

Appendix 1

Note on lessons learned regarding James Elliman Homes Limited

Introduction and Background

In December 2016, Cabinet agreed to establish two new entities as part of a proposal to establish a housing company group. One entity would focus on new-built properties for the open market and the other to serve a wider social purpose by providing affordable homes to a broad pool of applicants, as well as provide temporary accommodation to support the Council to meet its duties.

Delegated authority was given to senior officers to progress the venture, and James Elliman Homes (JEH) was established in 2017, with an approved business plan to acquire 225 homes within a five-year period.

The Council has entered into several facility agreements from May 2017 to February 2020. These totalled £53.950m. Aside from the initial funding of £3.1m approved by Full Council in January 2017, all subsequent funding was approved by virtue of Full Council approving the overall capital strategy and treasury strategy (February 2018, 2019, 2020, March 2021).

It is accepted that there was a failure by officers and elected members to properly manage the company or manage risks of non-payment of the loan throughout the period. This is despite advice and commissioning of external support. Due to the turnover of officers and a lack of record keeping, it is difficult to establish the cause of such failures and these relate to wider issues with governance that were identified in 2021 and are therefore not limited to failures in company governance.

Previous Reviews

Since 2016, the Council has had several reviews of governance in general and recommendations in relation to company governance, including JEH specifically.

CIPFA Review – 2021 – commissioned by MHCLG as part of best value review

Extracts of the review are set out below:

(ii) The potential for the scale of liabilities to increase even further as further investigative work is undertaken particularly around council-owned companies.

Companies risk – work is ongoing to assess the level of liabilities and risks within Council owned companies. This may identify further liabilities particularly around GRE5.

Internal Audit work carried out during 2020-21 identified substantial weakness in financial governance including:

- Some 52 recommendations relating to Council subsidiary companies.

CIPFA identified five critical milestone dates to measure progress:

- October 2021. It is important that by this date there is an outline of what is required to build a realistic delivery plan. This should include:
 - o A realistic timescale for the investigation of other potential financial risks, such as the governance of companies, debtors, creditors and suspense accounts to show how they will be resourced and when the results will be available for consideration by Executive Directors.

James Elliman Homes

The Council owns a number of residential properties through James Elliman Homes (JEH) with loans having been made to this company of £51m. We understand the company is operating at a loss of some £1.5 pa due to acquisition costs of new properties, although this is not considered to be an inherent loss that will continue year on year.

Jim Taylor Governance Review – 2021 – commissioned by MHCLG as part of best value review

Extracts of the review are set out below:

4.36 The Audit and Corporate Governance Committee meeting of 29th July 2021 examined the council's strategic risk register. There are blanks against risk owners. The register does not adequately outline the risks and is not fit for purpose. For example, potential omissions are COVID-19 pandemic, the Our Futures transformation project, governance, financial governance, wholly owned companies and workforce. The risk register is currently being reviewed.

6.1 Financial governance is poor, despite recent best efforts of the s.151 officer and his interim team. Deficiencies exist within procurement, business case development, governance of council owned commercial companies and the closure of financial accounts from multiple years. It has not been clear how capital projects have been prioritised or where the decision-making sits with these capital decisions. The rate of return on some investments is at risk. 'Part 2' reports have been presented at confidential meetings which does not help with transparency. The council is not currently equipped to undertake effective pre-decision scrutiny and the scrutiny function and is under resourced. There are instances where the correct financial approvals have not been sought by officers.

6.19 It was not until the arrival of the s.151 officer and his team that further significant issues were found to have been having an impact on the council, some of which are not of a financial nature but do contribute to good financial decision making and planning. For example, formation of business cases, procurement processes, the operation of wholly owned council companies and also decision making, and the ownership and direction of the significant capital programme.

6.23 A consultant is currently undertaking a review of these council Companies, and this is in its early stages. Several issues have already been identified which have an impact on financial and operational risk. Financial management, governance, performance and value for money. A first phase of work has 21 identified several issues that will require more detailed assessment of options and the way forward. Emerging issues relate to, but are not limited to:

- the rationale and objectives for establishing / continuation of companies
- Council scrutiny and oversight functions
- Governance arrangements and conflicts of interests
- Transparency and accountability
- Risk oversight and management
- Performance and financial monitoring and reporting
- Roles and responsibilities – directors and staff
- Independence and separation of financial systems, processes and transactions
- Incorrect accounting treatment such as capitalisation of revenue costs
- Non-compliance with Council policies and processes and legal requirements

6.25 An internal audit report was carried out during March 2021 on the council owned companies. This audit identified 52 actions across all companies, 9 rated red, 37 amber and 9 green.

6.26 Although the companies were originally set up with the best of intention, the emerging findings of

the review (listed above 6.26) indicate that the governance and the approach of the council to operating the companies is not adequate.

External Auditor Recommendations – 2021 and 2024

May 2021 Statutory recommendation

The Council should review and implement effective financial governance and monitoring arrangements for group relationships to mitigate exposure to additional financial risk.

As a commercial entity subject to separate legal, tax and accounting considerations, there should be clear separation financial transactions of Slough Council and James Elliman Homes, in a separate financial ledger, with clear and distinct financial controls and monitoring in place for both the Council and the company.

The Council should review its overall approach to using council officers on the boards of its group companies and other similar organisations. This should be informed by a full understanding of the role of and legal requirements for company board members. When allocating roles on Council-owned organisations to individual officers, the Council should ensure that the scope for conflicts of interest is minimised, with a clear divide between those in such roles and those responsible for holding them to account or overseeing them. The Council should ensure it is actively and routinely monitoring the financial performance of its group entities to consider and protect any unintended financial exposure on the Council's financial position.

May 2024 – key recommendation

The Council should ensure it effectively manages all its subsidiaries and winds up those subsidiaries which are not delivering value to the Council.

Local Partnerships Review – 2022

Extracts from report:

JEH is currently a loss-making enterprise (with annual accounts showing a loss of £1.665m in the year to 31 March 2020). JEH owes around £52m to SBC, with no method to repay this debt without disposal.

A further, more bespoke, valuation exercise should be conducted to inform the final decisions on options over the disposal strategy, taking on board market conditions.

The development of a rehousing strategy for those residents currently living in JEH stock, based on an understanding of the individual requirements and circumstances of JEH tenants.

A review and refresh of its homelessness prevention strategy (originally developed in 2019), informed by the above.

The identification and prioritisation of requirements for the use of its Homelessness Prevention Grant, to ensure the maximum strategic impact, with consideration given to utilising an appropriate proportion of this allocation specifically to support current JEH residents.

The commissioning of specialist accounting, tax and legal advice and support, as well as identifying appropriate project management capability in order to be able to progress the recommended option

The identification of appropriate specialist and project management resources, to ensure that the disposal of JEH and / or its stock is delivered in the most effective way possible.

Regardless of the future option to be pursued it is essential that SBC ensures that the arrangements are in place to ensure the proper transactions and financial flows between SBC and JEH, including SBC charging JEH for SLAs, and SBC ensuring the transfer of rental income to JEH.

SBC Annual Governance Statements

The Council's own AGS has highlighted company governance as an area of required improvement. The latest actions state:

For each Council company, review and report to Cabinet Committee on:

- contractual and governance documentation
- decision-making,
- risk and performance reporting arrangements, including financial performance, statutory compliance, including filings of annual reports and accounts and board director performance,
- annual business plans

Actions taken since 2021

It was clear in 2021, that there was insufficient oversight by members of Council projects and services. This was identified as part of wider issues and not specific to JEH.

Significant steps have been taken since 2021 to improve governance in general, and specifically in relation to JEH. This includes:

1. The Constitution has been substantially re-written, including in relation to executive decision-making (including cabinet committee to allow it to fulfil some shareholder functions and have oversight role), financial procedure rules, officer scheme of delegation, treasury management, new terms of reference to Audit and Corporate Governance Committee, new Council Owned/Connected Entities Protocol to name a few.
2. New risk management framework and refreshed risk management internal officer board.
3. Changes to internal audit team, including in-sourcing and procuring interim resources.
4. Several companies were reviewed and closed down in 2021/22 as no longer needed to deliver on Council priorities.
5. Loans reviewed and further draw down halted or subject to increased scrutiny.
6. Directors replaced for JEH and cease appointing elected members to company boards.

External Legal Advice

Pinsent Mason were commissioned to draft a new facility agreement in 2021 to provide security for the loan against the physical assets of JEH. Unfortunately this was not entered into and therefore the loans continued under the existing facility agreements, with conditions not being met or managed.

Bevan Brittan were commissioned to advise in 2024 on risk of strike off, following notice by Companies House. Action taken included a letter of support, a special resolution to JEH and a Cabinet Committee report in September 2024 setting out action taken and next steps.

Browne Jacobson were commissioned to advise in 2025. This included advice on:

- (a) Tenant deposits – email advice confirming there is no requirement to take deposits from tenants.
- (b) Initial governance review – this identified some actions for JEH, including establishing a scheme of delegation (noting that at present JEH has no staff), keep under review and update business plan and review frequency and attendance at board meetings, including separating out meetings to discuss Council delivered services and board activity. It also identified some actions for the Council, including appointment of new directors, review of articles of association and draft

shareholder agreement, a review of the services provided under the SLA, including whether the Council has the capacity and capability to provide the services.

- (c) VAT advice relating to under-declared VAT – this was high-level advice and recommended that advice was sought from PSTax and engagement with the external auditors.
- (d) Strike off – advice was given on the process for compulsory strike off in relation to non-filing of accounts. This was similar to the advice given by Bevan Brittan in the previous year. The accounts were subsequently filed before any action by Companies House.
- (e) Directors' duties – the risk of council officers being shadow or de facto directors.
- (f) Housing Benefit subsidy advice – this related to properties leased back to the Council and recommended a review of rent setting and accounting for these properties.
- (g) Review of loan agreements – a review of the 7 loan agreements confirmed that the 2017 facility agreement was a legal mortgage and secured all sums owned by JEH to SBC over 81-83 High Street and Pendeen Court. The other facility agreements are structured as revolving facilities and each loan should be repaid on each Maturity Date, 60% of the interest needs to be paid (this has happened up to Q3 2023/24, audited accounts need to be delivered 90 days after the end of the financial year, which has not happened due to late filing of accounts. Advice was given in relation to taking additional security, relying on a breach of previous facility agreements. The risk of challenge as a result of the company being insolvent in the period up to 2 years following the grant of security was highlighted. It was recommended that a debenture was entered into as a first step to provide fixed and floating charges over all assets, flagging the limitation of floating charge security. The next steps were to reinstate the existing facility terms, to consider further security options, including legal mortgages over properties – this would in effect replicate the arrangement that already exists over High Street and Pendeen Court properties.
- (h) High level advice on company law and insolvency – this included advice on compliance with company law requirements and potential legal liabilities. Beyond failing to file accounts on time, no specific breaches were identified, noting that the advice and review was high level only. It was noted that the company was only a going concern due to financial support from the Council. It was also noted that to identify all potential areas of liability would be an extensive and time-consuming task, but other liabilities could arise in relation to building safety, health and safety, environmental law, employment and pensions (although the company has no employees), bribery and competition law, financial crime and money laundering, data protection and misrepresentation. Statutory director duties are set out.
- (i) High level advice on lessons learned – this was based on limited documentation and only covers the period and decisions made in 2016 to 2020. Whilst concerns were raised that some decisions could be found to be ultra vires, some of these relate to decisions made by former officers without detail of the information those officers had to inform decisions and some relate to issues of governance, for example the extent of delegations given to officers. Next steps include investigation into whether statutory officers and elected members had the skills, experience and resources needed to exercise shareholder functions, the extent to which risks were recorded on the Council's corporate risk register and effectively mitigated, the role of the Council's Overview and Scrutiny Committee, the role of the Council's Audit and Corporate Governance Committee, whether the constitutional rules are sufficiently robust to prevent further lending. Bearing in mind that the review ends in 2020 and the Council has had various governance reviews since then, as highlighted above and there are known issues around record keeping and corporate memory, officers have conducted an internal lessons learned review to identify lessons since 2021.

Learning

1. **Capacity to respond to external reviews** – the Council has in the past commissioned external reviews or sought external support to prepare business cases or options appraisals. However if there is insufficient support to client such arrangements or to respond to any recommendations, then improvements are not made. Commissioning external advice requires a detailed brief and effective clienting arrangements in addition to knowledge and understanding of the advice given.
2. **Overly focused on constitutional and governance documents** – changes have been made to constitutional documents, including changing terms of reference for Cabinet Committee, including a new protocol and clarifying roles and responsibilities. However changes to governance documents and structures alone will not improve governance without the necessary capability, capacity and culture to support these.
3. **Ensuring the Council's internal systems are driving good governance** – the Council's annual governance statement and Audit and Corporate Governance Committee Annual Report flag company governance as an area of concern. The Council's corporate risk register also includes governance of JEH as one of its highest risks. However the extent to which this drives decision-making is less clear. The Committee does invite chief officers, including the Chief Executive, and the Leader to its meetings and does have private meetings with the Head of Internal Audit. This provides a framework to allow members to question officers and members on action being taken. The Council's Corporate Improvement Scrutiny Committee has undertaken scrutiny on company governance in relation to Slough Children First, however it has only undertaken very limited scrutiny in relation to housing delivery, and in particular the role that JEH plays in this.
4. **Expertise to provide support services to companies and management of conflicts of interest** – on occasions the Council has set up corporate entities to deliver in accordance with a strategic business case, however there has been less attention on the expertise needed to run a company, particularly when it is anticipated that support services will be provided by the Council. This is particularly prevalent for JEH, as it has no employees and no full time board members. The Council has provided finance and housing support, however the governance failures include issues with late filing of accounts, lack of documentation to the board to inform decision-making, concerns about decision-making to lease properties back to the Council. There is a significant risk of conflicts of interest arising when all activity undertaken by JEH is undertaken by council officers.

November 2025