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TO	Overview and Scrutiny Committee
DATE	Thursday, 7 November 2019
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Companies Performance Update, 17 October 2019
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RECOMMENDATIONS
(i) To note the 17 October 2019 Companies Performance Update, as set out in this report, and to consider any observations from the Overview and Scrutiny Committee from its meeting of 17 October 2019.
REASONS FOR RECOMMENDATIONS
To consider the performance of companies owned or part-owned by the Council, as of October 2019.
EXECUTIVE SUMMARY
<ol style="list-style-type: none"> 1. This report provides an overview of the performance of the companies currently owned, or part-owned, by the Council. 2. These companies currently consist of Greensand Holdings Ltd, Horley Business Park Development LLP, Pathway for Care Ltd and RBBC Ltd. 3. All these companies are currently considered to be performing in line with the Council's objectives, or are on target to be once actions currently being undertaken are completed. 4. Additional supporting information is detailed in the exempt report set out in the Part 2 section of this agenda.

The Commercial Ventures Executive Sub-Committee has authority to approve the above recommendations

STATUTORY POWERS

5. 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.
6. Companies and the rights of shareholders are governed by the Companies Act 2006.

BACKGROUND

7. Central Government funding for local authorities has reduced considerably in recent years, whilst the demand for services has increased. To enable the Council to continue to deliver and maintain the level of services that residents currently benefit from it is essential that alternative sources of income are found. Commercial activity is one such source of income, and has in recent years formed part of the Council's strategy to be financially self-sustaining.
8. The Council conducted a Commercial Governance Review in 2018.
9. The Executive considered the findings and recommendations of the review on 18 March 2019, and agreed the adoption and implementation of the proposed Commercial Governance Framework.
10. The Executive approved updates to its Commercial Governance arrangements on 30 May 2019, including the establishment of a Commercial Ventures Executive Sub-Committee.
11. The Commercial Ventures Executive Sub-Committee has authority to undertake the shareholder and partnership function of the Council with regard to companies owned and part-owned by the Council, and to manage and monitor the performance of Council investment in companies, within financial limits initially set out by the Executive decision establishing the Sub-Committee on 30 May 2019, and henceforth to be set out as part of the annual Service and Finance Planning process
12. The Commercial Ventures Executive Sub-Committee has been in operation since July 2019 and meets on a monthly basis. Sub-Committee members have been considering the Council's asset base and appraisal framework, and are working to develop the Council's future commercial approach and investment strategy. These will be brought forward for formal approval in the coming months. Sub-Committee members have been examining best practice arrangements at other local authorities and made visits to other local authorities to view arrangements first hand and meet with other members of those local authorities.
13. To support good governance of the Council's companies, the Overview and Scrutiny Committee currently receives six-monthly updates on the performance of companies owned or part-owned by the Council. This reports sets out the update for October 2019.

KEY INFORMATION

Greensand Holdings Limited

14. 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.
15. The company received initial funding through a loan from the Council, authorised on 15 September, and with additional details noted by the Property Executive Sub-Committee on 14 November 2016, and provides an income to the Council through repayments and interest on the loan.
16. The company has received £2,269,500 in loan funding from the Council.
17. The company currently holds one property, which provides a rental income sufficient for the company to meet its repayment and loan obligations to the Council and to generate a profit.
18. The Council received a revenue income of £102,000 from the company in 2018/19.
19. There is potential for additional opportunities for company activity to emerge in line with the Council's emerging commercial and housing strategies.
20. On 19 September 2019, the Executive granted authority for a loan of funds to Greensand Holdings Limited, in order to enable the company to explore a time sensitive business opportunity. As specified in the report supporting this decision, that loan, if advanced, will be at a commercial rate. The specific terms of the loan are to be agreed.
21. Derek Beck, a Council Property Advisor, was appointed to a vacant director post of the company in May 2019 on an interim basis, pending review of the director appointments across all of the companies.
22. The company is currently judged to be performing well.
23. The Annual Report and Financial Statement for Greensand Holdings Limited for the year ended 31 December 2018 are provided as Annex 1 to this item.
24. Additional details are available in the exempt report set out in the Part 2 section of this agenda.

Horley Business Park Development Limited Liability Partnership

25. Horley Business Park Development LLP 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 company was authorised by the Executive on 15 October 2015, and a joint venture with Millhill Properties (Horley) Limited was established in 2016.
26. Following promotion of the site by the LLP through the local plan-making process, the Horley Business Park site was allocated for employment purposes in the Reigate & Banstead Development Management Plan (2018-2027) (DMP), adopted by full Council on 26 September 2019. The DMP policy confirms the extent of the site, the uses that will be acceptable and (in general terms) the infrastructure and mitigation measures that will be required to make the development acceptable in planning

terms.

27. Steps to acquire land within the site that is owned by a third party are well progressed. In May 2019, the Executive received an updated report about this acquisition opportunity and agreed to proceed, and to fund the acquisition and supporting costs from funding allocated within the approved Capital Programme for 2019/24.
28. Another section of the land within the site is owned by Surrey County Council (SCC), and it is intended to work with SCC to deliver a mutually supported development. Negotiations with Surrey County Council are ongoing, to reach consensus over the form of agreement by which to include it as a partner in the development. SCC will not enter into the existing partnership. Therefore discussions are also taking place with the Council's existing partner in the LLP (Millhill) as to the structure of any future agreement.
29. Given the scale of the scheme, the updated Horley Business Park partnership (see above) will need to seek external funding to bring the development forward. Advice is being sought from independent experts as to the best way to proceed with scheme development and the identification of a funding partner. The Commercial Ventures Executive Sub Committee have been briefed about this advice to date. Initial steps will include the preparation of a masterplan (in accordance with the requirements of the DMP) which will be used to market the site to prospective funders and inform a planning application in due course.
30. Conversations are also ongoing with Gatwick Airport which, since the last update, has published its final Masterplan. The Masterplan sets out the Airport's aspiration to bring its standby runway into permanent use; and there is clearly a complementarity between the two proposals, not least because they rely on the same primary road access. Gatwick's initial Masterplan proposals suggest that a small part of the area allocated in the DMP may be required for junction improvements/road widening and/or temporary storage of construction material and the Council will be seeking further clarification on this issue.
31. In January 2018, the Executive received a report outlining that Local Enterprise Funding had been secured to assist in delivering the Horley Business Park project. An element of this funding has subsequently been drawn down. In the last six months, further information has been provided to the LEP about project progress, and the we are continuing to engage to agree how the remaining funding element is spent.
32. In the coming six months, it is anticipated that the third party land deal will be concluded; a revised partnership structure (including Surrey County Council) will be agreed; and positive progress will have been made to prepare a development masterplan and seek a funding partner. In order to ensure that project momentum is maintained now that a policy allocation has been secured, the Council intends to appoint a project manager to oversee progress, potentially in conjunction with SCC. The Commercial Ventures Executive Sub Committee will continue to be briefed on progress.
33. As a strategic venture, the company's current purpose is not to generate a revenue return for the Council, but it is judged to be performing well in supporting the strategic objective of bringing forward the Business Park and associated benefits for the local area. In the long term, it is expected that a capital (and potentially income) return for

the Council will be generated from its share in the development.

34. To date, the Council has provided £602,000 in funding to the company, as loans at a commercial rate. These loans have accrued £113,984 in interest to date.
35. The Annual Report and Financial Statement for Horley Business Development LLP for the year ended 31 December 2018 are provided as Annex 2 to this item.
36. Additional details are available in the exempt report set out in the Part 2 section of this agenda.

Pathway for Care Limited

37. Pathway for Care Limited provides supporting living facilities and support for their residents at a number of sites in the borough and surrounding areas. As a shareholder, the Council is able to provide local expertise and experience in supporting vulnerable residents. The creation of the company was authorised by the Executive on 14 July 2016.
38. The Council is a minority shareholder in the company, with the majority shareholding held by Paul Green, a founder and former Director of Fairhome Group PLC, which was the previous majority shareholder in the company. The Council has the right to appoint a director to the board of the company.
39. The Council holds £1.1m in redeemable preference shares in the company, redeemable in April 2023, which were converted from the Council's £1.1m loan to the company. When redeemed, these will provide a capital return for the Council, subject to the company holding sufficient funds to honour the redemption at that time.
40. The Council also stands to receive income from any dividends paid by the company. Total dividends are stipulated to be 50% of profits generated by the company. Whilst the company has been investing in growing its services, it has not generated a profit, and therefore has not yet provided a dividend income to the Council.
41. As of the performance update in March 2019, the company was growing well, and performing in line with business plan targets, supported by investment for growth from the previous majority shareholder, Fairhome Group PLC. Since then, Fairhome undertook an internal restructure and subsequently reduced investment in Pathway for Care. This therefore caused a reduction in the performance of the company relative to business plan targets.
42. However, the majority shareholding was sold to Paul Green in September 2019, with the business transfer agreement also removing remaining liabilities to Fairhome, and establishing an option to transfer associated supporting living properties previously owned by Fairhome to a new provider.
43. The sale of these shares was approved by the Commercial Ventures Executive Sub-Committee on 5 September 2019. The new owner met with the members of the Commercial Ventures Executive Sub-Committee in August to discuss his intentions ahead of the purchase.
44. With the change of majority ownership, the company will develop an updated business plan, which will be shared with the Council once complete. The new business plan is expected to include the provision of investment to support the growth of Pathway for Care and performance and growth are therefore projected to return to target levels.

45. The company is projected to generate a net profit in 2020.
46. The Annual Report and Financial Statement for Pathway for Care Limited for the year ended 31 July 2018 are provided as Annex 3 to this item. The Annual Report and Financial Statement for the year ended 31 July 2019 have not yet been approved.
47. Additional details are available in the exempt report set out in the Part 2 section of this agenda.

RBBC Limited (Pathway Digital)

48. RBBC Limited was split from Pathway for Care in April 2018, as a potential digital technology business supported by external investment.
49. In the event, no suitable external investment was secured, and the company is therefore in the process of being closed, as reported in the performance update in March 2019. This process will be completed following confirmation of the most appropriate accounting treatment.
50. The company is currently neither generating an income for the Council, nor incurring any significant costs.
51. RBBC Limited was incorporated on 4 April 2018 and its financial report and accounts are due by 4 January 2020 (newly incorporated entities are allowed to lodge their first accounts with Companies House 21 months after the date of incorporation). Its report and accounts have therefore not been prepared to date, and as it is intended to dissolve the company these will not be required if it is dissolved before of 4 January 2020.

Future Commercial Agenda

52. In July, the members of the Commercial Ventures Sub-Committee received a paper regarding taking forward a commercial agenda. The sub-committee members were asked to consider the Council's investment approach, objectives and level of risk appetite, in order to help address the forecast budget challenge based on the following questions:

- The scale of commercial investment opportunities to be pursued;
- The type of investments that the commercial strategy should focus on;
- The extent of borrowing to purchase income-generating assets;
- Whether commercial investment should be through joint-ventures with partners;
- Whether commercial investments should be focussed on assets within the Reigate and Banstead borough;

The members of the Sub-Committee also considered a draft assessment matrix for considering future property investment opportunities, the need to set aside resources to maintain current investment assets, how to convert the Council's asset register into a programme of opportunities to consider, and if and how targets are set for investment opportunities, particularly regarding Greensand Holdings, and potential Revenues and Benefits commercial activities.

53. The members of the sub-committee noted the questions, and supported their use on an ongoing basis, to support consideration in the coming months, and around forthcoming visits to examine commercial models in use by other local authorities.

54. The above questions, along with the question of the relative importance of commercial and local benefit objectives when considering a new investment opportunity, were also considered by the Overview and Scrutiny Committee on 11 July 2019, and the Committee provided feedback to the Executive.
55. The Council's developing commercial approach will be shaped by the responses to these questions, and is expected to be reported for consideration by Members alongside the finalised service and financial plans for 2020/21.

OPTIONS

56. The options available to the Commercial Ventures Executive Sub-Committee are set out below:
Option 1: To note the performance of companies owned, or part-owned, by the Council, as set out in this report. **This is the recommended option** as it will support good governance of the Council's companies.
Option 2: To request additional information on the performance of companies owned, or part-owned, by the Council. **This is not the recommended option** as additional information will be provided to the members of the Commercial Ventures Executive Sub-Committee and Overview and Scrutiny Committee as part of regular performance monitoring of the Council's investments, and not noting the available information at this juncture will delay the formal governance of the Council's companies.

LEGAL IMPLICATIONS

57. There are no direct legal implications of this report.
58. 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

59. There are no direct financial implications of this report. The Council's annual statement of accounts incorporates the financial position of its companies as part of its group financial statements.
60. Where decisions are made which effect 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

61. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
 62. Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
 63. Advance equality of opportunity between people who share those protected characteristics and people who do not;

64. Foster good relations between people who share those characteristics and people who do not.
65. 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.
66. There are no direct equalities implications of this report.
67. 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.
68. 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

69. 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

70. 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.
71. 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.

CONSULTATION

72. The Members of the Commercial Ventures Executive Sub-Committee are consulted on an ongoing basis as to the performance and actions of companies owned or part-owned by the Council, along with other Members of the Executive or wider Council where appropriate.
73. The Overview and Scrutiny Committee considered this report on 17 October 2019 as part of consultation with the wider membership. The Committee noted the report and asked a number of questions. With regard to these:
 - It was confirmed that the Council had not yet adopted a position regarding Gatwick's proposals for the expanded use of its reserve runway, or formally

responded as a local authority to a possible future application for a Development Consent Order.

- It was identified that a report from the Monitoring Officer regarding non-executive directors of Council owned or part-owned companies would be considered by the Commercial Ventures Executive Sub-Committee early in the new year.
- It was noted that David Beck had been appointed by the Commercial Ventures Executive Sub-Committee as an interim Council Property Advisor to a vacant director post in the company in May 2019. This was a temporary post to ensure that the appropriate number of directors were on the Board. The Commercial Ventures Executive Sub-Committee had approved the appointment and had oversight of his work.

74. No additional observations were noted.

POLICY FRAMEWORK

75. The recommendations of this report are not in conflict with the Council's Policy Framework.

76. All actions undertaken by the Council shall have regard to the objectives of the Council's Corporate Plan and supporting policy framework, unless otherwise specified by statute.

BACKGROUND PAPERS

77. None.