

# **Guildford Borough Council**

Report to: Executive Shareholder and Trustee  
Committee (the “Committee”)  
Date: 28 November 2024  
Ward(s) affected: All  
Report of Strategic Director of: Economy, Planning & Place  
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Status: Open  
Key decision: No

## **A Review of the objectives and arrangements for the future of Guildford Borough Council Holdings Ltd**

### **1.0 Executive Summary**

- 1.1 The Council has various existing interests in companies, whether by way of sole or joint ownership. This report relates to Guildford Borough Council Holdings Limited, a company registered at Companies House with registration number 10152910, and wholly owned by the Council (the “Company” or “GBCH”).
- 1.2 At the meeting of the Committee held on 8 August 2024, the Committee resolved, amongst other things, to receive a report in November 2024 from the Lead Officer for the Company reviewing the objectives and arrangements for the future of the Company. This report provides a summary of the current position of the Company and seeks authority to wind up the Company by way of a members’ voluntary liquidation under the Insolvency Act 1986 and certain other related and connected steps.

## **2.0 Recommendations to Executive Shareholder and Trustee Committee**

### **That the Committee resolves to:**

2.1 delegate authority to the Joint Strategic Director of Economy, Planning & Place, in consultation with the Monitoring Officer and Leader of the Council, to take all steps necessary to implement the members' voluntary liquidation of the Company under the Insolvency Act 1986 (the "Winding Up") including the appointment of a liquidator in connection with the Winding Up;

2.2 delegate authority to the Joint Strategic Director of Economy, Planning & Place to seek all further advice necessary in connection with the Winding Up including, without limitation:

- (i) advice from external legal services provider; and
- (ii) advice from external tax services provider.

2.3 delegate authority to the Monitoring Officer to amend the articles of association of GBCH to reduce the quorum requirement from three directors to two directors for any meeting of the board of directors of the Company.

## **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 fulfil its duties in respect of best value and continuous improvement in respect of its interests in GBCH and NDH, and to keep under review the objectives, strategies and plans, and performance of each company.

3.3 To fulfil the Council's corporate governance duties in respect of GBCH and NDH.

## **4.0 Status of Report**

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

## **5.0 Strategic Priorities**

The Council's Corporate Strategy 2024-2028 includes a strategic priority of having a resilient and well-managed Council. The management of the shareholder function and fulfilling the Council's corporate governance duties in respect of the Council's corporate interests supports that priority.

## **6.0 Background**

### *Establishment of Guildford Borough Council Holdings and North Downs Housing*

6.1 On 23 February 2016, the Executive resolved to establish North Downs Housing Limited ("NDH") and GBCH. The Council is the sole shareholder of GBCH and GBCH is the sole shareholder of NDH. The Company is currently financed solely through share equity and the Council currently holds 10120000 shares. The Board of Directors of the Company consists of Cllr Tom Hunt and Jo Knight and they meet on an as needed basis to deal with governance matters. The Company is the sole shareholder in NDH and holds 10120000 shares in NDH.

6.2 Since the establishment of GBCH, only NDH has been incorporated and there are no current proposals for any further subsidiaries of GBCH to be incorporated. The future of GBCH was considered in the context of the Council's objectives of: (i) generally simplifying the corporate structure beneath the Council in order to benefit from the long-term operational cost savings of removing GBCH from the structure, which appeared to be a largely redundant holding company; (ii) generally improving the governance structure; and (iii) improving transparency of the operations of NDHL as the active subsidiary.

### *Background to the decision to wind up Guildford Borough Council Holdings*

6.3 In September 2022 it was determined after appropriate consultation, having taken into account factors identified above, that GBCH should be wound up. External solicitors, Sharpe Pritchard, were

appointed to advise on and assist with implementing the winding-up process. A key component of a members' voluntary liquidation is a Statutory Declaration of Solvency by a majority of the directors of the company to the effect that, having made a full enquiry into the company's affairs, they are satisfied that the company will be able to pay its debts in full, together with any interest, within a specified period not exceeding 12 months from the commencement of the winding up. It was not considered at the time that such a declaration could be made and further work needed to be undertaken to review the position.

#### *Solvency issues relating to North Downs Housing*

6.4 Savills were subsequently appointed by the directors of NDH to assess the current and future financial position of NDH and to suggest proposals for the future operation of NDH. Savills produced a report and options appraisal in July 2023, in which they concluded that the only option that provides the potential for NDH to repay its debt to the Council in full, but also minimise the loss to the Council on its equity investment, is for NDH's housing portfolio to be sold to the Council, and for NDH to cease operations and be wound up.

6.5 Given the concerns about the status of NDH, and NDH's likely inability to make scheduled repayments of the loans due to the Council, it was concluded that the best course of action given NDH's solvency issues would be for NDH's housing portfolio to be sold to the Council and for NDH to be liquidated as a priority. It was therefore determined that the winding up of GBCH could not proceed at such time.

6.6 Following this further advice was sought from PwC in relation to the tax implications of any transfer of properties from NDH to the Council.

#### *Resolution of solvency issues at North Downs Housing*

6.7 It is understood that improvements in the market conditions mean that NDH are now able to meet the current financial commitments on an ongoing basis, including meeting scheduled repayments of its loans due to the Council. This is still under review and further work is being undertaken which is outlined separately.

6.8 Given the above, the previous intention to pursue a members' voluntary liquidation of GBCH is now being re-considered. To re-iterate,

the broad benefits of this would be: (i) generally simplifying the corporate structure beneath the Council in order to benefit from the long-term operational cost savings of removing GBCH from the structure; (ii) generally improving the governance structure; (iii) removing the accounting and filing operational burden currently placed on personnel and resource due to the existence of GBCH which is a redundant holding company; and (iv) improving transparency of the operations of NDHL as the active subsidiary.

#### *Information about the members' voluntary liquidation process*

6.9 A members' voluntary liquidation provides a legal process for all remaining assets of the relevant company to be distributed by the liquidator to the "members" (i.e. owners) of the company once creditor claims have been dealt with. By contrast, any assets remaining in the company at the time that it is struck-off (see below) become "bona vacantia" (without an owner) and transfer to the Crown.

6.10 The key stages of the members' voluntary liquidation of the Company are as follows:

- (i) a majority of the members of the Company make a statutory declaration of the Company's solvency;
- (ii) the directors of the Company hold a board meeting to resolve to place the Company into liquidation;
- (iii) the directors give notice to members of the general meeting and proposed resolutions to place the Company into liquidation and appoint a liquidator;
- (iv) the Company holds a general meeting to pass resolutions and commence the liquidation;
- (v) the Company is in liquidation at this point and the liquidator will be appointed; and
- (vi) after the appointment of the liquidator, certain filings and advertisements are required to be made with respect to the liquidation.

### *Transfer of shares in NDH*

6.11 In connection with the winding up of GBCH, it is proposed that the entire share capital in NDH would be transferred to the Council, so that NDH would become a direct subsidiary of the Council (the “Transfer”). Advice on the tax implications of the Transfer was sought from PwC.

6.12 In their advice referred to above, PwC expect that a transfer by GBCH of its shares in NDH to the Council should be tax neutral. By contrast, if NDH were dissolved while still owned by GBCH, the tax position is more complex and there would potentially be tax liability triggered in GBCH, particularly if the value of the shares in NDH had increased in value compared to share capital paid into NDH. Therefore, the broad advice has been that a transfer of shares in NDH to the Council, followed by a winding up of GBCH, would be the most tax efficient solution to simplify the corporate structure.

6.13 It is proposed that the shares in NDH be transferred to the Council and that the Winding Up be implemented as soon as reasonably practicable.

### *Governance arrangements within GBCH prior to the Winding Up*

6.13 The Council has also encountered consistent difficulties in ensuring that the board of GBCH is quorate and good governance arrangements are in place. As of the date of this report, in order for the board of GBCH to be quorate, there must be at least three directors, one of whom must be an Officer of the Council and one of whom must be a member of the Council. From a good governance perspective, a quorum requirement of three is considered the minimum. As of the date of this report, there are only two directors of GBCH; Jo Knight and Cllr Tom Hunt. At present, the board of GBCH is not quorate and therefore the only decisions that can be made are to issue a request to the Council for the appointment of additional director(s).

6.14 It is acknowledged that securing a sufficient number of directors to allow GBCH to always meet its quorum requirements whilst maintaining flexibility is particularly challenging when such roles are undertaken on a voluntary basis and that finding new directors would likely necessitate sourcing professional directors which would likely add significantly to the operational costs at GBCH.

6.15 It is proposed that the articles of association of GBCH be amended to reduce the quorum requirement from three directors to two directors for any meeting of the board of directors of GBCH. This will ensure flexibility and resilience and make it more likely that there will always be a sufficient number of directors available for the board of GBCH to be quorate and therefore meet its statutory duties.

## 7.0 Options

7.1 The Committee could choose not to progress the Transfer and the Winding Up but there would likely be the following implications:

(i) *financial:*

- a. continued operational costs at GBCH. These costs would likely increase if professional directors were required;
- b. as identified in this report, from a taxation perspective it would be more favourable for NDH to be owned directly by the Council rather than GBCH, if and when further disposals by NDH (or of share capital in NDH) are required to be made.

(ii) *legal and governance:*

- a. legal and governance issues may arise as a result of the failure of the Company to file accounts and make timely decisions, and contribute to a situation where the Council has insufficient oversight in its capacity as shareholder and thereby is at risk of not competently fulfilling the executive function; and
- b. an opportunity may be lost to simplify the corporate structure if action is not taken at this time, as the valuation of the property portfolio of NDH will fluctuate, impacting NDH's ability to meet its ongoing obligations.

7.2 Choosing to implement the Winding Up and the Transfer would likely have the following implications:

- (i) *financial*: there are short to medium-term costs associated with the Winding Up and the Transfer, which were estimated in September 2022 to be in the approximate region of:
  - a. For the Council: £6,000
  - b. Legal costs: £10,000
  - c. NDH: £15,500

However, it is noted that these costs will need to be revised using updated quotes from external service providers. It should also be noted that, since those costs were provided, an in-house company lawyer has been appointed and his work will help to reduce some of the external legal cost. There will also of course be a medium to long-term operational cost-saving achieved by removing GBCH from the corporate structure. The tax implications identified above must also be taken into account – being forced to liquidate NDH at a point in future might result in significant tax charges which could be avoided by simplifying the structure beforehand as proposed in this report.

- (ii) *legal and governance*: the key beneficial implications would be: (i) generally simplifying the corporate structure beneath the Council in order to benefit from the long-term operational cost savings of removing GBCH from the structure; (ii) generally improving the governance structure; (iii) removing the accounting and filing operational burden currently placed on personnel and resource due to the existence of GBCH which is a redundant holding company; and (iv) improving transparency of the operations of NDHL as the active subsidiary.

7.3 Choosing to amend the quorum requirement for GBCH from three directors to two and also appoint an additional director of GBCH would help to ensure flexibility and resilience and make it more likely that there will always be a sufficient number of directors available for the board of GBCH to be quorate and therefore meet its statutory duties

## 8.0 Consultation



8.1 Consultation also took place with the Executive as a whole via the Executive briefing meeting held on 20 November 2024, ahead of the Committee meeting where this report will be formally considered, currently expected to take place on 28 November 2024.

8.2 Consultation has taken place with all members of the Corporate Leadership Board (“CLB”), including on 15 November 2024 and with the Council’s Statutory Officers and their deputies.

## **9.0 Key Risks**

9.1 Without simplifying the corporate structure by removing GBCH, there is a significant risk of a taxation burden arising on any future disposal of NDH assets and/or shares in NDH itself.

9.2 Without simplifying the corporate structure by removing GBCH, there is a risk of insufficient oversight of the Council’s interests in NDH. Insufficient oversight leads to a risk that NDH may not be delivering for the Council against its objectives, nor making sufficient progress. There is a risk of financial implications and that the Council cannot satisfy its legal duty to best value. There is a risk that the Council may not be satisfying its legal responsibilities in respect of the shareholder function.

## **10.0 Legal and Governance Implications**

See above.

## **11.0 Financial Implications**

11.1 The financial implications are set out in the body of the report.

## **12.0 Human Resources Implications**

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**

Not applicable.

## **14.0 Climate Change and Sustainability Implications**

Not applicable.

## **15.0 Next Steps**

15.1 The company lawyer will reach out to PwC for revised quotes for assisting on the accounting and financial aspects of the Transfer and the Winding Up.

15.2 The company lawyer will work to source quotes from licensed insolvency practitioners to act as a potential liquidator of GBCH.

15.3 The company lawyer will prepare revised articles of association to amend board quorum requirement of GBCH from three directors to two directors.

15.4 The Committee will be kept up-to-date over the coming months on the progress with respect to the Transfer and the Winding Up.

## **16.0 Background Papers**

16.1 None for the purposes of this report.

## **17.0 Appendices**

None

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