



Mayor and Cabinet

Report title: Amendments to Lewisham Homes articles

Date: 11 November 2020

Key decision: Yes.

Class: Part 1

Ward(s) affected: All

Contributors: Fenella Beckman, Director of Housing Services

Outline and recommendations

- This report outlines proposed changes to Lewisham Homes Memorandum of Association and Articles of Association.
- The changes proposed modernise and update the articles. The changes also ensure that the articles fully reflect the range of activity that Lewisham Homes conduct.
- Mayor and Cabinet are requested to approve these changes.

Timeline of engagement and decision-making

N/A

1. Summary

- 1.1. This report asks Mayor and Cabinet to approve the proposed changes to Lewisham Homes Memorandum of Association (MoA) and Articles of Association (AoA).
- 1.2. The AoA and MoA are legal documents that define the powers, objects and governance framework for Lewisham Homes. They are the written rules that define what activities Lewisham Homes undertakes on behalf of the council. The documents have been updated twice since Lewisham Homes was incorporated, in 2006 and 2011.
- 1.3. Following a governance review conducted by Lewisham Homes and a review of the proposed changes by the Council, a number of changes are now being proposed.
- 1.4. The changes are being recommended for a number of reasons:
 - 1.4.1. Changes are required to strengthen and modernise the governance framework;
 - 1.4.2. Changes are required to reflect the activities Lewisham Homes are undertaking on behalf of the council, since the Articles were last approved in 2011.
 - 1.4.3. Under the 2006 Companies Act the MoA became a much simpler document in law, and elements of the MoA are now deemed to be part of the AoA. The governance review highlighted changes required to ensure these documents are fit for purpose,
- 1.5. The full changes proposed are detailed in this report. The proposed new articles are at appendix 1 of this report. A full comparison of the current articles with the proposed new articles are at appendix 2 of this report.

2. Recommendations

- 2.1. Mayor and Cabinet are recommended to:
 - 2.1.1. Approve the changes outlined in this report to Lewisham Homes Memorandum of Association and Articles of Association

3. Policy Context

- 3.1. The Council's Corporate Strategy (2018-2022)^[1] outlines the Council's vision to deliver for residents over the next four years. Building on Lewisham's historic values of fairness, equality and putting our community at the heart of everything we do, the Council will create deliverable policies underpinned by a desire to promote vibrant communities, champion local diversity and promote social, economic and environmental sustainability. Delivering this strategy includes the following priority outcomes that relate to the management and provision of affordable homes by the Council's ALMO, Lewisham Homes:

^[1]<http://councilmeetings.lewisham.gov.uk/documents/s61022/Draft%20Corporate%20Strategy%202018-2022.pdf>

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- Tackling the Housing Crisis – Providing a decent and secure home for everyone.
 - Building an Inclusive Economy – Ensuring every resident can access high-quality job opportunities, with decent pay and security in our thriving and inclusive local economy.
 - Building Safer Communities – Ensuring every resident feels safe and secure living here as we work together towards a borough free from the fear of crime.
- 3.2. Homes for Lewisham, Lewisham’s Housing Strategy (2015-2020)^[2], includes the following priority outcomes that relate to the management and provision of affordable homes:
- Key Objective 1 – Helping residents in times of severe and urgent housing need.
 - Key Objective 2 – Building the homes our residents need.
 - Key Objective 4 – Promoting health and wellbeing by improving our resident’s homes.
- 3.3. The new Lewisham Housing Strategy 2020-26, which is being considered by Mayor and Cabinet on the 11th November 2020, also contains the following priorities that are met by this report.
- Delivering the homes that Lewisham needs.
 - Preventing homelessness and meeting housing need.
 - Supporting our residents to live safe, independent and active lives.

4. Background

- 4.1. Lewisham Homes was incorporated on 26 July 2006, as Lewisham Council’s Arms Length Management Company (ALMO). Lewisham Homes manages nearly 14,000 social housing tenancies, and 5000 leasehold properties, on behalf of the Council. The creation of Lewisham Homes as an ALMO was a major strand of the Councils decent homes strategy, to bring in the investment needed to improve the standard and condition of council owned homes.
- 4.2. Lewisham Homes is the main organisation undertaking operational housing management services for the Council. A number of services have been delegated from the Council to Lewisham Homes in recent years, including sheltered housing, new homes development construction, grounds maintenance, and the management of the temporary accommodation portfolio. Lewisham Homes have also acquired their own properties for the use of temporary accommodation, and taken on the management of council property acquisitions.
- 4.3. The full details of the arrangements between the Council and the ALMO for the delivery of the housing management service are set out in the management agreement, which can be found in the background reading to this report. The management agreement was extended and revised in 2017, when Mayor and Cabinet agreed to extend the management agreement for a further 10 years.
- 4.4. Lewisham Homes was incorporated as a company with two main documents; the Memorandum of Association (MoA) and the Articles of Association (AoA). The AoA and MoA are legal documents that define the powers, objects and governance framework for Lewisham Homes. They are the written rules that define what activities Lewisham Homes undertakes on behalf of the council. They sit alongside the management

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agreement to define the activity undertaken, responsibilities and accountability to the council of Lewisham Homes.

- 4.5. Currently, the MoA contains the objects, powers, application of income and property and members guarantee clauses, while the AoA contain clauses for internal administration and governance.
- 4.6. Since Lewisham Homes was incorporated the MoA has been amended once in 2006, and the AoA has been amended twice in 2006 and 2011.
- 4.7. In 2019, Lewisham Homes undertook a governance review as part of their business plan 'good governance' objectives. Following discussion and officer review, a number of changes are being proposed to the AoA, which will now incorporate the MoA. The changes are being proposed for a number of reasons:
 - Under the 2006 Companies Act the MoA became a much simpler document in law, and as such the MoA can be incorporated as part of the AoA. The governance review highlighted that changes are required to ensure the AoA is fit for purpose;
 - Changes are required to strengthen and modernise the governance framework;
 - Changes are required to reflect the activities Lewisham Homes are undertaking on behalf of the council, since the Articles were last approved in 2011.
- 4.8. As a Local Authority Trading Company (LATC), Lewisham Homes is classified as a Teckal company. This means that it must conduct at least 80% of its business for Lewisham Council (measured by turnover). The amendment to the AoA presented for approval in this report are not intended, nor will they actually extend the work LH does.
- 4.9. The proposed changes to the articles will ensure that Lewisham Homes governance arrangements are modernised and fit for purpose for the current day.

5. Proposed changes to the articles

- 5.1. The proposed new articles are attached at appendix 1 of this report.
- 5.2. The full track changed version comparing the 2011 articles and proposed new version is attached at appendix 2 of this report.
- 5.3. Should these changes be approved, the amended articles as at appendix 1 will be filed at Companies House, with the new Articles effective from the date accepted by Companies House. Lewisham Homes' governance documents will then be updated to reflect the new Articles.
- 5.4. The changes proposed, and the rationale for the changes, are summarised below:
Once formally approved by Lewisham Council as sole member

Proposed changes to the Articles of Association –

- 5.4.1. **General meeting clauses** - updated the General meeting clauses to remove the term Extraordinary General meeting, as this term does not exist in law. All meetings are now called General meetings.
- 5.4.2. **Board Composition (Article 13)** - reduced the maximum number of Board members from 15 to 12, introduced as a range and not a fixed number. The split of board members is proposed as follows: 5 Residents (includes Leaseholders), 5 Independents and 2 Council nominees. This change has been proposed to bring the board composition in line with the the National Housing Federation Code of Governance, which sets out that the optimum size for any board should be between 9-12 members.
- 5.4.3. The reduction in board members is found through the reduction in council nominees from 3 to 2. In addition to representation on the board, Lewisham Council retains

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control through its position as a shareholder and through the management agreement.

- 5.4.4. **Payment of Board members** – the clause in the Articles (2.7.2) updated to allow for payment of non-councillor board members. Lewisham Council agreed to the remuneration of non-councillor board members at Mayor and Cabinet in September 2018. This report has been included in background information in section thirteen below.
- 5.4.5. **Retirement and Election of Tenant and Independent Directors (Articles 15)** - Introduced terms of office for the tenant and independent directors. Terms introduced are 3 terms of 3 years, a maximum of 9 years in total. Also introducing the bar on re-appointment of up to 2 years, for any Director who has served the maximum term of office. This replaces the rotation requirements and has been introduced to modernise and update the board in line with the recommendations in the National Housing Federation Code of Governance.
- 5.4.6. **Disqualification and Removal of Board members (Article 18)** - updated clause to remove the discriminatory clauses for people with mental health issues. Increased absence threshold to 85% from 60%, to ensure better attendance at Board meetings by Board members. This has been linked to a leave of absence policy, which has previously been approved by Lewisham Homes board.
- 5.4.7. **Quorum (Article 29.2)** - the quorum clause has been updated, so that the quorum reflects the reduced number of Board members, proposed above at 5.2.2. The quorum also now reflects that either a council nominee (or duly authorised representative of the Council), board member or a council officer needs to be present for a Board meeting to be quorate.
- 5.4.8. **Electronic meetings** - updated clauses to ensure that holding Board meetings by electronic means is explicitly stated within the Articles.
- 5.4.9. **Terminology** - updated throughout the revised document. For instance, council member to be replaced with London Borough of Lewisham, Tenant/Leaseholder to be replaced with Resident. Definition of Resident to only include people who occupy property in the Lewisham Borough or properties managed by Lewisham Homes. This additional clause is to ensure that absentee leaseholders are not selected as serving Board members.
- 5.4.10. **Chair** - Introduced a 3-year term for the Chair's position, rather than the rolling annual term. The Chair is to be allowed to serve a maximum of 2 x 3 year terms. The Board members, with the written consent of the Council (32.1), can appoint the Chair.
- 5.4.11. **Written Resolution** - allow written resolutions to be passed by electronic means.
- 5.4.12. **Co-option** - increased the number of co-optees from two to five with explicit no-voting rights. This provides Lewisham Homes with the opportunity to bring in short term skills to support the Board, as well as provide succession planning in the event of absenteeism. This change would also enable a co-optee to attend as a committee member to help fulfil a skills gap.
- 5.4.13. **Objects** – The objects have been strengthened to reflect the expanded activity Lewisham Homes now undertakes. Article 2.3.1 has been added to reflect Lewisham Homes acquisition of stock outside the borough boundaries. Article 2.3.12 ensures that Lewisham Homes must get written consent from the Council prior to carrying out any other business.
- 5.4.14. **Powers** - Article 2.5.3 has been strengthened to ensure that Lewisham Homes would get consent from Lewisham Council on each occasion to borrow money, issue loan stock or raise money. The amendment to the objects and powers are not intended, nor will they actually extend the work LH does, thus they will not breach the Teckal limitations highlighted at 4.8 of this report.

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5.4.15. **Statutory references** - Statutory references within the 2011 articles have been deleted, due to them being out of date. The extended article 2.6 with new wording ensures that the context of the statutory references have not been lost and ensures the council will not be in breach of any such act.

5.4.16. **Notice** - updated section to allow notice to be given by electronic means.

5.4.17. **Conflict of Interests clauses** - updated the conflict clauses to cover transactional and situational conflicts and allowing the Board to authorise situational conflicts in accordance with the 2006 Companies Act. (31.4)

6. Financial implications

6.1. Lewisham Homes' management costs are funded through the fee paid via the HRA for the management of the majority of the social housing and leasehold stock in the borough. Additional fees are paid to Lewisham Homes for the delivery of the development programme.

6.2. The proposed changes to the articles of association does not affect the payments made to the organisation for the services supplied. As such, there are no direct financial implications arising from this report.

7. Legal implications

7.1. Section 27 of the Housing Act 1985, provides the power to allow another person to exercise housing management on behalf of the local housing authority. This power enabled Lewisham Homes to be set up in 2007.

7.2. Lewisham Homes Limited is a company limited by guarantee and is wholly owned by the Council. It is registered at Companies House with its own registration number, 05887410.

7.3. It has its own governance arrangements which are governed by its Articles which sets out its objects. Its decision making is through a Board. The Board has representatives from tenants and leaseholders and also a number of independent Board members. This conforms to the model for ALMOs recommended by the Ministry of Housing Communities and Local Government. Subject to the provisions of the Companies Act 2006 and following the directions of the London Borough of Lewisham in general meetings, the business of Lewisham Homes is managed by its Board.

7.4. Articles of Association may be amended in accordance with the provisions of the Companies Act. Amended Articles are filed with Companies House.

7.5. A company's Memorandum of Association states the objects for which the company is formed. It contains the rights, privileges and powers of a company. It may be lawfully amended in accordance with the provisions of the Companies Act and if amended it is then filed with Companies House.

7.6. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.7. In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.

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- foster good relations between people who share a protected characteristic and those who do not.

- 7.8. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.
- 7.9. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 7.10. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice> and <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>
- 7.11. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- [The essential guide to the public sector equality duty](#)
 - [Meeting the equality duty in policy and decision-making](#)
 - [Engagement and the equality duty: A guide for public authorities](#)
 - [Objectives and the equality duty. A guide for public authorities](#)
 - [Equality Information and the Equality Duty: A Guide for Public Authorities](#)
- 7.12. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

8. Equalities implications

- 8.1. There are no anticipated equalities implications

9. Climate change and environmental implications

- 9.1. There are no anticipated climate change and environmental implications.

10. Crime and disorder implications

- 10.1. There are no anticipated crime and disorder implications.

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11. Health and wellbeing implications

- 11.1. There are no anticipated health and wellbeing implications

12. Appendices

- 12.1. Appendix 1: "*Proposed Articles*." This is a full version of the proposed new articles.
- 12.2. Appendix 2: "*Current articles versus proposed articles*." This contains a comparison of the current articles and the proposed new articles.

13. Background papers

- 13.1. [Lewisham Homes management agreement](#) approved by Mayor and Cabinet on 22/03/17
- 13.2. [Lewisham Homes Governance Review](#). Approved by Mayor and Cabinet on 20/09/18

14. Report author and contact

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