

HOUSING AND COMMUNITY SAFETY OVERVIEW AND SCRUTINY COMMITTEE

Thursday, 25 September 2008

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| <u>Present:</u> | Councillor | A Taylor (Chair) | |
| | Councillors | AR McLachlan C Blakeley L Fraser | A Pritchard F Doyle |
| <u>Deputies:</u> | Councillor | J Salter (In place of B Kenny) | |
| <u>Co-opted Members:</u> | | Ann Holme | Peter Smith |
| <u>Cabinet Member:</u> | Councillor | G Davies | |
| <u>In Attendance:</u> | Councillors | P Davies W Duffey JE Green T Harney | K Hayes I Lewis L Rennie D Roberts |

CALL-IN OF CABINET MINUTE 186 (4 SEPTEMBER 2008) - WIRRAL PARTNERSHIP HOMES - PROPOSED AMENDMENTS TO CONSTITUTION

At its meeting held on 4 September 2008, the Cabinet considered the report of the Deputy Chief Executive/Director of Corporate Services, which advised of proposals put forward by Wirral Partnership Homes to amend its constitution and sought the Cabinet's endorsement of those changes.

The Cabinet (minute 186) resolved – That

(1) Wirral Partnership Homes be requested to avoid meetings of the full Council when setting their meeting dates and be provided with details of the Council's calendar of meetings; and

(2) the Council member vote in favour of the amendments to the Articles of Association of Wirral Partnership Homes Limited.

Cabinet minute 186 was called in by Councillors Duffey, K Hayes, Rennie, Blakeley, Fraser and Green on the following grounds –

“We believe that the Cabinet decision to instruct the Council's representative to vote in favour of the amendment to the Articles of Association of Wirral Partnership Homes Ltd (WPH) at its Annual General Meeting on 30 September 2008 to be ill judged and has the potential to impact on residents of Wirral, particularly those who rent or are leaseholders of WPH, without any checks and balances from any of the Council Nominated Directors.

Whilst we agree that the quorum should be six voting Directors, we believe that among those present should be a Council-nominee. We also have concerns that the minutes of WPH Board Meetings are not open to public scrutiny and are effectively secret, and therefore we believe it is essential that Council Directors are present at WPH Board Meetings.

We therefore call on Cabinet to rethink its decision of 4 September and instruct the representative to vote AGAINST the amendment to the Articles of Association of Wirral Partnership Homes.”

15 **CHAIR'S OPENING REMARKS**

The Chair welcomed everybody to the meeting and, subject to the agreement of the Committee, he outlined the procedure he proposed to adopt to deal with the call-in item. Scrutiny call-in guidelines had been written in order to assist those planning and taking part in a call-in meeting and had been produced having regard to the process described in the Council Constitution (Part 4: Overview and Scrutiny Procedure Rules), as well as in Standing Orders 26(4) and 35.

He commented also that Councillor Crabtree had been unable to attend the meeting. However, he had invited Councillor Harney to attend to give evidence, if the Committee were in agreement, as he was also a Board member of Wirral Partnership Homes (WPH). Councillor Blakeley indicated that he had no objection to this.

It was moved by Councillor Blakeley and seconded by Councillor Fraser –

“That consideration of this matter be deferred to a future date, as the meeting is unconstitutional, the call-in guidelines not being in accordance with the Council's constitution”

The Director of Law, HR and Asset Management indicated that the guidelines had been produced to assist members of the Overview and Scrutiny Committee. However, they could be varied as the Committee wished.

The motion was put and lost (3:4), Councillors Blakeley, Fraser and Pritchard voting in favour; and Councillors Doyle, McLachlan, Salter and Taylor voting against.

16 **DECLARATIONS OF INTEREST/PARTY WHIP**

Members were asked to consider whether they had personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they were.

Members were reminded that they should also declare, pursuant to paragraph 18 of the Overview and Scrutiny Procedure Rules, whether they were subject to a party whip in connection with any item(s) to be considered and, if so, to declare it and state the nature of the whipping arrangement.

The Director of Law, HR and Asset Management referred to paragraph 12 of the Code of Conduct, and advised that those members who had been called as witnesses, and who were Board members of Wirral Partnership Homes would have a

prejudicial interest in the matter before the Committee. He advised therefore, that they should withdraw from the meeting after having given evidence to the Committee. Councillor Blakeley commented that it was a matter for individual members, as to whether they declared an interest, and whether or not they subsequently withdrew from the meeting.

Councillor Duffey made the following declaration –

“I have been requested to attend this meeting to provide evidence in respect of the ‘call-in’ of Cabinet minute 186.

I am not part of the decision making process in respect of this matter, I appear here today as both a Director of Wirral Partnership Homes and a Councillor of this Authority.

If I were to be determining this matter and taking the decisions, it is my view that I would have a personal interest and also a prejudicial interest in the matter that is being considered today. I say this because I am a Director of Wirral Partnership Homes and as the matter being reviewed today has a direct implication upon them, so it is my view that such an interest is likely to be prejudicial if I were making the decision.

However, I am relying upon you to make the decision after hearing evidence and information from myself and my colleague Councillor Karen Hayes as well as other witnesses”

Councillor K Hayes made the following declaration –

“I act in the same capacity as Councillor Duffey and I endorse and agree with the comments that Councillor Duffey has made”.

Councillors Harney and Roberts declared their prejudicial interest in the matter before the Committee by virtue of them being Board members of Wirral Partnership Homes and, in accordance with the officer’s advice, proposed to withdraw from the Committee after having given evidence to it.

Councillor Blakeley declared a personal interest, insofar as he had accepted hospitality from Wirral Partnership Homes, whilst in Harrogate in June 2008, attending the Annual Housing Conference. In response to a question from Councillor Blakeley, the Chair declared his personal interest, as he had also accepted hospitality from WPH at the Institute of Housing Conference.

In response to a question from Councillor Blakeley as to whether the Chair had recorded the hospitality in the register of interests maintained by the Director of Law, HR and Asset Management, the Chair indicated that he had not. Consequently, in the interest of openness and transparency, Councillor Blakeley suggested to the Chair that he should take no part in the meeting.

It was moved by Councillor Blakely and seconded by Councillor Fraser –

“That as this issue has a direct impact on local residents, the co-opted members be given the right to vote on this matter”

The Director of Law, HR and Asset Management indicated that only the Council could give the right to vote to co-opted members of the Committee, and that it had not done so.

The motion was put and lost (3:4), Councillors Blakeley, Fraser and Pritchard voting in favour; and Councillors Doyle, McLachlan, Salter and Taylor voting against.

17 **EXPLANATION OF THE CALL-IN BY LEAD SIGNATORY**

Councillor Blakeley declined to explain the call-in at this stage, as he did not accept the constitutional validity of the guidelines that had been adopted by the Committee.

The Director of Law, HR and Asset Management advised the Committee that he had consulted with the Centre for Public Scrutiny, who had indicated their satisfaction that the guidelines were reasonable and lawful.

18 **EVIDENCE FROM CALL-IN WITNESSES**

The Chair welcomed each of the witnesses to the meeting and thanked them for their attendance.

It was moved by Councillor Taylor and seconded by Councillor Salter –

“That each of the witnesses be allowed to make a brief statement to the Committee prior to answering questions from members”

The motion was carried (4:3), Councillors Doyle, McLachlan, Salter and Taylor voting in favour; and Councillors Blakeley, Fraser and Pritchard voting against.

Brian Simpson (Chief Executive – Wirral Partnership Homes)

Mr Simpson indicated that he was somewhat perturbed at the way the issue had had been portrayed and he confirmed the desire of Wirral Partnership Homes (WPH) to work in partnership with the Council. However, there had been five meetings of the WPH Board that had been inquorate, largely because of a failure to attend by Council nominees. Clearly, the issue of inquorate meetings had to be addressed in order for the company to be able to function effectively, and in May 2008 he had written to the Council’s Chief Executive in order to work together to explore ways of improving attendance at Board meetings. He referred to regular liaison meetings held with Council officers and commented that initiatives proposed included more frequent briefings for Board members and increased co-operation in setting meeting dates to avoid clashes of the Board with meetings of the full Council. He recognised the difficulties members had in attending meetings, given the considerable number of meetings in the Council diary, but was happy to co-operate in order to encourage attendance.

Councillor Blakeley referred to the difficulties faced by members of the Council in attending meetings, and indicated that there were frequent clashes in membership. In response to a question from Councillor Blakeley, Mr Simpson indicated that the motion to the AGM could not be changed, although he conceded that it could fall, if members of the Board voted against it.

Councillor Blakeley requested an explanation of the origin of the company name – Wirral Partnership Homes, and he requested further information in relation to liaison meetings previously referred to. Mr Simpson indicated that the name was intended to convey the partnership that existed between the company, its residents and the Council. He stated that quarterly liaison meetings were held with officers from the Regeneration Department, at which notes were taken, and he suggested that this was an example of partnership working with the local authority.

Councillor Blakeley requested details in relation to the availability, for public scrutiny, of agendas and minutes of the WPH Board. He referred also to the potential for excluding Council nominated Directors. In response, Mr Simpson confirmed that the agendas and minutes of WPH Board meetings were not published and that there was nothing in the proposal to the AGM that would exclude any group represented on the Board.

In response to a question from Councillor McLachlan in relation to the reasons for non-attendance at Board meetings, Mr Simpson referred to the pressures on elected members, given the number of meetings in the Council diary. WPH meetings were arranged in October for the following calendar year and were shared in advance with all Directors – there were 6 Board meetings, which dealt with strategic issues; and 6 Operational Committees, which dealt with day to day matters. The Operational Committees reported to the Board, and as there were now fewer Board meetings, it was essential for it to be quorate, so as to enable day to day matters to proceed.

Patrick McCarthy (Company Secretary – Wirral Partnership Homes)

In response to a question from Councillor Blakeley, Mr McCarthy outlined his role as Company Secretary at meetings of the AGM. As to whether the Board would be prepared to maintain the status quo in relation to meetings and consider an alternative proposal to ensure a quorum, he stated that all of the proposals that had been presented to the Board for consideration had been clearly explained by the company's lawyers. The decision to accept or reject the proposals would be a matter for those members present at the AGM.

Maggie Sparks (Interim Chairman – Wirral Partnership Homes)

In response to questions from Councillor Blakeley, Ms Sparks indicated that she had been a Director of WPH since the formation of the shadow board and she outlined the circumstances of her twice being Chair. As to the rate of turnover of Company Directors, she commented that there were at present only two serving members that had been on the shadow board and that since that time the rate of turnover of Company Directors had been substantial. She commented that changes in membership had led to difficulties in relation to continuity. However, all Board members had an equal opportunity for input at meetings, if they were in attendance.

Councillor Bill Duffey

Councillor Duffey indicated that he had been a Board member of WPH since 2006 and commented that in his view, it was essential for public accountability that there was continued Council representation.

In response to a question from Councillor Blakeley as to why he did not object when the proposal was first considered by the Board, he stated that the meeting had a particularly lengthy agenda and he did not fully recollect the debate. As soon as the implication of the proposal had been brought to his attention he had made known his objection to it, and had been pleased to add his name to the call-in.

As to why he had been absent at Board meetings which were inquorate, he believed that he had been at other committee meetings, and that it was not always possible to arrange deputies. He stated that it would have been unusual for none of the Council appointed Directors to be present at Board meetings and he believed that improved liaison between WPH and the Council's Committee section would lead to fewer clashes of key meetings and therefore improve attendance of Council nominated Directors at Board meetings.

In response to a further question from Councillor McLachlan, Councillor Duffey accepted that the proposal by WPH would not preclude attendance by Council nominated Directors.

Councillor Karen Hayes

In response to a question from Councillor Blakeley, Councillor Hayes commented that she had been a Board member of WPH since November 2007. When the change to the constitution had been first considered by the Board, she had misunderstood its implications and had not objected to it at that time. The meeting in question was a very long meeting with a large agenda. She indicated that the company's Chief Executive was now trying to overcome difficulties faced by members of the Council, and she commented upon the importance of Council representatives being present at Board meetings, wherever possible.

Councillor McLachlan asked Councillor Hayes at what point she had realised that she had misinterpreted the proposal and whether she subsequently brought her concerns to the attention of the Leader of the Conservative Group, prior to the meeting of the Cabinet on 4 September. It was at that meeting that with the permission of the Chair, the Leader of the Conservative Group had indicated that Wirral Partnership Homes should be requested to avoid meetings of the full Council when setting their meeting dates. The minutes indicated that no concern had been expressed in relation to attendance of Council Directors. In response, Councillor Hayes stated that she discussed her concern with Councillor Duffey but did not recall at what point she realised the true implications of the WPH proposal.

Councillor Ian Lewis

Councillor Lewis indicated that he had previously been a shadow board member and that his membership had continued until 2004, when he lost his seat on the Council. He also served briefly on the Board in 2007. In response to a question from Councillor Blakeley, he expressed his surprise that the Council would allow important decisions to be taken by the Board without an assurance that elected member representatives would be present. He would also have had similar concerns if tenants' representatives were also not present.

Councillor Phil Davies (attending in place of Councillor Steve Foulkes)

Councillor Blakeley commented upon a decision of the Cabinet on 16 May 2007 (minute 7 refers) which stated that the Council's representation on the WPH Board should be limited to elected members or, where provided for in the Board's constitution, Council officers. He expressed his surprise that the Cabinet was now prepared to allow decisions to be taken by the Board of WPH without any assurance that an elected member of the Council would be present. In relation to the WPH proposal, Councillor Davies indicated that the Cabinet saw it as a pragmatic response and considered it to be a reasonable approach in order for the company to effectively conduct its business. He commented that the Leader of the Conservative Group had only expressed a concern that Board meetings should avoid meetings of the full Council. Councillor Davies expressed the view that the proposal did not constitute a diminution of input by Council nominated Directors and that elected members were free to attend Board meetings as they always had been.

Councillor Fraser commented that she had been a member of the Board in 2004, at the same time as Councillor Lewis. At the time, she was not a member of the Council, and questioned Councillor Davies as to why the same objection to Councillor Lewis in 2007 had not been made against her in 2004. In response, Councillor Davies declined to personalise the debate.

Councillor George Davies (Cabinet Member for Housing and Community Safety)

As he had not been present at the start of the meeting, Councillor Blakeley asked Councillor Davies whether he wished to declare a personal or prejudicial interest. Councillor Davies declined to do so. Councillor Blakeley asked Councillor Davies whether he had accepted hospitality from WPH at the Institute of Housing Conference in Harrogate, in June 2008 and, if so, whether this had been declared in the Gifts and Hospitality Register maintained by the Director of Law, HR and Asset Management. Councillor Blakeley indicated to Councillor Davies that he had checked the register earlier in the day and no such entry had been made. Councillor Davies confirmed that he had accepted hospitality and had requested the Director of Regeneration to make a record of it.

Councillor Blakeley requested that the meeting be adjourned in order to ascertain whether those members who had accepted hospitality from WPH at the Institute of Housing Conference had declared it in the Gifts and Hospitality Register. The Chair commented that members were able to undertake such research outside of the meeting and declined to adjourn the proceedings.

19 **EVIDENCE FROM CABINET MEMBER'S WITNESSES**

In the absence of Councillor Crabtree, the Chair had invited Councillor Harney to attend and give evidence and in response to a further request, he also proposed to hear evidence from Councillor Jeff Green, if the Committee were in agreement.

Councillor Tom Harney

In response to a question from the Cabinet Member for Housing and Community Safety, Councillor Harney indicated that he considered Cabinet minute 186 to be fair

and accurate. He wished the Cabinet to support the Board of WPH, who were acting in the best interest of tenants.

Councillor Denise Roberts

In response to a question from the Cabinet Member as to the reasons for change to the constitution, proposed by WPH, Councillor Roberts indicated that her first knowledge of it was at a Board meeting on 29 July 2008, when problems of achieving a quorum were highlighted. She accepted the proposals, which she believed sought to address the problem, and commented also that there was a willingness of the Board to avoid clashes with meetings of the Council.

Councillor Jeff Green

In response to an earlier comment, Councillor Green stated that at the meeting of the Cabinet held on 4 September 2008, he had made the point that the proposal by WPH could effectively mean that important decisions could be taken without a Council Director being in attendance. He had also commented that WPH could assist in ensuring attendance by avoiding clashes with meetings of the Council. He had also made the point that the unavailability of minutes of the WPH Board was not acceptable. In response to a question from a member, he commented that although he believed the Cabinet minute to be accurate, the pre-amble was a summary, not a verbatim record.

20 SUMMING UP BY MOVER OF CALL-IN

In response to a question from Councillor Blakeley as to who was deemed to be the mover of the call-in, the Director of Law, HR and Asset Management indicated that as the mover of the call-in had not been named, it was up to the signatories to it to nominate a member to sum up, if they wished to do so.

Councillor Blakeley stated that the reason for the call-in was quite clear, that the Conservative Group had serious concerns that the proposal would enable important matters to be determined by the WPH Board without assurance that a Council nominated Director would be in attendance. He agreed that the Council and WPH should work more closely together to ensure elected member representation at every meeting of the Board, but expressed the view that there was no need for the proposed amendment to the Articles of Association to achieve that objective. Although there had been widespread support for stock transfer, he commented that the Council was in danger of betraying the trust placed in it by the tenants and residents who had transferred to WPH, because of the reduction in accountability that would result from the proposed change.

21 SUMMING UP BY CABINET MEMBER

Councillor G Davies declined the opportunity to sum up.

22 COMMITTEE DEBATE

Ann Holme commented that she had contacted all of the member groups within the Wirral Federation of Tenants and Residents Associations (WFTRA), and all had

expressed the view that there should always be Council representation on the WPH Board.

The Chair indicated that there was nothing in the proposed change that would exclude any Board member from attending, and he urged all Council-nominated Directors of WPH to make every effort to attend, utilising the system of deputies if a clash of meetings was unavoidable. He was also pleased to acknowledge the willingness of WPH to continue to work closely with the Council and to try to avoid clashes with key meetings.

23 COMMITTEE DECISION

It was moved by Councillor Blakeley and seconded by Councillor Fraser –

“(1) That this Committee recognises the important role the Board Directors of Wirral Partnership Homes (WPH), Tenants, Independent and Council Nominees play in ensuring that the business of WPH runs smoothly and that the promises made to tenants at transfer are carried out.

(2) That this Committee recognises that the Council has, and continues to work in ‘Partnership’ with WPH to deliver services to its tenants.

(3) Therefore, this Committee asks the Cabinet to reconsider its decision of 4 September 2008 (minute 186) and asks that the Council vote against the proposed changes to the Articles of Association of WPH at its Annual General Meeting on 30 September 2008.

(4) However, this Committee, in an effort to assist WPH, asks the Council to inform them that it will in principle support a change to its Articles of Association with regard to numbers and make up of constituent Directors in order for Board meetings to be quorate, and as such is prepared to reduce from two to one, the number of Council nominated Directors who have to be present at Board meetings. The Committee recognises that if this is acceptable to WPH, they can convene an EGM at relatively short notice to approve the changes.”

The motion was put and lost (3:4), Councillors Blakeley, Fraser and Pritchard voting in favour; and Councillors Doyle, McLachlan, Salter and Taylor voting against.

It was moved by Councillor McLachlan and seconded by Councillor Salter –

“That this Committee endorses Cabinet minute 186 and urges all Council members of the Wirral Partnership Homes Board to make every effort to attend and play a full part in WPH Board meetings.”

The further motion was put and carried (7:0)

At the request of the Chair, the Chief Executive of WPH agreed that should such a situation arise again, where there were no Council nominated Directors in attendance, he would report this to the Council at the earliest opportunity.

Resolved – That this Committee endorses Cabinet minute 186 and urges all Council members of the Wirral Partnership Homes Board to make every effort to attend and play a full part in WPH Board meetings.
