

## Slough Borough Council

<b>Report To:</b>	<b>Cabinet Committee / Cabinet</b>
<b>Date:</b>	13 <sup>th</sup> and 17 <sup>th</sup> March 2025
<b>Subject:</b>	James Elliman Homes Limited (JEH) – Company update and Business Plan
<b>Lead Member:</b>	Councillor Wal Chahal Deputy Leader – Finance, Council Assets and Transformation
<b>Chief Officer:</b>	Pat Hayes – Executive Director (Regeneration, Housing & Environment) Annabel Scholes - Executive Director Corporate Resources
<b>Contact Officer:</b>	Vicki Palazon – Finance Consultant (FIP and Companies)
<b>Ward(s):</b>	All
<b>Key Decision:</b>	YES
<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>	YES
<b>Appendices:</b>	Appendix 1 – Business Plan 2025/26 Appendix 1a – Business Plan 2025/26 (Exempt)

### 1. Summary and Recommendations

1.1 This report provides an update on the current position of James Elliman Homes Limited (“JEH”) and approval of the interim JEH business plan.

#### Recommendations:

Cabinet is recommended to:

- a) Approve the JEH business plan for 2025/26, including updates to the strategic objectives noting it is a one year business plan;
- b) Approve the council’s underwriting of the financial operating risks;
- c) Note the undertaking and progress of an options appraisal for JEH future strategic direction; and
- d) Note that a further report will be presented to Cabinet early in the 2025/26 municipal year to approve a medium term business plan and future strategic direction for JEH;

## **Reason:**

JEH is a company limited by shares wholly owned by the council holding 1 ordinary share of £1.00. The company registration number is 10603870 and was incorporated on 6 February 2017. The council as shareholder needs to consider its future strategy in the context of both the council's finances and the broader homelessness pressures on Slough and therefore the options for the company that best meets the council's strategic objectives and minimises financial risk exposure held within the company.

## **Commissioner Review**

*"The council faces significant financial pressure, to which savings, and debt reduction continues to be a key element of its financial strategy. Under the 2021 statutory directions the council was required to consider the case for continuing with each subsidiary company of the Authority (except Slough Children First) and for those companies that it is agreed to continue, ensure each Board functions effectively. More recently in 2024 the new directions were expanded for the council to re-examine the above and make proposals in relation to financial viability and improving company governance.*

*JEH continues to be a loss-making entity and reviews in relation to the above in some form have been ongoing for JEH since 2021, with no clear resolution to date. The 2025/26 business plan and cover report outlines planned improvement activity, however In the absence of a fully resourced and independent Board, the council as the shareholder needs to consider the pace of delivery, capacity to undertake an independent review of the full options available, ensure that appropriate arrangements are in place for the financial flows between the council and the company, risks are managed effectively, and that public funding is used efficiently.*

*The 2025/26 business plan continues the financial risk exposure to the council. and the council's willingness to provide ongoing financial support to JEH in case of its financial difficulties and, if necessary, invest additional funds to ensure that JEH will continue as a going concern delivering the agreed strategy for the next 12 months, will need to be clearly stated."*

## **2. Report**

### **Introduction**

- 2.1 JEH was set up in 2017 with the primary objective of improving the supply of affordable housing for key workers and care leavers and those within the lower bands of the council's waiting lists who are unlikely to receive a council property; as well as allowing the Council to discharge its responsibilities to homeless residents and reduce the use and cost of expensive temporary accommodation.
- 2.2 The decision to establish JEH was informed by a business plan, prepared by Savill's in November 2016, and agreed by Cabinet in December 2016. The business plan assumed that JEH would acquire properties over a five year period and that properties would be rented as a mix of market rents (60% of properties) and Local Housing Allowance ("LHA") rent (40% of properties).

## Options considered

Option	Description
1. Do nothing, provide no company update or business plan	<p>Do not provide a company update or approval of the annual business plan to the council as shareholder. Under the council's constitution (Part 3.5, table 3, 15), Cabinet is required to approve the annual business plan for companies. Under the council's constitution (Part 3.5, table 3), Cabinet Committee for Assets Disposal is to receive a report on the companies activities and performance, at least annually and in person.</p> <p><b>This option is not recommended</b></p>
2. Provide company update but do not recommend approval of the business plan	<p>The non approval of the annual business plan would not provide the strategic direction the council as shareholder would expect the company to operate under and to satisfy itself that the company's strategic aim and objectives are met. The Council's external auditors made a statutory recommendation in May 2021 that the Council review and implement effective financial governance and monitoring arrangements for group relationships to mitigate exposure to additional financial risk and specifically in relation to JEH review the approach to using council officers on boards, ensure scope for conflicts of interest minimised and actively monitor financial performance of group entities. The auditors made a further key recommendation in May 2024, not being satisfied that its previous recommendation had been met, recommending that the Council ensures it effectively manages all its subsidiaries and winds up those subsidiaries which are not delivering value to the Council. In addition the MHCLG statutory direction and the Council's own AGS require improvements in relation to company governance.</p> <p><b>This option is not recommended</b></p>
3. Provide company update and recommend approval of the business plan	<p>This option allows elected members to scrutinise company performance and to consider the future direction of the company. There is still more work to be undertaken on a medium term strategy, however members are asked to approve a 1 year plan to show the intended actions and objectives in 2025/26.</p> <p><b>This option is recommended</b></p>

## Background

- 2.3 An update on JEH company performance, governance and risk was presented to Cabinet Committee on 12 September 2024. This report provides a further update and progress made on the next steps outlined within the report, primarily on provision of a one year business plan for approval, progress on undertaking an options appraisal, financial performance and oversight and governance.

## JEH business plan 2025/26

- 2.4 The council received a draft five year business plan commencing 2024/25 from the company within the Board meeting distribution pack for the meeting of 1 October 2024. The business plan was based on the company's existing operating model where over 80% of properties were rented at LHA levels or below. JEH has 168 street properties and 46 temporary accommodation units. The current position deviates from the company's original business plan of approximately 60% of the property portfolio being let at market rent. It has also been established that some market rent properties are not keeping pace with the market rental market within Slough.
- 2.5 The Director(s) of the company have a duty to ensure that it acts in accordance with S172 companies Act 2006 to promote the success of the company and this would also extend to ensuring that decisions are made on lettings and setting of rents to ensure the company is a going concern and financially viable over the medium term. One of the issues is that the directors have historically been council officers who are undertaking the role in addition to other functions and may not have the capacity or competence to fulfil the role as required. When the Council has tried to appoint independent directors, they have raised concern about the level of risk and personal responsibility. One of the issues raised by the Council's external auditors relates to the use of council officers as directors and the risk of conflicts of interest not being properly managed.
- 2.6 The business case presented did not include a debt repayment strategy and whilst the business case outlined the company would make an operating profit (EBITDA – Earnings before interest, tax, depreciation and amortisation), when accounting for interest and depreciation the company would continue to make a loss and could therefore not demonstrate the company was a going concern.
- 2.7 The council as shareholder commenced an options appraisal and requested that the company provided a one year business plan for 2025/26 that demonstrates that company losses would not deteriorate further during 2025/26 through, for example, increasing its rents, reducing rent arrears, reducing voids, reducing its costs and possible asset disposals whilst the options appraisal concluded. This has been presented in the resubmitted business plan which can be seen in appendix 1.
- 2.8 Appendix 1 provides the updated one year business plan 2025/26. The previous strategic aim and objectives are as follows:

<b>Strategic Aim</b>		
The strategic aim of JEH is to provide good quality accommodation on terms that are affordable to the household, either as temporary accommodation, or as a permanent solution to their housing needs		
<b>Objective 1</b> Operate commercially and provide financial returns to the council, as its sole shareholder	<b>Objective 2</b> Supply and maintain high quality accommodation to residents in the borough	<b>Objective 3</b> Support the council in the discharge of its homelessness duties where this is not to the financial detriment of the company

2.9 As part of preparing the business plan, the Company have proposed revisions to the objectives as shown in the next table. These refreshed objectives form part of the business plan which Cabinet is being asked to approve and subject to review as part of the options appraisal.

<b>Strategic Aim</b>		
The strategic aim of JEH is to provide good quality accommodation on terms that are affordable to the household, either as temporary accommodation, or as a permanent solution to their housing needs		
<b>Objective 1</b> Operate commercially and be financially sustainable	<b>Objective 2</b> Support the Council to provide Temporary Accommodation across the Borough	<b>Objective 3</b> Support the Council in the discharge of its homelessness duties
<b>Objective 4</b> Provide good quality PRS accommodation	<b>Objective 5</b> Align shareholder and company objectives	<b>Objective 6</b> Improve the loan to value ratio of the company

### Options appraisal

2.10 The shareholder commenced an options appraisal during Q3 2024/25, forming a project group working closely with the company. A base model has been developed by property / unit to enable scenarios to be modelled and allows for sensitivity of variables and assumptions. From an initial long list of options, eight options are being worked up further during Q4 2024/25 with the intention of presenting back to April Cabinet for a decision to be made. The options are:

1. Do nothing
2. Do minimum
3. Consolidate to a core property portfolio. Increase rents over two years and retain remaining portfolio
4. Consolidate to a core property portfolio and then full disposal to a Registered Provider
5. Consolidate to a core property portfolio and then full disposal to the HRA (dependent on the HRA 30 year business plan)
6. Consolidate to a core property portfolio and outsource support services to a third party and retain remaining portfolio. (Support services currently provided by the council)
7. Full disposal to Registered Provider immediately without consolidation
8. Full disposal to HRA immediately without consolidation (dependent on the HRA 30 year business plan)

2.11 There are a number of variables and assumptions underpinning each option including determining the number of years the financial model should cover given the nature of the company and property lifecycle. Consideration will also be given to blending the options to determine the model which provides the greatest financial return across a number of financial metrics or minimises the financial impact on the MTFs and council tax payer, value for money, and the qualitative evaluation and return against the council's strategic direction.

## Financial performance

### 2023/24 Accounts

- 2.12 The company has been unable to meet the filing deadline as the external audit work had not concluded due to outstanding audit queries. The Company director requested an extension which was granted. Companies House granted an extension until 31 March 2025 and at the time of preparing this report, the deadline is expected to be met.
- 2.13 The draft accounts provide the following key financial information. The worsening position between years is due to no rent increases being applied in 2023/24 and higher operating costs which includes rental arrears and building repair and compliance costs.

	2023/24 (DRAFT) £m	2022/23 £m
Profit / (Loss) for Year	-1.9	-1.0
Retained Loss b/f	-6.9	-5.9
Retained Profit / (Loss) c/f	-8.8	-6.9

<b>Balance Sheet:</b>		
Current assets/(liabilities)	53.0	54.4
Net assets/(liabilities)	0.3	1.6
Profit and loss reserve	-8.8	-6.9

Council loan on company B/S	51.7	51.7
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- 2.14 The council has provided confirmation of continuing support for the Company to agree a financially viable business plan on a medium term basis or an exit strategy as deemed appropriate. The Company are also required to comply with the issued Special Resolutions and notify the council's S151 Officer if the ongoing financial situation deteriorates.

### 2024/25 Financial Performance

- 2.15 The appended business plan also provides comparative financial performance including the 2024/25 forecast. The Company is forecasting a net operating profit of £1.05m. This reduces to a loss making position of £0.50m after interest and £1.60m after depreciation. The Company has taken steps during Q3 2024/25 to stabilise its financial position, but recognises that this is a part year impact. Steps include letting voids in the temporary accommodation units and debt action to recover outstanding arrears. The business plan also outlines further actions as part of providing a 2025/26 budget.
- 2.16 As at 3 March 2025, voids stood at 33 units, as at 31 December 2024 voids were 36 and as at 31 March 2024 voids were 39 units and therefore overall continues to show an improvement. All of the current voids are associated with properties held in the company portfolio for temporary accommodation. The temporary accommodation placement team have booked sign ups for 12 to let voids thus reducing the voids further.

## Oversight and governance

2.17 The report on JEH to the Cabinet Committee September 2024 meeting outlined the requirement to undertake further work to improve oversight and governance. The next table shows the action taken by the company following the shareholder issuing a special resolution required the company to undertake and progress against this. It is important to note that the special resolution citing these actions requires to be filed by the company and the shareholder has requested this is completed. The letter of assurance issued for 2023/24 accounts recognises there is more work to complete to comply with the content of the special resolution and expects this to be addressed by a revised date of 28 February 2025.

Action	Progress	RAG rating
(1) Submit a draft business plan for the accounting year 2024/25, with a view to the Council's Cabinet approval to this being sought by the end of November 2024 or a later date as agreed by the Council. The draft should be submitted by 18 October 2024 and should set out options for returning JEH to profitability, alongside risks and mitigations	Business plan received 26 September 2024. Whilst the business plan was submitted prior to the deadline, further work was required. This report contains the refreshed one year business plan for 2025/26 requested by the council as shareholder whilst the option appraisal is concluded. The letter of assurance issued for 2023/24 requests that this to be submitted to the council for approval by 31 January 2025. The business plan has been received before the due date.	Complete
(2) Undertake a skills audit of the board and identify any gaps in skills and knowledge, to allow the Council to consider making additional appointments to the Board. Such a skills audit should be submitted to the Council by 30 September 2024	This is expected to be completed during Q1 2025/26 (aligns to options appraisal)	
(3) Submit evidence of a review of the services provided by the Council under the service level agreement and identify any risks or issues by 31 October 2024	Not yet completed. This is part of the options appraisal	
(4) Submit minutes of JEH board meetings held in the last 6 months, together with management accounts by 30 September 2024	Completed	Complete
(5) Submit an up-to-date risk register with mitigating actions by 30 September 2024	Completed but the shareholder has requested further information	
(6) Submit evidence that conflicts of interest are being appropriately managed, including details of any conflict of interest protocol and	Not yet completed	

Action	Progress	RAG rating
declarations of interests by 30 September 2024		
(7) Submit details of any further support required to run JEH effectively, including details of cost of such support if this is required to be externally sourced by 30 September 2024	Not yet completed. This is part of the options appraisal	
(8) Submit details of all governance documentation and evidence of approval by the Board and by the Council as sole shareholder and/or service provider by 30 September 2024	In progress Articles of Association, loan facilities agreement and Service Level Agreements received	

2.18 The same report to September Cabinet Committee outlined the steps required by the council to undertake and remains a work in progress and will require working alongside the Commissioners.

Action	Progress	RAG rating
Recruit and appoint an executive director/chief executive who will be a direct employee of JEH – appointment is a decision of the Chief Executive or officer acting under their delegation, with appropriate commissioner oversight;	Not yet progressed	
Support JEH to commission specialist finance support, either by way of an independent non-executive director with a background in finance, a finance officer or a commissioned service	Finance support has been provided, but this is on behalf of the Council as shareholder	
Review the arrangement for company secretariat support	No progress	
Review the articles of association and other governance documents with a view to Cabinet Committee being asked to approve any amendments.	No progress	
Conduct an options appraisal informed by the recommendations made by Local Partnerships and to inform JEH's business plan	In progress	
Consider the role of JEH as part of a wider review of the Council's	In progress as part of wider housing improvement plan	



Action	Progress	RAG rating
housing and homelessness prevention strategies		
Reviewing the use of Homeless Prevention Grant as part of wider review of housing services	In progress as part of wider housing improvement plan and budget setting process	

2.19 Company governance, oversight and financial matters have been captured within the council's improvement and recovery plans, housing improvement plan and financial improvement plan with a target date for completion by 30 April 2025.

### 3. Implications of the Recommendation

#### Financial Implications

2.20 The financial position shown earlier in this report highlights that the company whilst generally maintains an operating profit, there is a net loss each year after accounting for interest and depreciation. The balance sheet as at 31 March 2024 has cumulative retained losses of £8.8m although equity in the company at the balance sheet date is £0.3m when accounting for the revaluation reserve and the company is reporting a positive total assets less liabilities of £53.0m

2.21 The business plan for 2025/26 is a one year business plan to enable a full options appraisal to be completed to determine the Shareholders medium term strategy for the Company. It is noted that the business plan has taken steps to improve the operating position of the company and forecasting an operating profit of £2.71m. This reduces to £1.17m profit after interest, £0.04 loss after depreciation and retained loss of £0.047m. The financial position does not include provision for an ongoing legal matter which has not yet concluded and value not yet finalised. This remains a risk to the Company's financial performance during 2025/26.

2.22 The council has provided a loan to the company of £51.7m which is repayable including interest by October 2028. Based on the latest set of accounts, there is sufficient assets to repay the loan and meet all liabilities providing that market value on disposal could be achieved. However, this is only one option on deciding the future strategy for the Company and part of the full options appraisal underway.

2.23 The draft accounts for 2023/24 have outstanding debts of £0.828m and within the accounts, the company's current policy is to assume a bad debt provision of equal value although it continues to follow debt recovery actions to recover overdue debt.

#### Legal Implications

2.24 JEH is a company limited by shares. The Council is the sole shareholder. The Council has provided financing to allow JEH to purchase properties. At present there are considerable risks that this financing will not be repaid and that interest charges are also not capable of being paid. JEH is currently loss making. Company directors have various statutory duties, including a duty to promote the success of the company for the benefit of its members as a whole, in this case the Council as sole shareholder. The directors must also exercise independent judgement. This means outside of reserved matters or written resolutions by the shareholder, they cannot be directed by the Council (either at officer or member level) to take certain decisions. The directors also owe a duty to exercise reasonable care, skill and

diligence and avoid conflicts of interest. Relying solely on Council officers to act as directors makes it particularly difficult for the board as a whole and individual directors to fulfil their statutory duties.

- 2.25 The Council, as shareholder, should hold JEH to account, but it should not seek to take operational decisions on behalf of JEH. Doing this risks the Council (and individual officers and members) acting as shadow directors. Shadow directors are recognised by law as directors because of the influence and control they exercise over a company. Therefore the same legal duties would apply and any disqualifications or restriction orders applicable to directors could also apply to shadow directors. Several activities could lead to a view that an individual or legal entity is a shadow director including approving expenditures, securing loans or borrowings on behalf of the business, participating actively in board meetings and managing the business activities of the company.
- 2.26 The Council has received an update from its external auditors on value for money and the external auditors have commented on the lack of progress against previous statutory and key recommendations, including recommendations directly related to JEH. In addition the Council has been issued with a new statutory direction from MHCLG which requires it to prepare and implement a new recovery and improvement plan including as a minimum specific information. This includes re-examining the review by the Council of its companies that considered the roles and case for continuing with each subsidiary company of the Council (except Slough Children First), to make proposals in relation to financial viability and improving company governance. The commissioners have new default powers in relation to all functions relating to the appointment and dismissal of persons to positions of directors of council companies (except Slough Children First).

### **Risk Management Implications**

- 2.27 This report articulates a number of challenges the company faces in its current operational state and therefore the council as Shareholder has previously issued two special resolutions as outlined in this report to address which will also mitigate risk.
- 2.28 JEH maintains a detailed risk register which is reviewed by the Board monthly. The Board has also been directed to submit an up to date risk register and the council needs to ensure its own risks are properly considered and where appropriate, recorded in the council's corporate risk register.
- 2.29 The council corporate risk register contains a corporate risk of failure of the company resulting in financial losses and reputational issues for the council. The company is at high risk of failure and requires the council to provide assurance that liabilities will be underwritten. From a cash flow perspective the company is able to meet its liabilities as they become due but unable to repay the loan. £51.7m of loan has been provided by the council. The company has total net assets on the balance sheet. The business plan for 2025/26 is due to be approved by Cabinet in March 2025 but it is noted that this is a one year only business plan pending review of the full options appraisal due in Q1 2025/26. The council is exposed to financial and reputation risk if the company fails.

### **Environmental Implications**

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

### **Equality Implications**

- 2.31 There are no equality implications from this report. Any future business case should consider the impact on existing tenants and whether these tenants are more likely to have specific protected characteristics.

### **Procurement Implications**

- 2.32 There are no direct procurement implications because of the recommendations contained within this report.

### **Workforce Implications**

- 2.33 JEH has no directly employed staff. The Council provides staffing resources under an service level agreement.

## **4. Background Papers**

None