

Cabinet

Excerpt of the Minutes of the meeting held on Wednesday 5 July 2023 in the Town Hall, Royal Leamington Spa at 6.00pm.

Present: Councillors Davison (Leader), Billiald, Chilvers, J Harrison, Hunt, Kennedy, King, Roberts, and Wightman.

Also Present: Councillors: Boad (Liberal Democrat Group Observer), Day (Conservative Group Observer), Falp (Whitnash Residents Association Group Observer), and Milton (Chair of Overview & Scrutiny Committee).

2. **Declarations of Interest**

There were no declarations of interest made in respect of the Part 1 items.

Part 1

(Items upon which a decision by Council was required)

5. **Updates to the Constitution**

The Cabinet considered a report from Governance which brought forward several changes to the Constitution of the Council for consideration.

The section 'Summary and Explanation' in the Constitution needed a general update following a number of changes made within the Council over several years that had not previously been reflected.

The following sections had also been changed.

Article 5 – Chairing the Council.

Following a review by the Council, the role of the Chairman was changed in 2021. This resulted in a revised remit for the Chairman as defined in Article 5 and that the Chairman should only attend three types of functions: Royal Visits, Warwick District Council events and services of remembrance.

On approval of this revised remit, Council asked for a report back in 12 months to consider the impact it had had on the role. The following successive Chairman and Chair were content with the remit and thought that the role was correct, although this was not formally reported back to the Council.

The Chair of the Council for 2021/22 was content with arrangements approved by Council because it removed pressures from attending a significant number and variety of events held within the District and allowed the role of Chair to be accomplished without significant impact on work/personal commitments. The previous Chair was of the view that broadening the scope of the role could have a negative effect and put individuals off Chairing the Council.

There had not been any significant adverse feedback to the Council on the current arrangements. That said, comments had been made that the

Council no longer attended events, such as the Warwick University Graduation Ceremony, or some Mayor making ceremonies, both inside and outside the District, where other civic heads were attending. Members should have been mindful that because other Councils were attending, it did not mean the Council had to attend, especially when it came to events outside the District.

The current Chairman had reflected on these thoughts and was of the view that more discretion should be given to allow them attend events where there was no cost to the Council.

Councillors needed to be mindful of the points raised and also the potential impact of attending a lot of events in one year, and the next Chair using discretion not to attend other similar events. Any inconsistency could lead to a greater impact on the reputation of the Council than not attending.

Officers were mindful that the wording needed to be carefully chosen so that the individual post holder was not choosing to pay to attend events. Equally, the justification for attending events outside Warwick District needed to be far greater than the personal choice of the Chairman i.e. there needed to be material benefit to the Council and its community. The proposal to amend the Constitution so that it moved from defining the Chairman to Chair was made to make the Constitution more gender neutral.

Provision was still made for the individual who chaired a meeting to define the terms they would like to be known as i.e. Chair, Chairman, Chairwoman, Chairperson. The Cabinet were made aware that the term Chairman was defined within legislation and case law but that the proposed change was not unreasonable and clearly identified the role in line with legislation if required. Further reflection on defining the terms used could be made during the review of the Constitution.

Based on these considerations, revised wording had been included within Article 5 of the Constitution.

The Cabinet were reminded that the review of the role of the Chairman resulted in the removal of the post of Attendant to the Chairman. This was based on the significant reduction in events attended. Revised risk assessments were introduced and regularly reviewed with the previous Chair for attending any event and these would continue to be monitored with the current Chairman.

Article 14 – Finance Contract and Legal Matters

The revisions to Article 14 were at the request of Legal Services, to ensure electronic signatures and sealing were explicitly mentioned within the Constitution. While currently this was implied, and most organisations accepted this, the Land Registry had said it would not accept the electronic signature or sealing of conveyancing (and related) documents from the Council without it being explicitly set out within the Constitution.

Section 4 - Scheme of Delegation

The proposed change to enable the Monitoring Officer to make minor

changes to the Constitution was suggested for when minor wording/grammar errors were identified to remove the need for Council approval. These could be errors or changes as a result of external decisions, for example, those in the summary and explanation specifically where the size of the Council had changed from 46 to 44.

The proposed new delegation to the Head of Place, Arts and Economy removed any ambiguity on the right to represent and defend planning appeals against decisions the Council had taken.

It was proposed to remove the reference to former employees within delegation DS(70). This was based on legal advice following a recent successful judicial review against a Warwick District Council decision, as a result of which a planning decision had to be quashed. Therefore, the legal advice was that it was very hard for planning officers to know who a former member of staff was, in that they might have been employed many years ago and might not declare this on the application. The reference to them being known former employees was vague and could lead to argument because some people might know they were a former employee and others might not.

The proposed amendment to DS(70a) was to enable officers to conclude negotiations on S106 and other necessary legal agreements when an application had been determined by the Planning Inspector or Minister. This was considered reasonable as it allowed matters to be concluded without the need for reporting to Committee in effect for rubber stamping. The change to delegation to A(2) was the inclusion of the Monitoring Officer specifically now the role was being split from the role of Deputy Chief Executive.

Christine Ledger Square

This temporary delegation was proposed to enable WDC to acquire leasehold interests by way of private treaty negotiations, enabling the agreement of valuations and compensation that would be payable to leaseholders that might exceed what would be payable in the event of a compulsory purchase. This was considered a practicable solution where the Council had agreed to demolish the building and now needed to complete the necessary agreements to enable this work to take place.

The agreements could involve making an offer to leaseholders to share an amount comparable to the value that the Council would pay in legal costs should it be required to acquire the leasehold interest compulsorily and would include an ex-gratia payment equal to the statutory home loss payment (currently 10% of the value of the interest being acquired subject to a minimum sum of £7,800 and a maximum sum of £78,000 – these sums were subject to change from time to time) that a leaseholder would receive on being displaced by the Courts.

Often the gap between the value of a property and the asking price of the leaseholder arose because individual owners found it difficult to use the capital receipt to fund a replacement property in the vicinity of the development.

Guidance published by the Secretary of State which set out the policy for

confirmation of compulsory purchase orders (CPO) required that an authority should demonstrate that it had made reasonable endeavours to acquire the land by agreement. A structured and documented programme of discussions and negotiations with leaseholders would need to be commenced before a CPO could be made.

It was understood that it was often the case that acquiring authorities might decide to pay in excess of market value to secure strategic acquisitions in advance of a CPO where this might save costs in the long term.

A leaseholder offer would be adopted that ensured consistency between different individuals as there could otherwise be a risk in settling on generous terms with one leaseholder as other leaseholders would expect similar treatment. The offer was designed to mitigate hardship arising from compulsory purchase and the following would be considered as standard in each set of negotiations:

- agreement to pay the market value of the dwelling plus an additional fixed percentage uplift;
- agreement to pay the home loss payment for those who would qualify under a CPO;
- agreement to pay a fixed amount of compensation for disturbance payments without the need for receipts, but with the ability for owners and occupiers to claim more if they could evidence the costs incurred;
- offer of equity loans for resident leaseholders to assist them relocate elsewhere to a suitable equivalent property;
- offer of a replacement home for every resident homeowner who wished to return when the area was redeveloped; and
- offer to pay loss of rent for non-resident landlord leaseholders provided that the landlord leaseholders complete on the sale within a period of six months from the start of negotiations, such payment due on completion of the sale.

Regularly reviewing of the Constitution and its operation was recognised good practice. It was considered that with new legal advisors to the Council having been in operation for a year, now was a good time to review the document overall. There would be lead officers for specific parts of the Constitution, for example, the Code of Corporate Governance was produced by the Audit & Risk Manager.

Councillor Davison proposed the report as laid out.

Recommended to Council that

- (1) the following amended parts of the Constitution, be approved:
 - (a) revised Summary of the Constitution and explanation, as set out at Appendix 1 to the report;
 - (b) updated Article 5, Chairing the Council, as set out at Appendix 2 to the report and the

Constitution be amended so that Chairman is replaced with Chair, but allows for individuals to identify the title associated with this role;

- (c) revisions to Article 14 (with regard to electronic signing and sealing) as set out at Appendix 3 to the report; and
 - (d) revisions to Part 4 Scheme of Delegation, as set out at Appendix 4 to the report;
- (2) authority be delegated to the Head of Housing in consultation with the s151 Officer, Legal Services, and the Portfolio Holders for Housing and Resources, to make financial settlements and necessary legal agreements to and with leaseholders of properties in Christine Ledger Square; and
- (3) the Monitoring Officer will be reviewing the Constitution in partnership with Legal Services and Heads of Service and further reports will be brought to Cabinet on this, be noted.

(The Portfolio Holders for this item were Councillors Davison, King and Wightman)

Forward Plan Reference 1,380

6. **Milverton Homes Limited Governance Audit**

The Cabinet considered a report from Housing. Milverton Homes Limited (MHL) was a company wholly owned by Warwick District Council, incorporated on 8 January 2021.

After a period of operation, an internal audit review was commissioned to provide assurance that the Council had appropriate governance arrangements in respect of MHL that protected the Council as an entity, as well as its officers and Councillors as individuals.

The report set out the findings of that audit and offered recommendations to increase assurance in this area.

MHL had well established governance arrangements in place to provide the Council with control in respect of the operation of the company and its financial arrangements. These arrangements were set out in the Articles of Association and Shareholders Agreement which Members could view through the Committee Management System.

As with all companies, MHL was required to provide audited accounts on an annual basis which were submitted to Companies House. An auditor/accountancy firm that was independent to the Council's auditor has been appointed by MHL. The auditors were asked to consider any

governance gaps when undertaking their work. They did not make any recommendations.

Monthly Board meetings were held for MHL with papers circulated to the Board in advance and meetings were minuted. Warwickshire Legal Services provided MHL with the Company Secretarial Role. Each month the Board considered standard agenda items which included Declarations of Interest, Finance update, horizon scanning, sites of interest and the Joint Venture (JV).

New Members might not have been aware that in August 2021, MHL entered into a Joint Venture (Crewe Lane Kenilworth JV LLP) arrangement with Vistry Linden Limited for the purchase of land at Crewe Lane, Kenilworth to facilitate the construction of 620 homes. The purchase was enabled by a £60m loan from this Council to the JV.

MHL had established a number of documents that were deemed by the Board to be a requirement for good organisational management. These included:

- Comprehensive Risk Register which was reviewed by the Board on a quarterly basis.
- Financial Regulations.
- Annual Business Plan.

Housing companies and Joint Venture arrangements were not unusual in the local government sector and if risks were properly managed through effective managerial and political oversight then these arrangements could be effective contributors to the Council's strategic objectives. Regrettably, there had been a number of high-profile incidences where Council companies' governance arrangements had broken down with dire consequences for the Council and local taxpayers. Therefore, twelve months following the establishment of the JV, the Deputy Chief Executive considered it prudent to commission a governance review of MHL and the way the company's actions were being monitored by the Council. The review was undertaken by the Council's Audit & Risk Manager.

The findings from the review and the latest position were detailed in the table in section 1.17 in the report.

The Council's Business Strategy 2020-2023 stated that the Council's vision was 'to make Warwick District a great place to live, work and visit, and carbon neutral by 2030'. Within the Fit For The Future strands was the outcome to ensure that 'Housing needs for all are met', and to 'Maximise income earning opportunities'.

MHL contributed to this vision as set out in the report presented to Cabinet on 10 December 2020. The report stated that 'establishing a LHC (*Local Housing Company*) would assist Warwick District Council to take a commercial approach to the delivery of new homes and offer a range of products to assist in the delivery of local housing needs. Furthermore, it could offer an alternative to traditional private rented options by offering a good quality product through a trusted organisation.

The LHC model had the aim of making significant contributions to the Council's income in the face of funding shortfalls, and by doing so, put services on a more sustainable footing to support local people as well as raising money to invest in our priority outcomes.

The Shareholder Agreement set out the following as Objectives of the Company:

- (a) To be profitable and generate short and long-term financial returns for WDC as shareholder.
- (b) To deliver much needed housing within the District and outside of the District, where appropriate.
- (c) To strive to develop homes that were carbon neutral.
- (d) To endeavour to provide excellent quality market rented homes provided by a trusted landlord.

MHL had formed a JV with Vistry to which the Council had provided a loan to finance the purchase of land and to develop housing. This was forecast to deliver loan profit to the Council of £9.1m and development profit to MHL of £6.5m. Loan profit was profiled to come into the Council in regular tranches and could be evidenced to be delivering in accordance with the profile.

Through the involvement with MHL, half of the residential properties being built at the JV site at Crewe Lane were zero-carbon to SAP standards. This was great news for the environment and good news for residents of these new homes.

On 25 July 2022, Council appointed the Deputy Chief Executive and Monitoring Officer to take the Shareholder Representative role, removing this from the Head of Finance.

The audit report had suggested the need for a Shareholder Representative Board thereby negating the need for a single Shareholder Representative. Indeed, the audit report advised against vesting experience in one senior officer. Nevertheless, there was a proven need for a person who could take the lead on progressing work on a day-to-day basis and it was proposed that this role be passed to the S151 Officer (Head of Finance) for financial matters and the Monitoring Officer for governance matters with both seeking ratification of decisions from the named Shareholder Board Councillors.

It was proposed that the Board had the following structure as set out in the Terms of Reference.

Councillors

Leader.

Deputy Leader.

Portfolio Holder for Housing.

Portfolio Holder for Resources.

Chairman of Audit & Standards.

Leaders of Lib Dem, Conservative and WRA Groups

Advising officers

Head of Finance.

Legal Services representative.
Monitoring Officer (who will act as Chair).

Officers to Attend

Council appointed Executive Directors of Milverton Homes Limited.
Principal Accountant (appointed to Milverton Homes).
Principal Accountant (Housing).

The Terms of Reference of the Board would be to review performance of MHL and the JV against agreed objectives and the SLA.

It would also receive the proposed business plan for comment at least two months before it was to be presented to Cabinet, along with an annual review of the governance arrangements completed by the Monitoring Officer.

The views of the Board would be presented to the Cabinet as part of the business plan and the governance review would be separately reported to the Audit & Standards Committee.

Meetings would take place on a quarterly basis.

The Terms of Reference would be reviewed annually by Cabinet alongside the Business Plan for MHL.

The proposed Terms of Reference were at Appendix 1 to the report.

Some performance targets were already contained within the Shareholder Agreement, and these were:

'6.1 The Company shall prepare a Business Plan in respect of each financial year that shall include an overview of the planned activity for that financial year and an explanation of how that planned activity furthered the Company's Objectives, which should be submitted to WDC no earlier than four months and no later than two months before the end of each financial year.

6.2 The Annual Budget for each financial year should form part of the Business Plan. The Annual Budget should be reviewed by the Board quarterly.

6.4 (a) the audited accounts of the Company and any subsidiaries for each financial year as soon as practicable and, at the latest, by four months after the end of that financial year.

6.4 (b) quarterly performance reports, cash flow statements and cash flow forecasts for the company'.

There were additional targets set for the company which were reviewable by the Shareholder Representative Board. These were planned to be delivered on a quarterly basis to the Shareholder Representative Board:

- Board Cover Report and comments on the Finance information and appendices for Shareholder.
- Performance Report - Profit & Loss - Income & Expenditure Statement.
- Balance Sheet.
- Cash Flow Statement.

- Cash Flow Forecast –MHL Business Plan updated to show a revised forecast year end position from the Board.
- Risk Register.
- New business proposals and updates.

Legal advice was that prior to any decision to dissolve the company, a full report was commissioned/prepared at that time looking at the financial and legal implications in the round, the risks and options. Only then could a fully informed decision be made on dissolution and the steps required. For example, it might reveal that there was a sweet point for dissolution at some defined point or that winding down before winding up might be appropriate. Much would depend on the circumstances at the time. Paragraphs 1.6.2 & 1.6.3 in the report then became matters that might form some of the steps considered.

Should any decision be made to dissolve the company, there was a clear option for the Council to liaise with the Board of MHL to determine the future of any property in the ownership of MHL. The options would be for the properties:

- To be purchased from MHL by the Council for use as affordable housing, a move that would likely attract investment funding from Homes England thereby reducing the costs directly falling to the Housing Revenue Account.
- Sold on the open market.
- Sold to current residents of that property.

Any monies that would be available following liquidation/dissolution would be payable to the shareholder by way of dividend. Alternatively, the Council could undertake an appraisal of each property to determine the most appropriate form of action. There were existing processes in place that could be deployed to support this activity. The Housing team, working collaboratively with the Finance team, would lead on the activity.

In terms of alternative options, the recommendations of Internal Audit could not be acted upon, however, this would not assist the Council to strengthen its governance arrangements and achieve enhanced levels of assurance.

The Overview & Scrutiny Committee recommended to Cabinet that officers should review the effectiveness on governance arrangements with the Monitoring Officer chairing Board meetings and also being the Shareholder Representative. It asked for the review to examine whether alternative options should be pursued.

An addendum circulated prior to the meeting advised of the following amendments to recommendations 3 and 4:

Amendment to Recommendation 3

"Approves the establishment of a Shareholder Representative Board and removes the role of Shareholder Representative from the Deputy Chief Executive to be replaced by the Council's ~~Monitoring Officer~~ *Head of Finance* with effect from 1st August 2023".

Amendment to Recommendation 4

"4 Approves the Terms of Reference for the Shareholder Representative Board at the Appendix 1, **and asks Council to annex it to the Constitution.**

The addendum also advised of the following amendment to the Terms of Reference at Appendix 1 to the report:

"The Board will be made up of the following:

Councillors

Leader (*who will act as Chair*)

Deputy Leader

Portfolio Holder for Housing

Portfolio Holder for Resources

Chairman of Audit & Standards

Leaders of ~~Lib Dem, Conservative and WRA~~ Groups *non-administration Groups*

Advising officers

Head of Finance

Legal Services representative

Monitoring Officer (~~who will act as Chair~~)

Officers to Attend

Council appointed Executive Directors of Milverton Homes Limited.

Principal Accountant (Appointed to Milverton Homes)

Principal Accountant (Housing)".

This needed Council approval (see 1.3.1 where Council appointed the Deputy Chief Executive and Monitoring Officer to take the Shareholder Representative role, removing this from the Head of Finance on 25 July 2022.

Councillor Wightman proposed the report as laid out, along with the recommendation from the Overview & Scrutiny Committee as revised by the addendum.

Recommended to Council that

- (1) the establishment of a Shareholder Representative Board, be approved, and the role of Shareholder Representative be removed from the Deputy Chief Executive to be replaced by the Council's Head of Finance with effect from 1 August 2023; and
- (2) the Terms of Reference for the Shareholder Representative Board at Appendix 5 to the minutes, be approved and appended to the Constitution.

Resolved that

- (1) the findings of the internal audit review commissioned by the Deputy Chief Executive

and the response to the findings at 1.1.7 in the report, be noted;

- (2) the statement of alignment to the Council's Business Strategy, be noted;
- (3) the performance targets set for MHL, be noted; and
- (4) the Council's Exit Strategy from MHL, be approved.

(The Portfolio Holder for this item was Councillor Wightman)
Forward Plan Reference 1,366

7. **Local Authority Housing Fund Award Round 2**

The Cabinet considered a report from Housing. The Department for Levelling Up, Housing and Communities (DLUHC) had advised that Warwick District Council was eligible for a grant award of £919,200 from a national award of £250 million to support the purchase of six properties to provide sustainable housing primarily for Afghan families seeking refuge in the area. The aim of the report was to seek approval for the purchases and the additional funding required to complete the purchases within the required timeframe.

The LAHF was launched on 14 December 2022. The details of the fund were shared with the Council in the document 'Local Authority Housing Fund – Prospectus and Guidance' ('the Prospectus'). It was a £500m capital grant fund to support local authorities in England to provide sustainable housing for those unable to secure their own accommodation i.e., Afghan and Ukrainian refugees. On 7 June, DLUHC wrote to WDC to announce round 2 of the scheme and to advise that WDC was eligible for a further grant.

The objectives of the scheme were:

- Provide sustainable housing to those on Afghan resettlement schemes at risk of homelessness so that they could build new lives in the UK, find employment and integrate into communities.
- Reduce local housing pressures beyond those on Afghan resettlement schemes by providing better quality temporary accommodation to those owned homelessness duties by local authorities.
- Reduce emergency, temporary and bridging accommodation costs.
- Reduce impact on the existing housing and homelessness systems and those waiting for social housing.

The DLUHC had awarded Warwick District Council a total of £919,200 which was consistent of two separate grant elements.

The first element was £799,200 to purchase:

- Five properties for households that met the eligibility criteria referred to as the 'the resettlement element.
- One property to be allocated to temporary accommodation.

The £799,200 grant represented 40% of the purchase price. There was also a grant allocation of £120,000 which was £20,000 per property to cover other expenses. These expenses could include the purchase price, stamp duty, surveying, legal and other fees, refurbishments, energy efficiency measures, decoration, furnishings, or otherwise preparing the property for rent and potentially irrecoverable VAT incurred on these items. The Council needed to ensure it complied with the CIPFA Code of Practice for Local Authority Accounting.

The DLUHC had applied a deadline that the properties had to be acquired by 29 March 2024.

The purchase could be new build, existing dwellings, those requiring refurbishment and any combination to meet the scheme requirements by the stated deadline.

The five resettlement properties were solely for Afghan households whereas the sixth property could be used to provide quality temporary accommodation to those owed a homelessness duty by local authorities. This presented problems for authorities in that Council homes must only have been allocated through its published Housing Allocations Policy. DLUHC proposed that Councils used Local Lettings policies or provided the properties through a Registered Provider or the Council's Local Housing Company. There were advantages and disadvantages of each of these methods and further work was required to establish the optimum means of allocating these properties.

In terms of alternative options, one was to refuse the allocation and not purchase additional properties to assist the Afghan and Ukrainian refugees.

However, the grant was being provided to assist with the purchase of properties and it would contribute to the number of social properties in the District.

Councillor Wightman proposed the report as laid out.

Recommended to Council that a total expenditure budget allocation of up to £2,046,780 be approved to purchase six dwellings in the Housing Revenue Account (HRA) and enter into applicable necessary legal agreements to purchase the dwellings. Of this total the HRA will fund £1,127,580 and DLUHC grant of £919,200 will provide 40% match funding for the purchase of six properties and to allow for potential sustainability/ environmental improvements to the properties.

Resolved that

- (1) authority be delegated to the Head of Housing to purchase the properties, entering into any necessary legal agreements;

- (2) authority be delegated to the Head of Housing in consultation with the Portfolio Holder for Housing to determine the optimum means of allocating these properties; and
- (3) authority be delegated to the Head of Finance in consultation with the Portfolio Holders for Resources and Housing and the Head of Housing to determine the means of financing the scheme.

(The Portfolio Holder for this item was Councillor Wightman)
Forward Plan Reference 1,366

(The meeting ended at 8:01pm)