

Rother District Council

Report to:	Audit and Standards Committee
Date:	27 July 2022
Title:	Rother DC Housing Company Governance Monitoring
Report of:	Malcolm Johnston, Chief Executive / Joe Powell, Chief Operating Officer (Rother DC Housing Company Ltd)
Purpose of Report:	To provide an update on the present governance arrangements of Rother DC Housing Company and the arrangements for the local authority's governance of its wholly owned company.
Officer Recommendation(s):	It be RESOLVED: That the present governance arrangements of Rother DC Housing Company Ltd and the arrangements of the local authority's governance of its wholly owned company be noted.

Introduction

1. On 27 July 2020, Cabinet approved the Articles of Association and the Shareholders Agreement and appointed directors to enable the incorporation of Rother District Council's local housing company (Minute CB20/21 refers). Note that the company recently changed its name from Alliance Homes (Rother) Limited to Rother DC Housing Company Ltd (RDCHC).
2. The report will provide an update on the governance arrangements of RDCHC as well as the Council's arrangements for the governance of RDCHC. The update has been informed by a recent report, 'Local Authority Company Review Guidance (Local Partnerships LLP 2021)', a link to which can be found within the reference documents section of this report. It is recommended that all officers and Members of the Council with an interest in the governance of RDCHC review sections 1 to 4 of this guidance.
3. The purpose of RDCHC governance arrangements is to ensure that RDCHC has enough freedom to achieve its objectives; while the Council has enough control to ensure that its investment is protected, returns on investment can be secured and that RDCHC activity is in keeping with the strategic objectives of the Council. The strategic objectives of RDCHC can be found within its published Business Plan 2022-25 (Minute CB21/86 refers).
4. The Audit and Standards Committee (A&SC) consider the governance arrangements for the management and monitoring of the Council's significant partnerships, hence it is the appropriate body to receive updates on the governance of RDCHC. The Overview and Scrutiny Committee (OSC) is the responsible body for scrutinising Council performance and that of its wholly owned entities. Once resources allow, the company intends to provide one standalone report to both the OSC and A&SCs. This will enable each committee

to review their focus area of responsibility, whilst having sight of the wider aspects.

5. Appendix 1 provides an overview of the present RDCHC structure, the shareholder's governance arrangements for its company and the interface between the two entities.
6. At the time of writing, the Blackfriars development remains a Council-led corporate plan project that is governed and overseen by the Council's Corporate Project Board. RDCHC continues to regularly review the Blackfriars scheme with the shareholder representative in order to continue to support the delivery of the Blackfriars project on terms to which all agree.

Governance Overview

Company governance

7. RDCHC Articles of Association were produced with Trowers & Hamlins to provide a framework for the governance of RDCHC. RDCHC has also recruited the services of a company secretary from the Council's shared legal service with Wealden District Council to support RDCHC's compliance with its Articles of Association and the Companies Act 2006.
8. RDCHC has been undertaking a review of its governance arrangements, since the appointment of a new Chief Operating Officer (COO) in January 2022. RDCHC and the Council have thus recognised the need for a more detailed review and has recently appointed an external consultant to undertake a review and position appraisal. The consultant is the former development director of a large housing development organisation, as well as presently supporting several other local authority housing companies. The review will focus on governance arrangements, as well as RDCHC's business plan and the performance of the development at Blackfriars.
9. Appendix 2 includes an outline of the governance arrangements and staffing resources the shareholder and company could adopt. The structure is an initial proposal that has been informed by advice from a range of sources including commissioned law firms, other local authority-owned housing companies and the Local Partnership LLP guidance. The structure is subject to further refinement by RDCHC and the shareholder representative, following the present review being undertaken by RDCHC's external consultant.
10. RDCHC has developed an issues and risk log and associated action plan for addressing a range of outstanding tasks related to governance that must be tackled to fulfil the ambitions of RDCHC's board and shareholder representative. The review to date has provided assurance to RDCHC's board that the Articles of Association and Shareholder Agreement are broadly effective and fit for purpose; however, there are aspects relating to governance that require improvement, these are summarised below:
 - a. Skills and resources - the level of resourcing and requisite skills and expertise for RDCHC to operate effectively in the longer-term. The COO function requires a professional with the requisite time, experience, skills and expertise for overseeing the delivery of RDCHC's ambitious business plan objectives. In addition, RDCHC's board is limited to political Members

and may require executive Members of the Council as well as independent non-executive Members with a range of knowledge and expertise from the financial management and residential property development sectors. The Board and officers are in the process of identifying appropriate personnel as part of the wider review that is underway.

- b. Company business plan - The function of the business plan, and RDCHC's performance against it, should provide the Council with comfort that its financial, social and environmental objectives can be met. The performance of RDCHC is reviewed on a weekly basis, between relevant officers of RDCHC and the Council. One issue identified is that the business plan contains several competing objectives, inherited from the shareholder, all of which may not be achievable in equal measure, within a fluctuating and uncertain economic environment. RDCHC is working to improve the detail within the business plan to include scheme appraisals, supporting financial analysis and communications and marketing approaches.
- c. Service Level Agreement (SLA) – the SLA between the Council and the shareholder, which defines the scope of the roles being undertaken by Council officers on behalf of RDCHC, is still being finalised. Appendix 1 indicates the various roles and responsibilities of company officers to the extent that the risk of conflicts of interest emerging is minimised; however, there is a need to finalise these arrangements into a formal SLA. Trowers & Hamlin has been instructed to support with producing this document which will be forthcoming.
- d. Internal audit – RDCHC anticipates the need to commission routine audits of its governance and financial procedures as part of the review.

Council governance of its company

- 11. RDCHC is not a department of the Council and is a non-contracting entity, albeit one that is wholly owned by the Council. RDCHC and its shareholder must avoid the risk that RDCHC drift into the status of a Teckal company. Teckal companies are subject to complex regulation and are subject to the same procurement regulations as the Council. Therefore, a Teckal company would not possess the same independence and agility to operate as a non-contracting entity. RDCHC continues to consult with its legal contractor Trowers & Hamlin to properly ensure the company's non-contracting status is maintained.
- 12. RDCHC continues to review with the shareholder representative the Council's arrangements for governing its company. The Shareholder's Agreement sets out the terms upon which the Council will participate in RDCHC as its shareholder. As with the Articles of Association, this document has been produced in consultation with legal support and has broadly been assessed as fit for purpose at this stage, although amendments may be required following the review.
- 13. The shareholder representative is presently reviewing how to achieve the requisite resources and structure to ensure RDCHC has enough freedom to operate, while ensuring its investment is protected, returns on investment can be secured and that company activity is in keeping with the strategic objectives of the Council. As already indicated, an initial structure and resource outline is attached at Appendix 2.

Next steps

14. At the time of writing, RDCHC is embarking upon a review of its governance arrangements and business plan; it expects this to be completed by the late summer 2022. The scope of the review will also inform the Council as to how it might adequately structure and resource itself to oversee the governance of RDCHC and ensure that its investment and return on investment is protected and that the values and strategic objectives of the Council are maintained.

Conclusion

15. RDCHC is still a relatively new entity and is embarking upon a high risk and marginally viable project at Blackfriars while it also finalises implementing its governance and finance policies and procedures. The report details several improvements that need to be achieved within both RDCHC's internal governance arrangements and the governance structures of the Council so that the requisite controls on RDCHC can be achieved, while allowing RDCHC the freedom to operate as a commercial entity and deliver the Council's objectives.

Financial Implications

16. There will be costs associated with the detailed review, which will be reported to Members, upon its conclusion.

Legal Implications

17. External legal advice has been obtained by both the Council and RDCHC in terms of their respective roles and functions.

Human Resources Implications

18. The human resource implications are detailed within the main body of the report.

Risk Management

19. The Council has approved up to £80m of investment in RDCHC for it to achieve its business plan objectives. The level of investment in RDCHC and its present marginally viable development at Blackfriars is a risk for the Council and the scheme must remain viable if it is to be delivered successfully. The governance arrangements of RDCHC and Council need to be robust, open and transparent, as well as adequately and appropriately resourced, to ensure that the investment is protected, risks are minimised, and RDCHC's business plan objectives achieved.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	External Consultation	No
Environmental	No	Access to Information	No
Risk Management	Yes	Exempt from publication	Yes/No

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Appendices:	A Governance of Housing Company (present) B Housing Company Governance Framework
Relevant Previous Minutes:	CB20/21 CB21/86
Background Papers:	Local Partnerships Local-authority company review guidance v1.pdf (localpartnerships.org.uk)
Reference Documents:	None