

## Rother District Council

<b>Report to:</b>	Audit and Standards Committee
<b>Date:</b>	5 December 2022
<b>Title:</b>	Rother DC Housing Company Governance Monitoring
<b>Report of:</b>	Malcolm Johnston, Chief Executive / Joe Powell, Chief Operating Officer (Rother DC Housing Company Ltd)
<b>Purpose of Report:</b>	To provide a progress update on the governance arrangements of Rother DC Housing Company and the arrangements for the local authority's governance of its wholly owned company.

### Officer

<b>Recommendation(s):</b>	It be <b>RESOLVED</b> : That the proposal to refine the governance arrangements of Rother DC Housing Company Ltd and the arrangements of the local authority's governance of its wholly owned company be noted.
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## Introduction

1. The purpose of the Rother DC Housing Company (RDCHC) governance arrangements is to ensure that RDCHC has enough freedom to achieve its objectives; while the Shareholder (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).
2. It is relevant to note that the Shareholder's Agreement affords the Shareholder with the power to make appointments to the RDCHC Board. The budget for the resourcing of the company operations is approved within the Business Plan 2022-23; in addition, operating costs relating to specific projects (such as Blackfriars) are built into individual project budgets and independently managed by the RDCHC Board; although budget performance is presented to the Shareholder Representative to demonstrate consistency with its objectives. It is important to note, that the Shareholder Representative and the Chair of the RDCHC Board continue to meet to discuss governance arrangements regularly. In addition, the operational structures and resourcing required for the RDCHC to meet its objectives are reviewed and discussed between both parties and the recommendations of this report are a result of these discussions.
3. 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.

4. This report follows a more recent report to A&SC, on 27 July 2022 (Minute AS22/20 refers) that provided an update on the governance arrangements of RDCHC as well as the Council's arrangements for the governance of RDCHC. In the period since the July report, RDCHC has commissioned a review of its governance, resourcing and operating structures from Counties and Capital Consulting (C&CC).
5. On the 20 October 2022 the RDCHC received its report and recommendations from C&CC. The scope of the C&CC review focused primarily on measures the company could take to improve its governance arrangements and ensure it continues to achieve its objectives effectively. The report also indicated the type of governance arrangements it should expect from its Shareholder, such that RDCHC can continue to demonstrate openness and transparency to the Council as sole Shareholder. A summary of the C&CC report recommendations can be found at Appendix A.
6. This report is in two sections therefore. Section 1 will provide a summary of the recommendations that the Shareholder Representative has received from the RDCHC Board, covering both the company's governance of itself, as well as recommendations from the RDCHC Board on the Shareholder's governance of its company. In section 2 of this report, the Shareholder Representative has considered these recommendations when presenting his view of how the company should continue to be governed, resourced and structured alongside priority next steps. All views within the report have 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. Further, both entities have each consulted its own independent legal support and advice on an ad-hoc basis to inform their respective views.

## **Section 1: RDCHC Recommendations and Updates**

7. The RDCHC Board has recommended to the Shareholder Representative its view on how it should be governed so that it is independent of the Shareholder in its decision making and is not subject to any formal or informal control that would be inappropriate, within the governance parameters of the Shareholder's Agreement.
8. A summary of the recommendations from the Chair of RDCHC to the Shareholder Representative can be found at Appendix B.
9. In July 2022, the company presented to the Shareholder Representative's Audit and Standards Committee key issues and risk associated with its governance that must be tackled to fulfil the ambitions of RDCHC's board. What follows is an update on the Board's progress towards mitigating these risks and issues as well as a summary of the measures which it will take to improve these mitigations further, following the C&CC report.
  - a. Skills and resource:

- The Board continues to recognise the need to improve the skills and expertise within the company, both at Board and officer level. In August 2022, the Board took the decision to expand the scope of its commissioned partner C&CC to include greater support to its officers from C&CC on the Blackfriars project. The operational structure of the Blackfriars project has therefore been revised, from within the existing project budget. Aside from the benefits of greater expertise, the approach will create capacity for the existing Chief Operating Officer (COO) and Housing Development Manager (HDM) to revise and add value to the existing Business Plan 2022-24, ahead of its presentation to the Shareholder for approval in early 2023.
- The Board has a strong desire for a dedicated full-time COO with the requisite professional experience, skills and expertise for driving the company forward; however, the Board acknowledges it must first demonstrate the benefits of such a role against the cost of it, within future business plans.
- The Board is anxious to expedite the recruitment of independent non-executives with a range of knowledge and expertise from the financial management and residential property development sectors. The Board is presently developing a recruitment package to this end.
- Consideration should be given to a senior RDC officer on the Board of RDCHC, in line with the practice in some other local authority housing companies.

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 periodically, between relevant officers of RDCHC and the Shareholder. The Company is embarking upon a review of its business plan for shareholder approval early in 2023.
- The measures described above to revise the operational structure of Blackfriars will allow the COO and HDM time 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. Trowers & Hamblins has been instructed and a first draft of the document is under review by the shareholder and RDCHC.

d. Internal audit:

- RDCHC remains in consultation with the Shareholder's internal audit team, and its own independent legal advisors, to ensure that its own financial audit requirements are met, in addition to remaining compliant with the Shareholder's audit demands of it.

## Section 2: Shareholder Representative's View

10. RDCHC is not a department of the Shareholder and is a non-contracting entity, albeit one that is wholly owned by the Shareholder. 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.
11. Therefore, there is a balance to achieve in the governance arrangements between the Shareholder and RDCHC. The RDCHC Board must be able to demonstrate independence in its decision making and discharging its responsibilities under the Companies Act 2006. There is a residual risk that, without proper governance arrangements, the Board becomes subject to informal influence from Council officers; further, there is a risk to Council officers of their becoming 'shadow directors' of the RDCHC Board and personally liable for the RDCHC decisions.
12. The shareholder representative has considered the findings of the C&CC report, as well as the views of the RDCHC Board, alongside discussions with the RDCHC Chairman and a range of independent advice. A high-level diagram of the governance arrangements that will be put in place for the oversight of RDCHC by the Shareholder can be found at Figure 1.

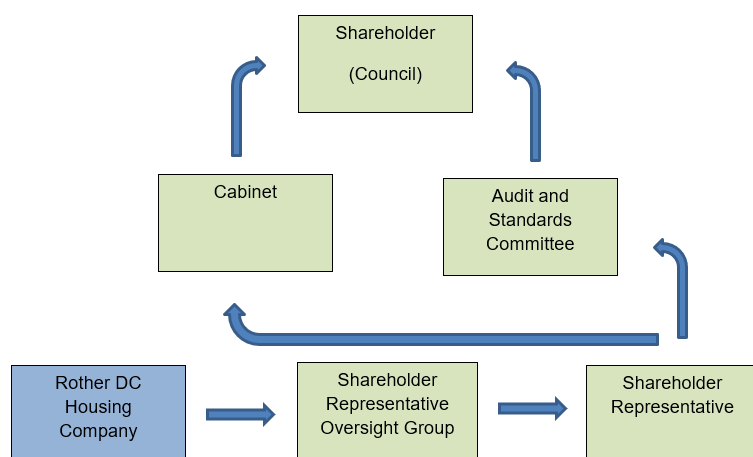


Fig. 1

13. There will continue to be an independent role for the Audit and Standards Committee in receiving periodic updates from the Shareholder Representative on the governance arrangements of the company and any significant changes to these. The Council will continue to receive annual requests from the RDCHC to approve its business plans and the Council's Overview and Scrutiny Committee remains able to request performance updates on the RDCHC as it sees fit.

### Shareholder Representative's Oversight Group (SROG)

14. The draft Terms of Reference of the (SROG) is attached at Appendix C. The aims of the group are:

- To represent the interests of the Shareholder Representative and ensure use of reserved powers, delegated from Council are exercised responsibly and reasonably in consultation with the Cabinet Portfolio Holder for Finance and Performance Management.
  - To oversee the company's activity and ensure that RDCHC has enough freedom to achieve its objectives as a non-contracting entity and ensure the Council has enough control to protect its investments in the RDCHC.
  - To facilitate the RDCHC in demonstrating openness and transparency to its Shareholder
  - To ensure that, when required, investment can be secured by RDCHC from the Shareholder against approved business plans.
  - To provide the Shareholder Representative with financial performance and risk information against RDCHC business plan objectives and approved business cases.
15. The SRG will comprise of the following RDC lead officers, deputies may attend as required:
- Director of Place and Climate Change
  - Senior Housing Manager
  - Chief Finance Officer
  - Corporate Programme and Projects Officer
16. The Shareholder Representative understands that the RDCHC will be completing several next steps with the aim of refining existing governance arrangements, to complement actions being taken by the Shareholder Representative. These are:
- The Shareholder Representative will consider whether or not Council officers will be appointed the RDCHC Board.
  - The SRG is already formed and will begin to meet with the RDCHC officers on a monthly basis. It is relevant to note that representatives of the lead SRG officers attend weekly coordination meetings between the RDCHC and Shareholder officers as we work together to deliver two complex contracts at Blackfriars.
  - The first draft of the SLA is being considered by both parties and the SRG will support with its completion.
  - The RDCHC is engaging with the Shareholder's internal audit team to support Shareholder audit requirements.
  - The RDCHC is finalising recruitment packs and will be advertising for non-executive directors shortly.
  - RDCHC is embarking upon a review of its business plan; it expects this to be completed by early 2023 for submission to the Shareholder for approval.

## **Conclusion**

17. 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 recommendations of the RDCHC, following its own internal governance review, have been considered by the Shareholder Representative and have informed the next steps highlighted in the report.

## Financial Implications

18. As detailed within the report, it is a priority for the Council as shareholder to ensure that it monitors the financial performance of the company and ensure its investments in RDCHC are protected and the risks of financial losses minimised.

## Legal Implications

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

## Human Resources Implications

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

## Risk Management

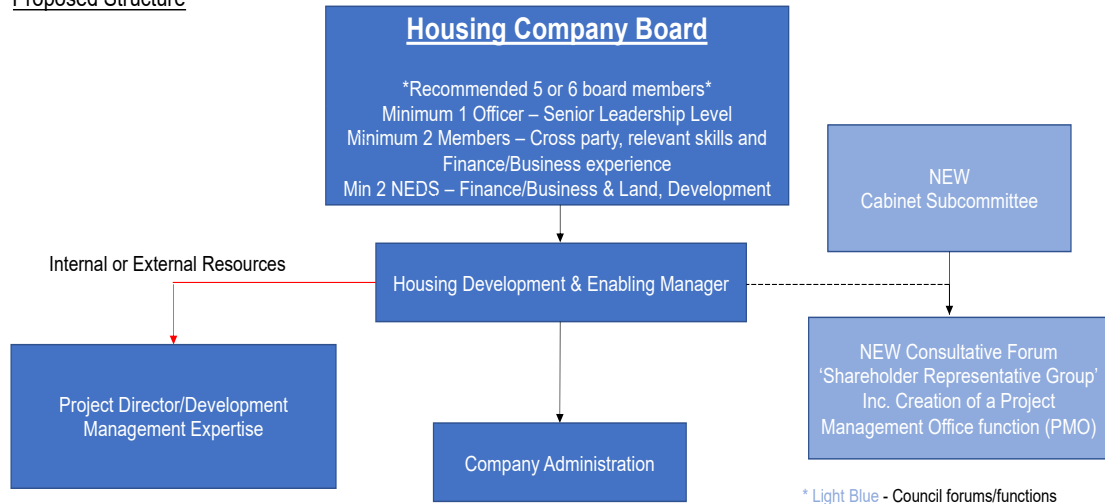
21. The Council has approved up to £80m of investment in RDCHC for it to achieve its business plan objectives. The level of investment in the Blackfriars project, inclusive of the site preparation, spine road and housebuilding phases, must remain viable overall if it is to be delivered successfully. 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	No

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Appendices:	A C&CC Recommendations B RDCHC Recommendations C SHRG Draft ToR (attached)
Relevant Previous Minutes:	CB20/21 CB21/86 AS22/20
Background Papers:	<a href="#">Local Partnerships Local-authority company review guidance v1.pdf (localpartnerships.org.uk)</a>
Reference Documents:	None



Proposed Structure



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**Rother DC Housing Company**

## Summary Governance Recommendations

Introduction

1. The Board of the Rother District Housing Company has prepared detailed responses about its governance, both internally and in its relation to the Council. What follows is a summary of our main conclusions.
2. The Board believes the Company will have a vital role in the construction of much-needed environmentally sound homes in Rother. The Board would like it to take on an enlarged role, developing potentially profitable sites throughout the District through Joint Ventures with both a substantial commercial partner, or partners, and with smaller, more local concerns throughout the AONB. This would enable the company to make a larger contribution to council funds, and release the company, in whole or in part, from reliance on council borrowing as its main funding mechanism.
3. The Board believes it is important to strike a balance between the relative autonomy of the company, giving it flexibility and responsiveness, and the oversight of the Council, providing unity between council and company aims and purposes, and ensuring strategic alignment and financial prudence.
4. The Board believes this approach is mirrored in the Local Partnerships recent report, Local-authority company review guidance, which is widely regarded as setting the 'gold standard' in this field.  
  
[Local Partnerships Local-authority company review guidance v1.pdf \(localpartnerships.org.uk\)](http://localpartnerships.org.uk)
5. The Board recognises that the Council has the right to make decisions in this area but wishes its views to be considered carefully.
6. The Board believes that the Company needs, as a priority, to recruit expert Non-Executive Directors, and has taken an initiative to achieve this. It believes that this is the best way to create confidence in the Company and raise its profile in Council deliberations. Legal advice from Trowers, the Company solicitors, agrees with this priority.
7. The Board believes that an equal priority is to develop a more detailed Business Plan including short, medium term and long-term strategic planning and financial forecasts. It envisages future iterations of such a document to be at the centre of annual reports to the Overview and Scrutiny Committee, and the Audit and Standards Committee.
8. The Board would welcome the setting up of a Shareholder's Committee but would see its central role as connected with the Business Plan, as above. It would welcome the involvement of the 151 Officer on that Committee as a guarantee of financial prudence as central to its deliberations.



9. The Board believes that it is necessary to retain the four Councillor appointees on the Board, both to provide continuity, and to ensure wide representation of all groups on the Council.
10. The Board believes that the structure outlined above will provide the assurance and oversight that the Council requires.
11. The Board rejects the idea of a Senior Council Officer on the Board. The Chief Executive has suggested that, following the appointment of non-Executive Directors, a new Skills Audit of the Board should take place, and the Council would then look to provide an Officer who could fill any gaps. It regards this as a constructive and positive contribution to the debate
12. The Board believes that the Company should, as now, have its own Chief Operating Officer. It is clear that the Council and the Company would benefit from a separation of this role from the Council in due course. It believes that the Chief Operating Officer should continue to report to the Board. This is regarded as best practice in company governance circles.
13. There are regular meetings now between the Chair of the Board, the Chief Operating Officer, the Housing Development Manager, and the Project Support Officer. These are invaluable and should continue.
14. Meetings have already taken place involving the Chair of the Board and the Chief Executive with involvement by other officers and a Senior Councillor. It is envisaged that such meetings will become a more regular occurrence, and these are also of great value.
15. There are also regular Board meetings, detailed discussions between Board members, and occasional meetings involving all Board members. These are ongoing. The contributions of all contribute substantially to the running of the company.
16. The above is an illustration of how form can follow function in company governance, and achieve the desired balance between company freedom and council oversight, justifying the setting up of the company as a delivery entity in the first place.
17. The Board records its appreciation of the excellent work of Joe Powell, Amy Fearn, and all officers and employees.

**Richard Thomas, Chair of the Board.**  
**25 November 2022**