



ADUR & WORTHING
COUNCILS

Joint Strategic Committee
10 September 2019
Agenda Item 13

Key Decision [~~Yes~~/No]

Ward(s) Affected: All Worthing

Worthing Homes Ltd: Corporate Structure and Governance Arrangements

Report by the Director for Digital & Resources

Executive Summary

1. Purpose

- 1.1. Worthing Homes Ltd is a local not-for-profit registered provider of social housing. It has been reviewing its corporate structure and governance arrangements and proposes converting from a company limited by shares and registered charity, to a community benefit society with charitable objectives, with commercial and charitable subsidiary arms.
- 1.2. Worthing Homes requires the consent of Worthing Borough Council to implement these proposals due to obligations contained within the original Stock Transfer Agreement and the more recent Loan Agreement between Worthing Borough Council and Worthing Homes Ltd.

2. Recommendations

The Joint Strategic Committee is recommended to resolve to provide the Council's consent to Worthing Homes Ltd to:

- 2.1. Convert from a registered charitable company to a community benefit society with charitable objectives;
- 2.2. Create a commercial subsidiary company, limited by shares, for the primary purpose of property sales;
- 2.3. Create a charitable subsidiary company, limited by guarantee, for the primary purpose of community development activity;
- 2.4. using overall borrowing for on-lending to their subsidiary.

3. Context

- 3.1. Worthing Homes is a company limited by shares, registered at Companies House and a registered charity, regulated by the Charities Commission. It is a not-for-profit local provider of social housing.
- 3.2. Worthing Homes, have undertaken a review of their corporate structure and have made proposals to their Board for change.
- 3.3. In March 2019 the Board of Worthing Homes Ltd received a report on their corporate structure project, and the proposal to convert to a community benefit society with charitable objectives and a group structure with a commercial and charitable subsidiary.
- 3.4. In March and May 2019 the Board approved (subject to lenders' consents):
 - the conversion of the registered company to a community benefit society,
 - the creation of a commercial subsidiary for the primary purpose of property sales, and
 - the creation of a charitable subsidiary for community development activities.
- 3.5. However, to implement the conversion to a community benefit society and the creation of subsidiaries, Worthing Homes require the consent of their lenders. The primary lender, Lloyds Bank, has given their

consents, and Worthing Homes are now seeking similar consents from Worthing Borough Council, in our capacity as a lender.

4. Issues for consideration

4.1. Conversion to a Community Benefit Society (CBS)

- 4.1.1. Worthing Homes are keen to convert from a registered charity to a CBS with charitable objectives, to take advantage of the greater efficiency afforded to CBS's in bringing entities together, in disposing of land assets without restraint of the provisions of the Charities Act 2011, and in being able to enter land transactions with a connected company, such as a subsidiary, without the need for Charity Commission consent.
- 4.1.2. As a CBS Worthing Homes would be regulated by the Financial Conduct Authority rather than the Charity Commission and Companies House.
- 4.1.3. The proposed conversion to a CBS requires the Council's consideration due to both the Agreement for Transfer of Housing Stock entered into between the Borough Council of Worthing and Worthing Homes Limited on 29th March 1999 and the Loan Agreement between the Council and Worthing Homes for £10million dated 21st March 2017.
- 4.1.4. The Transfer Agreement contains a provision that Worthing Homes Ltd will *"not knowingly do or omit to do any act or thing which might result in the cancellation or withdrawal of the Company's registration by The Housing Corporation and by the Charity Commissioners and to comply with all reasonable requirements of The Housing Corporation and the Charity Commissioners"*. The Loan Agreement includes obligations upon Worthing Homes to *"maintain its registration as a company limited by shares under the Companies Act 2006"* and further provides that *"except with the prior consent of the Lender the Borrower shall not convert from a company to a registered society..."*.
- 4.1.5. To fulfill its obligations under both the Stock Transfer Agreement and the Loan Agreement, Worthing Homes Ltd requires the consent of Worthing Borough Council to convert

from a registered charitable company to a charitable community benefit society.

4.2. Creation of a Commercial Subsidiary for the primary purpose of Property Sales

- 4.2.1. Worthing Homes Board have also accepted proposals (subject to lenders' consent) to create a commercial subsidiary company, limited by shares, for the primary purpose of property sales. Their aspiration is to build a proportion of market sale properties in their development programme, with the intention of making a surplus which can be used to subsidise the building of low rent homes.
- 4.2.2. Currently, operating as a charity, a market sale dominated development scheme or activity would be difficult for the charity to justify whereas a commercial subsidiary would allow these activities to be undertaken. Further, there would be a tax efficiency for Worthing Homes as profit from the subsidiary could be paid to the parent company by way of gift aid.
- 4.2.3. The loan agreement between Worthing Borough Council and Worthing Homes provides that "*except with the prior consent of the lender ... the borrower shall not ... form any subsidiary*".
- 4.2.4. Consequently the consent of the Council is required for Worthing Homes to create a commercial subsidiary company to develop property sales.

4.3. Creation of a Charitable Subsidiary for the primary purpose of Community Development Activities

- 4.3.1. As a CBS, Worthing Homes would be an exempt charity, not registered with the Charity Commission and not having a charity number. There is a risk this could impact on their ability to bid for charitable funding or grants in the future and they therefore propose to also create a charitable subsidiary for community development activities. The subsidiary would be a company limited by guarantee and would be registered with the Charity Commission.

4.3.2. In the same way that Worthing Homes require the consent of Worthing Borough Council to create a commercial subsidiary, they also require consent to create a charitable subsidiary.

4.4. **Corporate ‘On-Lending’ from the Community Benefit Society to the Subsidiaries**

4.4.1. Worthing Homes intend to on-lend their general borrowings to the subsidiary. This does not apply to the loan made by Worthing Borough Council to Worthing Homes Ltd; the monies arising from this loan have already been attributed to existing schemes, including West Durrington, Heene Road and Aquarena. However, borrowing from other lenders, may be passed on as lending from Worthing Homes to its commercial or charitable subsidiary.

4.4.2. A clause of the loan agreement between Worthing Borough Council and Worthing Homes provides that Worthing Homes *“shall not, without the prior written consent of the lender ... make any loan to any person ... other than loans to subsidiaries of the borrower”*.

4.4.3. Worthing Homes do not intend to on-lend, from their general borrowing, to anyone other than their own subsidiaries, and the monies from the Worthing Borough Council loan of £10 million have been allocated to schemes within the Borough. However, Worthing Homes don’t keep separate loans for separate schemes and pool their borrowing monies, so the WBC loan has become part of their overall borrowings. They have therefore taken the cautious approach of seeking the Council’s consent to using overall borrowings for on-lending to the subsidiary.

5. **Engagement and Communication**

5.1. The process involved in conversion required Worthing Homes to consult with their tenants. The consultation made clear that conversion will not affect their tenancy terms or rights and will not involve any change in service delivery. Consultation has been undertaken with 4000 local residents.

6. Financial Implications

6.1. There are no direct financial implications arising from these proposals.

7. Legal Implications

7.1. In November 2017 the Regulation of Social Housing (Influence of Local Authorities)(England) Regulations 2017 were brought into force. These regulations affected Board membership and Local Authority voting rights.

7.2. On 29th March 1999 Worthing Borough Council entered into a Stock Transfer Agreement with Worthing Homes Ltd transferring Local Authority Housing Stock to them.

7.3. On 21st March 2017 Worthing Borough Council entered into a loan agreement with Worthing Homes loaning them the sum of £10 million to be used for social housing provision within the Borough.

Background Papers

- JSC Report 10th April 2018: Worthing Borough Council's Relationship with Worthing Homes
- Transfer Agreement for the transfer of Housing Stock from Worthing Borough Council to Worthing Homes Ltd dated 29 March 1999.
- Loan Agreement between Worthing Borough Council and Worthing Homes dated 21 March 2017.

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Sustainability & Risk Assessment

1. Economic

Considered, no issues arising

2. Social

2.1 Social Value

Worthing Homes Ltd continues to provide significant social value in our communities, regardless of these changes in governance. There should be no impact on their tenants arising from the proposed changes.

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

The paper deals with corporate governance issues relating to Worthing Homes Ltd but should have no impact on the governance arrangements of the Council.