

## Slough Borough Council

<b>Report To:</b>	<b>Cabinet Committee Assets Disposals</b>
<b>Date:</b>	12 September 2024
<b>Subject:</b>	Company Governance Update
<b>Lead Member:</b>	Councillor Wal Chahal Deputy Leader – Financial Oversight, Council Assets, Procurement and Revenues & Benefits
<b>Chief Officer:</b>	Annabel Scholes - Executive Director Finance & Commercial
<b>Contact Officer:</b>	Vicki Palazon - Finance Consultant (FIP and Companies)
<b>Ward(s):</b>	All Wards
<b>Key Decision:</b>	NO
<b>Exempt:</b>	NO - Public with exempt appendix 2 under paragraph 3 of Schedule 12A Local Government Act 1972 – Information relating to the financial or business affairs of the Council.
<b>Decision Subject To Call In:</b>	NO
<b>Appendices:</b>	Appendix 1 – Company Overview Appendix 2 – Activity Roadmap – Key Activities (Exempt)

### 1. Summary and Recommendations

- 1.1 This report provides a status update on the Section 24 statutory recommendation on poor performance, oversight and financial reporting in relation to the Council's group accounts and group relationships as published by Grant Thornton report on 9 May 2021.

#### Recommendations:

Cabinet Assets Disposal Committee is recommended to:

- a. note the Council's role and responsibilities in maintaining company governance oversight, performance and financial reporting for its group entities; and
- b. to note the current progress to date to discharge the section 24 statutory recommendation made by Grant Thornton in 2021 and next steps required to fully discharge this recommendation.

## Commissioner Review

*"Commissioners have noted the contents of this report and the need for the Council to continue to improve reporting openness and transparency.*

*The committees with delegated responsibilities need to actively strengthen the oversight of shareholdings which it wholly owns or in which it has a material interest and contribute to the development of an effective control environment."*

## 2. Report

- 2.1 The Council has set up a number of corporate entities over time, for a variety of reasons and by 2021 had 11 connected companies. On 9 May 2021, Grant Thornton published a report making recommendations under section 24 schedule 7 of the Local Audit and Accountability Act 2014, one of which was on the poor performance, oversight and financial reporting on group entities.
- 2.2 Further to the section 24 recommendation, the Council notes further reporting on company governance such as:
  - 2.2.1 the MHCLG commissioned [external governance review](#) and CIPFA financial assurance review published in autumn 2021;
  - 2.2.2 Secretary of State finding that the Council had breached its best value duty, resulting in the issue of statutory [Directions](#) and appointment of commissioners;
  - 2.2.3 Internal and external audit reports flagging concerns about governance arrangements in specific companies;
  - 2.2.4 The Annual Governance Statement for 2022/23 and 2023/24 contained actions to ensure required improvement to governance of companies; and
  - 2.2.5 Updates to Council committee meetings and commissioner reports.
- 2.3 This report provides an update on overall company governance at a high level. It is not intended to replicate the separate and more detailed reporting on company performance in other reports, including reports to this committee and Cabinet this month on James Elliman Homes Limited and Slough Children First Limited.
- 2.4 For background information, appendix 1 provides the status and compliance with Companies House filings for active companies (including DISH which is not owned by the Council) and confirmation of those that were subsequently closed. All active companies must file annually on time their confirmation statement and accounts, not to do so is a criminal offence and Companies House could commence strike off action and all late filings will be subject to late filing penalty.

## Company Governance and Oversight

- 2.5 Companies must comply with the Companies Act 2006 and operate business operations independently from the Council, albeit from an accounting perspective the council interest within a company will determine the accounting treatment in the Council's accounts. However, the Council will have an interest in ensuring that the primary objective of each company is fulfilling its purpose whilst protecting its investment and assets with the relationship, roles and responsibilities clearly defined

in legal documents such as articles of association, shareholder agreement, partnership agreements and the council's own governance arrangements for providing oversight of its companies.

- 2.6 Company Board Directors will normally be either an executive director (i.e. they are employed directly by the Company to fulfil a specific role based on their expertise) or non-executive directors that will typically be appointed to the Board and provide a range of skills and experience relevant to the company's objectives. Both executive and non-executive directors have statutory responsibilities under the Companies Act 2006, sections 171 – 178 to ensure the appropriate running and successful promotion of the company. Suitable recruitment and appointment processes and training and development need to be in place to ensure directors understand these duties and reduce the risk of enforcement action being taken, conflicts of interest not being managed and poor decision making.
- 2.7 Company Board Directors have a duty to promote the success of the company for the benefit of its members as a whole. The company may be a company limited by shares; in which case this may involve delivering a profit over the long term. However some companies are limited by guarantee and are explicitly set up on the basis they are not for profit. Even for companies limited by shares, in order to promote the success of the company for the benefit of members, this involves considering the interests of other stakeholders such as employees, suppliers, customers and the company's social and environmental impact.
- 2.8 A company must be permitted to operate independently and this requires the company board to take operational and strategic decisions that are not explicitly reserved to the Council as owner. If the Council, elected members or officers get involved and take operational decisions, they risk being deemed a shadow director (performing the duties of a company director behind the scenes) or a defacto director (an individual performing the duties of the director even though not registered at Companies House) and subject to the same legal duties as a director appointed to the Board. Additionally, Slough Children First is a Teckal company (Public Contract Regulations) and the service delivery contract and other governance documents outline how services are to be provided and how the Council exercises control over the company. At present 100% of activities are carried out in furtherance of the requirements of the service delivery contract and SCF does not provide services to any third party.
- 2.9 Company oversight at a member level involves different member bodies having oversight in different ways. Full Council is responsible for appointing elected members to any board, Cabinet is responsible for significant financial decisions and approval of annual business plans, Audit and Corporate Governance Committee is responsible for monitoring risk and the internal control environment of the Council and Corporate Improvement Scrutiny Committee is responsible for holding Cabinet to account in relation to the exercise of its functions. This committee has a role in company governance as follows:
- a) To consider the roles and case for continuing with each company of the Authority (except Slough Children First);
  - b) To ensure that the Directors appointed by the Authority are appropriately skilled in either technical or company governance matters and that each Board functions effectively under the terms of an explicit shareholder agreement and a nominated shareholder representative;

- c) To approve shareholder agreements, or changes to current agreements, on behalf of the Council;
- d) To receive a report on their activities and performance, at least annually and in person, from any/all of the Directors, appointed by the Council to any council company under their remit;
- e) To mandate the Council's shareholder representative to act in particular ways such as voting on resolutions;
- f) To require the directors and officers of any council company to attend meetings of this Cabinet Committee to report on the current financial health and prospects of their company; and
- g) To establish a plan to internalise, close or sell as appropriate any council company which it is decided not to continue in its current form.

2.10 Within the companies that still remain active to date, the council needs to assure itself that the companies are acting in accordance with legislation, have been set up correctly and operating correctly, council officers are not acting as either shadow or defacto directors and the council as owner is content that its strategic objectives are being met and any investment or asset is protected. This may require additional training for officers and members to fulfil their role.

### Financial Governance

2.11 A company is an entity subject to separate legal, tax and accounting considerations and should therefore be separate from council financial transactions. This includes a bank account, a separate finance ledger or a minimum of a separate coding structure within the Council's finance ledger, financial controls / regulations, financial monitoring and performance reports and a business plan. Where the company requires consolidation into the Council's financial statements, there is a process to be followed within accounting legislation. The company's principal risks and uncertainties will be relevant to the company but where the Council is shareholder or has an interest in a company, it will want to know its legal and financial exposure to risk and uncertainty.

2.12 Each entity will assess its going concern, its ability to continue trading at least 12 months after the statutory accounts are approved by Company Board Directors. Depending on the financial health of the company and its risks and uncertainties, it may require the council in its ownership role to provide a letter of assurance as part of the going concern assessment. The latest filed profit and loss and balance sheet for each company is as follows (an updated financial position is provided for SCF in the separate report on its Annual Report for 2023/24):

For year ended	31/12/2022	31/03/2023	31/03/2023	31/03/2023	31/03/2023
	SUR	JEH	DISH	GRE5	SCF
Profit / (Loss) for Year £m	-0.1	-1.0	0.0	0.1	-8.1
<b>Balance Sheet:</b>					
Current assets/(liabilities) £m	9.6	54.4	0.0	14.2	-0.3
Net assets/(liabilities) £m		1.6	0.0	-1.0	-9.7
Profit and loss reserve £m		-6.9	0.0	-1.9	-5.3
Share Capital (£)		1.00		455,001	

- 2.13 DISH is not a company owned by the Council, however, there are transactional issues that need to be resolved between the Council and DISH and has therefore been brought into scope to resolve as DISH is a registered company at Companies House.
- 2.14 The business plan is an integral part to support business activities and performance monitoring and is not unusual for this to be a reserved matter in the articles or separate agreement, thereby ensuring the owner of a company approves the business plan.
- 2.15 The business plan may require an investment in the form of use of an asset or licence, lease agreement or financing from the council to fulfil its objectives and operate. Separate legal agreements may be required between parties and depending on the nature of the agreement, may also be a legal agreement that is required to be filed at Companies House to enable the shareholder to protect its interest. For loans, it is noted that Slough Urban Renewal (SUR), James Elliman Homes (JEH), Ground Rent Estates 5 (GRE5) and Slough Childrens First (SCF) have loans with the council. The balance as at 30 June 2024 is as follows:

	SUR	JEH	DISH	GRE5	SCF
Loan outstanding (£m)	0.7	51.7		2.2	5.0

- 2.16 Operationally, the Council may have contracts for services to engage the company for contracted services or a service level agreement, the latter where the company may share services such as finance or IT services.
- 2.17 Where a company is a subsidiary of the Council, the company will require an audit. However, there are exemptions to this which can be explored under the Companies Act 2006 depending on company size and the Council's filing deadlines and decision to make audit exemptions.
- 2.18 For the Council to be assured its interests are being protected, the company is expected to report regularly into the Council to enable the Council to hold its companies to account but also supports council MFTP planning and future strategic direction of its companies. This may include an exit strategy.

### **Progress to Date and Activity Roadmap**

- 2.19 The Council has 3 active companies – JEH, a company limited by shares, GRE5 – a company limited by shares and SCF – a company limited by guarantee. The Council is also a key stakeholder in other corporate entities, including Development Initiative for Slough Housing Limited – a company limited by guarantee operating leased properties from the Council, Slough Urban Renewal (SUR) – a limited liability partnership delivering regeneration projects and various trusts for which the Council is the corporate trustee. Of the active companies that remain, the next table provides a summary of the progress to date. This assessment is based on a light touch desk top exercise.

Activity	SUR	JEH	DISH	GRE5	SCF
Company Governance	●	●	●	●	●
Oversight and Performance	●	●	●	●	●
Financial Governance	●	●	●	●	●

- 0 To be reviewed
- 1 High risk - Exposes council to significant risk on company governance assurance
- 2 Medium risk - Further action required to complete governance assurance
- 3 Complete - Appropriate governance assurance

- 2.20 Council officers acknowledge there is still work to complete to ensure that it is content with governance, oversight and financial matters to improve the governance of these companies. Appendix 2 provides some detail on the assessment, however further detail on each company is provided in stand alone reports. For SCF and JEH there are separate reports in September 2024 and for GRE5 it is intended that an update report is brought to October cabinet committee and for DISH later in Autumn.
- 2.21 It is important to note that the appendix is a light touch desk top assessment that has been performed on information available as at August 2024.

### Options considered

There are no alternative options to be considered. The Council must deliver a plan and agree actions to improve company governance. Failure to do so could lead to further statutory measures imposed on the Council.

## 3. Implications of the Recommendation

### 3.1 Financial implications

3.1.1 This report does not specifically contain financial implications and is not seeking a decision from the committee. The report is to provide an update on companies' governance and activities that will progress to assure the Council that company governance is robust.

3.1.2 There are separate updates provided to the sub committee on individual company performance and financial implications.

### 3.2 Legal implications

3.2.1 The Council has various powers to set up and have an ownership role in companies. The power will depend on the functions to be provided by the company. For instance Slough Children First delivers statutory children's social care functions in accordance with a direction of the Secretary of State for Education.

3.2.3 To meet its best value duty, the Council should ensure it has good governance arrangements in place for its companies, including making sure they are supporting the Council to meet its strategic priorities. The guidance on best value standards and intervention state that a well-functioning authority should have the following:

- Proper member oversight (as shareholders) of companies and partnership bodies, in accordance with the [Local Authority Company Review Guidance](#), and their existence is regularly and independently reviewed.

- The purposes of companies are carefully considered and regularly reviewed, with effective governance and oversight arrangements in place.
- Effective risk management arrangements to consider the risks arising from companies

### 3.3 Risk management implications

3.3.1 This report is an update report on the current progress made in relation to company governance since 2021. The risk exposure on governance, oversight and performance and financial governance have been captured within the main report. This includes a current assessment for each company and the level of risk that the Council is exposed to. Broadly, the risks fall into the following categories:

- Legal – failure by directors to comply with statutory requirements, leading to fines, prosecution and strike off and failure by the Council to meet its legal duties including in relation to subsidy control.
- Regulatory/Governance – failure of companies to meet regulatory responsibilities, including in relation to health and safety and subject specific regulation. Failure to have in place proper systems to manage risk and conflicts of interest.
- Financial – failure to ensure Council is meeting its best value duty to ensure value for money or ensuring that it is properly charging at cost recovery level for any services provided. Failure to manage its liabilities with the companies.

### 3.4 Environmental implications

3.4.1 There are no direct environmental implications because of the recommendations contained in this report.

### 3.5 Equality implications

3.5.1 There are no equality implications from this report. Business cases and reviews should consider the Council's duties under the Equality Act 2010.

### 3.7 Procurement implications

3.7.1 There are no direct procurement implications because of the recommendations contained in this report.

### 3.8 Workforce implications

3.8.1 There are no direct workforce implications because of the recommendations contained in this report.

### 3.9 Property implications

3.9.1 There are no direct property implications because of the recommendations contained in this report.

## 4. Background Papers

None

## Appendix 1 – Company Overview

Company	Activity	Council Interest	Active Board Directors	Filing History
<b>ACTIVE COMPANIES</b>				
<a href="#">Slough Urban Renewal LLP</a> (“SUR”) OC379405  Incorporated 16 October 2012  (SBC appointed 22 March 2013)	This is a holding LLP set up as a joint venture to deliver a number of in-borough regeneration schemes. SUR is a Local Asset Backed Vehicle (LABV) formed as a 50:50 Limited Liability Partnership between the Council and Community Solutions for Regeneration (Slough) Limited (a wholly owned subsidiary of Morgan Sindall Investments Ltd (MSIL))	<a href="#">Member of the LLP (50%)</a> . SUR LLP is a limited liability partnership as opposed to a company. Its designated members are SBC and Community Solutions for Regeneration (Slough) Limited. Separate limited liability partnerships operate for specific sites for which SUR LLP is a member and therefore there is a group structure in place covering a range of developments. Limited liability partnerships do not have a board or directors in the same way that a limited company does		All up to date. Latest filings:  Group of Company Accounts 31 December 2022  Confirmation Statement 16 October 2023
<a href="#">James Elliman Homes Limited</a> (“JEH”) Co. No. 10603870  Incorporated 6 February 2017	This is a housing company originally set up under a different name with a business plan to operate a range of residential properties at market rent, for key workers and as temporary accommodation	Company limited by shares 100% shareholder	Neil Euesden Appointed 28 March 2024  Council Employee	At significant risk of compulsory strike off if accounts not filed by extended deadline of 14 August 2024. (Previous year also filed late)  Small Company Accounts filed 14 August 2024  Confirmation Statement 5 February 2024 Filed on time
<a href="#">Ground Rent Estates 5 Limited</a> , (“GRE5”) Co. No. 05997934  Incorporated 14 November 2006	This is a management company for Nova House and was acquired after the Grenfell fire due to the property having high risk cladding on it	Company limited by shares 100% shareholder	Martin Johnson Appointed 27 October 2021  Neil Simon Appointed 19 November 2021	All up to date. Latest filings:  Accounts for a small company 31 March 2023  Confirmation Statement 1 March 2023
<a href="#">Slough Children First Limited</a> Co. No. 09487106	This become wholly owned in 2021 and delivers statutory children’s social care functions under the statutory direction of the Secretary of State for Education	Company limited by guarantee – wholly owned by the Council since 2021	Simon Baker Appointed 7 September 2023 Chair person	All up to date. Latest filings:  Full accounts 31 March 2023



Company	Activity	Council Interest	Active Board Directors	Filing History
<p>Incorporated 12 March 2015</p>			<p>Raj Bhamber Appointed 1 August 2021 (independent NED)</p> <p>Sue Butcher Appointed 4 January 2023 (chief executive)</p> <p>Lesley Hagger Appointed 28 July 2021 (independent NED)</p> <p>Steven Mason Appointed 11 May 2023 (Council Non Executive Director)</p> <p>Nina Robinson Appointed 8 September 2021 (independent NED)</p> <p>Benjamin Short Appointed 7 September 2023 (executive director)</p>	<p>Confirmation Statement 12 March 2024</p>
<b>INACTIVE COMPANIES - DISSOLVED</b>				
<p><a href="#">Herschel Homes Limited</a> <b>Co. No. 10603805</b></p> <p>Dissolved via voluntary strike off 10 May 2022</p>	<p>Herschel Homes (HH) was established to provide new build properties for open market rent. It was envisaged that HH would acquire 365 new build units over a five-year period to provide high quality housing for market rent and that most of these properties would be high-end new apartments, with a mix of one and two bed properties. The company has been dormant since incorporation</p>	<p>100% shareholder</p>		
<p><a href="#">Slough Asset Management Limited</a> ("SLAM")</p>	<p>SLAM's objective related to the acquisition of commercial properties on behalf of the Council</p>	<p>100% shareholder</p>		

Company	Activity	Council Interest	Active Board Directors	Filing History
<p><b>Co. No. 10537836</b></p> <p>Dissolved via compulsory strike off 5 July 2022</p>	<p>with a purpose of generating rental income. However, SBC decided in 2017 that SLAM was no longer required due to an overlap in purpose with the Strategic Acquisition Board (SAB). The company has therefore remained dormant since incorporation</p>			
<p><a href="#">Slough Direct Services Limited</a> <b>Co. No. 11923234</b></p> <p>Dissolved via voluntary strike off 7 June 2022</p>	<p>The nature of business is stated as collection of non-hazardous waste, collection of hazardous waste, urban planning and architectural services and landscape service activities. However, the company has remained dormant since incorporation</p>	100% shareholder		
<p><a href="#">DISH RP Limited</a> <b>Co. No. 12429623</b></p> <p>Dissolved via voluntary strike off 10 May 2022</p>	<p>DISH RP was set up to provide, develop, acquire, and manage affordable homes that are developed as part of the Council's development strategy for affordable housing. The company was also directed to seek opportunities to acquire affordable housing outside the immediate Slough area. Opportunities not pursued due to financial challenges. The company has remained dormant since incorporation</p>	Company limited by guarantee with the Council acting as guarantor		
<p><a href="#">DISH RP (FP) Limited</a> <b>Co. No. 12489041</b></p> <p>Dissolved via voluntary strike off 6 September 2022</p>	<p>The nature of business is stated as renting and operating of Housing Association real estate. However, the company has remained dormant since incorporation</p>	The Council is 50% shareholder. It holds 100% of the Ordinary B class shares (can receive dividends)		
<p><a href="#">DISH CLS Limited</a> <b>Co. No. 12361290</b></p> <p>Dissolved via voluntary strike off 7 June 2022</p>	<p>The nature of business is stated as that of a Hold Co. The intention for the company was for it to act as a holding company for the DISH companies (DISH, DISH RP and DISH RP (FP)). However, the company has remained dormant since incorporation</p>	100% shareholder		