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<b>Decision maker:</b>	<b>Cabinet member: Health and Wellbeing</b>
<b>Decision date:</b>	<b>13 July 2017</b>
<b>Title of report:</b>	<b>Proposed merger of Herefordshire Housing and Shropshire Housing Group</b>
<b>Report by:</b>	<b>Strategic wellbeing and housing manager</b>

## **Classification**

**Open - report**

**Exempt – Appendix 1;** Appendix 1 is exempt by virtue of paragraph 3 of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A Local Government Act 1972, as amended.

## **Key decision**

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

## **Wards affected**

Countywide

## **Purpose**

To approve the approach to be adopted by the council to the proposed merger between Herefordshire Housing Limited (HHL) and Shropshire Housing Group (SHG).

## Recommendation(s)

THAT:

- (a) **the council's representative on the board of Herefordshire Housing Limited be guided to exercise the council's golden share in support of the proposed merger of HHL with SHG.**

## Alternative options

- 1 The council could oppose the merger, or abstain from exercising the vote, which would prevent it from happening at this time. This option is not recommended since it would appear not to be necessarily in the interests of Herefordshire residents. In due course, new regulations are likely to be introduced by government, which will have the effect of removing the council's influence over decisions of this kind, such that the merger may be considered likely to happen at some point in the future, regardless of the views of the council.
- 2 The council could seek to defer any decision about the merger by HHL and SHG until the council's "golden share" has been removed from HHL's constitution by regulations which may be made by the secretary of state under the Housing Act 2016. This option is not recommended as it would have a very similar effect as the option to oppose the merger. There is no timetable currently for the government to bring forward the regulations which would remove the rights of councils such as golden shares, but it had previously been indicated that it was intended for this to be during 2017.
- 3 The council could support the merger conditional upon assurances that the new organisation would support and implement the council's strategic requirements on key issues. These would include a new allocations system and expansion of supported housing. This option is not recommended as SHG and HHL have indicated concerns about such conditions. It is likely that this approach would lead to a deferral of the merger until the council's golden share has been eliminated.

## Reasons for recommendations

- 4 The boards of HHL and SHG have provisionally agreed to the proposed merger of their organisations on the recommendation of their officers in order to further their interests and those of the people of Herefordshire and Shropshire. The council has a "golden share" in HHL which effectively allows it to veto or prevent any significant constitutional change by the housing provider, such as a merger. In exercising the golden share on the HHL board, the council's representative should be guided by the view of the council's executive and so act with its authority. Whilst it is not clear that the merger will bring positive benefits to Herefordshire's residents, it may have the effect of protecting local assets, workforce and services from a volatile commercial and national policy environment. It is therefore recommended that the council's representative votes in favour of the merger.

## Key considerations

- 5 HHL was created by Herefordshire Council in 2002 through a large scale voluntary

transfer (LSVT) of remaining council housing stock which passed to Herefordshire Council following local government re-organisation in 1998. HHL is a charitable organisation and manages around 5,800 social and affordable housing properties in Herefordshire and employs 389 people. It also provides a range of social care and other services in the county and elsewhere through its Independence Trust. HHL is relatively unusual in providing housing in only one council area and is one of the smallest housing providers in the Midlands; there are several providers regionally with stock in excess of 20,000 units. HHL's housing development programme has increased in pace and scale in recent times, but it remains a comparatively small organisation.

- 6 In recent years, mergers and takeovers have become very common amongst social housing providers, leading to a significant consolidation into a smaller number of larger providers. This is, in part, a result of banks becoming less willing to support borrowing for capital investment by small providers, as these are deemed to represent a greater financial risk. SHG itself is the product of a merger of two local providers in Shropshire. SHG manages around 4,600 social and affordable housing properties and has a well established development programme and a community led housing support service.
- 7 HHL announced its intention to merge with SHG early in 2017 and the two organisations have completed extensive and detailed negotiations and joint planning with a view to concluding the merger by July 2017. It is proposed that the newly merged organisation will be called Connexus Housing. The two organisations have provided the business case attached as an appendix to support discussion about the proposed merger.
- 8 In establishing HHL as an organisation in 2002, the council reserved for itself a "golden share" in its constitution with regard to the votes of board members in making decisions for the organisation. This share represents 33% of all votes on decisions. The HHL constitution also requires the board to vote by 75% to approve a major constitutional change such as a merger. The combination of these arrangements has the effect of giving the council a veto over the proposed merger. The council currently nominates a representative to be appointed to the HHL board. Under the merger proposals, the council would have no golden share nor any other representation or voting rights on the board of the new organisation. It is not proposed that the council make a continuation of such voting rights a condition of supporting the merger in view of the express intention of Parliament in the Housing Act 2016 to exclude such arrangements.
- 9 Under recent legislative changes, registered housing providers are no longer required to seek the approval of the Homes and Communities Agency (HCA) when proposing restructures or mergers. They have obligations to notify the regulator and provide information, which will then be reviewed in due course. The regulator is likely to carry out an in depth assessment within 18 months of a newly merged housing provider being formed, to examine a variety of issues, including value for money.
- 10 The Housing Act 2016 includes provision to take away all interests and rights of councils in the constitutions of registered housing providers. New regulations are required to give effect to this provision and in early 2017 the government paved the way for such regulations to be published, with a target date of April 2017. No regulations have been published, however, and they have been delayed further by

the general election. The exact content of the regulations is not yet known, since the Act suggested a menu of possible approaches to stopping golden shares and other arrangements. Whilst it is possible that the regulations could remove council voting rights immediately, it seems more likely that councils would be required to withdraw from arrangements voluntarily over a period of time. Overall, it seems likely that the council will retain its golden share in HHL for some months and certainly beyond the period in which HHL intends to complete its merger with SHG, but that there will be an end date within the foreseeable future.

- 11 As the golden share still remains in place for the time-being, HHL requires the approval of the council before it can merge with SHG. In exercising the council's vote, the representative will be guided by the council's executive.
- 12 The economic factors involved in a merger of this kind are diverse and complex and open to interpretation. As such, economic arguments may not be compelling in themselves. In arguing for the proposal, HHL has not relied primarily on economic criteria and the merger is not apparently intended to produce any substantial savings from combining staffing and infrastructure. The two organisations believe that a combined organisation would deliver sustained and significant housing development and a consolidated offer of housing management and other support across the Marches sub-regional area.
- 13 The council has not been able to ascertain in any detail the potential impact of the merger on the pay or wider remuneration of the new organisation's board or senior managers. Connexus Housing is likely to appoint a remuneration committee to advise on pay and other benefits, following standard industry practice of setting these with regard to the position across the sector.
- 14 In considering whether to support the merger, the council has reviewed the information available to try to assess the potential impact on Herefordshire's residents and communities. From a strategic housing and economic perspective, the main considerations are;
  - The merger will continue the current significant investment in new housing and associated infrastructure in Herefordshire.
  - There is a broad commitment to sustaining the current employment of people in Herefordshire by HHL, with no significant change planned to operational services.
  - The new organisation will retain a significant base in Hereford
  - Very small housing organisations cannot command the confidence of commercial lenders in seeking long term investment in new housing development through the bond market. The merged organisation would be in a better position to borrow in this way.
  - Housing providers face many current challenges to their stability, viability and social purpose, arising from loss of grant funding, a four year rental reduction and the wider impact of welfare reform. Providers are generally responding by joining together to create greater flexibility and resilience.
  - It has been indicated that the merged organisation would be committed to

working in partnership with the council. This would offer opportunities for achieving effective community engagement and prevention of health and social care need. It may also enable more comprehensive development of supported housing for vulnerable people.

- 15 These considerations indicate that there may not necessarily be a direct positive benefit to Herefordshire's residents from the merger. However it may be that the proposal provides a somewhat effective defence against wider risks, such as a reluctance by banks to provide lending for capital investment, or possible takeover by a much larger or national housing provider. This defensive benefit would involve a larger local organisation with greater assets being able to maintain local staffing and having potential to borrow and invest effectively. In the light of this approach it is suggested that on balance, the council should support the proposed merger and it is recommended that the council's representative be guided to exercise the council's vote accordingly

## **Community impact**

- 16 The proposed merger is expected to advance the priorities in Herefordshire's Corporate Plan. The housing development plans of the new organisation would help support the growth of the economy. This development and the consolidation of housing management, maintenance and support will help enable residents to live safe, healthy and independent lives. This priority will also be addressed by the maintenance of significant local employment and the promotion of community engagement and prevention.
- 17 Herefordshire's Health and Wellbeing Strategy identifies good quality housing as very influential in promoting people's health and wellbeing and emphasises the importance of eradicating or improving housing of poor quality. The development programme of the merged organisation and sustaining the delivery of housing management and property maintenance will contribute to making advances in this respect. The merger will enable continued engagement in supported housing for vulnerable residents including children, young people and adults with mental health needs, who are priority groups in the Health and Wellbeing Strategy

## **Equality duty**

- 18 The council is committed to equality and diversity using the Public Sector Equality Duty (Equality Act 2010) to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. The equality duty covers the following nine groups with protected characteristics: age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The recommendations in the report have no adverse implications for groups of people with protected characteristics.
- 19 In its relationship with the new merged organisation, the council will be able to influence its future housing development and its provision of supported housing and other services to bring specific benefits for vulnerable groups of people including those with protected characteristics. These would include disabled people including those with mental health needs, young people and gypsies and travellers.

## Financial implications

- 20 There are no direct financial implications for the council arising from the recommendations in the report or the proposed merger of HHL and SHG. The council only provides funding to HHL or SHG through specific schemes or contracts and these would not appear to be affected by the merger. Neither would the contributions to the local economy of the two organisations be expected to reduce as a result.

## Legal implications

- 21 Section 93 of the Housing and Planning Act 2016 which came into force on 3 February 2017 enables the Secretary of State for Communities and Local Government to issue regulations restricting, limiting or removing the ability of local authorities to exert influence over private registered providers. The regulations are not yet in force but once implemented, they could prevent the council from exercising its golden share. It is currently unclear when the regulations will be implemented.
- 22 The term golden share refers to provisions contained within the housing provider's constitution which gives the council a power of veto over constitutional changes. The articles of association for HHL state that the size of the board is 11, one of which is the council nominated board member. The decision to merge with SHG requires a 75% vote as a special resolution and the council board member vote is worth one third (the golden share), so effectively the council can block any vote to consolidate groups structures.
- 23 The council currently has a golden share and can vote how it wishes, taking all relevant considerations into account.

## Risk management

- 24 If the recommendations in this report are approved, there are no specific risks arising which have been identified. If the recommendations were not to be approved, the following risks would arise;
- The merger of HHL and SHG would be delayed until such time as the council is no longer able to exercise a golden share as a member of HHL's board. This would have the effect of delaying the potential benefits of the merger for Herefordshire's residents and its economy.
  - Acting to prevent or delay the merger will potentially disrupt the council's relationship with the merged organisation in due course. This could have a significant impact on housing management, development and availability in Herefordshire, given that without any legal power or control, the council would be dependent upon its strategic relationship in order to achieve any influence.

## Consultees

- 25 All council members have been consulted on the intention to support the proposed merger between HHL and SHG. No comments or suggestions have been received.

## **Appendices**

Appendix 1 Merger business case for Connexus Housing (exempt from publication)

## **Background papers**

None identified