

# **Cherwell District Council**

## **Shareholder Committee**

**20 December 2016**

### **Graven Hill – Creation of Additional Companies**

#### **Report of Assistant Director - Transformational Governance**

This report is public

#### **Purpose of report**

To consider a request from Graven Hill Village Holding Company for the creation of additional subsidiary companies that are required to carry out specific roles required as part of the delivery of Graven Hill.

#### **1.0 Recommendations**

The meeting is recommended:

- 1.1 That approval be given to the creation of a Graven Hill Site Wide Management Company as a company limited by guarantee and that Graven Hill Village Holding Company be requested to prepare governance documents for final approval by the Shareholder representative before registration and director nominations occur.
- 1.2 That approval be given to the creation of Individual Apartment Management Companies as required and that Graven Hill Village Holding Company be requested to prepare template governance documents for final approval by the Shareholder representative and then subsequent approval prior to each Individual Apartment Company being established.
- 1.3 That the above companies be included within the proposed shareholder agreement.

#### **2.0 Introduction**

- 2.1 A necessary consequence of the development process is the requirement to set up subsidiary companies to carry out specific roles. This was envisaged during the initial establishment of the Graven Hill entities which currently comprise the Graven Hill Holding Company (Hold Co.) as parent and its operating subsidiary the Graven Hill Village Development Company (GHVDC). The purpose of the latter to carry out development activities necessary to realise profits from the sale of self-build and other properties both residential and commercial.

- 2.2 The actual requirement for additional subsidiary companies will be determined over time as the process of development continues and to effect the most efficient methods of delivery. However, as the development enters the sales phase in February 2017 the necessity to put in place special purpose vehicles to carry out specific business needs is clear.

### **3.0 Report Details**

#### **Background**

- 3.1 The initial company required is a Graven Hill Site Wide Management Company, which will need to be included within the sale documents. It is then likely that multiple Individual Apartment Management Companies will be required. Subsequently and through a future report it is likely that we will receive a request to establish a Graven Hill Rentals Company.

#### **3.2 Graven Hill Site Wide Management Company**

The majority of GHVDC freehold title will either be conveyed to purchasers of residential properties, conveyed to the purchaser of the ground rent freehold reversion, adopted as public highway or transferred as amenity space to the district council. However, there is residual land which comprises communal space such as parking courts and un-adopted roads and footways which benefit some of the properties on the development but that will not be conveyed to them.

Therefore, some legal entity, a body corporate, that is transparent and accountable is required to deliver communal obligations and that eventually would be wholly owned and controlled by the residents who benefit from it. The company (the residents) will be in charge of setting annual budgets for services they enjoy communally. This would be the Site Wide Residents Management Company which will be a subsidiary of Hold Co.

Current convention is that such companies are limited by Guarantee. This simplifies ongoing administration as there is no annual return and no requirement for householders to find share certificates on resale of their properties. Each person (householder) has an interest in the company as a member but this entitlement only exists if they own a plot. The company can therefore be in the simplest form to maintain membership records and for ease of transfer of membership when plots are bought or sold. The companies accounts will effectively be governed by the very exacting legislation protecting residential management.

To ensure effective governance there will be an obligation to retain a suitably qualified managing agent to administer and account for service charge collection and administration.

The company will be non-profit making with the corporate account to be balanced at year end to zero save for reserve or sinking fund. Any surplus would be carried forward or re-distributed or if any deficit a surcharge made.

Hold Co would hold a controlling interest in the site wide management company until the last membership or until such earlier time as it was considered prudent to relinquish control to the residents.

### **3.3 Individual Apartment Management Companies**

The blocks of apartments at Graven Hill will be sold as a long leasehold tenure to individual purchasers via individual leases derived out of an intervening superior lease above the freehold. Each apartment sub-lease will attract a ground rent which is paid up the superior lease landlord. This income stream can be forward sold for a multiplier of the ground rents to realise a capital receipt. This sale is assumed within the development viability and must take place prior to the sale of 50% of the apartments to avoid Section 5 (the right of first refusal) under Part 1 of the Land Lord and Tenant Act 1987 as amended by the Housing Act 1996.

However, a management company will be required as a named party to the individual residential apartment sub-leases with an obligation to deliver the communal services to the residential areas of the apartment blocks. Therefore, a number of management companies will be required to deliver these services to the apartment blocks dependant on how we divide the various groups of apartments.

The constitution of these companies will identical to the site wide management company with the exception that each will have a membership of the site wide management company.

If the apartment contains any commercial or retail space let under a rack rent these are not members of the apartment management company, but commercial tenants are surcharged for aspects which they share and enjoy.

### **3.4 Graven Hill Rentals Company (Rent Co.)**

In order to rent out these properties to individuals under assured shorthold tenancies (AST) it will be necessary to incorporate a company to carry out this activity. In accordance with Trowers advice, as referred to at section 5.0 above, this company would be a company limited by shares and a subsidiary of Hold Co. The specific reasoning for a separate Special Purpose Company to do this is as follows:

- rental of the apartment would constitute the grant of a first major interest which would lose the zero VAT rating for onward sale. It is therefore necessary to transfer (sell) the relevant apartments from GHVDC to Rent Co at market value and benefiting from the zero rating for VAT.
- Rent Co would then undertake the letting of these apartments under an AST either by appointing the services of an established letting agency or resourcing to carry out this role themselves
- Rent Co. would hold and rent the apartments as Landlord until such time as it wished to realise the capital receipt associated with the sale of the long leasehold interest of these apartments.

## **4.0 Conclusion and Reasons for Recommendations**

4.1 The proposals in this report are designed to ensure that Graven Hill has in place an effective governance structure to enable it to meet its aims and delivery objectives and in doing safe guard the councils investment and return on investment. Whilst the individual apartment management companies are not required at this time, it is pragmatic for Graven Hill Village Holding Company to procure the legal and

technical advice at the same time as the advice for the site wide management company so that when required appropriate template governance documents are available.

## **5.0 Consultation**

The proposals in this report originate from and have been considered and approved by both Graven Hill Village Development Company and Graven Hill Village Management Company. The Assistant Director – Transformational Governance has also been consulted and confirms that the proposals are required and in line with the shareholders approach to Graven Hill.

## **6.0 Alternative Options and Reasons for Rejection**

6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To agree the recommendations

Option 2: To amend the recommendations

Option 3: Not to agree the recommendations. This is not supported as it would have a detrimental effect on the ability of the Graven Hill project to deliver.

## **7.0 Implications**

### **Financial and Resource Implications**

7.1 There are no direct financial implications arising from this report at this time. Graven Hill have confirmed that funding required to obtain legal and technical advice, register and operate the companies until residents purchase plots is contained within existing budgets and the Graven Hill loan.

Comments checked by:

Paul Sutton, Chief Finance Officer - 0300 003 0106

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### **Legal Implications**

7.2 The proposals set out in this report are in accordance the shareholder responsibilities for Graven Hill and the decision making framework. It is noted that Graven Hill will procure their own legal advice to create the required governance documents for the proposed companies and these documents will be considered by the council to ensure that the council's interests are protected.

Comments checked by:

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### **Risk Implications**

- 7.3 The proposals set out in this report mitigate risk to the council in ensuring that Graven Hill has the correct governance in place and is able to safe guard the councils investment and make a return on that investment.

Comments checked by:

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## 8.0 Decision Information

### Key Decision

**Financial Threshold Met: No**

**Community Impact Threshold Met: No**

### Wards Affected

None directly

### Links to Corporate Plan and Policy Framework

None directly

### Lead Councillor

Councillors Atack, Donaldson and Wood

## Document Information

Appendix No	Title
None	N/A
Background Papers	
None	
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