

Report of The Managing Director

Wellingborough Homes Board Membership

1. Purpose of report

To consider the proposed changes to the board membership as outlined in the report.

2. Executive summary

The Housing and Planning Act 2016 set out changes to the way the council can be represented on the board of Wellingborough Homes (WH). It limited the control the council has via changes to the membership of the board and removal of the “golden share” the council had.

The changes were put before parliament in November 2017 and there was then a six month period in which voluntary changes could be made before the changes were imposed on the council. Officers and members of both Wellingborough Homes and the borough council have been in discussion on the way forward, and this report makes a recommendation based on these discussions.

3. Appendices

None

4. Proposed action:

Council is invited to RESOLVE to:

4.1 Agree to make with immediate effect the following changes to the members nominated to the Board of Wellingborough Homes as follows: Councillors G Lawman and T Lloyd be removed as nominated board members of Wellingborough Homes, and Councillors J Ekins and T Aslam remain as board members for the remainder of the current municipal year.

4.2 Note the revised board membership has been agreed by Wellingborough Homes to remain in place from May 2018 until their next Annual General Meeting in September 2018.

5. Background

- 5.1 As part of the stock transfer agreement with Wellingborough Homes (our Large Scale Voluntary Transfer (LSVT) housing association) it was agreed that the council shareholder had “the right to nominate no more than four board members by notice in writing to the association, which shall be effective immediately on receipt by the secretary”. Currently the board members are Councillors G Lawman, J Ekins, T Lloyd and T Aslam, as nominated at Annual Council on 23 May 2017. This nomination is reviewed at annual council each year.
- 5.2 The borough council (BCW) currently holds a third of the company’s shares. Some constitutional matters – such as a change in the rules - require a 75% vote in favour of any decision, so this effectively means that BCW has a “golden share”.
- 5.3 Board members nominated by the council are, under company law, not representatives of BCW and, once appointed, they are under a legal obligation to make decisions and act in the best interest of the company. While their contribution will be informed by their membership of the council and their work in the community, they are not on the board to act as delegates of the council. The member services agreement that all Wellingborough Homes Board members are required to sign confirms this position. This has been the situation for nearly 10 years.
- 5.4 However, in October 2015 the Office for National Statistics (ONS) made changes to the classification of Housing Associations (HAs) so that they were no longer identified as public bodies, and this had a significant impact on the government’s balance sheet position.
- 5.5 The government then had concerns about LSVT arrangements because they included the ability for local authorities (LAs) to appoint directly to Housing Association Boards in addition to the golden share arrangements. Concerns arose because these two factors gave LAs a strong influence over LSVTs; the ONS might therefore take the view that HAs are controlled by public bodies and should remain on the balance sheet. The government reacted to these concerns by laying down two amendments on 11 April 2016 to the Housing and Planning Bill.

6. Discussion

New Legislation

- 6.1 There is now new legislation in the Housing and Planning Act 2016 that has fundamentally changed and limited the influence of local authorities over LSVTs such as WH. This legislation came into effect on 16 November and has a six month lead in period taking it to 16 May (the appointed day), when it has to be implemented.

- 6.2 Under the new legislation any LA board membership will be limited to a maximum of 24%. The explanatory notes state " *Regulation 3 requires that the percentage of a private registered providers' (PRP) total board membership which is comprised of officers appointed by a local authority must be no more than 24%. A local authority must nominate before the appointed day (which falls six months from the date the instrument is made) which of its officers is to be removed. In the event that it does not, a PRP itself may, after that date, select which of those officers to remove.*"
- 6.3 The total number of members on the WH board is dictated by their code of governance which was adopted in May 2015, an extract of which is shown below: "*B4 - Board members who are executive staff must be in a minority. Boards should have at least five members and no more than twelve, including any co-optees and any executive board members.*"
- 6.4 WH currently has 12 members on its board so the **maximum** places BCW could have would be 2, but there is no requirement to have any reserved places under the new rules.
- 6.5 The decision on numbers, and who will be on the board at the end of the six month period will be made by the WH Board, and places are not guaranteed to be allocated to councillors. There will be no further nominations to the board directly from the council as the "appointed day" is 16 May 2018, the week before the next annual council.
- 6.6 Any further changes to board memberships are likely to be confirmed at the WH AGM in September 2018. The exception to this is the reduction from four council elected board members to two, which must take place before 16 May 2018 to be legally compliant.

Local authority veto on constitutional changes.

- 6.7 Under the transfer agreement the council currently has the right to appoint four members to the WH Board and have 1/3rd shareholding.
- 6.8 This gives the council a 'golden share' that allows the local authority to have an effective veto on changes to the association's constitution. The new regulations remove the LA shareholding totally, meaning its share is evenly distributed between the remaining shareholders. This means that, from 16 May 2018, BCW will have no shareholding and therefore no vote in any matters relating to Wellingborough Homes, including constitutional arrangements. Once the regulations are in place, board composition will be in the control of the company.

Future board membership proposal

- 6.9 The regulations passed through both houses in early November 2017 and there is now a 6 month period to implement the changes. This means that by 16 May 2018 the changes have to be applied and board membership changed accordingly.

- 6.10 BCW and WH will both benefit from an ongoing mutually supportive partnership, which is more and more important as the local need for housing increases. The council's response to these changes needs to ensure that it does not adversely impact on the positive relationship that has been developed between the two organisations. A meeting of lead councillors and board members was held in December 2017 to discuss the transition and, following the meeting - at the council's request - WH made the following recommendation based on their understanding of the current board members, which is now proposed for agreement.
- 6.11 *"The recommendation of Wellingborough Homes is that Cllrs Ekins and Aslam remain on the board until the September 2018 AGM.*
- 6.12 *Also as discussed at the meeting this is our recommendation- the regulations are clear that within the first six months this needs to be a decision of the Local Authority."*
- 6.13 WH has clarified that it will continue to operate a skills based assessment for appointment of its board members, and any new appointments would be via this process. In future council members may express an interest to WH in being independent board members and proceed through the open selection process to be appointed. WH has acknowledged the value of local knowledge to their board and would welcome future applications from any local councillor to be an independent board member.

7. Legal powers

- 7.1 Section 214(2)(g) of the Housing and Planning Act 2016
- 7.2 The Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017.
- 7.3 A link to the legislation details is below:
<http://www.legislation.gov.uk/ukdsi/2017/9780111160312>

8. Financial and value for money implications

- 8.1 There are no direct financial implications as result of this decision but, as the need for housing adds pressure to the revenue budget, the working relationship with our key provider of social housing is an important consideration.
- 8.2 When newly appointed board members for Wellingborough Homes are selected these will be independent of the council and will be remunerated positions. It is the council's view that this would be applicable from September 2018 onwards only.

9. Risk analysis

There will be some risk that the changes to the board membership may reduce the local "voice" but WH have assured both lead officers and members that their

policies on this will remain strong and they value the need for local involvement and scrutiny of their services. They also have a training plan for board members which focuses on gaining local knowledge and understanding.

10. Implications for resources, equalities, and stronger and safer communities

None for this report.

11. Author and contact officer

Liz Elliott, Managing Director.

12. Consultees

Directors of the Borough Council of Wellingborough
Leaders of both political parties of the borough council
Wellingborough Homes key officers and members

13. Background papers

MBN on WH board membership

