



Cabinet

Title	Amendment to The Barnet Group Articles
Date of meeting	16 January 2024
Report of	Councillor Ross Houston, Deputy Leader and Cabinet Member for Homes and Regeneration
Wards	None specific
Status	Public
Key	Non key
Urgent	No
Appendices	Appendix A – The Barnet Group Covering Note Appendix B – The Barnet Group Articles
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Summary

The Barnet Group (TBG) has recently reviewed the TBG articles as part of its commitment to high quality governance and would like to recommend some beneficial amendments.

The articles currently filed with Companies House were amended in 2015 to be almost entirely aligned with the Terms of Reference. This means that each time the Terms of Reference (ToR) are

amended, potentially the Articles will also require amendment and then to be re-filed with Companies House.

It is proposed to adopt the Companies House model articles relevant to the Company, excluding where a section is not permitted via the shareholder agreement with the Council (such as issuing shares or appointing the Board Chair). The model articles have also been reviewed to ensure that the Terms of Reference are never 'less than' the requirements of the Model Articles (which is the suggested minimum levels of governance by Companies House). This means where future Terms of Reference requirements are greater than but not less than the Articles, any amendments would not need to be notified to Companies House.

There are some clauses in the model articles that are not applicable to our circumstances and those will not be adopted.

Recommendations

That Cabinet:

1. **Note the report and The Barnet Group Covering Note at Appendix A.**
2. **delegate authority for approval of the amendments to The Barnet Group Articles as set out in Appendix B to the Deputy Chief Executive.**
3. **delegate broader authority to the Deputy Chief Executive to act as the shareholder representative for The Barnet Group to consider and agree reserved matters (set out in Schedule 2 of the Shareholder's Agreement dated 2nd February 2016) on behalf of the Council.**

1. Reasons for the Recommendations

- 1.1 If the Terms of Reference (ToR) and Articles mimic one another, this means that should the business wish to make an amendment to the (ToR), it may also need to amend the relevant article.
- 1.2 It is proposed to adopt the Companies House model articles relevant to the Company, excluding where a section is not permitted via the shareholder agreement with the Council (such as issuing shares or appointing the Board Chair). The model articles have also been reviewed to ensure that the Terms of Reference are never 'less than' the requirements of the Model Articles (which is the suggested minimum levels of governance by Companies House). As such if the Company complies with its own Terms of Reference, it will be, by definition be compliant with the Articles and thus Companies House requirements. This will also mean where future Terms of Reference requirements are greater than or not less than the Articles, any amendments would not need to be notified to Companies House.
- 1.3 There are some clauses in the model articles that are not applicable to our circumstances and those will not be adopted.

1.4 In accordance with the Barnet Group's Shareholders Agreement, varying the Articles is a Reserved Matter and can only be varied with the express authorisation of the Council.

1.5 A summary of the Model Articles clauses and whether they will be adopted or not as part of the Barnet Group's revised Articles is set out below.

Para		TBG
1	Defined terms	✓
2	Liability of members	✓
3	Directors' general authority	✓
4	Shareholders' reserve power	✓
5	Directors may delegate	* shareholder agreement limits
6	Committees	✓
7	Directors to take decisions collectively	* partly
8	Unanimous decisions	* impacts use of Convene
9	Calling a directors' meeting	✓
10	Participation in directors' meetings	✓
11	Quorum for directors' meetings	✓
12	Chairing of directors' meetings	* shareholder agreement limits
13	Casting vote	✓
14	Conflicts of interest	✓
15	Records of decisions to be kept	✓
16	Directors' discretion to make further rules	* shareholder agreement limits
17	Methods of appointing directors	✓
18	Termination of director's appointment	✓
19	Directors' remuneration	✓
20	Directors' expenses	✓
21	All shares to be fully paid up	✓
22	Powers to issue different classes of share	* shareholder agreement limits
23	Company not bound by less than absolute interests	✓
24	Share certificates	✓

25	Replacement share certificates	✓
26	Share transfers	✓
27	Transmission of shares	✓
28	Exercise of transmitters' rights	✓
29	Transmitters bound by prior notices	✓
30	Procedure for declaring dividends	✗ shareholder agreement limits
31	Payment of dividends and other distributions	✗ shareholder agreement limits
32	No interest on distributions	✓
33	Unclaimed distributions	✓
34	Non-cash distributions	✗ shareholder agreement limits
35	Waiver of distributions	✓
36	Authority to capitalise and appropriation of capitalised sums	✗ shareholder agreement limits
37	Attendance and speaking at general meetings	✓
38	Quorum for general meetings	✗ shareholder agreement limits
39	Chairing general meetings	✗ shareholder agreement limits
40	Attendance and speaking by directors and non-shareholders	✓
41	Adjournment	✓
42	Voting: general	✓
43	Errors and disputes	✓
44	Poll votes	✓
45	Content of proxy notices	✓
46	Delivery of proxy notices	✓
47	Amendments to resolutions	✓
48	Means of communication to be used	✓
49	Company seals	✓
50	No right to inspect accounts and other records	✗ shareholder agreement specifies
51	Provision for employees on cessation of business	✓
52	Indemnity	✓
53	Insurance	✓

1.5 The original articles are available on Companies House. Amended Articles are included at appendix B with tracked changes.

2. Alternative Options Considered and Not Recommended

2.1 The Articles could be amended to ‘mimic’ the Terms of Reference but that would not be best practice of Companies House.

3. Post Decision Implementation

3.1 If the recommendation is approved, the updated Articles will be submitted to Companies House. The new Articles will then be adhered to moving forward, by adherence to the Terms of Reference.

4. Corporate Priorities, Performance and Other Considerations

4.1 The amended Articles will support The Barnet Group’s strategies and overall performance. This amendment will also reduce the risk of the Articles filed with Companies House not being adhered to and contributes to the engaged and effective council element of the Corporate Plan.

5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)

N/A

6. Legal Implications and Constitution References

6.1 The Barnet Group is a company wholly owned by the Council and referred to as a Teckal Company. The Shareholders agreement (‘SHA’) governs the relationship between the Council and the Barnet Group. Schedule 2 of the SHA sets out a number of decisions that are categorised as ‘Reserved Matters’, this includes *“Varying in any respect the articles.”* The SHA states that: -

“insofar as a matter is a Reserved Matter relating to Group Holdco [Group Holdco means The Barnet Group LTD] ... shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent or the subsequent ratification of the Council as stipulated in Schedule 2”;

Therefore the Barnet Group or any of the Council’s other Teckal Companies (which includes YCB and Barnet Homes) cannot take any decisions in relation to Reserved matters without either prior approval from the Council or subsequent ratification. The SHA further provides in relation to Reserved Matters that;

“in each case such consent from the Council shall be sought and processed in accordance with a scheme of delegation to be agreed by the parties acting reasonably with the intention to facilitate decisions being given by the Council as quickly as reasonably practicable.”

At present no general scheme of delegation has been put in place by the Council which would facilitate the taking of decisions which are Reserved Matters in an efficient manner.

6.2 Under the Council’s Constitution, Part 2D, the Cabinet has the authority to exercise all of the local authority functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution. It is also responsible for the following functions:

- Development of proposals for the budget (including the capital and revenue budgets, the fixing of the Tax Base, and the level of Council Tax) and the financial strategy for the Council;
- Monitoring the implementation of the budget and financial strategy;
- Recommending major new policies (and amendments to existing policies) to the Council for approval as part of the Council’s Policy Framework and implementing those approved by Council;
- Approving policies that are not part of the policy framework;
- Management of the Council’s Capital Programme;

The Cabinet therefore has the authority to approve such a delegation to the Deputy Chief Executive, to approve the amendments to the articles and to take future decisions on Reserved Matters on behalf of the Council and who would act as the Council’s representative.

7. Consultation

N/A

8. Equalities and Diversity

Decision makers should have due regard to the public sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. The equalities impact will be revisited on each of the proposals as they are developed. Consideration of the duties should precede the decision. It is important that Cabinet has regard to the statutory grounds in the light of all available material such as consultation responses.

The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9. Background Papers

None.