



Shropshire Council
Legal and Democratic Services
Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Date: Wednesday, 22 November 2023

**Committee:
Housing Supervisory Board**

Date: Thursday, 30 November 2023
Time: 2.00 pm
Venue: Shrewsbury Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

You are requested to attend the above meeting. The Agenda is attached

There will be some access to the meeting room for members of the press and public, but this will be limited. If you wish to attend the meeting please email democracy@shropshire.gov.uk to check that a seat will be available for you.

Please click [here](#) to view the livestream of the meeting on the date and time stated on the agenda

The recording of the event will also be made available shortly after the meeting on the Shropshire Council Youtube Channel [Here](#)

Tim Collard
Assistant Director - Legal and Governance

Members of Housing Supervisory Board

Vince Hunt (Chairman)
Garry Burchett (Vice Chairman)
Jeff Anderson
Julian Dean
Ruth Houghton

Simon Jones
Heather Kidd
Tony Parsons
Dan Thomas

Your Committee Officer is:

Shelley Davies Committee Officer
Tel: 01743 257718
Email: shelley.davies@shropshire.gov.uk

AGENDA

1 Apologies for Absence and Substitutions

2 Disclosable Pecuniary Interests

Members are reminded that they must declare their disclosable pecuniary interests and other registrable or non-registrable interests in any matter being considered at the meeting as set out in Appendix B of the Members' Code of Conduct and consider if they should leave the room prior to the item being considered. Further advice can be sought from the Monitoring Officer in advance of the meeting.

3 Minutes (Pages 1 - 4)

To confirm the minutes of the Housing Supervisory Board meeting held on 14th September 2023.

Contact: Shelley Davies on 01743 257718

4 Public Question Time

To receive any questions or petitions from the public of which notice has been given. The deadline for this meeting is 5.00 pm, Friday 24th November 2023.

5 Member Question Time

To receive any question of which Members of the Council have given notice. Deadline for notification for this meeting is 5.00pm, Friday 24th November 2023.

6 Cornovii Developments Limited - Update Report (Pages 5 - 16)

To receive the Cornovii Developments Limited Update Report from the Assistant Director, Homes and Communities. [Report attached]

Contact Jane Trethewey

7 Cornovii Developments Limited - Establishment of a Subsidiary Company (Pages 17 - 28)

To receive the Cornovii Developments Limited - Establishment of a Subsidiary Company Report from the Assistant Director, Homes and Communities. [Report attached]

Contact Jane Trethewey

8 Exclusion of the Press and Public

To resolve in accordance with the provisions of Schedule 12A of the Local Government Act 1972 and Paragraph 10.4[3] of the Council's Access to Information Procedure Rules, the press and public be excluded during consideration of the following items.

9 Exempt Minutes (Pages 29 - 30)

To confirm the exempt minutes of the Housing Supervisory Board meeting held on 14th September 2023.

10 Cornovii Developments Limited - Exempt Items Update Report (Pages 31 - 50)

To receive the Cornovii Developments Limited - Exempt Items Update Report from the Assistant Director, Homes and Communities. [Exempt report attached]

Contact: Jane Trethewey

11 Cornovii Developments Limited - Proposals to establish a Public Open Space Management Company

To receive a verbal update from the Managing Director, Cornovii Developments Limited.

12 Date of Next Meeting

To note that the next meeting of the Housing Supervisory Board will be held at 2.00 p.m. on Thursday 14th March 2024.

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Committee and Date

Housing Supervisory Board

30 November 2023

HOUSING SUPERVISORY BOARD

Minutes of the meeting held on 14 September 2023

In the Wilfred Owen Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

2.00 - 3.07 pm

Responsible Officer: Shelley Davies

Email: shelley.davies@shropshire.gov.uk Tel: 01743 257718

Present

Councillor Vince Hunt (Chairman)

Councillors Garry Burchett (Vice Chairman), Jeff Anderson, Julian Dean, Ruth Houghton, Simon Jones, Tony Parsons, Dan Thomas and Bernie Bentick (substitute for Heather Kidd)

13 Apologies for Absence and Substitutions

An apology for absence was received from Councillor Heather Kidd (Substitute: Bernie Bentick).

14 Disclosable Pecuniary Interests

None were declared.

15 Minutes

RESOLVED: That the minutes of the meeting held on 8th June 2023 be approved as a true record and signed by the Chairman.

16 Public Question Time

There were no public questions.

17 Member Question Time

There were no member questions.

18 Cornovii Developments Limited - Update Report

Members received the report of the Assistant Director Homes and Communities which gave an update from Cornovii Developments Limited (CDL) on the company's progress against the approved 10-year Business Plan.

The Clienting & Commissioning Officer introduced the report and referred to Appendix A which provided detail of the company's activity to the end of June 2023 and sought approval for the appointment of a new director to the CDL Board.

The Managing Director of CDL gave an update on the Ellesmere Wharf, Ifton Heath, Oaklands and London Road schemes noting that the Oaklands properties were due to be handed over in April 2024 and work had started on site at the London Road development.

In response to questions the Managing Director of CDL, confirmed that:

- The Ellesmere Wharf development was due for completion by May/June 2024.
- CDL had been advised that 2 and 3 bedroom were the appropriate size of properties required in regard to affordable housing.
- The situation in relation to the housing market and building costs was still a concern.
- The Energy Performance Certificate (EPC) for the London Road development had changed from A to B due to a change in the Standard Assessment Procedure (SAP) which now also considered running costs.

In response to a question suggesting that the CDL update report should be an independent view of the company rather than a summary of the report to the CDL Board, the Clienting & Commissioning Officer noted that this had been raised previously and officers would look to address this.

RESOLVED:

1. That the report be noted.
2. That the appointment of Ian Churms to the CDL board be approved.

19 Housing Supervisory Board Update Report to Cabinet

Members received the report of the Assistant Director Homes and Communities. The Clienting and Commissioning Officer noted that the report title should read: Update Report to Council - not Cabinet.

The Clienting and Commissioning Officer introduced the report and explained that the report set out the areas and themes to be covered in the report and sought approval for the work to develop and finalise the report to be delegated to the Assistant Director of Homes and Communities in consultation with the Chairman.

Members suggested the following points should also be included in the report:

- The impact of the income from CDL on the budget for the next 2 – 3 years.
- Information to show that CDL was meeting its aspirations such as delivering homes to key workers.
- The higher percentage of bungalows built by CDL should be highlighted.

RESOLVED:

- 1. That the proposed outline content for the Housing Supervisory Board Report to Council be approved.
- 2. That the work to develop and finalise the report be delegated to the Assistant Director of Homes and Communities in consultation with the Chairman.

20 Exclusion of the Press and Public

RESOLVED: That in accordance with the provisions of Schedule 12A of the Local Government Act 1972, and paragraph 10.4(3) of the Council’s Access to Information Procedure Rules, the press and public be excluded during consideration of the following items.

21 Exempt Minutes

RESOLVED: That the exempt minutes of the meeting held on 8th June 2023 be approved as a true record and signed by the Chairman.

22 Cornovii Developments Limited - Exempt Items Update Report

Members received an exempt report from the Assistant Director Homes and Communities.

RESOLVED: That the report be noted.

23 Proposals for Cornovii Developments Limited Subsidiary

Members received a verbal update from the Managing Director of Cornovii Developments Limited.

RESOLVED: That the update be noted.

Signed _____ (Chairman)

Date: _____

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<u>Committee and Date</u>
Housing Supervisory Board
30 th November 2023

<u>Item</u>
6
Public

Cornovii Developments Limited Update Report

Responsible Officer Jane Trethewey

e-mail:	Jane.trethewey@shropshire.ov.uk
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1. Synopsis

The purpose of this report is to update the Housing Supervisory Board on the progress of Cornovii Developments Limited (CDL) against its approved 10-year Business Plan. The report shown at Appendix A provides detail of the Company's activity to the end of September 2023. Furthermore, this report seeks approval for the CDL's to alter its registered office.

2. Executive Summary

- 2.1. The report in Appendix A provides the Housing Supervisory Board with an update from Cornovii Developments (CDL) on the Company's progress against the Business Plan which was approved by the Housing Supervisory Board on 16 March 2023.
- 2.2. The quarterly monitoring report provides detail on the progress against the approved Business Plan, giving updates on the Company's live schemes at Ellesmere Wharf, Ifton Heath, The Oakland and London Road to include investment in contractors and sub-contractors from a Shropshire postcode, detail of average EPC and carbon savings, employment and training opportunities created through CDL activity and number of educational settings supported by CDL.
- 2.3. The number of units forecast to be delivered over the plan period has decreased from 736 to 723. There has also been a reduction in the number of affordable homes the Company now anticipates it will deliver, reducing from 19% to 17%. In total (including both shared ownership and affordable rent) the Company expects it will deliver 123 affordable dwellings over the plan period.

3. Recommendations

- 3.1. That the Housing Supervisory Board receives the CDL Quarterly Monitoring Report in accordance with the terms of the Shareholder Agreement
- 3.2. That the Housing Supervisory Board approves the change in Cornovii Developments Registered office

REPORT

4. Risk Assessment and Opportunities Appraisal

- 4.1. A Risk Register is monitored by the Homes and Communities Team along with the CDL Monitoring Board. The Register covers the risks for the Council in its capacity of single shareholder of CDL.

5. Financial Implications

- 5.1. The CDL developments schemes are being delivered within the terms of the approved Shareholder Agreement and loan funding arrangements.

6. Climate Change Appraisal

- 6.1. All homes at Ifton Heath will have an EPC rating of A (SAP 2012) compared to building regulations that require an EPC rating of C, producing a carbon saving of 2.90 tonnes per year in comparison to a property with an EPC rating of C.
- 6.2. All new homes at Ellesmere Wharf will have an EPC rating of A (SAP 2012) producing a carbon saving of 2.93 tonnes per year in comparison to a property with an EPC rating of C.

- 6.3. All homes at London Road will have an EPC rating of B (SAP 10.2) and an Environmental Impact Rating of A. Design stage predicted energy assessments are not yet available for this development. In addition all homes at London Road will be electrically heated, utilising ASHP for houses, and electric panel heating for apartments.
- 6.4. All homes at Oaklands will have an EPC rating of B (SAP 10.2) and an Environmental Impact Rating of A. Design stage predicted energy assessments are not yet available for this development. In addition, all homes at Oaklands will be fitted with ASHPs to all plots, and a maximum of 1.7 kwp to roofs.
- 6.5. The homes at Ellesmere Wharf and Oaklands do not benefit from any additional carbon off-setting measures over and above the landscaping measures approved at planning. The Ifton and London Road sites are to benefit from the planting of additional trees.
- 6.6. At all four developments the flood risk assessment undertaken demonstrated that there is no risk of a 1 in 100 + 30year flood event, which was also demonstrated by the Engineer's drainage calculations. Rainwater goods have been sized by the Architect to capacities required by Building Regulations.
- 6.7. The homes at Ellesmere Wharf scheme are generally situated on a NE/SW axis, with principal rooms situated in that axis, to prevent extreme heating and extreme cooling. Ifton Heath plots 1-17 are situated on a NW/SE axis, with principal rooms situated on that axis. All other plots are on a NE/SW axis, however, all principal rooms are positioned to limit solar gain and heat loss.
- 6.8. The homes at London Road are generally situated on a NW/SE axis, with principal rooms situated in that axis, to prevent extreme heating and extreme cooling. All properties will be subject to an overheating assessment, which will result in all being fitted with a DMEV ventilation system, and low emissivity glazing to minimise solar gain. Properties will be fitted with a minimum of 0.8 Kwp Photovoltaic panels to houses, and 1.6 Kwp to apartments.
- 6.9. The homes at Oaklands are generally situated on a NW/SE axis, with principal rooms situated in that axis, to prevent extreme heating and extreme cooling. All properties will be subject to an overheating assessment, which will result in all being fitted with measures to minimise solar gain.

7. Background

- 7.1. In accordance with the terms of the Shareholder Agreement CDL is required to report to the Shareholder via the Housing Supervisory Board at quarterly intervals on the operations and performance of the Company in meeting unmet housing need and on the objectives contained within the Business Plan, and otherwise keep the Shareholder informed of the progress of the Company.
- 7.2. In accordance with the terms of the Shareholder Agreement, Schedule 1, Shareholder Consent Matters, Part A Corporate Matters, the company shall not, unless it has Shareholder Consent, alter its registered office.

8. Operations and performance of the Company in meeting unmet housing need and objectives contained within the Business Plan

- 8.1. On 16 March 2023 the Housing Supervisory Board approved CDL's 10-year Business Plan which set out its aims to deliver 736 homes over the plan period.
- 8.2. CDL is currently onsite at Ifton Heath and Ellesmere Wharf with 58 homes under construction, of which 15 will be affordable tenures. The quarter 2 forecast estimates 17% of the 736 homes to be delivered will be affordable. This compares to a planned amount, set out in the approved business plan, to deliver 19% affordable.
- 8.3. A further two developments are on site. The Oaklands and London Road which will deliver a further 29 affordable homes.
- 8.4. From the current live schemes, CDL will deliver a total of 249 units, of which 181 will be for market sale, 56 will be affordable tenure and 12 will be for private rent.
- 8.5. CDL aim to deliver 67 private rented homes over the plan period, 12 of which will be on the London Road development. CDL is yet to set out their rents and lettings policy for these dwellings, the adoption of both policies will be subject to the approval of the Housing Supervisory Board.
- 8.6. At section 2.4 Figure 3 CDL set out their sales forecast against the approved business plan. Due to changes in the programme peak

sales forecast have slipped to 2026-27, with sales continuing into 2029-30.

- 8.7. Through its Social Value objectives CDL is meeting targets set by its Board of Directors to invest in local contractors and subcontractors, offer employment and training opportunities, and to support, by its activities, educational settings within the locality of its development sites.
- 8.8. At Appendix A section three CDL report on the local Social Value generated from their activity, to include percentage of contractors and subcontractors from a Shropshire postcode, employment and training opportunities and number of educational settings supported by CDL activities.

9. Change to Cornovii Developments Registered Office

- 9.1. In accordance with the terms of the Shareholder Agreement CDL requests approval from the HSB alter its registered office.
- 9.2. CDL has relocated to the joint office space with Shropshire Towns and Rural Housing at Mount Mckinley on the Shrewsbury Business Park. CDL intends for this to be its registered office, subject to approval from the HSB.

10. Additional Information

- 10.1. The performance of CDL is also monitored by the Council's Homes and Communities Team, with further oversight being provided the CDL Monitoring Board, formed of a group of Officers from various departments across the Council.

11. Conclusions

- 11.1. The Housing Supervisory Board is asked to receive the CDL update report on the Company's delivery against its Business Plan and note its progress in respect of its approved schemes at, Ellesmere Wharf Ifton Heath, London Road and the Oaklands.
- 11.2. The Housing Supervisory Board is asked also to note the reduction in the number of units forecast since the plan was approved in March 2023, and the reduction in the number and percentage of affordable homes now forecast to be delivered during the plan period.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Cabinet Member (Portfolio Holder)

Cllr Dean Carroll

Portfolio Holder for Housing and Assets

Cllr Vince Hunt

Chair of Housing Supervisory Board

Local Member

Appendix A

CDL update report

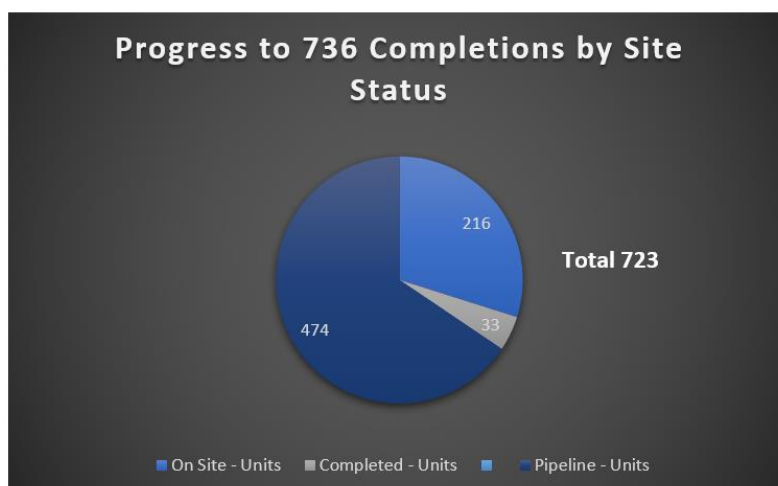
Cornovii Development Ltd Quarter Two Monitoring Report Public

1 Purpose of the report

- 1.1 The purpose of the Monitoring Report is to update Housing Supervisory Board members on Cornovii Developments Limited (CDL) activity to the end of September 2023.

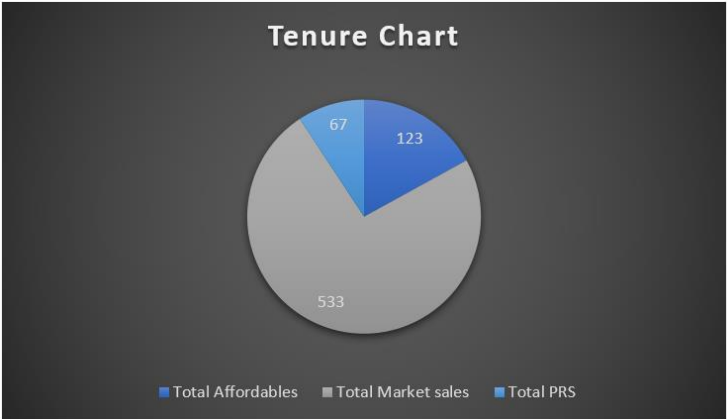
2 Development Summary

- 2.1 A total of 9 schemes were approved in the March 2023 Business Plan. The business plan aims to deliver a total of 736 new homes during the life of the business plan. The charts and tables below report on progress against this business plan.
- 2.2 Fig. 1 - Progress to 736 completions in accordance with the approved business plan:



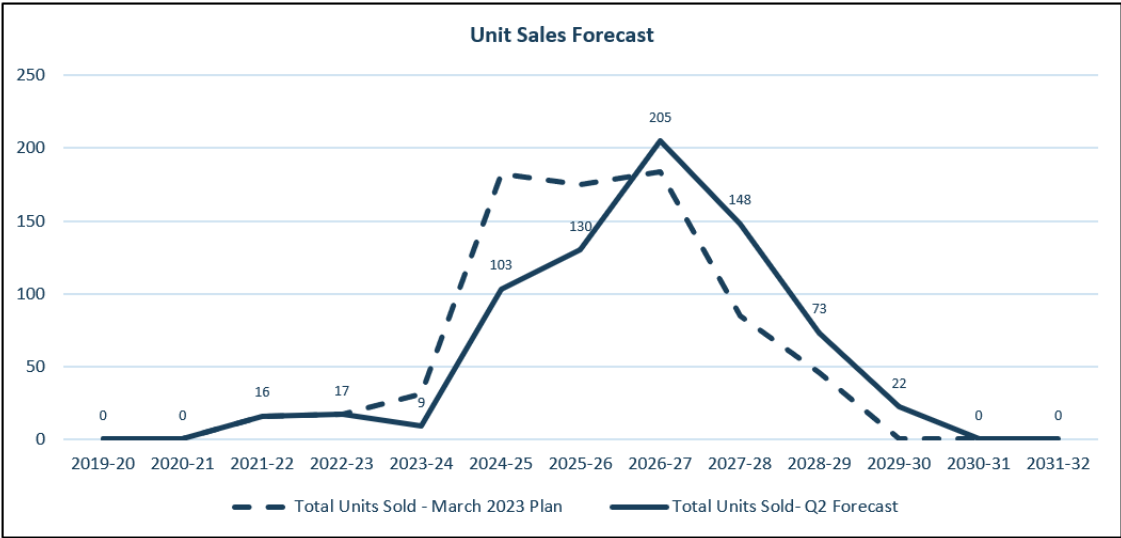
N.B. The number of units forecast has decreased since the plan was approved.

2.3 Fig. 2 - Tenure chart approved schemes :

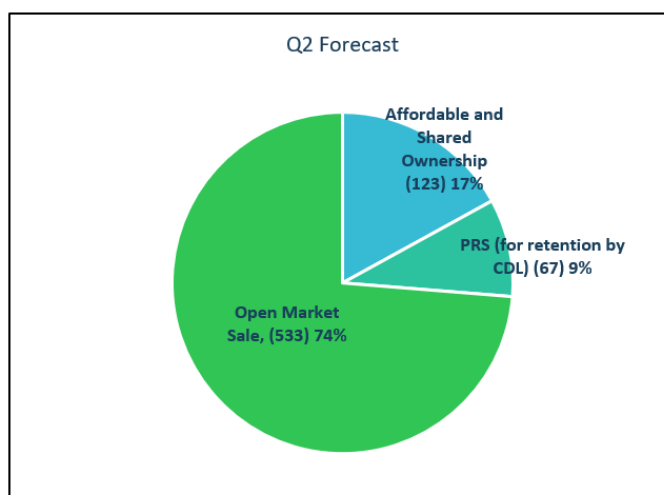


The Q2 forecast estimates 17% of the 723 homes to be delivered will be affordable. This compares to a planned amount of 19% (140/736). To date, one site has been completed delivering 12 affordable homes. A further four developments are on site and are due to deliver 44 affordable homes. We are exploring options to increase the number of affordable homes by using different funding streams such as the LAHF programme.

2.4 Fig. 3 – Sales forecast within the approved business plan and as at Q2



2.5 Fig. 4 - Number of units forecast by tenure over plan period:



2.6 Fig. 5 - Tenure chart (live and completed sites only):

	Tenure Type				Total Affordable Homes	Total Market Sale	Total PRS	Total No. Units
	Market Sale	Affordable Rent	Shared Ownership	Private Rent				
Crowmoor	21	7	5	0	12	21	0	33
Ellesmere Wharf	21	2	0	0	2	21	0	23
Ifton Green	22	7	6	0	13	22	0	35
London Road	96	19	8	12	27	96	12	135
Oaklands	21	2	0	0	2	21	0	23
					56	181	12	249

2.7 Homes by tenure type and bedroom size forecast to complete over the plan period (live and completed sites only):

Homes by tenure type and bedroom size

1 bed	24	10%
2 bed	65	26%
3 bed	82	33%
4 bed	70	28%
5 bed	8	3%
Total Units	249	

Bungalow	33	13%
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House	196	79%
Apartment	20	8%
Total Units	249	

2.8 Number of completions in the plan period against the approved business plan of 736 units:

	Prior Years	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	Total
Completions Forecast	33	29	102	123	220	155	54	7	0	0	723
Outright sales	21	0	72	90	159	118	66	7	0	0	533
Affordable rent	12	7	19	10	24	26	7	0	0	0	105
Affordable shared ownership	0	2	12	0	2	2	0	0	0	0	18
PRS	0	0	0	30	20	2	0	15	0	0	67

2.9 Map 1: – Location of sites across the county (approved schemes only)



2.10 Ifton Green Development Update – 35 new homes

All statutory provider issues have now been overcome and the site is fully connected for all utilities. First handover is anticipated in December and completion in June 2024.

- 2.11 Ellesmere Wharf Development Update – 23 new homes
As with Ifton Green, all outstanding statutory provider matters have been resolved and the site is now connected for all utility services. First handovers are expected November 2023 and completion in June 2024.
- 2.12 The Oaklands Development Update – 23 new homes
Works continue to progress well on site and first handovers are anticipated early 2024 and completion of the scheme by Summer 2024.
- 2.13 London Road Development Update – 135 new homes
CDL are awaiting a date from National Grid to divert the overhead electricity cable underground. Subject to these works being scheduled by March 2024, delivery of two show homes is anticipated late Spring 2024 with handovers following shortly afterwards. Completion of the first 82 homes on the scheme is anticipated by Summer 2025.

3 Social Value

- 3.1 CDL are currently investing in the following percentage of contractors and subcontractors from a Shropshire postcode on current on site schemes:
- The Frith – 100%
 - Ifton Green – remains at 60% to date
 - Ellesmere Wharf – remains at 65% to date
 - London Road – 25% to date (only a few trades engaged in the early stages of delivery, trades will increase when timber frames commence in November)
 - The Oaklands – remains at 92% to date
- 3.2 Average EPC and carbon savings:
- The Frith – EPC rating A (SAP 2012). Carbon savings of 2.86 tonnes/yr in comparison to a property with an EPC rating of C.
 - Ellesmere Wharf – EPC rating A (SAP 2012). Carbon savings of 2.93 tonnes/yr in comparison to a property with an EPC rating of C.
 - Ifton Green - EPC rating A (SAP 2012). Carbon savings of 2.90 tonnes/yr in comparison to a property with an EPC rating of C.
 - London Road – on target for an EPC 'B' under new SAP 10.2. Full design stage SAP's have been completed, CDL is awaiting results to calculate the carbon savings of tonnes/yr.
 - The Oaklands – also on target for EPC 'B' under new SAP 10.2. Full design stage SAP's to follow to calculate the carbon savings of tonnes/yr.

3.3 Employment & training:

- Ifton Green & Ellesmere Wharf – Six apprentices have been supported on site to date.
- London Road – the main contractor has engaged with the Shropshire Academy to arrange for apprenticeship placements once works commence above ground.
- The Oaklands – as with London Road, the main contractor will employ apprentices once more sub-contractors are on site.

3.4 Number and detail of Education settings supported by CDL activities:

- Ifton Green – Pupils at St Martins School took part in a competition and provided the three street names within the Ifton Heath development which have been approved by Shropshire Council and Royal Mail. The winning street names are:
 - Levi Lane
 - Miners Way
 - Old School Avenue
- The Oaklands – the street naming competition which was run with pupils at the local Oakmeadow Primary School is now concluded. The winning street name is Tree Top Avenue.
- London Road – the main contractor is engaging with the Shropshire Academy and the Construction Industry Training Board (CITB).



Housing Supervisory Board

30th November 2023

Item

7

Public



Cornovii Developments Limited: Establishment of a Subsidiary Company

Responsible Officer:	Jane Trethewey		
email:	Jane.Trethewey@Shropshire.gov.uk	Tel:	01743 258913
Cabinet Member (Portfolio Holder):	Dean Carroll		

1. Synopsis

The purpose of this report is to seek approval under the terms of the Shareholder Agreement for Cornovii Development Limited (CDL) to establish a new company limited by guarantee as a subsidiary of CDL.

2. Executive Summary

- 2.1. In accordance with the Shareholder Agreement, CDL are requesting approval from the Housing Supervisory Board to form a Subsidiary company into which land transactions from the Council can be made with onward sale of the land into CDL.
- 2.2. CDL has been considering its tax structure since certain advice was obtained from KPMG regarding a potential tax liability for the London Road development. Subsequent advice from KPMG to CDL has recommended to CDL that a new company is established as a company limited by guarantee, which would not be in the same tax group as the Council and CDL.
- 2.3. The newly proposed structure will support CDL to operate its tax arrangements in line with a typical developer enabling the company to operate competitively and to enhance the value derived from the company for the Council, and households and individuals residing in the Council administrative area.

- 2.4. Anthony Collins Solicitors have provided legal advice to the Council on the proposal which sets out the legitimacy and lawfulness of the proposal with recommendation for governance arrangements. Indeed, the advice suggests that the establishment of the subsidiary company can reasonably be regarded as part of the Council's fiduciary duty to safeguard public money as well as being a legitimate arrangement under the Local Government Act 1999 to secure best value through continuous improvement in the discharge of its functions with regard to economy, efficiency and effectiveness. This advice is attached to this report as Appendix A.
- 2.5. The proposed subsidiary would take the form of a Company Limited by Guarantee, the members of which would be directors from CDL.

3. Recommendations

- 3.1. Approve, in accordance with the provisions contained within the Shareholder Agreement, the request from Cornovii Developments Limited to establish a subsidiary company limited by guarantee.
- 3.2. Approve that any and all actions to facilitate and implement recommendation 3.1 are delegated to the Assistant Director Homes and Communities and the Assistant Director Legal and Governance in consultation with the Chair of the Housing Supervisory Board.
- 3.3. Authorise the Assistant Director Legal and Governance to sign, on the Council's behalf, any document and resolutions to implement recommendations 3.1 and 3.2.

Report

4. Risk Assessment and Opportunities Appraisal

- 4.1. The proposal by CDL to set up a subsidiary provides the opportunity for the company and the Council, as Shareholder to ensure that the company and its financial arrangements are optimised to ensure best value for residents living within Shropshire Council's administrative area.
- 4.2. Should the recommendation not be approved CDL is likely to experience a tax liability which is over that which could be achieved through the proposed new structure, limiting the ability of the company to operate commercially and competitively.
- 4.3. By continuing with tax management arrangements which do not produce best value for the company or the shareholder the risk of the company being unable to meet its objectives are increased.

5. Financial Implications

- 5.1. The proposal by CDL to establish a subsidiary will allow the company to operate under an optimised tax efficient structure, ensuring that return to the Council is maximised to deliver best value for the residents of Shropshire Council's administrative area. The structure proposed will see CDL pay tax inline with that which a typical developer would be liable for, therefore ensuring it is able to operate commercially and competitively and in accordance with accepted market principles.
- 5.2. CDL have advised that the cost of setting up the proposed subsidiary will be in the region of £20k. Furthermore, CDL advise that the establishment of the subsidiary has the potential to make CDL more tax efficient by ensuring that it pays the appropriate tax based on the type of land purchase arrangement.

6. Climate Change Appraisal

- 6.1. There are no direct climate change implications from this decision.
- 6.2. CDL's performance in delivering against the Council's Climate Change objectives will continue to be reported to and monitored by the Housing Supervisory Board.

7. Background

- 7.1. In December 2018 Council approved an outline business case to establish a wholly owned local authority housing company. This report set out that the primary purpose of such a company would be to use Council owned land, and acquire land and property, to develop housing and wider redevelopment in areas where we see unmet need or to address local pressures.
- 7.2. Furthermore, a report to Council on 28 February 2019 set out that objectives of the housing company will be to address the County's unmet housing needs and to support the Council to become more financially self-sufficient, by acquiring, developing and providing houses for sales and rent.
- 7.3. CDL continues to develop on council owned land, with sites within its approved Business Plan being predominately formed of council owned assets. The Company operates within a commercial environment which allows it to generate profit which it is expected will deliver financial benefit to the Council as lender and shareholder.
- 7.4. It is in meeting these objectives that the newly proposed structure has been considered.
- 7.5. CDL has been considering its tax structure since certain advice was obtained from KPMG concerning a potential tax liability for the London Road development.
- 7.6. A report from KPMG has recommended to CDL that a new company is established as a company limited by guarantee, either as a subsidiary of CDL or in parallel

with CDL, to purchase land from the Council and then to onward sell the land to CDL.

- 7.7. Being in the form of a company limited by guarantee will mean that the proposed subsidiary will not be in the same tax group as the Council and CDL. This enables the base value of the land transferred from the subsidiary to be that determined at the point of appropriation and not the value of at the time the land was acquired by the Council, thereby reducing corporation tax payable in respect of capital gains on the disposal of the land.
- 7.8. The Shareholder Agreement provides at schedule 1 for various corporate and operational 'shareholder consent matters. These are matters which cannot be affected by the CDL directors without the Council (as shareholder) having first resolved to grant consent.
- 7.9. Schedule 1, Part A -Corporate Matters 9 sets out that the Company (CDL) shall not unless it has Shareholder Consent, *form any Subsidiary, or acquire shares in any other company or participate in any partnership or joint venture.*
- 7.10. The Council has delegated certain Shareholder functions to the Housing Supervisory Board. The Housing Supervisory Board is requested to make this decision within its delegated powers, as set out in the shareholder consent matters contained within the Shareholder Agreement.
- 7.11. Legal advice from Anthony Collins Solicitors (ACS) obtained by the Council in respect of CDL' proposal is shown at Appendix A. The advice confirms that the arrangement put forward by CDL is legitimate within the consideration of a local authority owned company.
- 7.12. ACS recommend that the governance arrangements should align with CDL and that there should be bespoke articles of association and member/governance agreement. CDL has confirmed that this complements legal advice they have obtained and that, should the HSB give approval they will proceed to draft these documents.

8. **Subsidiary Structure and Resources**

- 8.1. The proposed subsidiary would be a company limited by guarantee, which is a company without shareholders or shares. This type of company is controlled by guarantors (members), who guarantee a nominal sum of money to the company in the event of it becoming insolvent or winding up.
- 8.2. CDL anticipate that all staff resources required to manage and deliver the projects undertaken by subsidiary will be done by the existing CDL Team.
- 8.3. The Housing Supervisory Board will continue to exercise its function within the terms of the Shareholder Agreement and in accordance with its articles of association. In accordance with the advice received from Anthony Collins, Shropshire Council expects that new articles of association are prepared for the new subsidiary. These will be supplemented by a bespoke governance agreement between the new company and CDL and the Council which will provide for the exercise of the Council's member function in relation to the subsidiary, and the

company's reporting and provision of information to CDL and to the Council and its Housing Supervisory Board.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Local Member: All

Consultation with Local Member – *Please consider the Local Member Protocol (see page E60 onwards of part 5 of the Constitution) and determine whether it is necessary to consult with the local member over the proposal set out in this report. This may not always be applicable (eg where the proposal affects all of Shropshire) but it should always be a consideration and in some cases a necessity so as to comply with the spirit of the Protocol.*

Appendices [Appendix A Anthony Collins - Legal Advice CDL NewCo]

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1. INTRODUCTION

- 1.1 We are instructed by Shropshire Council (the “Council”) in respect of the Council’s rationale for approving the establishment of a new company limited by guarantee (“Newco”) as a subsidiary of Cornovii Developments Ltd (“CDL”).
- 1.2 The proposal to establish Newco follows recommendations made by KPMG in their draft report to CDL: *Cornovii Developments Limited: Alternative land transaction structuring July 2023* (the “KPMG Draft Report”), and a related KPMG memorandum dated 16 Augst 2023: *Cornovii Developments Ltd – Tax Comments on land purchases from Shropshire County Council* (the “KPMG Memo”), and advice received from Shakespeare Martineau in consideration of the KPMG recommendations (the “SHM” Advice”).
- 1.3 We are asked to prepare a report which considers the Council’s rationale for approving CDL’s setting up of Newco.
- 1.4 We have received and reviewed the documents listed below and attended an initial meeting with Miranda Garrard, (our instructing officer), on 14 September 2023.
 - 1.4.1 The KPMG Draft Report;
 - 1.4.2 The KPMG Memo;
 - 1.4.3 The SHM Advice;
 - 1.4.4 The Housing Scrutiny Bord Report;
 - 1.4.5 The Housing Scrutiny Board Terms of Reference Review and Governance (5 November 2020);
 - 1.4.6 CDL’s Articles of Association;
 - 1.4.7 The Shareholder Agreement between CDL and the Council (11 December 2019);
 - 1.4.8. The Equity Subscription Agreement between CDL and the Council (19 March 2020).

2. THE CURRENT OPERATIONS AND GOVERNANCE ARRANGEMENTS OF CDL

CDL's Operations

- 2.1 CDL was established by the Council as a housing development company and acquires land from the Council (or potentially a third party) for the purpose of providing new, mixed tenure sustainable housing in Shropshire. The developments are designed and built of by third party contractors procured by CDL.
- 2.2 CDL is a private company limited by shares incorporated on 6 July 2019 under the Companies Act 2006 ("CA2006"). On 12 August 2019 CDL adopted bespoke articles of association (the "Articles"). On 11 December 2019 CDL entered into a shareholder agreement (the "Shareholder Agreement") with the Council. On 19 March 2020 CDL entered into an equity subscription agreement (the "ESA") with the Council.

CDL's Governance Arrangements

- 2.3 Pursuant to CDL's Articles, the company's directors are responsible for the management of the company's business for which purposes they may exercise all the powers of the company. The Articles further provide the Council, as CDL's shareholder, with a 'reserve power' where by way of a special resolution, the Council may require the directors to take, or refrain from taking, a specified action.
- 2.4 The Articles are supplemented by the Shareholder Agreement between CDL and the Council. The Shareholder Agreement provides at schedule 1 for various corporate and operational 'shareholder consent matters'. These are matters which cannot be effected by the CDL directors without the Council (as shareholder) having first resolved to grant consent.
- 2.5 The Council's shareholder function is exercised by the Council's Housing Scrutiny Board. We are aware that the Council is currently undertaking a comprehensive governance review which will consider the Council's companies and the exercise of its shareholder / member function in respect of them.

3. THE KPMG RECOMMENDATIONS

- 3.1 The KPMG Draft Report recommends that Newco is established as a company limited by guarantee, either as a subsidiary of CDL or in parallel with CDL, to purchase land from the Council and then onward sell the land to CDL. Being in the form of a company limited by guarantee will mean Newco is not in the same tax group



as the Council and CDL. This enables the base value of land transferred from the Council to Newco to be that determined as the point of appropriation by Newco as stock and not the value at the time the land was acquired by the Council, thereby reducing the corporation tax payable in respect of capital gains on the disposal of the land.

4. THE SHM ADVICE

- 4.1 It is our understanding that the SHM Advice was prepared for CDL in consideration of the KPMG Draft Report. In short, the SHM advice confirmed that Newco can be established as a subsidiary of CDL in the form of a private company limited by guarantee (“CLG”).

5. THE COUNCIL’S FUNCTIONS AND POWERS TO ESTABLISH NEWCO

- 5.1 The Council’s powers which it will have exercised in establishing CDL are:
- 5.1.1 The General Power of Competence (“GPOC Power”) – Sections 1 and 4, Localism Act 2011 (“LA2011”);
 - 5.1.2 The power to trade (“Trading Power”) – Section 95, Local Government Act 2003 (“LGA2003”) and the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009/2393 (“2009 Order”);
 - 5.1.3 The power to borrow (“Borrowing Power”) – Section 1, LGA2003;
 - 5.1.4 The power to invest (“Investment Power”) – Section 12, LGA2003;
 - 5.1.6 The power to dispose of land (“Disposal Power”) – Section 123, LGA1972;
 - 5.1.7 The powers to provide housing accommodation under Part II, Housing Act 1985 (“HA1985”) including the power to provide housing accommodation (Section 9), the power to acquire land for housing purposes (Section 17) and the power to dispose of land held for housing purposes (Section 32) (“Housing Powers”).
- 5.2 In approving the establishment by CDL of Newco the Council will be using its GPOC Power but this will also be an arrangement for the continuous improvement in the Council’s exercise of its Disposal Power in accordance with its overarching ‘best value’ duty pursuant to section 3 (1) of the Local Government Act 1999 (“LGA1999”).
- 5.3 The Council will also have regard to its common law fiduciary duty to safeguard public money.



6. THE COUNCIL'S RATIONALE FOR ESTABLISHING NEWCO

- 6.1 The officer reports which recommended establishing CDL will include the reasons and rationale as to why creating a subsidiary company was considered to be the most appropriate means through which to achieve the objectives for which CDL was set up – namely, the development of primarily Council owned land for the provision of housing.
- 6.2 To complete the picture, minimising or avoiding tax liabilities is entirely lawful (unlike tax evasion) to the extent possible within the law. The Council also has a fiduciary duty to safeguard public money, and this can be legitimately said to be an arrangement under the LGA1999 to secure 'best value' through continuous improvement in the discharge of its functions with regard to economy, efficiency and effectiveness.
- 6.3 Given the prevailing economic conditions and the increased cost of developing the land so far transferred to CDL, it may also be the case that the viability of CDL's proposed and future developments, and as such the continuation of CDL and its business, will be at risk if the tax efficiencies proposed in the KPMG Draft Report are not realised.

7. GOVERNANCE ARRANGEMENTS

- 7.1 Newco will be incorporated as a private company limited by guarantee under the CA2006, and as such will be a distinct legal entity separate from CDL and the Council. Newco will be subject to regulation under the CA2006 and as a local authority company, also the requirements of Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 Order.
- 7.2 We recommend that bespoke articles of association are prepared for Newco, supplemented by a bespoke member / governance agreement between Newco and CDL / the Council which provides for the exercise of the Council's member function in relation to Newco, and the company's reporting and provision of information to CDL and the Council.
- 7.3 To the extent possible, Newco's governance arrangements should be aligned with those of CDL.



8. SUMMARY

- 8.1 The group structure recommended by KPMG whereby Newco will sit outside of the tax group formed by the Council and CDL is the means by which CDL will reduce its exposure to corporation tax as advised by KPMG.
- 8.2 The Council's fiduciary and best value duties provide the rationale for approving the establishment by CDL of Newco which extends beyond merely mitigating tax liability.
- 8.3 Newco will be incorporated and regulated as a CLG under the CA2006, and as a local authority company, will be subject to the LGHA1989 and the 1995 Order.
- 8.4 Governance arrangements for Newco should be aligned with those for CDL, and bespoke articles of association and a bespoke member / governance agreement should be prepared for Newco, which provide for the exercise of the Newco member function and reporting arrangements from Newco to CDL and the Council.

We would be happy to advise and assist further subsequent to the consideration of this report. If there are any queries or any further information is required in the meantime, please do not hesitate to contact us.

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October 2023

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