

Guildford and Waverley Borough Councils

Report to: Corporate Governance & Standards Committee/Standards & General Purposes Committee

Date: 26 September 2024

Ward(s) affected: 'All'

Report of Strategic Director of: Legal & Democratic Services

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Status: Open

Review of Governance Arrangements relating to Companies

1. Executive Summary

- 1.1 Guildford Borough Council (GBC) has various existing interests in Companies, whether by way of sole or joint ownership. Waverley Borough Council (WBC) does not have any interests in companies, but has interests in six charities, two of which are charitable trusts.
- 1.2 The Councils, whether acting as shareholder or trustee, must have robust and resilient governance arrangements in place. Such arrangements must enable the Councils to have continuous oversight of financial interests, business cases and performance measures, to ensure continuous improvement and satisfaction of the Council's best value duty and to comply with all regulatory requirements of Companies House and the Charity Commission, as appropriate.
- 1.3 We have reviewed the existing governance arrangements for GBC, and have made recommendations for change to ensure that the

shareholder has greater oversight of the Council's interests in Companies, there is more frequent and transparent reporting, better officer support to the shareholder, and clearer lines of responsibility and accountability.

- 1.4 Similar work has commenced for WBC, and we intend to bring forward proposals to the Executive in due course.

2. Recommendations

That the Corporate Governance & Standards Committee recommends to full Council (8 October 2024):

- (1) the adoption into the Constitution of revised Parts 3(1) and 3(2), as set out in Appendices 2 and 4 to this report.
- (2) the inclusion within the terms of reference of any proposed Audit Committee of internal audits of the Council's companies.

That the Standards & General Purposes Committee notes that work is underway in respect of WBC and its charities, which will be reported initially to the Joint Constitutions Review Group in due course.

3. Reasons for Recommendations

- 3.1 It is considered that improvements can be made to the governance framework to ensure that GBC, as shareholder, has greater oversight of the Council's interests in companies.
- 3.2 Good practice would be for the Council's senior officers to monitor the performance of the Council's interests in companies, and to bring forward reports to the shareholder in a regular, timely and transparent way with appropriate recommendations.
- 3.3 Whilst the shareholder function is exercised by the Leader as an Executive function, there is currently no mechanism in place for scrutiny of such executive decisions and good practice would be for the Council's overview and scrutiny committees to provide effective scrutiny of the shareholder role.

4. Purpose of the Report

- 4.1 This report presents changes which will improve the governance arrangements for any existing Council companies and sets out clear arrangements for how they should be dealt with for the future.

5. Strategic Priorities

- 5.1 The Council's adopted Corporate Strategy 2024 includes a strategic priority of having a well-run Council and the more robust and resilient governance framework being proposed supports such a strategic objective.

6. Background

6.1 Responsibility for Functions relating to the Council's Interests in Companies

- 6.1.1 It is considered that improvements could be made to the robustness of the GBC governance arrangements surrounding oversight of its interests in Companies.

The Constitution, at Part 3(1), sets out the responsibility for functions at Guildford Borough Council, providing a framework for which functions are the responsibility of full Council, which are Executive functions and those which are a matter of choice for the Council. The Constitution does not currently provide clarity in respect of the Council's responsibility for Companies.

- 6.1.2 It is therefore proposed that amendments are made to this Part of the Constitution to provide for the following principles regarding the responsibility for Council owned Companies:

- The responsibility of representing the Council as a shareholder of each Council owned Company is an Executive function.
- The Leader of the Council has determined to operate the shareholder role for each Council owned Company through the Executive Shareholder and Trustee Committee (ESTC).
- Each Council owned company will have its objects set out in Articles of Association.

- Each Council owned Company will enter into a Shareholder Agreement with the Council clarifying which matters are the responsibility of the Company Directors and which are reserved to the shareholder.
- The Committee will meet with each Company's Directors, or representatives from the Board of Directors, at least bi-annually to monitor finance, performance and progress and determine any reserved matters.
- The activities of the Committee will be subject to consideration by the Overview & Scrutiny Committee (Resources).
- The responsibility for the appointment of Directors to the Board of a Council owned Company is set out in the Articles of the Company, and included in the shareholder agreement, but will usually be the responsibility of the ESTC.
- The Directors owe a fiduciary duty and have to act in the best interests of the Company but are also accountable to the shareholder.
- The Council and its Companies may contract with each other, subject to procurement matters, best value duty and a written legal agreement.
- Arrangements must be in place to avoid conflicts of interest.

6.1.3 These principles have been drafted into a revised Part 3(1) of the Constitution which can be found at Appendix 1 to this report as a tracked change version, and at Appendix 2 as a clean version.

6.1.4 The GBC Executive Shareholder and Trustee Committee has considered this report and agreed the recommendations.

6.2 Terms of Reference of the Council, the Executive Shareholder & Trustee Committee and the Overview and Scrutiny Committee (Resources) and Corporate Governance & Standards Committee

6.2.1 The Guildford Borough Council Constitution Part 3(2) sets out the terms of reference for each of the Council's bodies including the full Council, the Leader and their Executive, the Executive Shareholder and Trustee Committee, the Regulatory Committees, the Overview and Scrutiny Committees, and the Corporate Governance & Standards Committee.

Professional officers consider that further resilience can be provided to the governance framework relating to the Council's interests in Companies by strengthening and clarifying these constitutional provisions.

- 6.2.2 Currently the Constitution, whilst clear that the shareholder function is an executive matter, is silent on which body has the power to determine to create a company, where the Council is either a sole or joint owner. It is proposed that where there is any budgetary implication arising from creation of such a new body, or impact on current strategies, plans or policies, such a matter should be reserved for determination by full Council.
- 6.2.3 It is proposed that the terms of reference of the Leader/Executive are amended to provide clarity that the Executive will exercise their shareholder function through the Executive Shareholder and Trustee Committee, who shall collectively act as the shareholder to the Council's wholly or jointly owned Companies.
- 6.2.4 The Executive Shareholder & Trustee Committee is currently required to meet at least once a year, but it is proposed that this be amended to meeting quarterly, with each Council owned Company reporting to the Committee at least bi-annually. This will ensure that meetings are sufficiently regular to review all Companies and to receive performance reports and financial information in a timely way.
- 6.2.5 The current membership of the Executive Shareholder & Trustee Committee is 5 members of the Executive. This is considered insufficient to accommodate absences which may arise from conflicts of interest where members of the Executive are also Directors of Companies. It is proposed therefore that all members of the Executive are appointed, by the Leader, to the Executive Shareholder & Trustee Committee. This would leave no substitutes permitted as there would be no remaining Executive members who were non-Committee members and a quorum of three elected members is proposed. It is also advised that the Committee have the option to appoint two additional members to the Executive Shareholder and Trustee Committee who would be external members i.e. non-elected Councillors. They would be co-opted members, who were not entitled to vote, but could provide a critical

friend role to the Committee where that was considered appropriate and helpful by the Leader.

- 6.2.6 To reflect the fact that the Executive Shareholder & Trustee Committee exercises the shareholder function on behalf of the Council, the Committee should be required to report to the Council, once a year on the oversight of the exercise of the function.
- 6.2.7 There is currently no governance mechanism in place for scrutinising this executive function of acting as shareholder for the Council owned Companies. It is therefore proposed that the Overview and Scrutiny Committee (Resources) has within its terms of reference the ability to scrutinise the work of the Executive Shareholder and Trustee Committee and make recommendations to them. To facilitate effective scrutiny, it is advised that all members of the O&S Resources Committee are invited to attend and speak at the Executive Shareholder and Trustee Committee, and that the Committee is able to make recommendations.
- 6.2.8 There is currently no responsibility on the Council to carry out an audit function in respect of its Companies. It is recommended that the Corporate Governance & Standards Committee* agree the internal audit plan on an annual basis with each Company, and provision is made in the shareholder agreement, and that internal audit undertakes and reports to the Corporate Governance & Standards Committee* on audits relating to the Council's Companies.
- 6.2.9 Revised terms of reference of Council, Leader/Executive and Committees have been drafted to reflect the above proposed governance arrangements and can be found at Appendix 3 to this report as a tracked changes version and at Appendix 4 as a clean version for ease of reference. The Corporate Governance and Standards Committee is asked to approve the recommendation to full Council to adopt the revised Part 3(2) of the Constitution.
- 6.2.10 It should be noted that where the Corporate Governance & Standards Committee is referenced with an asterisk *, it indicates that this is the relevant Committee for the time being as it currently exercises the Council's audit function. However, if the recommendation is accepted by the Council to establish an Audit &

Risk Committee, then the function will transfer to the successor Committee and will be contained in its terms of reference.

6.3 Officer arrangements to ensure good governance of the Council's interests in Companies

- 6.3.1 The Chief Executive, Monitoring Officer and Chief Financial Officer have reviewed how best senior officers may support the Executive in exercising their shareholder function and other members in exercising their scrutiny function, relating to the Council's interests in Companies.
- 6.3.2 The Chief Executive has appointed a senior officer within the Joint Leadership Team (JLT), for each Company, to act as an internal officer responsible for managing the Council's relationship with that Company. The Officer will receive periodic information, including business cases, financial, performance and progress information from the relevant Company, and will bring forwards reports to the Corporate Leadership Board (CLB), appending that information. Such reports will come to CLB at least bi-annually for each Company.
- 6.3.3 Such reports, from the Council's senior 'client' officer will then be taken to the Executive Shareholder & Trustee Committee for consideration. The reports are likely to append the information from the Company's Directors, who will be expected to attend the Executive Shareholder and Trustee Committee to answer questions from councillors. The Executive Shareholder and Trustee Committee will receive their advice, as a Committee, from the senior client officer for the Company, supported by the Monitoring Officer or their deputy, and the Chief Financial Officer, or their deputy.
- 6.3.4 Should the Company require professional advice, by way of legal, financial or any other such advice, they will determine where they secure such advice from. Should they choose to contract with the Council for provision of services, the Council must ensure that any procurement and best value considerations are complied with. Any contractual arrangements must be encompassed in a legally binding document between the Council and the Company and best practice would also include the use of a service level agreement to govern the arrangement. Any provision of service by the Council would need to ensure that any costs were recovered to avoid any subsidy

control issues arising, and the Council would need to ensure that an ethical wall is in place between those officers providing a service to the Company and those acting for the Council and providing advice to the shareholder.

7. Options

- 7.1 The Council could choose not to make the changes to the governance framework, but that option is not recommended, as it leaves the shareholder exposed to the risk that they have insufficient oversight of the Council's interests in Companies to properly fulfil the role of the shareholder. Further, it would leave the Council will no scrutiny of the shareholder role which is contrary to best practice and guidance surrounding effective scrutiny arrangements for local authorities.

8. Consultation

- 8.1 Consultation has taken place with the Leader of the Council, Cllr McShane and the relevant Portfolio Holder, Cllr Rehorst-Smith, the Executive as a whole via an Executive briefing meeting prior to the Executive Shareholder and Trustee Committee considering this report. All agreed that the proposed changes to the governance arrangements were sensible.
- 8.2 Consultation has taken place with all members of the Corporate Leadership Board, and with the Council's Statutory Officers and their deputies.
- 8.3 Consultation has taken place with the Chair of the Resources Overview and Scrutiny Committee, Cllr Brooker.
- 8.4 This report has also been considered and endorsed by the Joint Constitutions Review Group at its meeting held on 17 September 2024.

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 Companies may not be delivering for the Council against their objectives, nor making sufficient progress. There is also a risk that the Council cannot satisfy its legal duty as to best value, and a risk that the Council may not be satisfying its 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. 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 Whilst this report goes some significant way to addressing existing poor governance arrangements relating to GBC Companies, it should be noted that this is the start of reviewing Company governance. It is the intention of the Council's statutory officers to carry out a further review of GBC companies against the Chartered Institute of Public Finance and Accountancy (CIPFA) guidance for local authority trading companies (LATCo's) and bring forward further recommendations in due course. We will also be looking to bring forward similar arrangements for WBC in due course.

11. Financial Implications

- 11.1 There are no direct financial implication arising from this report.

12. Human Resources Implications

- 12.1 There are no direct human resources implications arising from this report.

13. Equality and Diversity Implications

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

14. Climate Change and Sustainability Implications

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

15. Background Papers

Guildford Borough Council Constitution

16. Appendices

Appendix 1: Proposed revised Part 3(1) Constitution, Responsibility for Functions – tracked changed version

Appendix 2: Proposed revised Part 3(1) Constitution, Responsibility for Functions – clean version

Appendix 3: Proposed revised Part 3(2) Constitution, Terms of Reference of Council, Leader/Executive and Committees – tracked changed version

Appendix 4: Proposed revised Part 3(2) Constitution, Terms of Reference of Council, Leader/Executive and Committees – clean version