking any voted decisions.
- 5.1.3. WHL's constitution does not currently provide a right for WBC to appoint Board Members, as they are elected by the shareholders. However they do have a Board Membership Policy, which provides that the Board shall consist of between 9 and 11 Board Members, 2 of whom shall be Council nominees and that collectively Council nominees and residents shall not exceed two thirds of the Board membership.
- 5.1.4. The current arrangement between WBC and WHL provides that WBC may nominate two Elected Members; these nominations are proposed by the Leader of WBC as this matter falls within the remit of the Leader's portfolio being an Executive function. The nominated individuals are recommended to shareholders by WHL Chief Executive, and then elected by shareholders and appointed to the WHL Board. There are currently 10 Board Members of WHL, two of whom are Elected Members of WBC, currently giving WBC 20% of the Board membership.
- 5.1.5. Consequently there is nothing in the current arrangements that is contrary to the new Regulations or would need amending. However, whilst the statutory provision refers to the maximum number of Local Authority Members on the Board of a PRS, it does not provide for any minimum and there is no longer any

requirement for the Local Authority to be represented on the Board at all.

- 5.1.6. WHL have indicated that at the current time they have no plans to change the composition of the Board, which they intend to remain at 9-11 Members with two being Elected Members of WBC. However they may wish to amend the way in which these appointments are made in the future, to ensure a wide and relevant mix of knowledge and skills needed amongst their Board members.
- 5.1.7. It is suggested that the issue of how future appointments are made, forms part of a revised contractual agreement between WHL and WBC and that the Director of Communities be responsible for negotiating such terms and entering into a revised future agreement.

5.2. Quorum

- 5.2.1. Section 1(4) of the Regulations provide that any provision in the constitution of a PRP requiring one or more Local Authority Board Member to be present for the meeting to be quorate shall have no effect as of 16th May 2018.
- 5.2.2. Article 15.3 of WHL's Articles of Association relate to quorum of meetings and there is no provision currently for a Local Authority Member to be present to be quorate. So current arrangements comply with the new Regulations and no changes are required in this regard.

5.3. Voting rights of a Local Authority

- 5.3.1. Section 5(1) of the Regulations provide that from 16th May 2018 a Local Authority may not hold or exercise any local authority voting rights, as a Shareholder, in relation to a PRP. Such existing voting rights must be re-assigned amongst the remaining voting membership.
- 5.3.2. Currently, in accordance with WHL's constitution and the contractual relationship between the parties WBC, as a Local Authority body, is a shareholder of WHL and has a right to vote at a general meeting. Further, WBC has been allocated an

additional vote, sometimes referred to as a “golden share”, which affords the Council the opportunity to block the constitutional changes. These rights were given to WBC as a direct result of their stock transfer to WHL. They are exercisable by the Head of Housing, through the Officer Scheme of Delegations, who may attend shareholder meetings of WHL and cast the Council’s vote.

- 5.3.3. The current arrangements will be unlawful from 16th May 2018. The Council cannot exercise voting rights and WHL will need to take steps to amend their constitution, and WBC will need to divest themselves of their voting rights.
- 5.3.4. Whilst the regulations render it unlawful for the Council as a body to have a voting right, they do not prevent the Council from being a Member of WHL and a shareholder albeit without voting rights. WHL currently only have one class of shareholder, those with voting rights. It is difficult to see the value in the Council having a share but no voting rights, other than it retaining the ability to be aware of and attend shareholders meetings, but this could be dealt with contractually.
- 5.3.5. It is therefore intended that the Director for Communities be delegated to negotiate this point with WHL agreement to enable the Head of Housing, or his/her delegate, on behalf of the Council, to attend shareholder meetings or agree an alternative way of being updated on the outcome of those meetings.
- 5.3.6. It is also noted that the regulations do not prevent the Elected Members appointed to WHL Board from having a shareholding, and corresponding voting rights, as individuals.

5.4. Amendments to WHL Constitution

- 5.4.1. Section 6(3) of the Regulations provides that from 16th May 2018, where the constitution of a PRP makes provision for the consent of a Local Authority to enable a change to the constitution to be effective, such provision shall have no effect. Consequently from 16th May 2018 WHL will no longer require the consent of WBC to amend their constitution, regardless of any contractual or constitutional provisions.

- 5.4.2. This is particularly relevant as WHL are actively considering converting their status to that of a Community Benefit Society (CBS) with Charitable Objectives.
- 5.4.3. A CBS is not a company despite sharing many characteristics with a company. It is a body corporate and its assets are vested in the organisation itself with the shareholders having limited liability. CBS's are almost always formed for not-for-profit purposes. They are governed by the Co-operative and Community Benefit Societies Act 2014. A charitable CBS must have entirely charitable objects.
- 5.4.4. The benefits to WHL of converted to a CBS would include the fact that they could, as a CBS, enjoy the existing tax arrangements benefitting organisations of charitable status, without being registered with and regulated by the Charity Commission and that they would be free of Charities Act constraints relating to disposals. The disbenefit is the potential impact on charitable donations arising from the fact that WHL would no longer be a registered charity.
- 5.4.5. In order to convert WHL would need to call and hold a general meeting of its shareholders and would need a majority vote of 75% to convert from a company to a charitable CBS.

6. Conclusion

- 6.1. The regulations do have a profound impact on WBC as a stock transfer Association.
- 6.2. WHL will need to amend their constitution and governance documents to reflect the fact that WBC Elected Members may only constitute a maximum of 24% of the membership of their Board, and that WBC will no longer have voting rights as a shareholder.
- 6.3. It will be for WBC and WHL to negotiate whether it remains mandatory to have 2 WBC Elected Members on WHL Board, and how their nomination / selection and then appointment will come about. It will further be for the parties to agree whether WBC will remain a non-voting shareholder of WHL or simply have a contractual right to attend shareholder meetings, in addition to any other relevant matters that may arise during these discussions.

- 6.4. WBC will have to consider the method by which it nominates Elected Members for potential selection by WHL as Board Members and this will depend on the outcome of negotiations between the parties.
- 6.5. WBC will need to divest itself of its voting rights at shareholder meetings by 16th May 2018 and WHL will need to re-allocate these voting rights. WBC will also need to remove the delegation to the Head of Housing to cast the Council's vote, from 18th May 2018 and the Monitoring Officer will implement this under her delegated powers to make minor and consequential amendments to the Council's constitution. It should be noted that controls within the contractual agreement between WBC and WHL, which do not relate to the Council's membership as a shareholder or nomination of Elected Members to the Board, should remain intact. For example there is no reason why provisions relating to the Council's consent being required for the sale of a property should continue to be required.

7. Engagement

- 7.1. Despite the fact that conversion to a CBS will not have any impact on any rights that tenants and residents may have, WHL are considering undertaking formal consultation on the proposal to convert with their tenants.

8. Financial Implications

- 8.1. There are no direct financial implications arising from the change of the governance arrangements.
- 8.2. Under the terms of the loan made to WHL any change to the status of organisation will require the consent of the Council. This is expressly set out in the legal agreement with WHL as follows:

'Except with the prior consent of the Lender (which consent shall not be unreasonably withheld), the Borrower shall not:

enter into any demerger, merger or consolidation or convert from a company to a registered society pursuant to section 115(1) of the Co-operative and Community Benefit Societies Act 2014.'

9. Legal Implications

- 9.1. The deregulation has been brought about by the introduction on 15th November 2017 of the Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017.
- 9.2. Local Authorities (Functions and Responsibilities) (England) Regulations 2000 allows certain functions and responsibilities to be determined locally as 'local choice functions'.
- 9.3. Worthing Borough Council has determined in the Constitution (Part 3 Section 3) that the 'appointments to outside bodies in connection with the functions which are the responsibility of the Executive' is an Executive function with the decision maker being the Leader.

Background Papers

Housing and Planning Act 2016

Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017

Worthing Borough Council Constitution

Worthing Homes Ltd Constitution

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Sustainability & Risk Assessment

1. Economic

Considered, no issues arising

2. Social

2.1 Social Value

WHL continue to provide significant social value in our communities, regardless of these changes in governance required in law.

2.2 Equality Issues

Considered no issues arising

2.3 Community Safety Issues (Section 17)

Considered, no issues arising

2.4 Human Rights Issues

Considered no issues arising

3. Environmental

Considered no issues arising

4. Governance

This paper outlines the Statutory requirement for WBC to relinquish voting rights. The requirements continue to allow for WBC councillors to be board members of WHL and recommends that the Director for Communities, in consultation with the Leader, negotiate future arrangements between the parties as outlined in the body of the report.