

Scrutiny Committee

7 February 2017

Housing Development Company – Barley Homes (Group) Ltd

Information in this report was produced on behalf of:	
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Introduction

1. In November 2015 the Council approved the establishment of a Housing Development Company, limited by shares, for the purpose of developing housing for sale, private and affordable rent.
2. Barley Homes (Group) Limited (referred to as Barley Homes) was incorporated in March 2016 as a company limited by shares, jointly owned by Forest Heath District Council (25%), St Edmundsbury Borough Council (25%) and Suffolk County Council (50%). For this report, Forest Heath District Council and St Edmundsbury Borough Council are known as West Suffolk Councils. The primary function of Barley Homes is to generate capital and revenue income for the councils through the development of new housing for sale and rent, on land owned by one of the councils.
3. In December 2016, the Council approved the initial five-year business plan of Barley Homes and approved a £6 million revolving investment facility, which is included in the Council's capital programme for 2017-18 to 2019-20 and financed from borrowing.
4. This report highlights the general principles of the operation of Barley Homes.

a) What are the governance arrangements for Barley Homes and how will these arrangements ensure transparency and accountability for local taxpayers?

5. The governance structure for the Company has three key components:
 - a) the three Councils, each being a shareholder – see paragraphs 6-7 below for more details of this role;

- b) the Shareholder Advisory Group – an elected member-only group supported by the councils’ Section 151 and Monitoring Officers, which exercises scrutiny of the Company’s reports and performance, provides strategic guidance and advises the councils when exercising their rights and responsibilities as shareholders – see paragraphs 8-10 for more details and Appendix 1 for the Terms of Reference of the Group.
- c) the Company’s Board of Directors – the body which manages the affairs of the Company on a day-to-day basis. The Board has four directors nominated by the individual shareholder councils. All nominees will be officers. In addition, there is provision for up to three additional independent directors – see paragraphs 11–13 for more details.

The Councils’ Shareholder Role

- 6. Forest Heath District Council’s full Council, St Edmundsbury Borough Council’s full Council and Suffolk County Council’s Cabinet will each hold a shareholder role.
- 7. Acting in their shareholder roles, these bodies will be charged with protecting the councils’ interests as owners of the Company. Most notably, each body will be required to consider and approve the Company’s Annual Business and Delivery Plan.

The Shareholder Advisory Group

- 8. To ensure shareholder oversight of the Company, it was considered appropriate to establish a smaller body of elected members to more regularly consider matters relating to the Company. A Shareholder Advisory Group has been established, consisting of elected members from the three councils. Such groups, albeit with slightly different names and roles, have been established by a number of authorities that have set up housing development companies, including Thurrock Council, where the first site is now in development. In addition, Suffolk County Council has developed a similar governance approach regarding their wholly-owned companies.
- 9. It was considered more appropriate that elected members sit on the Shareholder Advisory Group rather than the Board of Directors, to minimise members’ exposure to conflict of interest situations which can carry significant penalties under the law. Members of the Shareholder Advisory Group may feel the requirements of directors under the Companies Act 2006 conflict with their roles as elected members and representatives of their communities.
- 10. The Shareholder Advisory Group consists of elected members only, in the following proportions:
 - Forest Heath District Council – two members
 - St Edmundsbury Borough Council – two members
 - Suffolk County Council – four members.

The Board of Directors

- 11. The Directors have ultimate responsibility for directing and managing the activities of the Company, ensuring that it is well run and delivering the outcomes for which it has been established. Directors are required to act in line with the Memorandum and Articles of Association and the Shareholder Agreement, with their roles including:

- a) drawing up the Company's annual business plan for onward submission to the councils, acting as shareholders, to consider and approve;
 - b) setting budgets, policies and plans and monitoring performance of the Company, and setting a framework for internal controls;
 - c) ensuring compliance with the Company's objects, purposes, and values;
 - d) ensuring the financial strength, solvency, and good performance of the Company;
 - e) ensuring the Company complies with all relevant regulation and laws;
 - f) dealing with the appointment and appraisal of staff (should the Company directly employ any);
 - g) procuring services necessary for the execution of the Company's objectives.
12. The Company's Board of Directors consists of:
- a) one nomination by Forest Heath District Council. This nomination would be a senior officer of West Suffolk Councils.
 - b) one nomination by St Edmundsbury's Borough Council. This nomination would be a senior officer of West Suffolk Councils.
 - c) two nominations by Suffolk County Council. These nominations would be senior officers.
 - d) up to three additional directors unanimously approved by the three shareholder councils. These to be 'independent' individuals (not councillors or officers from the shareholding councils) selected for the relevant expertise and experience in relation to housing development.
13. The councils, as the shareholders, retain the right under the Company's Articles of Association to appoint and dismiss the Company's Directors.

b) What is the Company's corporate strategy?

14. The primary aim of Barley Homes is to act as a commercial entity and make a financial return from developing quality homes for private sale and/or private rent and subject to viability affordable housing both rented and intermediate, in line with existing planning policies. The company business plan sets out the detailed approach and has been developed in conjunction with our advisors Savills.

c) What analysis has taken place to inform business level strategy?

15. Since its establishment in March 2016, Barley Homes has focused on the development of its first business plan. The business plan is based on the delivery of initial sites over the first five years of activity.
16. Following an open quotation process, Barley Homes commissioned Savills to assist in the development of the initial five-year business plan. The business plan contains details of the initial developments, the amount and type of funding required to complete the developments and the expected returns generated for the councils.
17. In preparation of the business plan, a total of 43 development sites varying in size (under the ownership of the three councils) were identified and rated as to

their suitability and deliverability within the timeframe. Following assessment four “initial sites” were prioritised for delivery in the first five years. In addition to the initial sites, an outline programme of activity for a number of “secondary sites” has also been drawn up, with work also starting on identifying a portfolio of longer-term pipeline sites.

18. As the development of housing through Barley Homes is a new venture for the shareholding councils, and to limit the potential exposure to risk, the Shareholder Advisory Group agreed for the Company to concentrate on those sites that were readily available and the most straightforward to develop. The advice from Savills is that the proposed development programme is a realistic and deliverable one for a new company the size of Barley Homes to be able to deliver over the life of the five-year business plan. As knowledge and expertise is gained within the company from developing the initial sites, there would be scope to increase the scale and ambition of development.
19. The business plans were taken through each of the Council’s democratic process and approved by the West Suffolk’s full Councils and Suffolk’s Cabinet in December 2016.

d) How will the company ensure it has corporate capability in place to deliver this strategy?

20. Barley Homes Group, as a newly formed company, would find it difficult, at least in the immediate term, to access finance in the market place. For the company to operate flexibly in the commercial market, a revolving investment fund of £12 million (comprising equity share capital and loan facility) has been approved by the councils, in their shareholding ratio, on a commercial basis. Over time, as the company’s record of accomplishment becomes established, it is planned that it will secure alternative funding.
21. The Board consists of four senior council employees who offer a range of skills in their specialist areas covering property, communications, housing, and finance. The Board has been operating for nine months and has developed good solid working relationships.
22. External advisors have been engaged (legal and tax) as and when required to ensure compliance with legislation and to maximise opportunities.
23. As the business plan developed, the Board recognised the need for more capacity, advice, and experience in housing development and with this in mind, the Board interviewed potential candidates to fulfil this role. An appointment has now been made, on a part-time basis, for one or two days a week. The appointee has extensive experience in the affordable and private housing sectors and lives and works locally in West Suffolk, bringing knowledge of local contacts in the development and construction industry.
24. In addition, Barley Homes requires support to deliver the four initial sites, and develop potential future sites. Following an invitation to quote, short listing and interviews of three perspective companies, Savills have been appointed as our Development Manager. This is a key appointment as the Development Manger will be responsible for developing a delivery plan for our first four sites. The appointment means that the Board can continue to build on the relationship they have with Savills following the work they completed on the Business Plan. The Development Manager will act on behalf of Barley Homes and report to the

Board and will be responsible for the administration of the development programme and monitoring spend on the schemes.

25. It is envisaged that Barley Homes will not initially directly employ their own staff. Resources including external advisors will be brought in as and when required, this approach avoids unnecessary overheads and costs. All costs relating to the different specialisms has been included within the five-year business plan.

e) What information will be used to inform the choice of sites for development?

26. As part of the initial exercise a total of 43 sites across West Suffolk were considered and graded on a traffic light system, Red, Amber, Green (RAG) based on an assessment against the following criteria:
- a) Location – Sites in more rural locations and across district boundaries were omitted and locations in higher value areas with good proximity to transport links were brought forward.
 - b) Site development potential – Focus on medium sized sites which would yield a decent scale of development whilst remaining deliverable for a start-up company.
 - c) Planning – Sites already with a residential allocation or development brief for residential development were considered as being positive and weighed favourably reflecting reduced risk. The results were graded as follows:
 - i. Green – sites to take forward for further investigation/appraisal immediately
 - ii. Amber – sites with longer term potential
 - iii. Red – sites that were not considered suitable for development given other options and constraints.

f) In light of the planning authorities' financial interest in Barley Homes, what arrangements will be in place to avoid any potential conflict of interest in the determination of planning applications?

27. The matter of potential conflicts of interest regarding the consideration and approval of planning applications submitted by Barley Homes was raised by members of both Forest Heath and St Edmundsbury's Overview and Scrutiny Committees when they considered the Business Plan. They were reminded that all members sitting on the council's Development Control Committee are required when determining a planning application (and related matters) to only take into account relevant planning considerations, as set out in various legislation and Government guidance, all other considerations must be disregarded.
28. The planning authorities will, therefore, be required to treat Barley Homes the same as any other commercial developer when assessing whether a scheme meets the planning requirements.
29. As it is stated in paragraph 14, the primary objective of Barley Homes is to generate a financial return from the provision of developing homes for private sale and/or private rent. A necessary consequence of such activity undertaken by any private house-builder, and indeed a beneficial one from the councils' perspective as shareholders, is that affordable housing is also provided. Councils acting as planning authorities and promoters of the well-being of local

communities and the local economy require private companies to provide affordable homes in line with local needs and at a percentage as reflected in their planning policies. Barley Homes must adhere to local planning policies but this will not compromise the Company's commercial aims, as the provision of affordable housing on all schemes will be subject to the standard financial viability assessment.

30. The West Suffolk councils, in their strategic housing authority role, will liaise with Barley Homes over the required affordable housing tenure and mix on all sites in line with the agreed planning policies as when working with any housing developer.
31. The Directors, as officers of the councils, are also at risk of potential conflict. However, the duties and roles of Directors, as detailed in the Department for Business Innovation & Skills guidance, will be followed to avoid conflicts of interest.

g) What will be the arrangements in the event the company makes a loss?

32. Barley Homes is set up as a limited Company and therefore any loss made is borne by the Company. The risk to the councils is the loans made do not get repaid and/or the investment made does not generate a revenue return.
33. Barley Homes will minimise the risk of a loss by monitoring each development scheme with detailed project and financial management. Funding provided by the councils will only be drawn down at various stages of the development. The Shareholder Advisory Group will be responsible for scrutinising the Company's development appraisals. In addition, each year the County Council's Cabinet will receive an Annual Report detailing progress made and future development plans.

h) What can be learned from other councils which have gone down this route?

34. A recent survey by The Institute of Housing (December 2016) has shown that over 60% of all councils are actively looking at setting up their own housing development companies. Many are at the early stages of setting up, but 42 authorities have so far agreed development plans and now moving into the development phase.
35. Almost all local authorities are choosing to establish independent limited companies, as required by the Localism Act 2010 and therefore the councils are not doing anything out of the ordinary.
36. As part of the process of developing the business case for establishing the Company, extensive discussions took place with a number of other local authorities that had already established housing companies, including South Norfolk District Council (Big Sky Developments), Thurrock and Havering. A lot of advice was received on structures, funding, and the practical aspects of operating a housing development company.
37. The councils have also worked with the East of England Local Government Association on the establishment of an East of England Housing Company Network, which draws together all local authorities across the region to share best practice.

Extract from Terms of Reference of the Shareholder Group.

Scope and membership

The role of the Shareholder Advisory Group is to support the development and growth of BHG which will include regular monitoring, financial performance reporting and reviews of the business plan on a regular basis and challenging where necessary.

The Shareholders Advisory Group consists of 8 members drawn from each of the Councils, four from Suffolk County Council and two from Forest Heath District Council and two from St Edmundsbury Borough Council.

Political Group Leaders will make appointments to the Shareholder Group

The Shareholder Advisory Group is not a formal committee of the Councils as defined in the Local Government Act 1972.

The Shareholder Advisory Group is not included within the Constitution of the Councils

Any Councillor sitting as a director on another board would need to declare their position as an interest.

It is anticipated that BHG will report to the Shareholder Advisory Group on a quarterly basis.

Members of the Shareholder Advisory Group will represent the interests of the shareholding Councils at BHG's Annual General Meeting

Quorum

The quorum for the transaction of business at meetings of the Shareholder Advisory Group shall be four, comprising at least two members appointed by Suffolk County Council, and at least one member appointed by Forest Heath and at least one member appointed by St Edmundsbury.

All decisions of the Shareholder Advisory Group will require:

- the support of a majority of Shareholder Advisory Group members present at the meeting; including
- the support of not less than 50% of each Shareholder's nominated Shareholder Advisory Group members.

Where the Shareholder Advisory Group feels unable to make a decision then these decisions will be initially escalated to the respective Cabinet's for their consideration

The chairman of the Shareholder Advisory Group Meetings shall be selected from the members of the Shareholder Advisory Group.

The chairmanship shall rotate on an annual basis such that every other year the chairman shall be a member nominated by Suffolk County Council,

The vice-chairmanship shall rotate on an annual basis in a similar way to the chairmanship but when the chairmanship is held by a member nominated by Suffolk County Council the vice-chairmanship must be held by a member nominated by one of the district councils. The vice-chair will chair meetings if the chairman is not present. Neither the chairman nor the vice-chairman will have a casting vote.

Terms of Reference

Main Purpose

The Shareholder Advisory Group will ensure a consistent strategic view is taken across BHG via regular reviews of the business plan.

The Shareholder Advisory Group will scrutinise and monitor the delivery of the business plan on the shareholders behalf.

The Shareholder Advisory Group will review and monitor the performance of BHG on a regular basis.

The Shareholder Advisory Group will discuss with the Directors how the Company could further the priorities of the Shareholders, in accordance with the Company's primary commercial focus.

The Shareholder Advisory Group will seek to resolve any situations where a deadlock has occurred as set out in the Shareholders' Agreement.

Where Shareholder Advisory Group is unable to agree upon a decision (other than in the case of deadlock) then these will be escalated to the respective Cabinet/Council for their agreement.

Members of the Shareholder Advisory Group will be responsible for reporting back key issues on the direction and performance of BHG to their respective Councils.

Remit

BHG could be readily expanded to take in other companies should they be established.

Openness and transparency is to be achieved through regular reports from BHG to the Shareholder Advisory Group and the respective Section 151 Officers of the Councils.

BHG would be subject to the same legal safeguards as any other company.

Members of the Shareholders' Advisory Group will be able to call upon specialist support from officers from the respective Councils, such the Section 151 and Monitoring Officer.

Schedule and agenda items

Indicative topics and a timetable of meetings are listed below;

- Annual review of business plans;
- Annual financial review, half-yearly review;
- BHG Quarterly update on performance;
 - Financial
 - Strategic
 - Operational
 - Proposals for potential development sites
 - Progress on sites in development