

CABINET

DATE OF MEETING: 3rd FEBRUARY

TITLE OF REPORT: REPORT OF SCRUTINY PANEL ON THE OPERATION OF HART HOUSING PROPERTY MANAGEMENT COMPANY

Report of: SCRUTINY PANEL

Cabinet Portfolio: Deputy Leader and Finance & Corporate Services

Key Decision No

Confidentiality Non Exempt

1 PURPOSE OF REPORT

- 1.1 This is a report from the Housing Company Scrutiny Panel and provides an update of the performance of the company to update Cabinet and enable the financial projections to be included within the budget for 2022/2023

2 SCRUTINY RECOMMENDATION

That

1. The positive performance of the Housing Company against the initial business plan is noted (see 4.2)
2. The updated financial projections of the Housing company are agreed for inclusion within the budget for Hart District Council 2022/2023
3. That Cabinet consider whether it wishes to consider changing the Articles of Association or bear the small risks associated with these items (see 4.4)
4. That Cabinet consider reverting to the original plan for the Scrutiny Panel to be convened twice per year (see 4.9)

3 BACKGROUND

- 3.1 In June 2021, by resolution of the Cabinet, Hart District Council created a new limited company, dedicated and wholly owned by the Council as the sole shareholder.
- 3.2 Cabinet approved the draft initial business plan, which set out in some detail a framework for the operation of the business including.
- The objectives and mission of the company
 - The company structure and governance arrangements
 - Its operational approach, how it would be financed and manage risk
 - Details of the Articles of Association and Shareholder Agreement were also provided

- 3.3 As part of the governance structure, a company scrutiny panel was established, comprising three members appointed annually by the Overview and Scrutiny Committee.
- 3.4 This was considered by Overview and Scrutiny Committee in July 2021 when Councillors Davies, Farmer, Harward and Smith were all nominated.
- 3.5 In September 2021, Cabinet considered a paper regarding the Housing Company Scrutiny Panel and approved the nominated representatives to comprise the 2021/2022 Scrutiny Panel to meet once a year to oversee company activity, provide strategic guidance and advise the Council in its capacity as Shareholder.
- 3.6 This is the first such report of the Housing Company Scrutiny Panel, the terms of reference for which can be found in appendix 1

4 MAIN ISSUES

- 4.1 The Housing Company Scrutiny Panel met on Wednesday December 15th, all Scrutiny Panel Members were in attendance as were the three Directors of the Housing Company. Minutes of the meeting can be found in appendix 2.
- 4.2 The Housing Company Scrutiny Panel heard of a number of highlights in the six months of operation including:
- Completion of statutory requirements for a new company and creation of appropriate documentation for a new business
 - An effective handover of the Edenbrook Apartments
 - All apartments let within 4 months with
 - 56% occupied by key workers such as 7 within the emergency services, 5 within social care, 3 within the health profession, 6 within the education profession and 2 from local government
 - 73% of residents had a local connection
 - No tenant was in arrears, reflecting the effectiveness of the vetting process
 - 2 flats have given notice at the 6 months break point – the first flat was relet within a week; the second flat is yet to be relisted.
 - The financial health of the business in the first year of trading is better than forecast, with faster letting of the flats, lower voids and no bad debts.
- 4.3 Whilst there were notable successes, the Housing Company Scrutiny Panel also heard that there had been some unanticipated challenges, these included
- A higher level of snagging with the asset than would have reasonably been expected. No action was asked of the Shareholder as matters were now well in hand.
 - To note that the Housing Company may need to make formal requests for the use of the Shareholder's staff, for which payment would be made at full cost recovery
 - The Shareholder has been requested by tenants to 'step into' management or operational issues as there is not sufficient clarity or delineation between the organisations. To note that HHPMC may seek to create a 'trading name'

under which to operate providing greater clarity of roles and responsibilities as well as provide an identity which will clearly establish the Housing Company is 'open for business'. The Scrutiny Panel members fully endorsed this suggestion to separate the identities of Shareholder and management company.

- 4.4 In addition to the above, the Housing Company Scrutiny Panel were also advised of a couple of risks that the Shareholder should be made aware of.

The Shareholder could simply decide to bear the relatively small risk for both of these matters, but should consider whether that is the approach they wish to take;

- The Shareholder should be aware that whilst standard terminology, the Articles of Association intimated that the Shareholder could require the Housing Company (via their Directors) to take or stop any specific actions, in doing so, increasing the risk of legal liability to the Shareholder. The Shareholder was asked to decide whether to bear the risk or amend the Articles of Association.
- The potential risk to the company from decisions taken by the Shareholder to divulge commercially confidential information which could impact future commercial viability or commercial agreements. Again the Shareholder is asked whether to bear the risk of amend the Articles of Association.

- 4.5 With regards to finances, the business is now stable and receiving a monthly income recognising that the first year or trading will need to absorb one-off set-up costs, it is still expected to break even.

- 4.6 The financial projections have changed since the original Business Plan. Demand for affordable, quality homes is higher than anticipated and the expectations of voids/bad debts is lower. However the anticipation of costs due to environmental factors has increased – for example – accidental damage and grounds maintenance. Some assumptions within the business plan have been amended to reflect lived experience

	Initial Business Plan	Current Business Plan
Void Rate/Bad Debts	5% gross rental per annum	2% gross rental per annum
Management/Letting agency fees	12.5% of gross rental income per annum. Based upon benchmark information.	14.7% based on tendered cost

- 4.7 The Scrutiny Panel queried the revised level of the Management/Letting agency fees and were assured that the charges were the result of a competitive tender process. Tendered management/letting fees being 17.6% higher than the initially benchmarked expectation is a considerable difference, though lower void rates and bad debts has more than offset this cost.

- 4.8 The Housing Scrutiny Panel also explored with the Housing Company future business opportunities, in particular the opportunity
- to work with local developers, private landlords and managing agents to identify future acquisition options
 - to work alongside Housing Associations to see if they have surprise property or homes where the Council's ability to borrow over longer periods could make investment viable or
 - partnering with local housing associations in future developments.

- 4.9 The Scrutiny Panel felt that convening once per year was not frequent enough, particularly in these early years of the property management venture. Meeting only in November or December would be half way through another company year before the previous year's performance would be assessed.

The Panel would suggest being convened twice per year, as was originally planned and set in the scrutiny panel terms of reference, at least for the next 2 years. Once should be soon after the end of year date, but allowing time for the preparation of the annual accounts and another time for a mid-year trading update and the business plan review. July and December might be appropriate scheduling.

- 4.10 In summary the Housing Scrutiny Panel has established that in its short time, the Housing Company has built appropriate governance foundations and delivered financial results in excess of forecasts, delivering higher than anticipated value back to the Shareholder.

Looking to the future, the Housing Company will evolve in the next 12 months by

- by building a strong brand (with a new trading name and website) enhancing local presence and profile and ensuring future partners know they are 'open for business'
- ensuring the right policies and procedures are in place giving the company the ethical framework appropriate to a company wholly owned by the Council
- proactively looking at the market and opportunities, assessing their value and bringing that to the Shareholder for consideration

5 ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1 The recommendations are set out in section 2. No alternatives have been considered or rejected.

6 CORPORATE GOVERNANCE CONSIDERATIONS

Relevance to the Corporate Plan and/or The Hart Vision 2040

The Housing Company meets the Council's ambitions as set out in the Hart Corporate Plan 2017-2022 to be a Council that is both efficient and effective and maximise income opportunities and increase financial self-sustainability.

Service Plan

Is the proposal identified in the Service Plan?	Yes
Is the proposal being funded from current budgets?	Yes
Have staffing resources already been identified and set aside for this proposal?	Yes

Legal and Constitutional Issues

As set out in Section 3, the Housing Scrutiny Panel is a formally constituted element of the newly created Housing Company. The terms of reference for this panel is set out in appendix 1.

As part of this, the Scrutiny Panel is requested to review the Company's Business Plan and advise Cabinet of its views, this report provides this feedback.

Financial and Resource Implications

The financial performance of the Housing Company has been much better than initially anticipated in the business case.

As such, the Shareholder should account for £0.24 million as a net position, for budgetary purposes for 2022/2023

Risk Management

The Housing Company provided an extensive risk register considered by the Housing Scrutiny Panel.

In addition, the Housing Company has highlighted some areas of risk that the Council, as sole shareholder will need to consider (see section 4.4)

7 EQUALITIES

7.1 Under equality legislation, the Council has a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality in relation to:

- Race
- Disability
- Gender, including gender reassignment
- Age
- Sexual Orientation
- Pregnancy and maternity
- Religion or belief.

The recommendations set out in this report should not have any impact on any of the protected characteristics highlighted above.

8 CLIMATE CHANGE IMPLICATIONS

8.1 It should be noted that the Edenbrook apartments were built to include

- Electric car charging points which are available to the public
- Solar panels which are used for the lighting in the common parts of the buildings
- Other initiatives to encourage biodiversity such as the swift bird boxes built into the brickwork to encourage summer migration

There are no other direct carbon/environmental implications arising from the recommendation.

9 ACTION

- 9.1 Subject to agreement of Cabinet, the financial information provided in appendix 3 will be used within the Councils forecast budget for 2022/2023

APPENDICES

Appendix 1 – Terms of Reference

Appendix 2 – Minutes of the meeting held on 15 December 2021

Appendix 3 – Financial information

Appendix 1

HOUSING COMPANY SCRUTINY PANEL – DRAFT TERMS OF REFERENCE

1. Purpose of the Housing Property Management Company Scrutiny Panel

- i. The purpose of the Housing Property Management Company Scrutiny Panel (the Panel) is to provide strategic guidance to the directors of the Company, including informing the Company of priorities of the Shareholder (the Council) that are pertinent to the operation and future development of the company.
- ii. The Panel will review the Company's business plan at least annually and advise Cabinet of its views
- iii. The meetings of the Panel will provide an opportunity for the Company to bring to the Shareholder's attention emerging issues or perhaps opportunities for new business ventures.

2. Membership and meetings of the Company Scrutiny Panel

- i. The Panel is an integral part of the governance arrangements for the Company.
- ii. The Panel will comprise three members of Hart District Council's Overview and Scrutiny Committee.¹
- iii. Members of the Panel may invite officers of the Council to attend meetings to provide performance updates.
- iv. The Panel is not a constituted committee of Hart District Council. There is no requirement to meet in public or publish any notes or minutes.
- v. Members of the Panel will treat information shared by the Company as being commercially sensitive and therefore it will not be shared beyond the Panel without the permission of the Company's directors.
- vi. A Panel meeting will be held no less than twice a year². The Board of Directors will report to the Panel at each Panel meeting on the following items:
 - Financial performance in the previous quarter and year-to-date against the annual budget and latest business plan
 - Performance against agreed key performance indicators
 - Any matters previously agreed between the Company and the Shareholder
 - Other matters that arise from time-to-time.

¹ Noting that Cabinet agreed to the nomination of four members from Hart District Council's Overview and Scrutiny Committee to form the Housing Company panel at its meeting in September 2021

² Noting that there were inconsistencies between the draft initial business plan and the Articles of Association, Cabinet regularised and confirmed the position that the Scrutiny Panel should meet once a year at their meeting in September 2021

- vii. A meeting of the Panel will only be quorate if at least two Panel members are present.
- viii. Unless otherwise agreed by a majority of members, not less than five clear working days' notice shall be given to each of the members of the Panel and to the Directors of the Company, for a meeting to be held. An agenda will be issued in advance of any meeting indicating the matters to be discussed together with any relevant papers for discussion.
- ix. In addition, the Company will supply the members of the Panel with all information and data reasonably requested by the Panel to enable it to reach an informed judgment on any matter put before it.
- x. The Company will ensure that at least one director attend each meeting of the Panel who is qualified to address the issues included on the agenda.
- xi. The Panel will hold an advisory role to the Shareholder, that is full Cabinet, when it is making decisions on matters reserved for the Shareholder (or the Shareholder Representative if and when deemed appropriate by the Shareholder).
- xii. Chairing of each meeting of the Panel will be determined by the members of the Panel present at that meeting.
- xiii. If a Panel member works for, is commissioned by, or has any interest in the Company, the member shall declare this to the Panel immediately.

3. Review of these Terms of Reference

- i. The Terms of Reference will be reviewed by the Panel and the Company's representatives on an annual basis.
- ii. Amendments may be agreed by the Panel (in consultation with Overview and Scrutiny Committee) and the Company representatives, so long as no amendment contradicts the Shareholder Agreement.
- iii. Amendments to the Shareholder Agreement may be determined by the Shareholder, that is, through a meeting of Cabinet.

HH Property Management Company Meeting	Date:	15/12/2021	Report no:	HHPMC03
	Time (24hr):	19:00-20:00		
		OFFICIAL: SENSITIVE		

	Last Meeting:	Next Meeting:
Chair: Patricia Taylor	20/07/21	TBC
Loggist: Lee Rome	Teleconference	Teleconference

ATTENDEE LIST:

Name	Initials
1. Joanne Rayne	JR
2. Dermot Smith	DS
3. Katie Davies	KD
4. Spencer Farmer	SF
5. John Swinney	JS

Name	Initial
6. Robert Harward	RH
7. Patricia Taylor	PT

MINUTES FROM MEETING:

Overview:
<p>1. Introductions: JS introduced himself as the newly appointed Chairman of the company and related his experience relevant to the role.</p> <p>The other members introduced themselves. KD arrived during this item.</p> <p>2. Strategic Oversight: JS outlined that Hart was building a business model around the management of property rather than development. This was felt less risky than development models and should generate income returns quickly if the portfolio can be grown. A good, focused manager (Bridges) was on board and prospects were seen as positive.</p> <p>A key challenge identified was the independence of the organisation in marketing and communications from the shareholder. How to build a profile for the business which fits with the shareholders governance structures and allows the company to become an independent, well-known and respected brand in the area was also identified.</p> <p>3. 2022/23 Business Plan Overview of first six months of trading:</p>

APPENDIX 2

The Business Plan report was reviewed. The report confirmed back what was requested of the company by the shareholder, and the key priorities. It was noted that company directors had been appointed. JS was appointed on the decision of the shareholder and gives an independent view and brings specific expertise to the company.

A range of governance elements and documents had been established.

The Company had taken over the flats at Edenbrook. The Shareholder had been consulted on letting policy updates.

Ongoing snagging at Edenbrook was completed and was fully let within 4 months. (Fully let by September 2021, 80% by 31st July).

The 41 apartments are let at affordable rents. Key workers were a priority for shareholder or people with local connections and exact figures for these are shown in the report.

Lessons learnt:

The level of snagging at Edenbrook was higher than expected but managed well by Bridges. A recent meeting with Berkeley Homes was successful, there were items that had the potential for reputational risk, but the meeting resolved many of those (the company will be them meeting again in March). The company would be mindful of the risks around snagging in future projects.

The Articles of Association are written in a standard way. It was noted that they imply that the Shareholder could force the housing company to take action. This raises the risk that if the Shareholder forces the Company to take a decision, they in effect become a 'shadow director', so would become liable for that decision in law.

It was clarified that the Business Plan report supplied were company papers, not public papers, but are fully accessible to the Shareholder (along with other company information). The Shareholder can keep things in confidence and make decisions without the housing company knowing. In a case of FOI the Shareholder may put into the public domain commercial sensitive information of the company, a risk that should be noted.

The company would need to lean on the Shareholder for some staffing resources, so any workflow through HHPMC would need to be captured so that the company pays for those services appropriately.

The Shareholder had been asked to step into operational management issues on at least 2 occasions as the single shareholder. Due to a lack of clarity between the naming of the two organisations, the company may need to consider adopting a new trading name. A new website was suggested to detail organisational ambitions and plans.

It was asked how quickly the rebranding was needed and how much it would cost. Doing this with Companies House would be quick and easy, the speed would depend on how quickly the company board could agree it. A target of having it completed for the start of the next financial year was felt appropriate.

Financial Projections:

APPENDIX 2

Income projections for the first 12 months were higher than originally forecast due to the quick take up of tenancies, and initial over projection of bad debts or voids. Other details of the financial report were discussed, including recharges to the Shareholder for staffing costs and returns to the Shareholder. Future forecasts were reviewed.

Board members asked for clarification on various details to widen understanding, including:

- Agent fees and their role in managing the tenancy relationships.
- Complaints processes beyond the agent.
- Future finance costs.
- Profits and profit handling.

Future Plans:

The speed of creating new opportunities and keeping momentum would be a focus and these were highlighted in the report. This included working with Bridges, contacting local developers and working with local Housing Associations. Making the company the first point of call would be an important goal, and as quickly as possible. Branding and a new website were important in this, communicating the company was 'open for business'. Shareholder support, but suitably distanced, was identified as vital. The goal was to quickly develop a well-recognised local presence, with a clear profile, strong local relationships and a reputation for quality with social value.

Board members discussed:

- How Housing Associations would view the venture, and relationships with them.
- Potential housing stock targets and housing mix.
- Company resources and the relationship around this with the shareholder.

Q&A:

Board Members asked questions around the challenges in the first 6 months.

4. AOB

The business plan will be reported to Cabinet in due course.

The updated Business Plan will be brought back to the board in December next year as agreed by the shareholder. Changes to this schedule were discussed but would be for the shareholder to consider.

Meeting ended at 8.12pm

APPENDIX 3

2022/23 Hart Housing Property Management Company Ltd Projected Return to Shareholder

Finance Charge	£ 135 K
Recharges	£ 95 K
Dividend	<u>£ 5 K</u>
	<u>£ 235 K</u>