

Arrangements for monitoring of WV Living – Monitoring Officer presentation to Residents, Housing and Communities Panel

July 2022

Background - Linked Bodies (1)

- Local authorities can own/control certain types of companies/other bodies such as limited liability partnerships (“Linked bodies”) and indeed in certain circumstances they need to in order to act lawfully
- There are a significant number of different approaches adopted by Local Authorities – as at 2018 it was estimated that there were over 740 Local Authority companies in the UK, with the largest percentage relating to property/investment.

Background - Linked Bodies (2)

- The types of bodies include:
 - Trading companies
 - Certain joint ventures with other organisations
 - Property companies
 - Service provision companies including so called “Teckal” companies (which avoid the need for local authorities to go through the procurement rules when contracting with a local authority controlled service provision company provided that certain tests are met)

Background - Linked Bodies (3)

- The legal framework makes it clear that Local Authorities can use Linked Bodies, under the Local Government Act 2003 and then widened through the Localism Act 2011.
- Grant Thornton in their 2018 study identified that there were a number of reasons for the rise in Local Authority including:
 - the decline in popularity of outsourcing to the private sector.
 - increased funding pressures on local authorities leading to use of trading powers to reduce the net burden on the budget and use of other innovative methods to reduce costs

Background - National issues - types of vehicles used

- There a number of different approaches that can be taken including:
 - Wholly owned companies by one authority
 - Wholly owned companies by a collection of authorities
 - Joint venture companies with input by the private sector as well as one/a number of local authority companies
 - Limited Liability Partnerships provided that not used to trade commercially (as under the law trading can only be carried out through Limited Companies)

Background – National issues – trading powers (1)

- In the case of trading companies a number of measures (covered in the next slide) are in place through the Local Government Act 2003 the reasons for these are that it:
 - Ensures a level playing field between local authorities and private sector companies.
 - Means that local authorities do not receive the tax advantage they would otherwise have had over private sector companies.
 - Results in greater transparency arising from the company law requirements. This is useful for the purposes of avoiding subsidy control restrictions (which has replaced state aid restrictions following the UK's departure from the EU)
 - means that there is greater protection for the council taxpayer and the monies paid to the public purse as a result of limited liability.

Background – National issues – trading powers (2)

- In the additional hurdles for trading companies include:
 - approval of the establishment of the Company by the Council
 - requires an authority to prepare a business case supporting the exercise of the trading power. The authority must approve this business case. This requirement ensures that authorities manage risks effectively.
 - prohibiting authorities from subsidising their trading activities on a continuing basis
 - prohibiting authorities from trading in services (other than to other local authorities) that they have a statutory duty to provide

Background – Control (1)

- Critically in the case of each linked body established by the Council best practice shows that there should be
 - A shareholder agreement between the Council and the linked body defining the arrangement
 - A business case
 - A business plan setting out the key performance indicators and expected financial performance
 - Governance arrangements to monitor the compliance with the shareholder agreement/business case/business plan

Background – Control (2)

- Whilst a linked body should have a certain amount of autonomy to act and deliver within the agreed parameters the Council as shareholder has some critical powers including
 - Power to appoint remove/directors
 - Approval/rejection of business plan
 - Power to wind up the linked body

Background – National – challenges that have arisen

- Whilst the vast majority of Local Authority Linked Bodies have worked well and have assisted in the delivery of key services/development of important facilities etc there have been issues with some such bodies including those in
 - Nottingham City Council
 - London Borough of Croydon
- As always it is critical that we learn the lessons from other authorities and indeed that is what we have done.

Background – National – challenges that have arisen

- Lessons from Nottingham City Council – Robin Hood Energy
- General view from Auditors (Grant Thornton) on RHE (in August 2020 report) was
 - *More generally, it is not seen as good practice for councillors to be on the boards of local authority companies, with other mechanisms used to ensure that the company meets the Council's policy objectives.*
 - *This reflects the above issues in relation to the expertise and experience of many councillors, and the potential for conflicts of interest between the councillors' commitment to the interests of the company, which has to override other interests when they are on company 'business', and their wider responsibilities as councillors.*
 - *Having councillors on company boards can lead to a failure to properly separate the two sets of interest – of the company and of the Council – and it appears that this occurred in relation to the expectation that the Council would continue to fund RHE indefinitely.*

Background – National – challenges that have arisen

- Lessons from London Borough of Croydon – Brick by Brick public interest report by Grant Thornton see here - and failures led to a section 114 notice issued in 2020 –
 - *A rapid review into the council’s finances and governance said that Brick by Brick has not delivered on expectations, with the town hall having managed the endeavour “extremely poorly”. “The council should immediately strengthen its oversight of Brick by Brick (BBB) by improving communication, monitoring contract information and development milestones and having experienced non-execs on the BBB board,” it added. Ministers ordered the review after Croydon Council issued a Section 114 notice in November last year, putting a freeze on all non-essential spending, after it accumulated a £66m budget deficit. Auditors revealed that the authority had lent Brick by Brick £200m since 2015 without receiving any dividends or interest in return.*
 - *The company formed a major part of the council’s plans to borrow another £500m over three years, today’s review said.*
 - *Lead reviewer Chris Wood said: “Members of both parties [Labour and Conservatives] and senior officers have reported to us the existence in the past of an ‘inner circle’ of the (then) leader and three cabinet members, who exercised a great deal of control of the council’s finances and championed the cause of the council’s commercial activities including Brick by Brick.”*
 - *Inside Housing 2.2.21*

Wolverhampton position – governance arrangements

- Overall for all linked bodies there has been increased oversight included in the Council's Annual Governance Statement taken to Audit and Risk Committee each year and now also monitored on a 6 month basis
- Overall Monitoring Officer has confidence that the relevant rules are being complied with and that there is good oversight in each of the linked bodies
- Agreed that at least every two months an update would be provided on those bodies either owned by the Council or with potentially large liabilities to the Council to Cabinet members/Leader of the Opposition going through:
 - Budget
 - Compliance with business plan KPIs
 - Future plans

Wolverhampton position – governance arrangements

- Importantly External Auditors happier with approach on Council Owned/Involved Bodies – not least partly due to the updates oversight covered.
- Important to note that Council accounts for 2020-21 were unqualified by external auditors and detailed questions were asked about how we manage our relationships with linked bodies, in the light of challenges in other authorities.
- We expect detailed questions will be asked by Auditors in 2022 as part of the Audit of the 2021/22 accounts based on the issues that have taken place in other authorities.
- We will be bringing a detailed report on each of the relevant Linked Bodies to the relevant Scrutiny Panel to ensure that there is transparency on the Governance arrangements for each body.
- Each of the Linked Bodies is subject to a detailed review of arrangements at least every 3 years.

Background – WV Living

WV Living - City of Wolverhampton Housing Company Limited –

- established in 2016 following approval by Council as a Limited Company wholly owned by the Council set up under the trading powers in the Local Government Act 2003
- known as WV Living
- focused on developing properties within the City to meet the Council's aspirations in terms of affordable housing
- accounts must be audited each year

Background – WV Living

WV Living -

- a shareholder agreement/contract between the Council and the linked body defining the arrangement – Jan 2017 – sets out the parameters of what WVL can decide and what it cannot without Council approval
- A business case and a regularly refreshed business plan (last approved in April 2022) setting out the key performance indicators and expected financial performance and
- Governance arrangements to monitor the compliance with the shareholder agreement/business case/business plan – critically this includes a Shareholder board made up of a cross party selection of Councillors who effectively represent the Council's interests and challenge the performance of WVL

Wolverhampton approach – specific bodies

- **WVL** – In 2020/2021 a detailed review took place of the governance of WVL – led to changes including appointment of
 - Non exec Director with experience of the relevant sector
 - New Business Plan
 - Strengthening of Shareholder Board and Transparency
 - Clear Blue water between the bodies

Directors (1)

- **WV Living board**
 - 4 Directors and a Company Secretary (not a Director) – Mark Taylor, Alison Shannon, Darron Baggs (WVH) – and Chris Handy as non exec director with significant housing experience
 - Directors appointed through IEDNs made by Cabinet Members for City Housing and City Assets and Resources in conjunction with the Director of Finance (Section 151 Officer)
 - Currently appointed Decisions about the company are to be made by directors within the scope of the Business Plan and shareholder agreement

Directors (2)

- **WV Living board**
 - Board of Directors made up of Council/WH senior officers/external expertise (who owe statutory duties to the company – aware of conflicts)
 - The Council's "key" controls are its ability to appoint/remove directors, amend the Articles and exercise control over shares/dividends.
 - WVL Board limits – they do not set remuneration policy – approved by Council (through decision by the relevant Cabinet members)

Business Plan (1)

- **WVL** – In 2020/2021 a detailed review took place of the governance of WVL – led to changes including appointment of
 - Non exec Director with experience of the relevant sector
 - New Business Plan – setting out clearly what the business would focus on – renewed each year
 - Strengthening of Shareholder Board and Transparency
 - Clear Blue water between the bodies
- WV Living's accounts are audited separately by external auditors and an unqualified opinion was provided on the accounts for 2020-2021, a copy of which will be published on the Council's website
- Business Plan approved by Cabinet in April 2022 – reviewed each year – focus on what work covered by WVL – for example clear that WVL only carry out business in Wolverhampton

Business Plan (2)

- Critically borrowing from the Council to WVL has been serviced throughout and has significantly reduced to current levels being less than £3 million.
- WVL's assets (which the Council has charges over) significantly exceed the Council's lending

Shareholder Board (1)

- RHE clear that failures partly down to poor sharing of quality information on a regular basis both with Shareholder board and with lead councillors
- Current approach
 - Key Performance Indicators
 - All asks of the Council directed to Lead Councillors
 - Improved use of Shareholder Board – Quarterly meetings
 - Focus on review/compliance with Annual Business Plan
 - Annual governance review on WV Living by Monitoring Officer as part of Annual Governance Statement – this in turn comes to Audit and Risk Committee

Shareholder Board (2)

- **Role of the Shareholder Board?**
 - provide oversight on the operation of WV L
 - Focus on review/compliance with Annual Business Plan and other key policies - performance against the Business Plan should be a standing item on all agendas
 - Governance/Finance update for each Shareholder Board Meeting
 - WV L need the space to be able to operate commercially within the Business Plan – **but** with clear measures and controls in place to understand *how* it is working which is why KPIs have been developed to consider and work through
 - Quarterly meetings – next meeting 27 July 2022

Shareholder Board (3)

- Approach is:
 - **Key Performance Indicators** – ensuring compliance with business plan refreshed each year and approved by Cabinet
 - **All asks of the Council by WVL directed to Lead Councillors** – clarity here that WVL is a separate company with clear blue water between the Council and WVL
 - **Improved use of Shareholder Board** – challenge on how WVL operates
 - **Annual governance review on WV Living and other companies owned by the Council/linked responsibilities** as part of Annual Governance Statement – comes to Audit and Risk Committee with an update mid-year to provide additional assurance

Clear Blue Water

- **Internal audit checks** - Under the Local Government legislation the Council cannot subsidise the running of trading companies – additional checks are being carried out through internal audit to provide assurance on this
- **Conflicts** – clear approach on conflicts including separate legal representation for Council/WVL when dealing
- **Land transactions** – all sales to WVL by the Council must be at best consideration under s.123 of the LGA 1972 – report on all land sales to come to relevant scrutiny panel in Autumn
- **Transparency** – ensuring that external audit reports are made available publicly and that there are detailed reports brought forward that then form part of the Council's own accounts

Conclusion and next steps

- **Monitoring Officer conclusion**
 - Linked Bodies are likely to continue to operate to assist local authorities with budgetary challenges and to find innovative ways of working
 - CWC has robust measures in place to check and challenge how the linked bodies operate – there will be a full review at least every 3 years of each linked body including WVLC and the Council's governing arrangements
 - Those measures will continue to be reviewed and reported on to Councillors including relevant scrutiny panels
 - CWC has good governance in place for its linked bodies

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