

RSH & NHF GOVERNANCE COMPLIANCE STATEMENTS

Report of the Finance Director & Company Secretary

1. SUMMARY

- 1.1 The Regulator of Social Housing (RSH) requires the Board to make a positive statement of its compliance with its standards on governance through a self-assessment, as part of the Governance and Viability Standard to which Registered Providers (RPs) must adhere. This year's self-assessment is attached at Appendix 1.
- 1.2 The Board adopted the National Housing Federation (NHF) Code of Governance 2015 at its meeting in September 2015. The NHF has now published a new Code of Governance 2020 and the Board needs to determine its approach to the potential adoption of this updated Code.
- 1.3 Many of the provisions of these two requirements overlap. This report sets out the self-assessed annual review of Derby Homes' position with respect to each.
- 1.4 In terms of the RSH Standard, this is enhanced by a Code of Practice that gives guidance on how RPs can demonstrate that the standard is met.
- 1.5 The overall conclusions of the self-assessments are that Derby Homes complies with the RSH Governance and Viability standard and complies with the NHF Code of Governance 2020, albeit with a number of declared 'non-compliances' with reasoned explanations. This is permitted by the Code itself, especially where the Constitution overrides the approach suggested by the Code. The non-compliances to the RSH 2020 Code are explained in Appendix 2
- 1.6 In determining whether to adopt the new Code, the main issues are around the expectation of Board approval to extend membership beyond 6 years – now permitted within the Code to be extended to 9 years and with the backing of our Constitution (which overrides the Code, as the Code itself makes clear) beyond 9 years with a statement of non-compliance.

2. RECOMMENDATION

- 2.1 That the Governance Committee recommends the adoption of the NHF Code of Governance 2020 to the Board.
- 2.2 That the Governance Committee recommends to the Board that it makes the following statements in its 2020/21 accounts with respect to these reviews:

“In its view, Derby Homes Board complies with the RSH Governance & Viability standard” as set out in the attached detailed statement.

and

“In its view, Derby Homes Board complies with the NHF Code of Governance 2020. The Board recognises one area of declared non-compliance, with respect to its Board Membership due to our Constitution, and a second with respect to Board Member appraisals which we expect to resolve this year.”

- 2.3 To recommend to the Board that the role of Vice Chair includes a new item 6: To appraise the performance of the Chair, informed by the views of all Board Members.
- 2.4 To recommend to the Board that the Chair of Governance be the designated non-executive member of the Board to receive serious concerns via Whistleblowing in conjunction with the Company Secretary, and that an annual report on whistleblowing matters and actions taken in response be instituted.
- 2.5 To recommend to the Board that the Chair undertakes an appraisal of the Managing Director on behalf of the Board.

3. REASON(S) FOR RECOMMENDATION

- 3.1 In order to comply with the RSH’s regulatory requirements and NHF Code of Governance.

4. MATTER FOR CONSIDERATION

RSH Governance & Viability Standard

- 4.1 As a private Registered Provider of social housing (RP), Derby Homes needs to comply with RSH Standards with respect to its governance and financial viability. These are set out in a number of required outcomes, supported by RSH guidance through a Code of Practice. The details are set out in full in Appendix 1 to this report. These are, in essence, what we must do to be an RP.
- 4.2 The required regulatory outcomes are listed below - the responses are set out in the Appendix. Overall, the statement has not changed significantly since last year.
- 4.3 **Outcome 1.1**
Registered providers shall **ensure effective governance arrangements** that deliver their aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner.
- 4.4 **Outcome 1.2**
Registered providers shall **manage their resources effectively** to ensure their viability is maintained while ensuring that social housing assets are not put at undue risk.
- 4.5 **Outcome 2.1**
Registered providers shall adopt and **comply with an appropriate code of governance**. Governance arrangements should establish and maintain clear roles, responsibilities and accountabilities for their board, chair and chief executive and

ensure appropriate probity arrangements are in place. Areas of non-compliance with their chosen code of governance should be explained.

This is why the Board chose to adopt the NHF Code of Governance 2015 and why the updated NHF Code 2020 is being considered for adoption.

4.6 **Outcome 2.2**

Registered providers shall ensure that they manage their affairs with an **appropriate degree of skill**, independence, diligence, effectiveness, prudence and foresight.

4.7 **Outcome 2.3**

Registered providers shall **communicate in a timely manner with the regulator** on material issues that relate to non-compliance or potential non-compliance with the standards.

4.8 **Outcome 2.4**

Registered providers shall ensure that they have an **appropriate, robust and prudent business planning, risk and control framework**.

4.9 **Outcome 2.5**

In addition to the above, registered providers shall **assess, manage and where appropriate address risks** to ensure the long-term viability of the registered provider, including ensuring that social housing assets are protected.

4.10 **Outcome 2.6**

Registered providers shall ensure that any arrangements they enter into **do not inappropriately advance the interests of third parties**, or are arrangements which the regulator could reasonably assume were for such purposes.

4.11 **Outcome 2.7**

Registered providers shall **communicate with the regulator in an accurate and timely manner**. This includes returns to the regulator, including an annual report on any losses from fraudulent activity, in a form determined by the regulator.

4.12 **Outcome 2.8**

Registered providers shall **assess their compliance with the Governance and Financial Viability Standard at least once a year**. Registered providers' boards shall certify in their annual accounts their compliance with this Governance and Financial Viability Standard.

Conclusion on meeting the RSH Standard

4.13 The self-assessment concludes that Derby Homes is compliant in all these areas. The detailed reasons for this are set out in the appendix. There are further standards that do not apply at present as we are neither a parent company nor a 'for profit' RP.

National Housing Federation (NHF) Code of Governance

4.14 Outcome 2.1 of the RSH Standard is to adopt an appropriate Code of Governance. Derby Homes adopted the NHF Code 2015 in that year and now has a choice whether to adopt the new NHF Code 2020. It is proposed that the Governance Committee recommends adoption to the Board at its May meeting.

- 4.15 The new Code contains many of the key elements of the 2015 Code but enhances it in some areas as explained in a previous report to the Board in November 2020. It would send a positive message therefore to adopt the Code with a clear intention that any current non compliances or areas for improvement can be used as a template for actions to improve our governance still further.
- 4.16 The NHF has helpfully set out a compliance checklist for their new Code which can be used to self-assess. This is attached at Appendix 2 with appropriate self-assessment comments. The 52 page self-assessment points out that in addition to the previous non compliance that we had to the 2015 Code relating to the period of office for Board members exceeding 9 years, there are a number of areas where Derby Homes either is or could be perceived to be non-compliant, or has an area which could be stronger in future with appropriate actions. Action is listed in the self-assessment only where a new or enhanced approach is required or suggested by the new Code. The intention is to address any such issues within the current calendar year where possible. These issues are set out below for the Committee's consideration:
- 4.17 **Non Compliances that can be resolved:**
Item 3.3.4 – There is a dedicated senior board member (normally a vice-chair or senior independent director) with duties that include appraisal of the chair and assisting the chair to ensure the effectiveness of the board.
- 4.18 While Derby Homes' Vice Chair role does include 'to assist and support the Chair in fulfilling their duties and responsibilities', thus covering the second point, it does not currently include a duty to appraise the Chair. This could be dealt with by this being added as a duty to the Role Profile of the Vice Chairs. If this is adopted, this would deal with this and make us compliant.
- 4.19 Item 4.5 – Whistleblowing and confidential concerns. The current approach is that these can be raised via an independent organisation and then passed to the Company Secretary or Chair to consider. The new Code's requirement is that there should be 'a designated non-executive member of the Board other than the Chair where these are serious concerns and cannot appropriately be raised through the usual channels'. This is not currently set out in the whistleblowing policy and it is proposed that the Committee recommend to the Board that the Chair of Governance be that person. Additionally, there should be a report on all such reports to the Governance Committee annually. It is intended to report on this at the May Board meeting, thus making this issue compliant if the Board adopts the Committee's recommendation on this issue.
- Non Compliances to be declared this year**
- 4.20 As in previous years, membership of the Board will be declared as a non-compliance as a result of Iain MacDonald's tenure on the Board being in excess of 9 years (Item 3.7.3).
- 4.21 In addition, Items 3.7.4 and 3.7.5 will be new additional non compliances this year. 3.7.4 In the previous Code any member leaving the Board could not be re-appointed for one term – which meant 3 years for tenant and independent members but one year for Councillors who are nominated by the Council each year. The new stipulation is that 'A member who has left the board is not re-appointed for at least three years'. Our constitution would allow a Councillor to be appointed after only one year off the Board. Should any Councillors be nominated that have been on

our Board within the last two years (other than current members) then we would be non compliant on this issue. We may therefore be non compliant depending on who is nominated each year.

- 4.22 Item 3.7.5 applies the rules of tenure to all boards and committees. As a result, the appointment of Dennis Rees OBE as a 'life member' of the Operational Board would be a non compliance. It is recommended that we continue with this policy and explain it as a means to retain Dennis' considerable experience not only at Derby Homes but in national tenant representation. These three non compliances taken together form one statement that our Board Membership is non compliant.
- 4.23 Item 3.10 Member Appraisal – we are currently non compliant as a result of not undertaking formal appraisal recently, but have just launched a process to review during this Summer, so anticipate this area becoming compliant shortly. This is not a new requirement as it was also part of the 2015 Code.

Further issues to be resolved / improved resulting from the review

- 4.24 One of the main benefits of adopting a new Code is to check each area annually but when a new Code is considered new areas of recommended action can emerge. While not necessarily tipping over into non compliances to be declared, there are a number of actions proposed where the stated standard may not be adhered to as well as we might like. These can form an action plan for the Board and can be reviewed in future years to make sure that these actions have been delivered.
- 4.24 Item 1.2.2 'The Board has insight into the views and needs of the organisation's residents....' This is an area of relative strength, but the action point is to recruit to the remainder of Operational Board positions. Positive recent appointments still leave a few places to be filled.
- 4.25 Item 2.4.5 'There is a formal process for the chief executive's annual appraisal overseen by the board or an appropriate committee'. While a process exists, it has been suspended for the period of the pandemic and needs to recommence. The Board should formally approve the Chair to undertake the appraisal or determine an alternative approach'.
- 4.26 If the actions above are undertaken this year's statement would include the usual one about Board Membership but with Board appraisal added with the full expectation that this would be addressed this year.

5. OTHER OPTIONS CONSIDERED

- 5.1 The Board could stick with the 2015 Code for now and adopt the 2020 Code once the majority of actions listed above have been completed. This would be an acceptable strategy as it would still meet the RSH standard but would leave the adoption of the Code as a reactive issue rather than one that drives positive change.

6. CONSULTATION IMPLICATIONS

- 6.1 It is for the Council to determine Councillor Board Membership.

7. LEGAL AND CONFIDENTIALITY IMPLICATIONS

- 7.1 It is not a legal requirement to comply with the RSH Standards but it is a regulatory requirement to sustain Derby Homes' Registered Provider (RP) status. It is believed that we meet the Governance and Viability standard in full.

8. RISK IMPLICATIONS

- 8.1 Derby Homes is a Registered Provider of Social Housing and is required to comply with the Governance and Viability framework of the RSH. Any non-compliance would lead to an increased risk of losing our Investment Partner or RP status.

The areas listed below have no implications directly arising from this report:

Financial and Business Plan
Council
Personnel
Environmental
Equalities Impact Assessment
Health & Safety
Policy Review

If Board Members or others would like to discuss this report ahead of the meeting please contact:

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Background Information: Previous Reports to Governance Committee and Board
Appendix 1 – RSH G&V checklist
Appendix 2 – NHF Code 2020 checklist

Supporting Information: NHF Code of Governance 2020, RSH Governance and Viability Standard