

Executive Shareholder and Trustee Committee Report

Ward(s) affected: All

Report of Director of Finance

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Annual Returns for Companies

Executive Summary

On 23 February 2016, the Executive resolved to establish two wholly owned companies; North Downs Housing Limited (the "Housing Company") and Guildford Borough Council Holdings Limited (the "Holding Company"). The Council is the sole shareholder of Guildford Borough Council Holdings Ltd and in turn Guildford Borough Council Holdings Ltd is the sole shareholder of North Downs Housing Ltd.

At its meeting on 26 September 2017, the Executive Shareholder and Trustee Committee (ESTC) held a shareholder Annual General Meeting (AGM) for both companies. At the meeting, the Committee:

- appointed the Directors of each company for a 4-year term
- agreed a delegations matrix setting out the role of the directors of each board and the role of the ESTC
- approved the updated North Downs Housing Business Plan 2016-2046

The accounts of each company have been prepared and approved by each Board within the required timescales. The accounts of Guildford Borough Council Holdings Ltd are disclosed at Appendix 1 and the accounts of North Downs Housing Ltd are disclosed at Appendix 2.

Recommendation to Committee:

That the annual accounts for each company be reviewed and noted.

Reasons for Recommendation:

To fulfil the Council's corporate governance duties in respect of its subsidiary companies

Is this report (or part of it) exempt from publication? No

1. Purpose of Report

- 1.1 This report presents several company documents and reports to ensure the Council, as sole shareholder of the holding company, is able to review

company business. This will assist the shareholder to exercise oversight of its subsidiaries.

2. Strategic Priorities

- 2.1 The establishment of the Housing Company in 2016 was part of introducing new ways of working at the Council. The objectives of the Housing Company are:
 - 2.1.1 To meet in such manner as the Company thinks fit identified housing need and increase the provision of new housing in the Guildford Borough and surrounding areas;
 - 2.1.2 To generate returns for the Council's general fund;
 - 2.1.3 To accelerate development of brownfield land in the Guildford Borough; and
 - 2.1.4 To carry on any other business or do such other things which may seem to the Company capable of being conveniently carried on in connection with any of the specified objects, or calculated to enhance the value of the Company's services, assets, property or rights.

3. Background

- 3.1 On 23 February 2016, the Executive resolved to establish two wholly owned companies; North Downs Housing Limited (the "Housing Company") and Guildford Borough Council Holdings Limited (the "Holding Company"). The Council is the sole shareholder of Guildford Borough Council Holdings Ltd and in turn Guildford Borough Council Holdings Ltd is the sole shareholder of North Downs Housing Ltd.
- 3.2 Under the Companies Act 2006, a director must exercise the care, skill and diligence, which would be exercised by a reasonably diligent person (the full test is set out in more detail within the Companies Act; there is both an objective test and a subjective test).
- 3.3 Elected members of Guildford Borough Council currently sit on the boards of both companies. The duty of any company director is to act in the best interests of the company for the benefit of its shareholders as a whole. An elected member on a board of directors therefore has a statutory duty to promote the success of the company and to exercise independent judgement in the same manner as any other director.
- 3.4 The Housing Company is a private company limited by shares. Part 4 of the Articles of Association for the Housing Company sets out the parameters for decision making by its shareholder. (See also articles 37 to 47 Companies Act 2006 for further background).
- 3.5 The Housing Company and the Holding Company are not public companies or private traded companies, therefore under the Companies Act; they are not required to hold an Annual General Meeting (AGM) however they can do so if they wish.

- 3.6 The companies have both appointed an external company secretary; Quorum Corporate Services Limited who have undertaken the relevant filing of information with Companies House on behalf of the Companies.

North Downs Housing Ltd

- 3.7 The accounts of North Downs housing Ltd are presented at Appendix 1.

Guildford Borough Council Holdings Ltd

- 3.8 The accounts of Guildford Borough Council Holdings Ltd are presented at Appendix 2. The company has no tradeable activities of its own and its main purpose is to be the holding company shareholder for North Downs Housing Ltd and any other wholly owned companies that the Council may choose to set up in due course. As such the income and expenditure account records a small loss relating to administrative and interest expenses. The company has recorded assets of £3million representing its equity shareholding of North Downs Housing Ltd.

4. Consultations

- 4.1 No consultations have been undertaken in relation to this report.

5. Key Risks

- 5.1 A recent report into arrangements for the companies recommended a number of actions to improve the governance of the companies.
- 5.2 The Council has determined, and the companies have agreed, to bring the Company Secretarial function in house in order to ensure greater oversight of company activities.

6. Financial Implications

- 6.1 The Council has an approved a budget of £25.3million split between £15.2million loan financing to North Downs Housing (60%) and £10.1million equity financing to Guildford Borough Council Holdings Ltd (40%) to enable North Downs Housing to implement the first four years of its 2016 to 2046 business plan.

7. Legal Implications

- 7.1 The Council, acting through the Executive Shareholder and Trustee Committee, has the power to operate and manage the abovementioned companies using the General Power of Competence under Section 1 of the Localism Act 2011. In exercising its powers over the company, the Council remains subject to its general duties, such as its fiduciary duty, and must exercise the power with a proper purpose.
- 7.2 S2 of the Localism Act 2011 confirms that the Council's exercise of powers over the companies is limited where it overlaps with a power which pre-dates it. Accordingly, the Council must comply with S95 of the Local Government Act 2003 and the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009.
- 7.3 This report is prepared in compliance with the above-mentioned legislation as well as The Companies Act 2006.

- 7.4 It is confirmed that the appointments detailed within this report comply with the requirements of the Articles of Association for Guildford Borough Council Holdings Ltd and North Downs Housing Ltd.

8. Human Resource Implications

- 8.1 There are no human resources implications as a result of this report.

9. Equality and Diversity Implications

- 9.1 There are no equality and diversity implications as a result of this report.

10. Climate Change/Sustainability Implications

- 10.1 There are no climate change / sustainability implications from this report.

11. Summary of Options

- 11.1 No options have been considered.

12. Conclusion

- 12.1 The Executive Shareholder and Trustee Committee is asked to note the accounts for the Council's subsidiary companies, Guildford Borough Council Holdings Ltd and North Downs Housing Ltd which have been presented as part of this report. The ESTC is also asked to approve the change in directorship for both companies.

13. Background Papers

None

14. Appendices

Appendix 1: Guildford Borough Council Holdings Ltd - Accounts for year ending 31 March 2020

Appendix 2: North Downs Housing Ltd - Accounts for year ending 31 March 2020