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Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

Committee: Shareholder Committee

Date: Wednesday 16 October 2024

Time: 6.30 pm

Venue Bodicote House, Bodicote, Banbury, Oxon OX15 4AA

Membership

**Councillor David Hingley
(Chairman)**

Councillor Tom Beckett

Councillor Rob Pattenden

Councillor Lesley McLean (Vice-Chairman)

Councillor Nick Cotter

AGENDA

1. **Apologies for Absence**

2. **Declarations of Interest**

Members are asked to declare any interest and the nature of that interest which they may have in any of the items under consideration at this meeting.

3. **Minutes** (Pages 7 - 16)

To confirm as a correct record the Minutes of the meeting of the Committee held on 26 June 2024.

4. **Chairman's Announcements**

To receive communications from the Chairman

5. **Urgent Business**

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

6. Crown House Banbury Limited - Quarter One Business Report 2024/25 (Pages 17 - 22)

Report of Shareholder Representative

Purpose of report

To note, comment and approve recommendations in response to Crown House Banbury Limited Quarter One 2024/25 Business Report.

Recommendations

The Shareholder Committee resolves:

- 1.1 To note and comment on the Crown House Banbury Limited Quarter One 2024/25 Business Report as contained in this report.
- 1.2 To note the temporary appointment of Councillor Rob Pattenden as a Director of the Crown House companies. This position will be reviewed at the end of the financial year to assess the recruitment of an independent NED, as this is best practice.

7. Revisions to the Graven Hill Shareholder Agreement (Pages 23 - 46)

Report of Monitoring Officer and Assistant Director Law and Governance

Purpose of report

This report recommends changes to the Shareholder Agreement that governs the relationship and decision making as between the Council and the Graven Hill companies.

The changes arise following implementation of the Governance Review in 2023.

Recommendations

The Shareholder Committee resolves:

- 1.1 To approve the changes to the Shareholder Agreement.
- 1.2 To delegate to the Assistant Director Law and Governance to make further amendments to the Shareholder Agreement, including inserting the Data Protection Schedule to the Agreement
- 1.3 To delegate to the Assistant Director of Law and Governance the execution of the Agreement as a deed.

8. Graven Hill Village Development Company (GHVDC) - Governance Review Action Plan - Update (Pages 47 - 52)

Report of Monitoring Officer & Assistant Director – Law and Governance

Purpose of report

This report presents an update of the Governance Review Action Plan, which commenced following a request at the Shareholder Committee meeting dated 05 July 2023 to ensure oversight of the remaining actions emerging from the Governance Review, carried out by WBD Solicitors.

Recommendations

The Shareholder Committee resolves:

- 1.1 To approve the updated Graven Hill Governance Review Action Plan attached at Exempt Appendix A.

9. Graven Hill Village Development Company (GHVDC) - Quarter One Business Report 2024/25 (Pages 53 - 58)

** An exempt version of this report and the exempt appendices are included on this agenda at a separate item **

Report of Shareholder Representative

Purpose of report

To note, comment and approve recommendations in response to the GHVDC Quarter One Business Report.

Recommendations

The Shareholder Committee resolves:

- 1.1 To note and comment on the GHVDC Quarter One Business Report.
- 1.2 To approve the GHVDC Quarter One Business Report.

10. Exclusion of the Public and Press

The following items of business contain exempt information as defined in the following paragraphs of Part 1, Schedule 12A of Local Government Act 1972.

- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Members are reminded that whilst the following items have been marked as exempt, it is for the meeting to decide whether or not to consider each of them in private or in public. In making the decision, members should balance the interests of individuals or the Council itself in having access to the information. In considering their discretion members should also be mindful of the advice of Council Officers.

Should Members decide not to make a decision in public, they are recommended to pass the following recommendation:

“That, in accordance with Section 100A(4) of Local Government Act 1972, the press and public be excluded from the meeting for the following items of business, on the

grounds that they could involve the likely disclosure of exempt information as defined in paragraph 3 of Schedule 12A of that Act and that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

11. **Crown House Banbury Ltd - Quarter 1 Business Report 2024/25 - Exempt Appendix** (Pages 59 - 60)
12. **Graven Hill Village Development Company (GHVDC) - Governance Review Action Plan Update - Exempt Appendix** (Pages 61 - 64)
13. **Graven Hill Village Development Company (GHVDC) - Quarter One Business Report 2024/25** (Pages 65 - 154)

Exempt report of Shareholder representative

Councillors are requested to collect any post from their pigeon hole in the Members Room at the end of the meeting.

Information about this Meeting

Apologies for Absence

Apologies for absence should be notified to democracy@cherwell-dc.gov.uk or 01295 221586 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Evacuation Procedure

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the car park as directed by Democratic Services staff and await further instructions.

Access to Meetings

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

Mobile Phones

Please ensure that any device is switched to silent operation or switched off.

Queries Regarding this Agenda

Please contact the Democratic and Elections Team, democracy@cherwell-dc.gov.uk
01295 221534

Shiraz Sheikh
Monitoring Officer

Published on Tuesday 8 October 2024

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Cherwell District Council

Shareholder Committee

Minutes of a meeting of the Shareholder Committee held at Bodicote House, Bodicote, Banbury, Oxon OX15 4AA, on 26 June 2024 at 6.30 pm

Present:

Councillor David Hingley
Councillor Lesley McLean
Councillor Rob Pattenden

Apologies for absence:

Councillor Tom Beckett
Councillor Chris Pruden

Also Present:

Councillor Barry Wood
Nicola Riley, Non-Executive Director

Also Present Virtually:

Adrian Unitt, Operations Director, Graven Hill
Sue Smith, Company Director, Graven Hill
Ian Penfold, Interim Operations Director
Phillip Kassiram, Finance and Governance Director
Elizabeth Rapoport, Non-Executive Director
Terry Fuller, Non-Executive Director
David Gelling, Non-Executive Director

Officers:

Stephen Hinds, Corporate Director Resources
Shiraz Sheikh, Assistant Director Law & Governance and Monitoring Officer
Michael Furness, Assistant Director Finance & S151 Officer
Joanne Kaye, Head of Finance and Deputy Section 151 Officer
Nicola Riley, Assistant Director Wellbeing & Housing
Kerry Wincott, Law & Governance Officer

Officers Attending Virtually:

Shahin Ismail, Interim Head of Legal Services & Deputy Monitoring Officer

1 Appointment of Chairman for 2024/25 Municipal Year

Resolved

Councillor David Hingley be appointed as Chairman of the committee for 2024/25.

2 **Appointment of Vice Chairman for 2024/25 Municipal Year**

Resolved

Councillor Lesley McLean be appointed as Vice Chairman of the committee for 2024/25.

3 **Declarations of Interest**

There were no declarations of interest

4 **Minutes**

The minutes of the meeting of the Committee held on 13 March 2024 were confirmed as a correct record and signed by the Chairman.

5 **Chairman's Announcements**

The Chairman welcomed everyone to the meeting, and the participants were introduced.

The Chairman proposed that the agenda be as publicly available as possible for increased transparency in future meetings.

6 **Urgent Business**

There were no items of urgent business.

7 **Graven Hill Village Development Company (GHVDC) - Bonus Scheme 2024/25 Update - Matters requiring the consent of the Council**

The committee consider a report from the Shareholder Representative regarding progress with improved governance of executive remuneration and to seek its agreement to a number of recommendations about the bonus scheme and payments in accordance with it.

Resolved

- (1) That GHVDC's Remuneration Committee's proposed bonus payments for 2023/24 be accepted.
- (2) That the principles and approach set out in the company's confidential reports attached as Confidential Appendix 1 to this report be endorsed.
- (3) That the Remuneration Committee review the scheme each year before the bonus appraisal process commences and advise the Shareholder Committee of any changes.

- (4) That the Remuneration Committee ensure that the benchmarking exercise is repeated periodically in accordance with sector best practice to ensure that the scheme remains consistent with good practice in the market.
- (5) That changes to the bonus scheme for future years be submitted to it for its approval before being implemented and before the financial year to which it relates.

8 **Exclusion of the Public and Press**

Resolved

That, in accordance with Section 100A (4) of Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they could involve the likely disclosure of exempt information as defined in paragraph 3 of Schedule 12A of that Act and that in all the circumstance of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

9 **Company Board Minutes**

The Committee were presented with the minutes of Graven Hill Village Development Company (GHVDC) board meetings held since the last Shareholder Committee meeting on 13 March 2024.

Resolved

That the Committee received Graven Hill Village Development Company's (GHVDC) board minutes of 25 April 2024.

10 **Graven Hill Village Development Company (GHVDC) – Bonus Scheme 2024/25 Update - Matters requiring the consent of the Council - Exempt Appendix**

The Committee asked detailed questions as set out in the exempt minutes.

11 **Graven Hill Village Development Company (GHVDC) - Quarter Four Business Report 2023/24**

The Committee received an exempt report from the Shareholder Representative, that detailed Graven Hill Village Development Company (GHVDC) Quarter Four (2023/24) Business Report and a verbal Q1 (2024/25) Flash Update.

Resolved

- (1) That the Graven Hill Village Development Company (GHVDC) Quarter Four Business Report be noted and commented on.

- (2) That the Graven Hill Village Development Company (GHVDC) Quarter Four Business Report be approved.
- (3) That the Savills Report be noted and a briefing to be received prior to the next Committee from officers on any implications arising from the report.

12 **Graven Hill Village Development Company (GHVDC) - Governance Review Action Plan - Update**

The Committee considered an exempt report from the Monitoring Officer and Assistant Director of Law and Governance, presenting an update of the Governance Review Action Plan. The action plan commenced following a request at the Shareholder Committee meeting dated 05 July 2023 to ensure oversight of the remaining actions emerging from the Womble Bond Dickinson report.

Resolved

- (1) That the updated Graven Hill Governance Review Action Plan be approved

13 **Crown House Banbury Ltd - Quarter Four Business Report 2023/24**

The Committee considered an exempt report of the Shareholder Representative, which detailed Crown House Banbury Limited's and Crown Apartments Banbury Limited's in-year key performance and financial update for Quarter Four 2023/24.

Resolved

- (1) That Crown House Banbury Limited Quarter Four 2023/24 Business Report as contained in the report be noted and commented on.
- (2) That a report on the Crown House Asset Review and management arrangements for Crown House be received at its next meeting.
- (3) That appointment of a second director to the company Board be considered.

14 **Shareholders' Agreement (Crown House Companies) - Matters requiring the consent of the Council**

The Committee considered an exempt report from the Shareholder Representative, proposing that the losses on the Crown House companies be surrendered to Graven Hill for application in Graven Hill's 2022/23 corporation tax calculations under the group relief provisions.

Resolved

- (1) That the losses on the Crown House companies be surrendered to Graven Hill for application in Graven Hill's 2022/23 corporation tax calculations under the group relief provisions be agreed.

The meeting ended at 8.12 pm

Chairman:

Date:

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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This report is public	
Crown House Banbury Limited - Quarter One Business Report 2024/25	
Committee	Shareholder Committee
Date of Committee	16 Oct 2024
Portfolio Holder presenting the report	Leader of the Council, Councillor David Hingley
Date Portfolio Holder agreed report	8 October 2024
Report of	Steve Hinds, Shareholder Representative

Purpose of report

To note, comment and approve recommendations in response to Crown House Banbury Limited Quarter One 2024/25 Business Report.

1. Recommendations

The Shareholder Committee resolves:

- 1.1 To note and comment on the Crown House Banbury Limited Quarter One 2024/25 Business Report as contained in this report.
- 1.2 To note the temporary appointment of Councillor Rob Pattenden as a Director of the Crown House companies. This position will be reviewed at the end of the financial year to assess the recruitment of an independent NED, as this is best practice.

2. Executive Summary

- 2.1 This report sets out the in-year key performance and financial update for the Crown House Companies for Quarter One 2024/25.
- 2.2 The Crown House Companies Director will attend the meeting to present an update on the operational delivery of Crown Apartments.

Implications & Impact Assessments

Implications	Commentary
Finance	There are no financial implications arising directly from this report. Joanne Kaye, Head of Finance, 7 October 2024
Legal	The report sets out company performance to date against KPIs. The issue of an independent NED should be addressed as soon as

	possible, in line with best practice for council-owned companies. Shahin Ismail, Interim Head of Legal Services, 7 October 2024			
Risk Management	There are no risks arising directly from this report. If any risk arise, it will be managed through the service operational risk, and escalate to the Leadership Risk register as and when deemed necessary. Shahin Ismail, Interim Head of Legal Servies, 7 October 2024			
Impact Assessments	Positive	Neutral	Negative	Commentary
Equality Impact		X		N/A
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		N/A
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		N/A
Climate & Environmental Impact		X		N/A
ICT & Digital Impact		X		N/A
Data Impact		X		N/A
Procurement & subsidy		X		N/A
Council Priorities	Business Plan - <i>Housing that meets your needs</i> With the caveat that this is private sector housing provided by a separate commercial company rather than social housing provided directly by Cherwell District Council.			
Human Resources	N/A			
Property	N/A			
Consultation & Engagement	N/A			

Supporting Information

3. Background

- 3.1 In 2017 Cherwell District Council (CDC) acquired the shares of Crown House Banbury Ltd (CHB) from Brickmort Developments Ltd. The purpose of the company was to redevelop the unused and dilapidated property in its ownership in the town centre of Banbury.
- 3.2 In March 2020, Stevenage Developments Ltd completed the development (instructed by CHB).
- 3.3 The new development comprises 49 residential units (1 and 2-bed apartments) and 1 commercial unit.
- 3.4 CHB established Crown Apartments Banbury Ltd (CAB) and granted a long lease in order to create major interest (VAT-related) for its subsidiary company.
- 3.5 CHB transferred the management of the 50 residential units into CAB and kept the 1 commercial unit under direct management.

4. Details

- 4.1 Directors have sought additional professional expertise from CDC's Property team and have accepted a capped fee arrangement for support on refreshing the business plan and re-tendering the managing agent service, to ensure a continuation of high service standards and operation (**see exempt Appendix A**).
- 4.2 Directors have agreed to install CCTV in key locations within, and on the periphery of, Crown House Apartments in an attempt to curtail some small-scale vandalism and non-compliance with expected standards of behaviour from a small number of tenants.
- 4.3 All flats save for the last four are now on independent electric meters. These four can only be transferred once the last main meter is removed. However, we have been advised that the removal can only be carried out by the contractor that installed it in the first place and, unfortunately, that contractor has gone out of business. It is possible that EDF and Eon, working together, may be able to rectify this problem. Our management agent, Centrick have managed to get an appointment for both contractors to attend on 9 September and we hope, therefore, to be able to report at the next meeting that all flats are now independently metered.

4.4 The performance measures for Q1 are given below:

KPI	Performance Measure	Current Performance
% of Voids (at any one time)	5% or less of total residential units	0% at end of June
Voids	5	0 at end of June
% of Rent Arrears (excluding Utilities) for residential units	5% or less of Gross Income	2.46% of annual rent
% of Rent Arrears for car parking spaces	5% or less of Gross Income	0.75%
% of Bad Debt (Apartments)	1% or less of total income due from the 50 residential units	No debts have been written off as unrecoverable/bad debts based off the last quarter.
% of Tenant Turnover Rate	10% for the full year	10% at present stage
Tenant Turnover Rate	3	1
Time taken to let new tenancies	20 working days – (allowing for references and works required between tenancies)	Avg 30.75 days allowing for works for units & bank holidays
Monthly Reports to be submitted to Directors of Crown House Companies	To be submitted no later than the next working day following the 9th of each month.	Complying with 9 th working day of the month.

5. Alternative Options and Reasons for Rejection

5.1 No alternatives have been considered

6 Conclusion and Reasons for Recommendations

6.1 The company continues to operate and provide 49 units of housing in the private rented sector and let one commercial unit. The operation of the facility has been brought up to a standard that will attract new tenants as units become vacant. Car parking income holds steady, and the commercial unit operates successfully. Actions taken to strengthen the management and operation of the two companies will ensure continued lawful operation.

Decision Information

Key Decision	N/A
Subject to Call in	N/A
If not, why not subject to call in	N/A
Ward(s) Affected	Banbury Wards

Document Information

Appendices	
Appendix A EXEMPT	Proposal – property support for Crown House, Banbury
Background Papers	None
Reference Papers	None
Report Author	Nicola Riley, Crown House Director
Report Author contact details	Email: Nicola.riley@cherwell-dc.gov.uk

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This report is public	
Revisions to Graven Hill Shareholder Agreement	
Committee	Shareholder Committee
Date of Committee	16 October 2024
Portfolio Holder presenting the report	Leader, Councillor David Hingley
Date Portfolio Holder agreed report	8 October 2024
Report of	Monitoring Officer and Assistant Director Law and Governance, Shiraz Sheikh

Purpose of report

This report recommends changes to the Shareholder Agreement that governs the relationship and decision making as between the Council and the Graven Hill companies.

The changes arise following implementation of the Governance Review in 2023.

1. Recommendations

The Shareholder Committee resolves:

- 1.1 To approve the changes to the Shareholder Agreement.
- 1.2 To delegate to the Assistant Director Law and Governance to make further amendments to the Shareholder Agreement, including inserting the Data Protection Schedule to the Agreement
- 1.3 To delegate to the Assistant Director of Law and Governance the execution of the Agreement as a deed.

2. Executive Summary

- 2.1 The Shareholder Agreement sets out the governing relationships between the Council as sole shareholder and the Graven Hill companies. The Agreement was put in place in December 2018, soon after the companies were established.
- 2.2 Following the Governance Review of the companies in 2023, a number of changes were recommended, to reflect best practice and to strengthen the governance arrangements between the Council and the companies. The attached revisions reflect best practice and are in line with the recommendations of the Governance Review.

Implications & Impact Assessments

Implications	Commentary			
Finance	There are no financial implications arising directly from this report. Joanne Kaye, Head of Finance, 7 October 2024			
Legal	Legal comments are contained within the body of this report. Shahin Ismail, Interim Head of Legal Services 7 October 2024			
Risk Management	There are no risks arising directly from this report. If any risk arise, it will be managed through the service operational risk, and escalate to the Leadership Risk register as and when deemed necessary. Shahin Ismail, Interim Head of Legal Services, 7 October 2024			
Impact Assessments	Positive	Neutral	Negative	Commentary
Equality Impact				n/a
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?				n/a
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?				n/a
Climate & Environmental Impact				n/a
ICT & Digital Impact				n/a
Data Impact				n/a
Procurement & subsidy				n/a
Council Priorities	Housing			
Human Resources	n/a			
Property	n/a			
Consultation & Engagement	The Managing Director of Graven Hill has been consulted			

Supporting Information

3. Details of proposed changes

- 3.1 The changes proposed are shown in the Appendix attached to this report. The changes are shown as underlined text or are struck through, for ease of reference.
- 3.2 The rationale for the changes is summarised below.

Proposed change	Explanation and reasons for change
Definitions	To clarify key definitions
Business Plan	<p>Adds dates and level of detail required</p> <p>Clarifies that business planning is a rolling three year programme</p> <p>Clarifies that if a new Business Plan is delayed, the previous year's Business Plan subsists.</p> <p>This added flexibility means that the business can continue in the event Shareholder Committee dates do not align with business plan dates, or if there are any legitimate and reasonable delays to the business plan</p>
Board of Directors	<p>Boards to consist of between 2 and 8 directors</p> <p>The Council will make all appointments and removals at Board level, whether Executive or Non-executive, including the Chair of the companies</p> <p>The Council will involve the companies in the recruitment process for Board positions. This will be a collaborative process. It is envisaged that the Council will take the lead on INED appointments and the companies will take the lead on Executive director level appointments.</p> <p>These changes strengthen the Council's oversight and control of key positions in the companies</p>
Board meetings	<p>A minimum of 4 Board meetings each year</p> <p>The companies to inform the Council of Board meetings taking place and will share with the Council Board</p>

	<p>agendas. There will be an open invitation to the Council to attend any Board meeting</p> <p>These changes strengthen the communication between the Council and companies and foster open and early dialogue</p>
Meetings between Council and companies	<p>Formalisation of a Forward plan of scheduled meetings</p> <p>This changes fosters open and ongoing dialogue</p>
Disposal of assets	<p>Clarification made that the companies can dispose of individual house plot sales to private buyers without requiring Council approval.</p> <p>Similarly the management companies that have no financial value but are created as part of the mechanism to sell on apartment blocks can be done by the companies without requiring Council approval.</p> <p>These changes will simplify the process for 'business as usual' company activity</p>
Remuneration	<p>INED fees are to be set by the Council</p> <p>Executive and Board level pay packages are determined by the Council</p> <p>These changes are to ensure the Council has adequate control over pay. The Council will continue to receive recommendations from the companies; Remuneration Committee to inform its decisions on pay packages</p>
Presentation of accounts	<p>Dates inserted for draft and final accounts</p> <p>These changes ensure the timely presentation of accounts</p>
Anti-corruption clauses	<p>Strengthened clauses on bribery and anti-corruption</p> <p>These changes are market normal and strengthen the provisions already in place</p>
Data protection	<p>These clauses will be moved to a schedule, as they may need to change from time to time</p>

5. Alternative Options and Reasons for Rejection

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

Option 1: Make no changes
This option has been rejected as the Governance Review recommended areas of change to strengthen the governance relationship.

Option 2: Dispense with the Shareholder Agreement
This option has been rejected, as there would no mechanism for governing the decisions or relationship between the parties.

6 Conclusion and Reasons for Recommendations

6.1 The proposed changes will clarify and strengthen the Council's oversight and management of its wholly owned companies at Graven Hill. The Shareholder Agreement will form the key basis of the Governance Framework, which will be presented to the Shareholder Committee at its next meeting.

Decision Information

Key Decision	No
Subject to Call in	No
If not, why not subject to call in	n/a
Ward(s) Affected	All

Document Information

Appendices	
Appendix 1	Shareholder Agreement – proposed revisions
Background Papers	None
Reference Papers	Governance Review report April 2023 (exempt)
Report Author	Shahin Ismail, Interim Head of Legal Services
Report Author contact details	Shahin.ismail@cherwell-dc.gov.uk

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Cherwell District Council

and

Graven Hill Village Holdings Limited

and

Graven Hill Village Development Company Limited

Shareholders Agreement

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Shareholders agreement

dated 2024

Parties

- (1) **Cherwell District Council** whose principal office is at Bodicote House, Bodicote, Banbury, Oxfordshire, OX15 4AA (the **Council**);
- (2) **Graven Hill Village Holdings Limited** a company incorporated and registered in England and Wales with registered number 09102490 whose registered office is at Graven Hill Site Office Building E25, Graven Hill Road, Bicester, OX25 2BF (**HoldCo**); and
- (3) **Graven Hill Village Development Company Limited** a company incorporated and registered in England and Wales with registered number 09102699 whose registered office is at Graven Hill Site Office Building E25, Graven Hill Road, Bicester, OX25 2BF (**DevCo**).

Introduction

- (A) HoldCo and DevCo were each incorporated under the Companies Act 2006 on 25 June 2014 as a private company limited by shares.
- (B) At the date of this Agreement HoldCo has issued share capital of £31,942,347.00 divided into 21,717,347 ordinary shares of £1 each, which are owned by the Council
- (C) At the date of this Agreement DevCo has issued share capital of £31,942,347.00 divided into 31,942,347 ordinary shares of £1 each, 1 of which is owned by the Council and 31,942,346 of which are owned by HoldCo.
- (D) The parties to this Agreement entered into a Shareholders Agreement in respect of HoldCo and DevCo on 30 September 2019. The parties have agreed to enter into this Agreement to replace the previous Shareholders Agreement.
- (E) This Agreement sets out the respective rights and obligations of the parties in relation to the business and operations of HoldCo and DevCo and is made pursuant to the Council's powers under Sections 1 and 4 of the Localism Act 2011. This is to include any other relevant and reasonable powers to meet the objectives of both HoldCo and DevCo.

Agreed terms

1 Interpretation and definitions

1.1 In this Agreement:

Annual Accounts Date means the accounting reference date of each Company from time to time;

Board of Directors means the board of directors of a Company;

Board Meeting means a meeting of the Board of Directors;

Business means the business of DevCo described in clause 3 and such other business as the Council may agree from time to time in writing should be carried on by DevCo or any other Company in the Group;

Business Day means a day other than a Saturday or Sunday or public holiday in England and Wales;

Business Plan means the business plan for DevCo, or, where a Business Plan is required to be produced by any Subsidiary Undertaking then, any other Company in the Group as the case may be, in the agreed form and any subsequent business plan agreed by the Board of Directors in accordance with clause 3.3 and applicable from time to time;

Companies means DevCo and HoldCo and each Subsidiary Undertaking in the Group and **Company** means either of them;

Deed of Adherence means a deed of adherence in substantially the same form as set out in schedule 1;

Director means any director appointed to the Board by the Council;

Environmental Information Regulations means the Environmental Information Regulations 2004;

FOIA means the Freedom of Information Act 2000;

Group means, in relation to HoldCo, DevCo itself and any other Subsidiary Undertaking of HoldCo or DevCo; and the expression **Group Member** shall be construed accordingly;

Independent Chair means a person appointed by the Council to act as the chair of the Board;

Independent Non-executive Director (INED) means an individual who is a member of the board of directors who does not have a material or pecuniary relationship with the company or related persons and is neither employed by, or an elected member of, the Council. The INED's role is to provide independent oversight and constructive challenge to the executive directors.

Information has the meaning given to it under section 84 of the FOIA;

Management Accounts Date means scheduled dates being the financial year quarter date or as otherwise advised by the Council from time to time in each financial year;

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Security Interest means any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, guarantee, indemnity, debenture, declaration of trust, right of set off or combination of accounts or any other type of preferential arrangement (including without limitation, a title transfer and retention of title) or any encumbrance or security interest whatsoever, howsoever arising and whether monetary or not;

Shareholder means Cherwell District Council acting in its capacity as sole owner

Subsidiary Undertaking means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006 whether existing at the date of this Agreement, or incorporated at any

later date.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.
- 1.6 In this Agreement all obligations and liabilities on the part of the Shareholders are (unless expressly stated otherwise) several and shall be construed accordingly.
- 1.7 Any reference to a document **in the agreed form** shall be a reference to that document in the form agreed and initialled by or on behalf of each of the Shareholders for the purpose of identification and attached to this Agreement.

2 Not used

3 The business of DevCo

- 3.1 The Shareholder acknowledges and agrees that unless and until it agrees otherwise, the business of DevCo shall be to develop the land at Graven Hill as set out in the annually updated Business Plan and Facility Agreement, as well as any other relevant and reasonable business for meeting the objectives of DevCo.
- 3.2 The Business shall be carried on in accordance with the current Business Plan on sound commercial principles.
- 3.3 The Business Plan shall be resolved upon by the Board of Directors and approved by the Council in accordance with clause 7.1 and replaced on a rolling basis annually in respect of the coming financial year and the next three financial years and superseded or modified from time to time. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received consent in accordance with clause 7.1.
- 3.4 The Business Plan shall be:
- (a) prepared by the Board by no later than 31st January in each year; and
- (b) put before the Board for approval as soon as practicable after it has been prepared.
- 3.5 If an updated Business Plan is not so approved within thirty (30) days or at the next scheduled Board meeting, whichever is the later, following the date it has been prepared by

the Board in each year, the Business Plan in force at the time shall continue in its existing form without amendment.

3.6 The Business Plan and any updated Business Plan will provide:

3.6.1 a 3 year medium-term strategic vision; and

3.6.2 a rolling 3 year forecast of information to be provided

3.6.3 as a minimum, the Business Plan shall include in relation to the Financial Year to which it relates:

- a. projected monthly income and expenditure for the forthcoming Financial Year (year 1) and projected annual income and expenditure for subsequent Financial Years (years 2 to 3), analysed by source of income and classification of expenditure;
- b. a monthly cash flow forecast for the forthcoming Financial Year (year 1) with annual cash flow forecast for subsequent Financial Years (years 2 to 3);
- c. forecast annual profit or loss and corporation tax;
- d. projected dividend and retaining earnings at the end of each financial year;
- e. a management report giving business objectives and operational approach for the year including: (i) planned phases for development; and (ii) estimated roles and resourcing requirements to be contributed by the Shareholder;
- f. financial reports which shall include an analysis of the estimated results of the Company for the previous Financial Year compared with the respective Business Plans for that year, identifying variations in sales revenues, costs and other material items;
- g. a written narrative explaining the source and provenance of these figures along with any assumptions which underpin them, including but not limited to inflation and pay awards;
- h. any additional items considered appropriate or prudent by the Board.

3.6.4 an assessment of market, commercial, delivery and other material risks

3.7 The principal place of business of each Group Member and the principal place for management of each Group Member shall be within the administrative boundaries of the Council, unless otherwise agreed in writing by the Council.

3.8 Subject to the provisions of this Agreement, the parties understand and agree that each Company shall use all reasonable and proper means to maintain and improve the Business.

4 **Conduct of each Company's affairs**

4.1 With the exception of those matters requiring the Council's consent pursuant to clause 7, the day-to-day management of each Company shall be vested in its Directors. Without

prejudice to the generality of the foregoing, the Directors will determine the general policies of each Company and the manner in which the Business is to be carried out, subject to the Business Plan, to those matters requiring the Council's consent pursuant to clause 7 and to any other express provisions of this Agreement. In particular, but without limitation to the generality of the foregoing, each of the parties will all use the voting and other rights and powers of control available to it, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that each Company shall:

- 4.1.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with the Business Plan and with good business practices, and
- 4.1.2 transact all its business on arm's length terms.
- 4.2 Each Company shall not carry out any activity which would render the holding of shares by the Council unlawful provided that where a proposed change of law would render such shareholding unlawful the Council will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its shares.
- 4.3 Each Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 4.4 Each Company shall permit any Director to discuss the affairs, finances and accounts of that Company with any Shareholder's designated members, officers and executives at any time. All books, records, accounts and documents relating to the business and the affairs of each Group Member shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the relevant shareholder properly informed about the business and affairs of the Group or to protect its interests as a shareholder. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the requesting shareholder and its designated officers and executives in accordance with the terms of clause 12.
- 4.5 Each Company agrees that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Group and will generally keep the shareholders informed of the progress of each Group Member's business and affairs and in particular will procure that each shareholder is given such information and such access to the officers, employees and premises of the Group as it may reasonably require for the purposes of enabling it to monitor its investment in the Group and to comply with its obligations under the Prudential Code for Local Authorities.
- 4.6 The Companies shall not breach nor cause the Council to be in breach of the Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing Act 1989, the Local Government Public Involvement in Health Act 2007 or its obligations under the Public Contracts Regulations 2015 or any other Legislation on public procurement effective in the United Kingdom.
- 4.7 Each Company shall:
 - 4.7.1 identify the Council's participation on all its official business stationery

4.7.2 ensure its directors and staff shall not engage in any party political publicity.

4.8 Each Company may offer remuneration to Independent Non-executive Directors.

4.9 The remuneration packages for executives, managers and staff shall be controlled and Determined by each Company under the formation of the relevant Business Plan.

5 **The Boards of Directors**

5.1 The Board has responsibility for the supervision and management of the Companies and its Business, subject to clause 4. To the extent permitted by law, the Shareholder shall cause its appointed directors to vote and to take all other actions as shall be necessary to ensure the fulfilment of the terms and conditions of this agreement.

5.2 There shall be a minimum number of 2 directors and no more than 8 on the Board of each company.

5.3 The Council shall be entitled at any time to appoint and maintain in office up to 8 Directors and to remove or replace any Director so appointed.

5.4 Director appointments and removals shall be made by the Shareholder giving notice in writing to the Company. The appointment or removal takes effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date.

5.5 The post of chairperson shall be appointed by the Council for a term to be determined by the Council and held by a INED. The chairperson shall have a casting vote. The chairperson shall be the Independent Chair. If the Independent Chair is unable to attend any meeting of the Board, the Directors may appoint another Director to act as chair at that meeting.

5.6 If the Shareholder removes a Director, the Shareholder shall, as appropriate and reasonable, indemnify and keep indemnified the Company against any claim connected with the Director's removal from office.

5.7 Unless the parties agree otherwise in writing, at least 4 Board Meetings for each Company will be held (at reasonably regular intervals) in each calendar year.

5.8 Unless otherwise agreed by all the Directors, 10 Business Days' notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting. The Shareholder may attend a Board meeting and will be notified of the dates and times of such meetings. Minutes of Board meetings will be reported to the Shareholder.

5.9 Each Company will procure that its chairman and managing director or nominated deputies will attend meetings with the Council to discuss the business and affairs of the Company at such times and at such locations as the Council may reasonably require. A forward plan for such meetings should be agreed with the Shareholder each year and set out to the Companies' Boards and to the Shareholder Committee before each municipal year

commences.

6 Finance

If any Company requires capital, it may request such capital from the Council **provided that** the Council shall not be obliged to provide any guarantee or security in respect of any indebtedness of a Company or to put up the finance concerned.

7 Matters reserved to the council

Determining INEDs' fees

7.1 Appointing and removing Board level positions, including the Chair, INEDs, the Managing Director and Executive Directors. The Council shall consult the companies on such decisions and involve them in the process.

8 Matters requiring the consent of the Council

8.1 Each Company shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement no action shall be taken or resolution passed by a Company in respect of any of the following matters except with the prior written consent of the Council:

- 8.1.1 altering in any respect its articles of association or the rights attaching to any of its shares;
- 8.1.2 permitting the registration of any person as a member of HoldCo other than the Council;
- 8.1.3 permitting the registration of any person as a member of DevCo other than the Council and HoldCo;
- 8.1.4 permitting the registration of any person as a member of any Subsidiary Undertaking other than the Council, the HoldCo and the DevCo;
- 8.1.5 issuing or allotting any shares;
- 8.1.6 borrowing any monies outside of the agreed Business Plan (other than normal trade credit);
- 8.1.7 changing its name or its registered office;
- 8.1.8 adopting or amending the Business Plan in respect of each Financial Year;
- 8.1.9 changing the nature of Business or commencing any new business which is not ancillary or incidental to the Business;
- 8.1.10 forming any Subsidiary Undertaking or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not);

- 8.1.11 amalgamating or merging with any other company or business undertaking;
- 8.1.12 making any acquisition or disposal of any material asset(s), to exclude house plot sales and transfer of management companies which have no financial value and which are limited by guarantee to resident members on the sale of the last plot or long leasehold interests.
- 8.1.13 creating or granting any Security Interest over the whole or any part of a Company's business, undertaking or assets;
- 8.1.14 making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee or indemnity;
- 8.1.15 entering into any arrangement, contract or transaction outside the normal course of its business or other than on arm's length terms;
- 8.1.16 changing its auditors or its financial year end;
- 8.1.17 making or permitting to be made any change in the accounting policies and principles adopted by it in the preparation of its audited or management accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom;
- 8.1.18 declaring or paying any dividend;
- 8.1.19 appointing or employing any person who is or was formerly a councillor or officer of the Council;
- 8.1.20 Having taken advice from the Companies Remuneration Committee establishing or amending the remuneration packages of Executive Directors and the senior leadership team including base pay, any profit-sharing, share option, bonus or other incentive scheme of any nature for directors or employees;
- 8.1.21 making any bonus payment to any director or employee;
- 8.1.22 instituting, settling or compromising any legal proceedings instituted or threatened against it or submitting to arbitration or alternative dispute resolution any dispute involving it; or
- 8.1.23 entering into an agreement to do any of the foregoing.

9 **Production of accounts and reports**

- 9.1 DevCo shall produce a balance sheet, as at each Management Accounts Date which is to be presented at a pre-agreed quarterly meeting and a profit and loss account which is to be a at each pre-agreed quarterly meeting. The balance sheet and profit and loss account

will be accompanied by a report in such format and covering such issues as may reasonably be requested by the Council.

- 9.2 HoldCo shall produce an annual profit and loss sheet and a balance sheet, as part of its financial year end process at each pre-agreed annual meeting. The balance sheet and profit and loss account will be accompanied by a report in such format and covering such issues as may reasonably be requested by the Council.
- 9.3 Each Subsidiary Undertaking shall produce an annual profit and loss sheet and a balance sheet, as part of its year end process at each pre-agreed annual meeting. The balance sheet and profit and loss account will be accompanied by a report in such format and covering such issues as may reasonably be requested by the Council.
- 9.4 Each Company shall ~~instruct its auditors~~ prepare and audit a balance sheet and have them externally audited, as at the Annual Accounts Date each year and a profit and loss account, for the 12 month financial period ending on the Annual Accounts Date each year. Draft accounts shall be presented to the Council within 3 months of the financial year end. Final accounts shall be presented to the Council within 6 months after the end of the period to which such accounts relate. The balance sheet and profit and loss account will be accompanied by a report in such format and covering such issues as may reasonably be requested by the Council.
- 9.5 Each Company will provide to its shareholders full details of any actual or prospective material change in its business or financial position or affairs, as soon as such details are available.
- 9.6 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.

10. Anti-corruption

In this clause:

Adequate Procedures means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

Associated Person means in relation to a party to this Agreement, any person (including an officer, employee, agent or Subsidiary Undertaking) who performs services for or on behalf of that party;

Corrupt Activity means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act;

- 10.1 Each party declares and undertakes to the other parties that:

- a. it has not and will not in relation to any Company, or the operation of the Business, engage in any Corrupt Activity;

- b. it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;
- c. it has and will maintain in place, or in the case of each Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;
- d. it has not and will not engage in any activity, practice or conduct which could place any Company or any other party in breach of section 7(1) Bribery Act;
- e. it will not, and will procure that the Company will not engage in any activity, practice or conduct which would constitute an offence under section 45 or 46 of the Criminal Finances Act 2017;
- f. it has and will maintain in place, and will procure that the Company has and will maintain in place, Prevention Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 45 or 46 of the Criminal Finances Act 2017; and
- g. from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under clause 9.2.1 and clause 9.2.2 and will provide any information reasonably requested by the other party in support of such compliance.
- h. breach of any of the undertakings in this clause shall be deemed to be a material breach of the agreement.
- i. from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 9.2 and will provide any information reasonably requested by the other party in support of such compliance; and
- j. it will ensure that its Associated Persons will comply with its commitments under this clause 9.

11 Conflict with articles of association

- 11.1 In the event of any ambiguity or discrepancy between the provisions of this Agreement and the provisions of the articles of association of any Company, then it is the intention of the parties that the provisions of this Agreement shall prevail. Accordingly, each party which holds shares in a Company (so far as each is able) shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it as a shareholder, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the relevant articles of association of the relevant Company.

13 No fetter

- 13.1 Nothing in this Agreement shall operate to bind any Company or the Council to the extent that it constitutes an unlawful fetter on any statutory power of such Company or the Council

(but this shall not affect the validity of the relevant provision as between the other parties to this Agreement or the respective obligations of such other parties as between themselves under clause 10).

14. Confidentiality

14.1 This clause applies to:

- all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;
- any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;
- including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).

14.2 In this clause, in relation to a particular item of Confidential Information:

- the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and
- the **Receiving Party** means the other party.

14.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:

- keep the Confidential Information confidential;
- not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause; and
- not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.

14.4 Notwithstanding clause 14.3, the Receiving Party may disclose Confidential Information as follows:

- To its professional advisers (each, a **Recipient**) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
- to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body

14.5 This clause shall not apply to any Confidential Information which:

- Is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
- Was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this

- Agreement) and which had not previously been obtained under an obligation of confidence;
or
- subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.
- 14.6 Each Company acknowledges that the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 14.10.
- 14.7 If the Council receives a Request for Information in relation to Information that a Company is holding and which the Council does not hold itself, the Council shall refer to the relevant Company such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the relevant Company shall:
- 14.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 10 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and
- 14.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 14.8 Following notification under clause 14.7, and up until such time as the relevant Company has provided the Council with all the Information specified in clause 1.7, the relevant Company may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:
- 14.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 14.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the relevant Company respond directly to a Request for Information.
- 14.9 Each Company acknowledges that (notwithstanding the provisions of clause 12.1) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Company:
- 14.9.1 in certain circumstances without consulting with the Company; or
- 14.9.2 following consultation with the Company and having taken its views into account.

14.10 Each Company shall transfer to the Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.

13 *Data Processing SUGGEST THIS IS MOVED TO A SCHEDULE THAT IS REVIEWED ANNUALLY FOR EASE OF UPDATING AS LAW AND BEST PRACTICE DEVELOPS*

13.1 The parties undertake to indemnify each other in full and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of the terms of the Data Protection Act 2018 or the UK GDPR.

15 **General**

15.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.

15.2 No variation of this Agreement or any agreement or document entered into pursuant to this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15.2A The parties agree that the Shareholders' Agreement dated 30 September 2019 shall cease, determine and expire absolutely on the date that this Agreement is entered into. Such determination or expiry shall not affect any pre-existing right, obligation or liability of any party to that agreement which arose prior to the date of determination.

15.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.

15.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.

14.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

15.6 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.

15.7 The rights and remedies provided by this Agreement are cumulative and subject as otherwise provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.

15.8 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:

15.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

- 14.8.1 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 14.9 Subject to clause 14.2A above, this Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.
- 14.10 Each of the parties acknowledges and agrees that:
- 14.10.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;
- 14.10.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;
- 14.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.
- 14.11 Save for a person who acquires shares in a Company and enters into a Deed of Adherence, no person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

15 **Assignment**

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party, save where either: (a) the Group is, or any Company forming part of the Group are, subject to a corporate restructure in which case whatever corporate entity replaces the Group, or any Company forming part of the Group, to continue in the Business (or any other business which is similar to the Business, as appropriate); or (b) the Council's function are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

16 **No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17 **Notices**

17.1 Any notice or other communication given under this Agreement:

17.1.1 shall be in writing;

17.1.2 shall be signed by or on behalf of the party giving it;

17.1.3 shall be served by email, delivering it by hand, or sending it by pre-paid recorded delivery or registered post at the address set out in clause 17.2 of the party due to receive it and marked for the attention of the person named in clause 17.2 (or at such other address in the United Kingdom or marked for the attention of such other person as last notified in writing to the other parties;

17.1.4 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery; and

(b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting.

17.2 The addresses of the parties for the purposes of clause 17.1 are:

HoldCo

Address: Graven Hill Site Office Building E25, Graven Hill Road, Bicester, OX25 2BF

For the attention of: Managing Director

DevCo

Address: Graven Hill Site Office Building E25, Graven Hill Road, Bicester, OX25 2BF

For the attention of: Managing Director

For each Subsidiary Undertaking (unless the parties agree otherwise in writing)

Address: Graven Hill Site Office Building E25, Graven Hill Road, Bicester, OX25 2BF

For the attention of: Managing Director of DevCo

The Council

Address: Bodicote House, Bodicote, Banbury, OX15 4AA

For the attention of: S151 Officer and the Monitoring Officer

17.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause 17.2 and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter.

17.4 In this clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

17.5 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

18 **Counterparts**

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

19 **Applicable law**

19.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.

19.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This Agreement has been executed on the date stated at the beginning of this Agreement.

This report is public. The appendix is exempt from publication by virtue of paragraph 3 of Schedule 12a of local Government Act 1972	
Graven Hill Village Development Company (GHVDC) - Governance Review Action Plan – Update	
Committee	Shareholder Committee
Date of Committee	16 Oct 2024
Portfolio Holder presenting the report	Leader of the Council, Councillor David Hingley
Date Portfolio Holder agreed report	8 October 2024
Report of	Monitoring Officer & Assistant Director – Law and Governance, Shiraz Sheikh

Purpose of report

This report presents an update of the Governance Review Action Plan, which commenced following a request at the Shareholder Committee meeting dated 05 July 2023 to ensure oversight of the remaining actions emerging from the Governance Review, carried out by WBD Solicitors.

1. Recommendations

The Shareholder Committee resolves:

- 1.1 To approve the updated Graven Hill Governance Review Action Plan attached at Exempt Appendix A.

2. Executive Summary

- 2.1 The recommendation that this report address is the ongoing reporting process of the Governance Review Action Plan to implement the governance arrangements that have been used to oversee the Graven Hill companies.

Implications & Impact Assessments

Implications	Commentary
Finance	There are no financial implications arising from this report. Michael Furness, Assistant Director of Finance (S151 Officer), 7 October 2024
Legal	Implementing the action plan will ensure strengthened governance arrangements between the Council and the companies. Shahin Ismail, Interim Head of Legal Services, 7 October 2024
Risk Management	There are no risks arising directly from this report. If any risks arise, they will be managed through the service operational risk and

	escalated to the Leadership Risk register as and when deemed necessary. Celia Prado-Teeling, Performance Team Leader, 7 October 2024			
Impact Assessments	Positive	Neutral	Negative	Commentary
Equality Impact				N/A
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?				N/A
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?				N/A
Climate & Environmental Impact				N/A
ICT & Digital Impact				N/A
Data Impact				N/A
Procurement & subsidy				N/A
Council Priorities	Business Plan - <i>Housing that meets your needs</i>			
Human Resources	Not applicable			
Property	Not applicable			
Consultation & Engagement	Not applicable			

Supporting Information

3. Background

3.1 The Council commissioned external legal experts to review the arrangements between it and the Graven Hill companies as good practice and ascertain whether

such arrangements needed to be amended to remain lawful and compliant with best practice. The full report was included for this meeting's consideration on 5 July 2023.

- 3.2 The report provided a comprehensive overview of the governance arrangements for overseeing the Graven Hill companies.
- 3.3 The report situated its observations in the context of the Council's overriding obligations (its Duty of Best Value), several well-known cases in which governance shortcomings have contributed to failures connected to commercial ventures initiated by other local authorities, and widely circulated guidance on best practices.
- 3.4 The report identified several focus areas for the Council to strengthen governance and oversight arrangements of its wholly owned companies further.
- 3.5 The Action Plan provided in this report has been previously approved by the Committee, and the attached version offers an update on the dates and progress.

4. Details – Action Plan Update

4.1 The main changes to the action plan are highlighted below

Governance Framework and Review of the Shareholder Agreement

Action: A draft revised Shareholder Agreement is on the Agenda for this meeting.

Update: The Shareholder Agreement forms the foundation of the Governance Framework. Work will now progress to articulating the governance framework that sets out the respective roles and responsibilities of the companies, shareholder representative and the Council.

Ensuring proper procurement is in place for the Company

Action: The Council should identify whether there is a current procurement policy with which the Companies are required to comply and ensure that it is fit for purpose and consistent with recent legislative changes

Update: GHVDC presented a new procurement strategy at its board meeting on 25th April, which was approved. The strategy is being updated by the company to take into account changes to procurement law through the Procurement Act 2023 and will be submitted to the MO for review.

Review provision of Council's Shareholder Representative

Action: The Shareholder Rep met with the CEO on 09 May 2024 to discuss options and identify the best way forward for the role that helps both the Council and the Company.

Update: This work has been subsumed into the Transformation Programme to ensure that the role of the Shareholder Representative is suitably skilled and is at the relevant level in the organisation. A draft job description is in place to assist in this work.

The roles and responsibilities of the Shareholder Rep will be incorporated into the Governance Framework, to be brought to the Committee at its next meeting.

Training for members

Action: All councillors will receive a briefing session annually on the performance of all companies.

Update: The Shareholder Rep will hold an all member briefing at the year end and will ensure this is done annually

Review of the Shareholder Committee's role

Action: The DMO will bring a report to the October Shareholder Committee meeting.

Update: This action has not been able to be progressed but will be subsumed into the Governance Framework work, as set out above.

Skills mix of Company Directors

Action: GHVDC will be requested to bring a report to October SHC detailing the skills mix of the newly appointed NEDs and recruitment to permanent senior roles within the executive team for shareholder consideration/approval.

Update: The Company has substantially completed this work, and it will be presented to the Committee at its next meeting. The work will inform the skills gap at Board level.

Risk Management

Action: The draft internal audit plan for 2024/25 will go to AARC on 29 May 2024. The S151 officer is expecting to see LATCO Governance as an agenda item.

Update: The oversight of company activity will be considered by the Overview and Scrutiny Committee on 28 January 2025.

4.2 Outstanding actions yet to be progressed

None

4.3 On-hold actions

Review of Loan Agreement

This action is on hold for reasons set out in the exempt appendix

4.4 Completed actions

The below actions have been removed from the action plan due to completion:

Strong Governance and Reporting

The council and the company have agreed that the company's Board minutes will be a standing item for future Shareholder Committee meetings.

Company Training

A joint training session to include members, NEDs, and executive directors was delivered by an external provider in July 2024.

Going Concern

The company remains solvent and is performing against its targets. An update is provided in the exempt appendix to this report.

5. Alternative Options and Reasons for Rejection

- 5.1 No alternative options have been considered, as company governance and compliance with governance actions are crucial to the success of the Council's companies.

6 Conclusion and Reasons for Recommendations

- 6.1 The Action Plan provided will enable the Shareholder Committee to track progress toward the completion of its recommendations.

Decision Information

Key Decision	No
Subject to Call in	No

If not, why not subject to call in	N/A
Ward(s) Affected	All

Document Information

Appendices	
Appendix A EXEMPT	Graven Hill Governance Review Action Plan
Background Papers	None
Reference Papers	None
Report Author	Shiraz Sheikh, Monitoring Officer
Report Author contact details	Email: shiraz.sheikh@cherwell-dc.gov.uk

This report is public	
Graven Hill Village Development Company (GHVDC) – Quarter One Business Report 2024/25	
Committee	Shareholder Committee
Date of Committee	16 October 2024
Portfolio Holder presenting the report	Leader of the Council, Councillor David Hingley
Date Portfolio Holder agreed report	8 October 2024
Report of	Steve Hinds, Shareholder Representative

Purpose of report

To note, comment and approve recommendations in response to the GHVDC Quarter One Business Report.

1. Recommendations

The Shareholder Committee resolves:

- 1.1 To note and comment on the GHVDC Quarter One Business Report.
- 1.2 To approve the GHVDC Quarter One Business Report

2. Executive Summary

- 2.1 This report sets out the in-year key strategic risks, performance, and financial update for Graven Hill Village Development Company Ltd.
- 2.2 This report will provide an overview of the company's first quarter and flash update of the performance to date in the second quarter, which have been focused on securing residential sales, delivering residential completions and progressing the new planning application and associated viability.
- 2.3 The GHVDC management team will attend the meeting to present the reports for comment and approval by the Shareholder Committee.

Implications & Impact Assessments

Implications	Commentary
Finance	There are no financial implications arising directly from this report. Joanne Kaye, Head of Finance, 8 October 2024

Legal	There are no legal implications arising directly from this report. Shiraz Sheikh, Monitoring Officer & Assistant Director Law & Governance, 8 October 2024		
Risk Management	There are no risks arising directly from this report. If any risk arise, it will be managed through the service operational risk, and escalate to the Leadership Risk register as and when deemed necessary. Celia Prado-Teeling, Performance Team Leader, 8 October 2024		
Impact Assessments	Positive	Neutral	Negative
			Commentary
Equality Impact			N/A
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?			
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?			
Climate & Environmental Impact			N/A
ICT & Digital Impact			N/A
Data Impact			N/A
Procurement & subsidy			N/A
Council Priorities	Business Plan <ul style="list-style-type: none"> • <i>Housing that meets your needs</i> • <i>An enterprising economy with strong and vibrant local centres</i> • <i>Supporting environmental sustainability</i> • <i>Healthy, resilient, and engaged communities</i> 		
Human Resources	N/A		
Property	N/A		
Consultation & Engagement	N/A		

Supporting Information

3. Background

- 3.1 This report sets out the in-year key strategic risks, performance, and financial update for Graven Hill Village Development Company Ltd.
- 3.2 This report will provide an overview of the company's first quarter and flash update of the performance to date in the second quarter, which have been focused on securing residential sales, delivering residential completions and progressing the new planning application and associated viability.
- 3.3 The GHVDC management team will attend the meeting to present the reports for comment and approval by the Shareholder Committee.

4. Details

- 4.1 The GHVDC 2024/25 Quarter One Business Report is attached as **Appendix A**. This contains information on the year-end financial position, achievement against KPIs, key issues, risks, targets, and activities for quarter.
- 4.2 The strategic risk position is being well managed and details can be found in the exempt report

Key Performance Indicators (KPI's)

- 4.3 The KPIs were agreed upon as part of the 2024/25 Business Plan, which was approved by the Shareholder Committee on 13 March 2024. Performance is detailed in Appendices 1 and 2 within **Appendix A** of the exempt report. The company is performing well against its KPIs in this quarter.

Financial Performance

- 4.4 The Q1 Focus has been on achieving reservation/exchanges to secure FY24/25 completions.
- 4.5 At this early stage of the financial year, there are no material deviations that places our FY24/25 targets at risk and we remain on track to achieve the required legal completions.
- 4.6 The Shareholder Committee will receive a verbal GHVDC Quarter One (2024/25) Update which will inform on progress on business performance and progress against the activities.
- 4.7 As part of the development of the new application, the current s106 has been reviewed with the intention of generating a deed of variation that would confirm the obligations and contributions due for Stage 1. Obligations and contributions for

Stage 2 would be determined as part of the new application. This work is continuing with monthly meetings being held where both the Council and Development Company undertake a detailed review of the issues.

- 4.8 The company was asked to provide regular updates in relation to the s106 contributions paid and direct delivery contributions as part of the quarterly updates and **Appendix B2** of the exempt report provides a status overview as per current discussions.

FY 23/24 Financial Statements

- 4.9 The company traded profitably during the year ended 31 March 2024. The now audited accounts reflect a pre-tax profit of £6.0m on Turnover of £65.4m (gross profit: £7.2m.) Results were significantly buoyed by land sales which will not reoccur resulting in a strong cash position at the end of March 2024.
- 4.10 The statutory accounts for GHVDC and GHVHC are tabled at the August Board meeting for approval by the Board. Both entities have received unqualified audit reports, and the management letter findings will be presented by the engagement partner at Critchley's (our auditors) at this Board meeting.
- 4.11 There are no material findings from the audit or significant control issues identified from their report.

Update on Recruitment to fill vacant roles within the management team

- 4.12 The new Finance and Governance Director, Phillip Kassiram joined the company on Monday 3 June. This will be a statutory appointment which taken to the Graven Hill Board for approval and for the resolution to be signed on 22 August. It is understood by the Company that the amendments being considered to the Shareholder Agreement and Articles would require these appointments to be made by the Shareholder in a joint process with the Company and therefore the appointment is brought to the attention of the Committee.
- 4.13 A paper was taken to the 9 May Board which recommended augmenting the executive statutory representation on the Board, specifically in relation to sales and marketing. The Board's decision on this was that prior to any further appointments a detailed skills assessment should be undertaken of the current Board to determine where if any skills gaps existed and therefore to advise on Board composition. The skills assessments have been completed and will be considered by the Graven Hill Board at its meeting on 22 August. It is understood by the Company that the amendments being considered to the Shareholder Agreement and Articles would require any appointments to the board to be made by the Shareholder and it is therefore intended that further updates on the outcome of the skills assessment will be reported to the Shareholder Committee.

5. Alternative Options and Reasons for Rejection

- 5.1 None

6 Conclusion and Reasons for Recommendations

- 6.1 Through agreeing the recommendations in this report the Council is ensuring continued oversight of the governance and strategic direction of the delivery of the Graven Hill Village development on behalf of the local communities.

Decision Information

Key Decision	N/A
Subject to Call in	N/A
If not, why not subject to call in	N/A
Ward(s) Affected	All

Document Information

Appendices	
Appendix	No appendices for this public report, the exempt version of the report includes exempt appendices
Background Papers	None
Reference Papers	None
Report Author	Stephen Hinds, Shareholder Representative
Report Author contact details	Email: stephen.hinds@cherwell-dc.gov.uk

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