
Report to: Cabinet

Date of Meeting: 14 February 2013

Subject: Nominations to One Vision Housing Board

Report of: Director of Corporate Services **Wards Affected:** All

Is this a Key Decision? No

Is it included in the Forward Plan? No

Exempt/Confidential No

Purpose/Summary

To consider the existing arrangements between the Council and One Vision Housing (OVH) to make nominations to OVH's Board.

Recommendation(s)

1. That it be noted that as a Board member of One Vision Housing that the Council has the benefit of a 33% shareholding
2. That the Council ceases to nominate members to the Board of One Vision Housing with immediate effect and subject to One Vision Housing confirming that the Board will exercise their discretion to allow the Council to retain its shareholding.
3. That the Head of Corporate Legal Services be instructed upon receipt of confirmation that the rules for One Vision Housing have been amended and that the Council to retain its shareholding that a Deed of Variation to the Council's Housing Stock Transfer Agreement be completed
4. That the implications of the shareholding be noted in the report below (paragraphs 1.9 refer).
5. That the Chief Executive be nominated to exercise the rights of the shareholding at shareholders meetings of OVH. Such an appointment to be confirmed to the Secretary of OVH.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity		✓	
3	Environmental Sustainability		✓	

4	Health and Well-Being		✓	
5	Children and Young People		✓	
6	Creating Safe Communities		✓	
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy		✓	

Reasons for the Recommendation:

- To recognise the evolution of One Vision Housing as a business.
- To ensure that One Vision’s governance structures are not adversely affected by certain clauses contained with the Stock Transfer Agreement concluded between the Council and One Vision Housing on 30 October 2006.

What will it cost and how will it be financed?

(A) Revenue Costs Nil

(B) Capital Costs Nil

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal - These are contained within the contents of the report	
Human Resources - None arising from the contents of the report	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery Nil

What consultations have taken place on the proposals and when?

The Head of Corporate Finance and ICT (FD2103) has been consulted and any comments have been incorporated into the report.

Are there any other options available for consideration?

The Council could continue to make nominations from time to time to the Board of One Vision Housing.

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet/Cabinet Member Meeting

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Background Papers:

Rules of One Vision Housing Limited – Register Number: 29938R (May 2011)

<http://sb1msgov1/ecSDDisplay.aspx?NAME=SD1397&ID=1397&RPID=6902877&sch=doc&cat=13197&path=13158%2c13197>

1. Introduction/Background

1.1 The Council transferred its housing stock to One Vision Housing (OVH) on 30 October 2006. OVH is registered with the Financial Services Authority as an Industrial and Provident Society (IPS) under the Industrial and Provident Societies Act 1965.

1.2 Contained within the transfer agreement is clause 5 in the Appendix to the Fifth Schedule which sets out the rights of the Council to nominate members to OVH's Board.

“5. Board Members and One Vision Membership

5.1 One Vision shall provide to the Council the opportunity to nominate three of One Vision's Board in accordance with One Vision's Rules from time to time subject to any changes to One Vision's constitution shall observe the following procedures

5.1.1 the Council shall appoint and remove its representative by serving written notice at any time on One Vision at its registered office

5.1.2 One Vision shall as soon as is reasonably practicable notify the Council in writing of any vacancies which arise among the Council's nominate representatives. “

1.3 The purpose of the Board at OVH is to lead, direct, control, scrutinise and evaluate the affairs of OVH in accordance with the objects (to act for community benefit) and the rules of the organisation. The Board currently exists of 10 members which are a mixture of independent people, Council nominations and tenants. The Council currently nominates Cllr John Kelly and Mr Darren Hardy. Since OVH is an IPS it has a registered written constitution or set of rules rather than a memorandum and articles of association.

1.4 OVH is diversifying and so is reviewing its own governance arrangements. These diversified arrangements no longer match the structure that was set up when stock transfer took place in 2006. To that end, the Council has received a request from the Chief Executive of OVH to forego its nominations to the Board. The rationale for OVH's request is set out below.

1.4.1 OVH attribute their success as a business in part to the continuity and quality of Council nominees. However, as the clause is currently drafted the Council can change the nominees at any time, with no notice period etc.

1.4.2 Notably the Council has for a number of years only nominated 2 members to the Board as opposed to the 3 available. The Stock Transfer agreement has not been varied to effect this change, although notably this change has been effected in the rules for OVH. The Council last nominated 3 members when OVH was still in 'shadow' form and has only nominated 2 members to the Board since May 2008. The Council, through its nominations, has supported OVH from a fledgling organisation to a successful multi-million pound organisation.

1.4.3 OVH is of the view that the chance of losing a key and longstanding Board member as a key business risk. They consider that the risk of such a change in their Board Membership under the current arrangements contributed to a possible partnership falling through last year that was worth an additional £0.5million to OVH.

1.4.4 OVH is concerned that this arrangement with Council nominations could jeopardise their future plans for expansion. OVH has recently moved to a group company structure which enables them to enter into partnerships with other housing associations and to trade their services such as HR, finance, maintenance etc more effectively.

1.4.5 OVH asks the Council to be mindful of the significant contribution they make to the local community, economy etc. Vital statistics include their investment of £4.6m in both neighbourhood and community projects across the Borough. They provide £800k on providing employment and income maximisation services for their tenants and £140K of their budget as a contribution to the Council's Supporting People programme. In addition other arrangements include shared posts between the Council and OVH.

1.5 In other words, the current arrangements allow the Council to significantly alter the Board Membership of OVH and there would be little that OVH could do to affect that change. Cessation of the Council nominations would therefore in summary:

- give confidence to OVH's lenders that key individuals can maintain their involvement.
- allow the organisation having proven itself to have more freedom from the Council than it did at transfer.
- enable the partnership to develop between the Council and OVH, not as prescribed within the Stock Transfer Agreement, but in a way which matches the OVH's and the tenants aspirations.
- ensure that investment in Sefton (through OVH) is maximised and not restricted or unduly constrained because of lack of confidence in the robustness of the governance structures

1.6 The Council will retain its status as a 'shareholding member' of One Vision Housing, subject to the Board's agreement (see paragraph 1.9 below). In essence this means that the Council owns shares in the society. The financial value of the shares is £1 thus protecting the Council in terms of liability. The degree of involvement of a shareholder can vary enormously depending on the wishes of the shareholder, the size of the society, the value of the shareholding etc.

1.7 To date the Council's shareholding responsibilities have been exercised through the Council's nominees to the Board.

1.8 Generally an Industrial and Provident Societies (IPS) is set up either to trade for the benefit of the community or to conduct business through member participation for mutual benefit. OVH is an IPS acting for community benefit. Features of IPS's include

- Liability of members is limited to the amount of any unpaid share capital
- They are regulated by the Financial Services Authority (FSA) which has a significant regulatory role. The FSA has to approve constitutional changes and this is the way that it monitors that registered IPS's continue to meet their objects, which in the case of OVH is acting for community benefit.
- Payment of a dividend is not permitted where the IPS is set up for community benefit.
- Should OVH be wound up the Council would only be entitled to the return of its capital which in this case is £1, there is no right to a share of the underlying assets.
- Voting is on the basis of one member one vote and is not proportionate to the size of the shareholding.
- A shareholder can vote to:
 - Elect and dismiss the board of directors
 - Appoint and Dismiss the auditors
 - Change the rules by special resolution
 - Approve the transfer of engagements, amalgamation or conversion of the society with another society etc.

1.9 IPS's which have been set up for stock transfer arrangements are governed by a national set of rules established by the National Housing Federation in 1998. This document replaces the usual requirement for memorandum and articles of association as required under company law. A summary of the key rights, issues and rules for the shareholding member in OVH are set out below:

- A shareholder is bound by the rules and must act in the interests of the association and for the benefit of the community. A shareholder is considered to be a guardian of the objects of the association i.e acting for the community benefit.
- The Council holds a 33% shareholding. The other shareholders are Tenants (33%) Independents (33%) and parent i.e. OVH (1%).
- The rules are currently drafted so as to terminate the Council's shareholding upon ceasing to be a Board member. However there is a Board discretion contained in the rules to allow the Council to retain its shareholding. It is proposed that the Board be requested to exercise this discretion in exchange for ceasing to nominate Council nominees to the Board. The Council will therefore remain as a Board Member until the rules have been changed and these have been registered with the Financial Services Authority.
- Clearly the Board could reverse this decision in the future. Any such decision would be subject to a vote by the shareholders of which the Council holds 1/3 of all issued shares.
- A shareholder can attend the annual general meeting and any special general meeting of the IPS. These meetings are subject to receipt of specific notification and this is why the Council needs to make clear to whom/which position in the Council those notifications need to be addressed

1.10 Should the Chief Executive not be able to attend one of the meetings as the Council's representative shareholder, then a proxy can be appointed so long as sufficient notice is possible (48 hours before the date of the meeting).