

Guildford Borough Council

Report to: Executive Shareholder and Trustee Committee
Date: 8 August 2024
Ward(s) affected: All
Report of Strategic Director of: Legal & Democratic Services
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Status: Open
Key decision: No

A Review of the Council's interests in Companies

1.0 Executive Summary

- 1.1 The Council has various existing interests in Companies, whether by way of sole or joint ownership. The Council exercises its shareholder function as an Executive function. The Leader has chosen to exercise the function via the Executive Shareholder and Trustee Committee.
- 1.2 This report sets out the Council's existing shareholder interests in Companies and work that needs to be undertaken to review the aims and objectives, management arrangements, financial and performance monitoring of each.
- 1.3 It should be noted that there is a separate report on the agenda for this meeting that considers the constitutional and governance arrangements relating to the Council's interests in Companies.

2.0 Recommendation to Executive Shareholder and Trustee Committee

That the Committee resolves to:

- 2.1 Note the Council's interests in 'Guildford Sportsground Management Company', 'Guildford Borough Council Holdings' and 'North Downs Housing Limited' and the dissolution of 75 Ash Street Management Company Limited;
- 2.2 Delegate authority to the Joint Chief Executive, in consultation with the Leader of the Council, to appoint an additional Director to the Board of Guildford Sportsground Management Company as soon as possible and to replace Ian Doyle and Kelvin Mills with alternative appointments on behalf of the Council;
- 2.3 Delegate authority to the Joint Chief Executive, in consultation with the Leader of the Council, to appoint an additional Director to the Board of Guildford Borough Council Holdings Limited as soon as possible and to replace Ian Doyle with an alternative appointment on behalf of the Council;
- 2.2 Note that the Joint Chief Executive will encourage the Directors of Guildford Borough Council Holdings Ltd to make 4 additional appointments of Director to the Board of North Downs Housing Ltd, with one being a Guildford Borough Council officer, as soon as possible;
- 2.3 To approve the draft work programme set out at paragraph 6.4 and delegate authority to the Monitoring Officer to deviate from the work programme where appropriate, in consultation with the Leader of the Council;
- 2.4 To receive a report in August 2024 from the Lead Officer for North Downs Housing Ltd recommending an options appraisal be undertaken to inform the future of the Company;
- 2.6 To receive a report in November 2024 from the Lead Officer for Guildford Sportsground Management Company reviewing the

objectives and arrangements for the Council's Interest in that Company;

2.7 To receive a report in November 2024 from the Lead Officer for Guildford Borough Council Holdings Ltd reviewing the objectives and arrangements for the future of Guildford Borough Council Holdings Ltd.

2.8 To receive a report in November 2024 from the Council's Statutory Officers starting the process of reviewing the governance arrangements and Council's interests in Charities and Trusts.

3.0 Reasons for Recommendations

3.1 To enable the Council to fulfil its duties in respect of the shareholder function competently, robustly and transparently.

3.2 To enable the Council to be able to fulfil its duties in respect of best value and continuous improvement in respect of its interests in companies, and to keep under review the objectives, strategies and plans, and performance of each of its companies.

4.0 Status of Report

4.1 This report is open as no parts fall within schedule 12A to the Local Government Act 1972 regarding exempt information.

5.0 Strategic Priorities

5.1 The Council's draft Corporate Strategy 2024 includes a strategic priority of having a well-run Council. The management of the shareholder function in respect of the Council's interests in Companies supports that priority.

6.0 Background

6.1 Guildford Borough Council's interests in Companies

6.1.1 75 Ash Street (Management Company Limited)

Guildford Borough Council has until recently had an interest, by virtue of being the sole owner of the separate legal entity known as 75 Ash Street (Management) Company Limited.

The entity was registered at Companies House with registration number 1066417.

The purpose of the Company was initially to act as a management company in respect of some properties purchased by North Downs Housing Limited. However the objective is now superfluous and consequently the Company was dissolved in July 2022 and members of the Executive Shareholder & Trustee Committee are asked to note the dissolution of the Company.

6.1.2 Guildford Sportsground Management Company

This is a separate legal entity being a Company limited by guarantee. It is owned 33.3% by Guildford Borough Council with the other two equal owners being Guildford Cricket Club and Surrey County Cricket Club. The entity is registered at Companies House with registration number 11914517.

In summary, the purpose of the Company is to be responsible for the management of Guildford Sportsground.

6.1.3 Guildford Borough Council Holdings

This separate legal entity, established in 2016, is wholly owned by Guildford Borough Council; the Council is the sole shareholder.

The intention was that this would act as a parent or holding Company for other Council interests, should further companies be necessary for specific development projects in the future, but in reality, the only interest it owns is North Downs Housing Limited.

The Company is registered at Companies House with registration number 10152910.

In September 2022 the ES&TC received a report concerning the future of GBCH Ltd. It was noted at the time that this holding company was superfluous as there were no additional companies

and no proposals for any. It was considered that GBCH was redundant and a poor use of Council resources and that it should be wound up to enable the shares in NDH Ltd (see para 6.1.4 below) to be transferred to the Council and for NDHL to report directly to GBC as its shareholder. The ES&TC resolved to delegate authority to officers to wind up GBCH Ltd.

Unfortunately it has not been possible to implement this decision of ES&TC, due to financial issues relating to NDH Ltd which were required to be resolved prior to the winding up being effected.

It is now proposed that a further report be received by the ES&TC from the Lead Officer for GBCH Ltd in November 2024 reviewing the purpose of the Company, its strategic direction, governance arrangements and future, before any further decisions are made or implemented.

The only formal consideration of GBCH Ltd by the ES&TC since the report of September 2022 was in respect of the appointment of Directors in February 2024. It is proposed that the Committee receive a more detailed report reviewing the Council's interest in the Company in November 2024 and thereafter at a minimum of bi-annual intervals.

6.1.4 North Downs Housing Limited

North Downs Housing Limited is a separate legal entity being a company limited by shares established in 2016 for the purpose of acquisition and management of housing. The sole shareholder of the Company is Guildford Borough Council Holdings Limited, a Company in itself owned wholly by Guildford Borough Council.

The Company was initially established to meet the identified housing need and increase the provision of new housing in Guildford Borough and surrounding areas; to generate returns for the Council's general fund; to accelerate development of brownfield land in the Borough and to carry on any other business to enhance the value of the services, assets, property or rights.

The Company is registered at Companies House with registration number 10153122.

The ES&TC appears to have last formally considered its interest in NDH Ltd in February 2022 when it considered a report proposing variations to the financial arrangements.

In 2022 ES&TC approved an increase of the Council's 25-year loan to NDHL to £15.18 million and approved the investment of £9.22 million in equity shares in GBCH to be drawn down alongside the loan to NDHL of which £7.79 million had already been invested. The Committee requested an updated Business Plan from NDHL but it doesn't appear that such a business plan has ever been formally considered by the Committee.

It is proposed that the ES&TC receive a separate report considering commissioning an options appraisal to inform the future of NDH Ltd at their August 2024 meeting. The ES&TC should also note the intention of the Strategic Director Finance to report to the Council regarding the loan made by the Council to the Company and the arrangements for repayment of the loan.

6.2 Directors of Council owned Companies

It is proposed that the Council arranges, at its own expense, some external independent training for Directors on each of the Companies where the Council has an interest and that refresher training is provided on an annual basis to Directors to ensure they are fully cognisant of their role, responsibility, fiduciary duty to the Company, accountability to the shareholder and legal obligations.

6.2.1 Guildford Sportsground Management Company

The Articles provide that Directors are to be appointed by the Members ie the 3 owners of the Company. Arrangements provide that there should be 7 Directors with 3 appointed by Guildford Borough Council, 2 appointed by Guildford Cricket Club and 2 appointed by Surrey County Cricket Club.

Currently there are two Directors who have been appointed to the Board by Guildford Borough Council;

- Ian Doyle, Joint Strategic Director for Governance & Transformation who was appointed for a term of 4 years on 27th May 2021; and
- Kelvin Mills, Joint Assistant Director Commercial Services, who was appointed for a term of 4 years (??) on 6 December 2022.

The Chief Executive intends to allocate the internal officer role of acting as the Council's client in respect of this Company to Kelvin Mills, which will result in the immediate resignation of Kelvin as a Board Director to avoid any conflict of interest between the two roles.

Ian Doyle is currently absent from work and it is considered that he may not be able to adequately fulfil his role as Director at the current time.

It is therefore the case that the Council should urgently appoint a third Director to the Company Board and as soon as practicable replace both Kelvin Mills and Ian Doyle with alternative Director appointments.

The Chief Executive is currently seeking suitably competent experienced and qualified individuals for the appointment of Director to this Company and the Executive Shareholder & Trustee Committee is asked to delegate authority to the Chief Executive in consultation with the Leader to make such appointments.

6.2.2 Guildford Borough Council Holdings Limited

The Articles of Association for Guildford Borough Council Holdings provide that there must be a minimum of 3 Directors with at least one being a Guildford Borough Councillor and one being a Guildford Borough Council Officer. Meetings of the Board of Directors require 3 Directors to be present to form a quorum and so it is recommended that good practice would be for the Board to have at least 4 Directors for resilience and to avoid operational difficulties.

The current Directors of Guildford Borough Council Holdings are:

- Jo Knight, current GBC Officer appointed on 1 March 2024 for a term of office of 4 years until 28 February 2028;

- Tom Hunt, current GBC Councillor appointed on 8 January 2024 for a term of office of 4 years until 7 January 2028; and
- Ian Doyle appointed on 4 January 2022 for a term of office of 4 years until 3 January 2026.

A previous delegation was made to an Officer to appoint a fourth Director but no suitable appointment has been made as yet. It is recommended that such an appointment is made as soon as practicable and that further, Ian Doyle be replaced on the Board of Directors, as soon as practicable, due to his likely inability to fully perform the role currently due to his absence from work.

6.2.3 North Downs Housing Limited

The Company is managed by a Board of Directors who report to Guildford Borough Council Holdings Limited as shareholder, who in turn report to Guildford Borough Council as their shareholder.

The Articles of Association (Article 20) provide that unless otherwise determined by the holding company, there must be more than 3 but no more than 8 Directors and provide that the Company must have at least 3 Directors present for any Board meeting to be quorate.

The Company's Articles provide that any Director appointed to the Board holds office for 4 years and is then eligible for a further period of re-election of up to 4 years, after which they are no longer eligible to be a Director.

The Company has currently 1 Director, due to 3 recent resignations from the Board:

- Cllr Angela Goodwin (GBC Councillor) was appointed on 18 May 2021 for a term expiring on 17 May 2025.

It is the recommendation of Officers that there should be 5 Directors on the Board of North Downs Housing Limited, to ensure that there is resilience of terms of Board meetings being able to operate on a quorate basis. Officers recommend that the 5 Directors should include one current GBC Councillor and one current GBC Officer and 3 external appointments.

The appointment of Directors to North Downs Housing Limited is a matter for the Company itself and the Council is not advisor to the Company. However, currently the Company is unable to hold a quorate Board meeting to make a decision to appoint additional Directors.

However, Guildford Borough Council Holdings Ltd, as the shareholder, retains the ability to appoint Directors to North Downs Housing Limited. (They also have the ability to determine that the Company can operate with less than 4 Directors, which would allow the remaining Director to act alone and make additional appointments). It is therefore proposed that the Executive Shareholder & Trustee Committee requires the Chief Executive to request that the Directors of Guildford Borough Council Holdings Ltd appoint 4 additional Directors to North Downs Housing and provided them with proposed nominations, being one Council Officer and 3 independent appointments.

It should be noted that if the Directors of Guildford Borough Council Holdings fail to do so, and the remaining North Downs Housing Director should resign, then Companies House will require the Guildford Borough Council Holding Directors to appoint Directors to North Downs Housing and they risk committing a criminal offence if they fail to do so.

6.3 Accounts

6.3.1 Guildford Sportsground Management Company

The 23/24 accounts for Guildford Sportsground Management Company are due to be filed at Companies House by 31 December 2024. Reports are to be taken to the Executive Shareholder & Trustee Committee on an annual basis to their December meeting to consider the final annual accounts prior to filing and submission.

6.3.2 Guildford Borough Council Holdings Ltd

The 22/23 accounts for Guildford Borough Council were due to be filed by 18 March 2024. Unfortunately for various reasons the filing was late but the final accounts were formally filed with Companies House on 7 June 2024 and the Company avoided receiving a financial penalty.

As in paragraph 6.4 below it is proposed that the Executive Shareholder & Trustee Committee receive a report on the draft final accounts of the Company in December each year, and further approve the final accounts at their quarterly meeting in March each year. The governance framework and work programme will ensure there is adequate oversight of the accounts process on an annual basis and mitigate against any risk of late filing of accounts in the future.

6.3.3 North Downs Housing Limited

The 22/23 accounts for North Downs Housing were also due to be filed at Companies House on 18 March 2024 but unfortunately for various reasons the Company was unable to comply with the deadline. Accounts were filed on 29 April 2024 and the Company avoided a financial penalty.

In future the Executive Shareholder & Trustee Committee will receive a report in March each year to provide oversight of the Company's accounts prior to filing.

6.4 **Shareholder Monitoring & Performance of Companies**

The shareholder function is exercised by the Executive Shareholder & Trustee Committee (ES&TC). Elsewhere on this agenda there is a report proposing changes to the membership of the ES&TC to include the whole Executive and changes to the meeting arrangements from at least one meeting per year, to at least quarterly meetings.

It is proposed that each Council Company reports, via the internal Client Officer, to the ES&TC at least bi-annually on the accounts, the Company business case, financial arrangements, and progress and performance.

It is proposed that meetings of the ES&TC are therefore convened on a quarterly basis in December, March, June and September of each year.

A draft annual work programme for routine matters within the remit of the Committee is as follows:

	Guildford Sportsground Management Company	Guildford Borough Council Holdings Limited	North Downs Housing Limited
March	Quarterly accounts Bi-annual Performance reporting as against Business Plan Annual Business plan for following year	Final annual accounts Bi-annual Performance reporting as against Business Plan Annual Business Plan for following year	Final annual accounts Bi-annual Performance reporting as against Business Plan Annual Business Plan for following year
June	Quarterly accounts		
September	Quarterly accounts Bi-annual Performance reporting as against Business Plan	Bi-annual Performance reporting as against Business Plan	Bi-annual Performance reporting as against Business Plan
December	Quarterly accounts Final annual accounts Charity draft final accounts for approval	Draft final accounts to be considered	Draft final accounts to be considered

6.5 Officer oversight of monitoring and performance of Companies

It is also important that the Council's leadership team has oversight of the performance of the Council's Companies in order to be able to fulfil their obligations, and to advise and support the shareholder role.

The Joint Chief Executive has appointed a Lead Officer for each Company from within the senior Leadership Team as per below. The role of that Officer will be to act in the best interests of the Council in accordance with their contractual employment obligations to the Council and they will owe no duty nor have any formal role to the Company. However, they will have a role in holding the Board of Directors of the Company to account, and in advising the shareholder, via the Executive Shareholder & Trustee Committee, on the performance, finances, business case and objectives of the Company.

It is proposed that the Council will provide annual training to all internal Lead Officers for Council owned Companies, and annual

refresher training so that each officer is cognisant of their role in monitoring the performance of the Company, responsibility to the shareholder, and how to deal with potential conflicts arising.

The Lead Officers for each Company will be as follows:

Company	Lead Officer	Current Postholder
Guildford Sportsground Management Company	Assistant Director Commercial Services	Kelvin Mills
Guildford Borough Council Holdings Ltd	Strategic Director Economy, Place & Planning	Ezra Wallace (from date to be confirmed)
North Downs Housing Ltd	Strategic Director Housing, Communities & Environment	Julian Higson

The shareholder will be advised by the Lead Officer for each Company and supported by the Monitoring Officer and Chief Financial Officer, and their deputies.

It is anticipated that the Corporate Leadership Team (CLB) will receive a report from each of the Companies on a regular basis, being at least bi-annually, via the Lead Officer. CLB will then in turn report to the Executive Shareholder & Trustee Committee.

The programme of reports to be taken to the Corporate Leadership Board: Companies, Charities & Trusts (CLB: CCT) is as follows:

	Guildford Sportsground Management Company	Guildford Borough Council Holdings Limited	North Downs Housing Limited
February	Quarterly accounts Bi-annual Performance reporting as against Business Plan Annual Business plan for following year	Final annual accounts Bi-annual Performance reporting as against Business Plan Annual Business Plan for following year	Final annual accounts Bi-annual Performance reporting as against Business Plan Annual Business Plan for following year
May	Quarterly accounts		
August	Quarterly accounts Bi-annual Performance reporting as against Business Plan	Bi-annual Performance reporting as against Business Plan	Bi-annual Performance reporting as against Business Plan

November	Quarterly accounts	Draft final accounts to be considered	Draft final accounts to be considered
	Final annual accounts		
	Charity draft final accounts for approval		

6.6 Governance Arrangements relating to the shareholder function

It should be noted that a previous paper on the agenda for this meeting recommends a review of governance arrangements for the Council's interests in Companies with proposed changes to the responsibility for functions relating to Companies, changes to the terms of reference for Committee exercising the shareholder function, the Committee responsible for audit and governance of the shareholder function, the Committee responsible for the scrutiny of the shareholder function, and full Council oversight of the executive shareholder function.

Such proposed changes will be recommended to the Council's Corporate Governance & Standards Committee, incorporating any feedback from the Executive Shareholder & Trustee Committee, with a recommendation that full Council makes appropriate changes to the Council's constitution.

7.0 Options

7.1 The Executive Shareholder & Trustee Committee could choose not to progress the appointment of Directors to Council owned Companies but there would likely be legal and governance implications so the recommendations in this report are strongly recommended.

7.2 The Executive Shareholder & Trustee Committee could choose not to receive further reports back on a review of each Council's Company and its purpose and governance arrangements, but to do so would provide insufficient oversight by the shareholder who would be at risk of not competently fulfilling their executive role.

7.3 The Executive Shareholder & Trustee Committee could choose not to receive regular and periodic reports going forwards on the

performance of each Company but this would lead to a risk that the shareholder has insufficient ability to monitor the performance of each Council company and the shareholder is unable to perform their duty to the Council.

8.0 Consultation

8.1 Consultation has taken place with the Leader of the Council, Cllr McShane and the relevant Portfolio Holder, Cllr Rehorst-Smith. Consultation also took place with the Executive as a whole via the Executive briefing meeting prior to the date of the Executive Shareholder and Trustee Committee meeting where this report will be formally considered.

8.2 Consultation has taken place with all members of the Corporate Leadership Board, and with the Council's Statutory Officers and their deputies.

9.0 Key Risks

9.1 Without more robust governance arrangements in place, both at officer and member level, there is a risk that there is insufficient oversight of the Council's interests in Companies.

9.2 Insufficient oversight leads to a risk that the Companies may not be delivering for the Council against their objectives, nor making sufficient progress. There is a risk of financial implications and that the Council cannot satisfy its legal duty as to best value. There is a risk that the Council may not be satisfying their legal responsibilities in respect of the shareholder function.

9.3 Without any mechanism for scrutiny of the shareholder function, there are risks arising from the lack of independent 'check and balance' in terms of the executive's role in this area, as currently there is an inability to be able to hold the executive to account.

10.0 Legal and Governance Implications

10.1 Section 3 Local Government Act 1999 provides that the Council must make arrangements to secure continuous improvement in the way in

which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This statutory duty applies to the Council's function and role when acting as a shareholder.

10.2 The Council, acting through the Executive Shareholder and Trustee Committee, has the power to operate and manage the Company using the general power of competence under s1 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.

10.3 Under the Companies Act 2006 a Director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person. An elected member on a board of Directors has a statutory duty to promote the success of the company and to exercise independent judgment in the same manner as any other director. Those appointed as directors should be aware of these duties.

10.4 When appointing directors, it is essential to consider that the duty of any company director is to act in the interests for the company for the benefit of its shareholders as a whole. The Council should only appoint directors with the necessary skills to act in the Company's interests.

11.0 Financial Implications

11.1 There are no direct financial implication arising from this report, but there likely will be arising from reports to be received over the next few months by the Executive Shareholder & Trustee Committee on each individual Company.

12.0 Human Resources Implications

12.1 There are no direct human resources implications arising from this report. Appointment as a director is done on a completely voluntary basis.

13.0 Equality and Diversity Implications

13.1 There are no direct equality and diversity implications arising from this report.

14.0 Climate Change and Sustainability Implications

14.1 There are no direct climate change and sustainability implications arising from this report.

15.0 Next Steps

15.1 The Chief Executive will progress with arrangements for senior officer oversight of the Council's companies.

15.2 The Monitoring Officer will receive feedback from members of the Executive Shareholder & Trustee Committee to incorporate into the revised Parts 3(1) and 3(2) of the Council's Constitution, before consulting with the Joint Constitution Review Group, and bringing forwards proposals to the GBC Corporate Governance & Standards Committee for a recommendation to Council to adopt the new parts into the Council's constitution.

15.3 The Chief Executive will appoint new Directors to Guildford Sportsground Management Company Ltd. In line with the recommendations of the report, and to Guildford Borough Council Holdings Ltd, and use best endeavours to effect the appointment of Directors to North Downs Housing Ltd.

15.4 Officers will bring further reports to the Executive Shareholder & Trustee Committee over the coming months with a more detailed review of each of the Companies that the Council has an interest in, reviewing their objectives, their Articles, their shareholder agreement, and their governance framework.

15.5 Officers will also bring forwards a further report to the Executive Shareholder & Trustee Committee over the coming months with a review of the Council's interests in Charities and Trusts.

16.0 Background Papers

16.1 Guildford Borough Council Constitution

17.0 Appendices

None

Report clearance progress:

Your report will not be published by democratic services unless the below is completed and there is evidence of the correct clearance process.

This box must not be deleted and will be published with the report

Finance	Richard Bates	30/7/24
Legal & Governance	Susan Sale	30/7/24
Human Resources	N/A	N/A
Equalities	N/A	N/A
Strategic Director	Susan Sale	30/7/24