



Coventry City Council

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Public report

Report to

Cabinet

Council

Report of

Chief Executive and Director of Legal and Democratic Services

21st March 2006

11th April 2006

Title

Council Response to Whitefriars Group Restructuring Proposals

1 Purpose of the Report

- 1.1 Councillors are asked to consider whether the City Council should formally consent to the proposed restructuring of the Whitefriars Housing Group and execute the Deed of Variation and Novation.
- 1.2 In particular, Councillors are asked to decide whether the changes in the voting arrangements which are proposed by Whitefriars in their restructuring proposals are in the best interests of the City Council.

2 Recommendations

- 2.1 Cabinet is recommended to:-
 - 2.1.1 Consider whether to accept the voting arrangements proposed by Whitefriars under which the City Council loses its power of "veto" in relation to future changes to the new entity's rules or constitution.
 - 2.1.2 Approve the City Council entering into a Deed of Novation and Variation between the City Council with Whitefriars Housing Group to give effect to the re-organisational proposals.
 - 2.1.3 To make the appropriate recommendation to the City Council for consideration at its meeting on 11th April 2006.

3 Information/Background

- 3.1 Whitefriars Housing Group have proposed re-organisation and conversion from their current status of three companies limited by guarantee to one industrial provident society which would have charitable status.
- 3.2 On 9th August 2005, Cabinet considered a joint report from the Chief Executive and Director of Social Services and Housing which sought agreement to a provisional response that had been sent to Whitefriars about their group restructuring proposals. Cabinet endorsed the provisional response and since then detailed work has been carried out in relation to the legal agreements required to give effect to the proposals.
- 3.3 As part of the group structure re-organisation Whitefriars Housing Group (WHG) have proposed entering into a Deed of Variation and Novation in relation to the initial housing Transfer Agreement (between the City Council and WHG) in order to ensure that all the rights and objectives which currently exist are transferred to the new entity.
- 3.4 A draft Deed of Novation and Variation has been drafted by Trowers and Hamlin, the firm of solicitors representing Whitefriars for agreement by the City Council. The City Council

are also being advised by external lawyers, Lawrence Graham, and a copy of their advice is attached at Appendix 1.

- 3.5 During the consideration of the documents in relation to the proposed re-organisation, it was established that the City Council would stand effectively to lose its right of "veto" under the proposed re-organisation.
- 3.6 The Cabinet is referred to the report by the Council's external lawyers annexed hereto, marked "Report to Coventry City Council" dated 23rd February 2006, which outlines the current position and the effect if the proposed re-organisation was to take place. Mr Simon Randall, CBE, a partner in the firm of Lawrence Graham will attend Cabinet to present the report and to address any questions that Councillors may have to elaborate or clarify any aspect of the report.
- 3.7 Whilst it has been possible to reach agreement on most of the issues that have arisen in relation to the proposed re-organisation there is one significant issue which remains outstanding and upon which Councillors are now asked to make a decision. This is the issue of the voting arrangements of general meetings of the new company, as opposed to general Board meetings. Under the present arrangements, the City Council has a weighted bloc vote which can be exercised by its nominated representative. In effect this means that the City Council has a "veto" on such issues as changes to Whitefriars constitution. In the rules for the new company, Whitefriars Housing Group Limited, voting will be restricted to Board Members, of whom there are proposed to be 18 of which the City Council will have 6, and Board Members will have to attend in person or appoint a proxy if their vote is to count. The effect of their change is that the City Council will lose its "bloc" vote as well as the weighting arrangement which require a Council appointed representative to be present for a meeting to be quorate. The Council's representatives will, therefore, need to ensure that they attend the relevant meetings. Whitefriars have been asked on several occasions to change their proposals so that they reflect current voting arrangements but they have declined to do so.

4 Proposal and Other Option(s) to be Considered

- 4.1 Whether the Council is prepared to forego its right to a veto under the proposed re-organisation or alternatively insist the Council's right to a veto is reinstated in the proposed Deed of Variation.

5 Proposal and Other Options to be considered

- 5.1 Councillors are asked to approve the entering into the Deed of Novation and Variation by the City Council.
- 5.2 Councillors are asked if they are prepared to accept the proposed voting arrangements, and approve arrangements for the amalgamations OR if they wish to negotiate a change in such arrangements to facilitate weighted voting or other arrangement which will preserve the City Council's existing voting rights.

6 Other Implications

	Implications (See below)	No Implications
Best Value		√
Children and Young People		√
Comparable Benchmark Data		√
Corporate Parenting		√
Coventry Community Plan	√	

	Implications (See below)	No Implications
Crime and Disorder	√	
Equal Opportunities		√
Finance	√	
Health and Safety		√
Human Resources		√
Human Rights Act		√
Impact on Partner Organisations	√	
Information and Communications Technology		√
Legal Implications	√	
Neighbourhood Management		√
Property Implications	√	
Race Equality Scheme		√
Risk Management	√	
Sustainable Development		√
Trade Union Consultation		√
Voluntary Sector – The Coventry Compact		√

6.1 Coventry Community Plan, Crime and Disorder, Impact on Partner Organisation

WHG is a key partner of the City Council, acting as a lead representative of Housing Associations on the Coventry Partnership. WHG is also a key partner in tackling Crime and Disorder and is represented on the Community Safety Partnership. It is important to maintain strong partnership relationships with the organisation.

6.2 Finance, Legal Implications, Property Implications, Risk Management

The Council has a variety of legal, financial and property relationships with Whitefriars Housing. The purpose of the Deed of Novation and Variation is to ensure that all of Whitefriars existing obligations transfer to the new Whitefriars corporate structure.

7. Timescale and expected outcomes

- 7.1 WHG is looking to implement their restructuring as soon as possible. One or more special general meetings would be required to incorporate the changes once the position has been agreed with the Council.

	Yes	No
Key Decision		√
Scrutiny Consideration (if yes, which Scrutiny meeting and date)	√ Scrutiny Co-ordination Committee 15th March 2006	
Council Consideration (if yes, date of Council	√	

meeting)	11 th April 2006	
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List of background papers

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Other contributors:

Papers open to Public Inspection

Description of paper

Location

Cabinet Report – Council's Response to Whitefriars Group Restructuring Proposal – 9th August 05

REPORT TO COVENTRY CITY COUNCIL

CABINET MEETING – 21 MARCH 2006

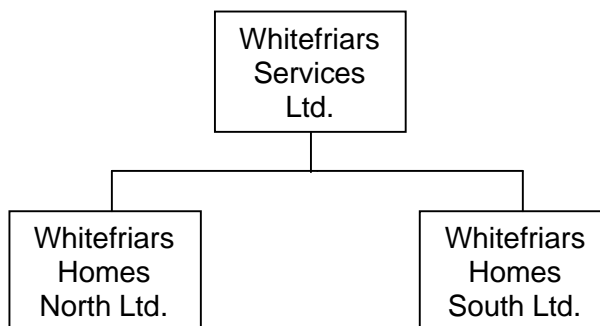
Whitefriars Housing Group Restructuring

1. Introduction

- 1.1 The Cabinet approved the proposed restructuring of Whitefriars Housing Group ("WHG") in principle at its meeting on 9 August 2005 (Minute 78).
- 1.2 Following such approval WHG commenced implementation of the proposed restructuring as outlined below. This has not been completed due to a proposed change in the arrangements which require Members' approval. In addition one key issue needs to be brought to Members' attention following the earlier approval.

2. Present Position

- 2.1 At the time of the original transfer in 2000 a tripartite structure existed with three non-charitable companies limited by guarantee registered as social landlords with the Housing Corporation as below:-



- 2.2 The transferred stock was owned jointly by Whitefriars Homes North Limited and Whitefriars Homes South Limited.
- 2.3 Due to the imminent likelihood of the group suffering corporation tax on its surpluses and the complications and added costs of maintaining the group structure, it was agreed by all parties that the group should collapse into one new corporate entity registered with charitable status. This approach was approved by Cabinet on 9 August 2005.
- 2.4 The mechanics to achieve this restructuring were:-
 - 2.4.1 conversion of all three entities in paragraph 2.1 above into industrial and provident societies;

- 2.4.2 the rules for Whitefriars Homes North Limited (which changed its name to Whitefriars Housing Group Limited) incorporated wholly charitable objectives to enable that entity to apply for exempt charitable status;
- 2.4.3 the above steps have already been taken and delay has been caused by technical issues arising from recent Pension Regulations which need not directly concern the City Council. However the next (and final step) is to amalgamate Whitefriars Services Limited and Whitefriars Homes South Limited into Whitefriars Housing Group Limited. Thereafter all the assets, debts and obligations, particularly under the original transfer agreement remain with Whitefriars Housing Group Limited.
3. **Changes in voting arrangements**
- 3.1 In the Articles of Association of the two land-owning entities (Whitefriars Homes North Limited and Whitefriars Homes South Limited) the arrangements for voting at both company and board level were broadly as follows:-
- 3.1.1 the membership arrangements for each company permitted tenants and independent persons to be members (i.e. the equivalent to shareholders);
- 3.1.2 votes at any general meetings involved weighted voting such that the City Council had a bloc vote of 33% except that this reduced to 26% on resolution to amend the Memorandum and Articles of Association – sufficient under the Companies Acts to veto any changes;
- 3.1.3 Whitefriars Services Limited as parent organisation also had a 26% bloc voting right;
- 3.1.4 the Boards were structured for equal numbers from each constituency i.e. City Council, tenants and independents.
- 3.2 In the rules for Whitefriars Housing Group Limited already approved when the conversion resolutions were passed, the following changes were incorporated:-
- 3.2.1 only board members can be shareholders;
- 3.2.2 the board consisted of six Council board members, six tenant board members and six independent board members;
- 3.2.3 thus the Council board members have one third of the votes at a general meeting and could veto any change in the rules requiring a three-fourths majority provided at least four Council board members attended in person or issued similar proxy votes.
- 3.3 The effect of this change is that the City Council would not have its automatic bloc vote which could be exercised by one Council board member or a system of weighted voting where the quorum includes at least one Council nominated attendee. Therefore this places the onus on all its board members attending general meetings particularly if controversial rule changes were contemplated.
- 3.4 The City Council will need to execute a Deed of Novation and Variation confirming the provisions of the original transfer agreement and that the single entity, Whitefriars Housing Group Limited, will be undertaking all obligations of the three entities. In particular there is a provision that the rules of the new entity will not be changed so far as they relate to its objects or powers or to local authority or tenant representation without the City Council's prior consent in writing, such consent not to be withheld or delayed in relation to reasonable

advice issued by the Housing Corporation concerning governance of all registered social landlords. There are also some additional provisions in the Deed to protect the City Council.

In other respects there is no reason for the City Council not to enter into this Deed of Novation and Variation.

4. **The way forward**

4.1 As the above report indicates, the City Council no longer has an actual veto on unacceptable changes to the new entity's rules or constitution requiring all its nominated board members to attend the relevant meetings and vote en bloc.

4.2 The City Council could accept the position with the covenant referred to in paragraph 3.4 above or require an amendment to the rules of the new entity reinstating a weighted voting system. WHG have advised that incorporating such an amendment at this stage would be inconvenient because:-

4.2.1 approvals would be required from the Housing Corporation, their funders and the Financial Services Authority responsible for any rule amendments: such approvals may not necessarily be forthcoming;

4.2.2 one or more special general meetings would be required to incorporate the change involving additional costs;

4.2.3 they considered that sufficient explanatory advice had been given to all parties advising that weighted voting was not incorporated in the new constitutional arrangements.

5. **Recommendations**

5.1 Members are asked to approve the entering into the Deed of Novation and Variation by the City Council.

5.2 Members are asked if they are prepared to accept the voting arrangements which have been partially implemented and approve arrangements for the amalgamations OR if they wish to negotiate a change in such arrangements to facilitate weighted voting.

Simon Randall
24 February 2006