



SIGNED OFF BY	Director & Head of Paid Service
AUTHOR	Kirsty J Hill, Company Secretary
TELEPHONE	Tel: 01737 276749
EMAIL	Kirsty.J.Hill@reigate-banstead.gov.uk
TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday 21 July 2022
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Companies Performance Update – Spring 2022
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Recommendations
To note the Spring 2022 Companies Performance Update and the observations of the Overview & Scrutiny Committee, as set out in the report.
Reasons For Recommendations
To consider the performance of companies owned or part-owned by the Council as of Spring 2022.
Executive Summary
<p>This report provides an overview of the performance of the companies currently owned, or part-owned, by the Council.</p> <p>The operational companies currently consist of Greensand Holdings Limited, Horley Business Park Development LLP, Pathway for Care Limited and Camelia Close (Tadworth) Residents Management Company Limited.</p> <p>RBBC Limited is inactive.</p> <p>RBBC Housing – Independent Living (the Council’s Community Benefit Society) was deregistered on 17 February 2022 following the decision taken at the Commercial Ventures Executive Sub-Committee on 30 September 2021.</p>

The Council is currently reviewing the future strategy for Greensand Holdings Limited with its Directors following recent changes to local government guidance on commercial investments.

Horley Business Park Development LLP is not currently considered to be performing in line with expectations.

We continue to attempt to obtain management information from Pathway for Care Limited in order to review its performance.

There are not any issues anticipated with Camelia Close (Tadworth) Residents Management Company Limited and, as soon as all units are sold, the Council's involvement with the company will cease and the management of the communal areas will transfer to the resident management company.

The Overview & Scrutiny Committee considered this report at its meeting on 16 June 2022 and its observations are set out below.

Additional commercially sensitive supporting information is detailed in the exempt report set out in the Part 2 section of this agenda.

Statutory Powers

1. Section 1 of the Localism Act 2011 gives local authorities a general power of competence that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation. Section 4 of the same Act directs that anything which is done for purely commercial purposes should be done through a company structure.
2. Companies and LLPs are governed by the Companies Act 2006; The Limited Liability Partnerships Act 2000; and The Limited Liability Partnerships Regulations 2001 (as amended principally by the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009).

Background

3. Local Authorities face ongoing financial challenges in recent years, due to a combination of reductions in central government funding and increasing demand on services in many areas. Whilst Reigate and Banstead Borough Council has maintained a generally strong financial position the pandemic has impacted income receipts, it remains essential for the Council to take action to ensure financial stability if it is to continue to deliver and maintain the high level of services it currently provides and has planned to continue to provide as part of the Corporate Plan 2020-2025.
4. Following a Commercial Governance Review in 2018, company activities have been overseen by the Commercial Ventures Executive Sub-Committee and integrated within the Council's wider Service and Financial Planning.
5. These activities take place within financial limits set out as part of the Council's approved revenue budget and capital programme.
6. The Council's holdings in companies represent one element of this commercial and investment activity, governed by the established commercial framework, along with relevant company regulations.

7. To support good governance of the Council's companies, the Overview and Scrutiny Committee and the Commercial Ventures Executive Sub-Committee receive regular updates on the performance of these companies.
8. The last full update was considered in June 2022 by Overview and Scrutiny Committee.

Key Information

9. As identified in the Executive Summary, the Council currently owns or part-owns, or has an interest in four operational companies. These are Greensand Holdings Limited, Horley Business Park Development LLP, Pathway for Care Limited, and Camelia Close (Tadworth) Residents Management Company Limited.
10. The Council is currently reviewing the future strategy for Greensand Holdings Limited with its Directors following recent changes to local government guidance on commercial investments.
11. Management Accounts information continues to be sought from Pathway for Care Limited and the decision on the adequacy of its performance is undetermined, pending receipt of that information.
12. Horley Business Park Development LLP is not currently considered to be performing in line with the Council objectives due to activity being limited by matters currently being resolved with the joint venture partners.
13. No assessment has been undertaken on the performance of Camelia Close (Tadworth) Residents Management Company as the Council's involvement was to build and sell the units and exit the project.
14. More detail of the current status and performance of the Council's interest in each company is set out below.

Greensand Holdings Limited

15. Greensand Holdings Limited is a property investment and development company, established to facilitate the Council's property investment activities. It is wholly owned by the Council. The creation of the company was authorised by the Executive on 15 September 2016.
16. The company was initially funded through a loan from the Council. It generates an income from one of its property holdings and provides an income stream to the Council through the payment of interest on the loan.
17. As of 31 March 2022, the company had received £13.258m in loan funding from the Council comprising
 - £2.270m in 2016/17 for the purchase of office premises; and
 - £10.988m in 2019/20 for the purchase of a plot of land for development.
18. The office premises provide a rental income that is currently sufficient for the company to pay interest on the loan to the Council however maintenance and operating costs are a concern
19. The development land provides a negligible income stream; £1.964m loan interest has been accrued at 31 March 2022. The loan and accrued interest are impaired in

the Council's accounts to reflect the risk of credit loss.

20. Mr W Pallett resigned as a Director of Greensand on 31 December 2021 and the Council are currently considering an appropriate replacement Director. The current Directors of the company are Mr D Beck and Councillor R Michalowski.
21. The performance of the investment in the development site will be dependent on future decisions made regarding the proposed development.
22. The Directors' Report and Audited Financial Statements for the year ended 31 December 2021 for Greensand Holdings Limited are not yet prepared.
23. Additional details are available in the exempt report set out in the Part 2 section of this agenda.

Horley Business Park Development LLP

24. Horley Business Park Development LLP (the Partnership) is a joint venture which was set up to bring forward planning, and subsequent development, of employment land in the Horley area. The creation of the Partnership was authorised by the Executive on 15 October 2015, and a joint venture with Millhill Properties (Horley) Limited and Berwick Hill Properties Limited was established in 2016.
25. The Partnership is funded through loans from the Council and its partners. It does not currently generate a profit.
26. As of 31 March 2022, the Partnership had received £0.608m in loan funding from the Council for set up and working capital expenses and £0.367m interest has accrued. This sum is impaired in the Council's accounts to reflect the risk of credit loss.
27. The Council is currently working to resolve a number of matters regarding its relationship with the partners to the LLP which may affect future engagement with the joint venture. In order to ensure we do not prejudice the current discussions we cannot publish additional information, but an update will be provided once it is possible to do so.
28. As identified in the Spring 2021 Companies Update report, following the felling of a number of trees without the Council's knowledge on land owned by Millhill, the Council is continuing to co-operate with the Forestry Commission to understand their intended route of enforcement against Millhill, if any.
29. Due to the limitations placed on the operation of the joint venture, the Partnership is not currently considered to be performing in line with Council objectives. Once a resolution is reached, an approach will be agreed how to move forward in a way which aligns with the Council's objectives. Significant progress towards the future of the LLP is anticipated to be made by the end of the year.
30. The Horley Business Park Development LLP's Annual Report and Financial Statements for the year ended 31 December 2020 were late being submitted to Companies House due to the partners working to assimilate the auditors' commentary into an agreed format. The Annual Report and Financial Statements for the year ended 31 December 2020 were included in the Companies' Performance Update – Autumn 2021 exempt reports received by Overview & Scrutiny on 21 October 2021 and Commercial Ventures Executive Sub-Committee on 24 March 2022 and there are no further accounts to report.

Pathway for Care Limited

31. Pathway for Care Limited provides supporting living facilities and support for their residents at a site in the borough. Its creation was authorised by the Executive on 14 July 2016. The company equity share structure was subsequently revised in April 2018.
32. The Council is a minority shareholder in the company, with the majority shareholding held by Transforming Healthcare Group Limited. The Council has the right to appoint a director to the board of the company.
33. The Council currently holds £1.1m redeemable preference shares in the company, redeemable in April 2023, which were converted from a £1.1m loan when the equity restructuring took place. When redeemed, these will provide a capital receipt for the Council, subject to the company holding sufficient funds to honour the redemption at that time.
34. The Council would be entitled to receive income from any dividends paid by the company. Total dividends are stipulated to be 50% of net profits generated by the company, subject to cash flow. The company has not declared a dividend and the Council is not aware of any tangible plans for redemption of the preference shares.
35. The current Directors of the company are Mr. O Vrublevskiy, Mr. J Ford; and Councillor V. Lewanski, the Council appointed Director. Messrs P Green and W Richards were previously directors of the company but resigned as of 6 October 2021. They remain directors of the majority shareholder, Transforming Healthcare Group Limited.
36. The Council is trying to obtain up to date management accounts information for the company. The most recent information was dated January 2021. A judgement on the current performance of the company is therefore subject to this information being received.
37. Additional details are available in the exempt report set out in the Part 2 section of this agenda.

RBBC Limited

38. RBBC Limited was incorporated on 30 September 2020 following the dissolution of a previous Council company, also named RBBC Limited. It was created for the purpose of preserving the name in case the Council should want to use the company name in the future. The directors, appointed for incorporation purposes, are the Director & Head of Paid Service and the Director of Place. The company is inactive and has not undertaken any activity in the current year.

RBBC Housing – Independent Living

39. This community benefit society has not undertaken any activity and following a decision taken at the Commercial Ventures Executive Sub-Committee on 30 September 2021, it was confirmed as deregistered by the Financial Conduct Authority on 17 February 2022.

Camelia Close (Tadworth) Residents Management Company Limited

40. This company was incorporated in May 2021, as a company limited by guarantee, and its directors are the Council's Head of Housing and the Council's Senior Development Manager.
41. The company will manage the housing properties developed by the Council at Pitwood Park until all the units are sold when control of the company will change to the director volunteers sought from home-owners of the properties. The Council will gradually no longer be involved with this company. At 9 May 2022, the remaining two units are sold but have not yet completed.

Observations of the Overview & Scrutiny Committee

42. The Overview & Scrutiny Committee considered this report at its meeting on 16 June 2022. Questions, observations and responses provided were captured in the minutes of the meeting and are set out below for the awareness of the Commercial Ventures Executive Sub-Committee.
43. Members asked questions and made the following observations:
 - Greensand Holdings Limited loans – Members referred to Point 19 on page 5 of the Overview & Scrutiny Committee agenda where it states 'the loan and accrued interest are impaired in the Council's accounts to reflect the risk of credit loss' and Members asked for confirmation of the amount of loan and accrued interest. It was confirmed that Loan 1 principal amount was £2,269,629 and Loan 2 principal amount was £10,988,471 with accrued interest of £1,964,919.
 - Horley Business Park Development LLP – Members requested an update on the progress of Horley Business Park including a timeline. It was confirmed the Council is currently working to resolve a number of matters regarding its relationship with the partners to the LLP which may affect the Business Park Development. In order to ensure we do not prejudice the current discussions we cannot publish additional information, but an update will be provided once it is possible to do so.

Legal Implications

44. There are no direct legal implications arising from this report.
45. Where decisions are made which effect the Council's companies, the legal implications of these decisions will be considered as part of the decision making process in each case.

Financial Implications

46. There are no direct financial implications arising from this report. The Council's annual statement of accounts incorporates the financial position of its companies as part of its group financial statements.
47. Where decisions are made which impact the Council's companies, the financial implications of these decisions will be considered as part of the decision making process in each case.

Equalities Implications

48. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
 - Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
 - Advance equality of opportunity between people who share those protected characteristics and people who do not;
 - Foster good relations between people who share those characteristics and people who do not.
49. The three parts of the duty applies to the following protected characteristics: age; disability; gender reassignment; pregnancy/maternity; race; religion/faith; sex and sexual orientation. In addition, marriage and civil partnership status applies to the first part of the duty.
50. There are no direct equalities implications of this report, however an awareness of the Council's obligations with respect to these duties should form part of the consideration of this report.
51. Where decisions are made which effect the Council's companies, the equalities implications of these decisions will be considered as part of the decision making process in each case.
52. The Commercial Ventures Executive Sub-Committee shall generally have regard to the obligations of the Equality Act (2010) in conducting its role as the representative of the Council as a shareholder or partner in companies owned or part-owned by the Council.

Communication Implications

53. There are no direct communication implications as a result of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures Executive Sub-Committee shall have regard for the Local Authorities (Companies) Order 1995, which sets out the rights for authorities and individual Members to receive company specific information.

Risk Management Considerations

54. All commercial ventures and investment activities contain an element of risk, and the Commercial Ventures Executive Sub-Committee shall consider these as part of the decision making process for any future decisions relating to companies owned or part-owned by the Council.
55. In monitoring the performance of companies owned or part-owned by the Council, the Commercial Ventures Executive Sub-Committee has regard to the fiduciary duty the Council owes to its rate and local tax payers, to the public law requirements to exercise the general power of competence for a proper purpose, and the

requirements of the Commercial Governance Framework which forms part of the terms of reference of the sub-committee.

Environmental Considerations

56. There are no direct environmental implications arising from this report.
57. Where decisions are made which effect the Council's companies, the environmental implications of these decisions will be considered as part of the decision making process in each case.

Policy Framework

58. The recommendations of this report are consistent with the Council's Policy Framework.
59. All actions undertaken by the Council in respect of commercial activity (including company activity) will be undertaken for the purpose of contributing to the achievement of the 'Funding our Services' objective within the Council's Corporate Plan and supporting policy framework, unless otherwise specified by statute.