

Constitutional Review – 2nd Committee Session with Lauren Little and Linda Ewart on 16th May 2023

Attendees: K Stevenson, N Finlayson, S Bannerman, J Thomson, K Devaney, H McLatchie, A Greene, J Gallen, G Mogan, S Quinn, S Hunter

Lauren's presentation summarised the key legal considerations in connection with the proposed change in Rosehill's constitution to form a Charitable Housing Association. Lauren covered:

- Rosehill's current status – RSL, regulated by SHR, Registered Society with FCA, fully mutual housing co-operative
- Rosehill's current rules – based on SFHA model rules amended for fully mutual, rules state that only tenants/ prospective tenants can be members
- Current objects in rules v Charitable Housing objects
- Perceived benefits of co-operative
- Committee membership – Co-operative
- Committee membership – Housing Association
- Charitable Status – advantages/disadvantages
- Process – effectively it is a rule change

Q&A and Discussion Session

- Q. Can SHR force the committee to take someone onto the Management Committee?
- A. No, if we have refused under our rules. Must show good governance. SHR could only appoint if utilising statutory appointments.
- Q. Is there a right of appeal for membership?
- A. Recommendation is that right of appeal is not included in Rosehill's membership policy, when that is produced.

General discussion about whether applications for membership of the RSL and membership of the Committee could be rejected. LE advised that applications for membership of the organisation can be rejected and the basis for this would need to be clearly covered in the Membership Policy. She explained that the ability to reject applications to join the Committee is a relatively new provision in the rules. However, it should be recognised that rejecting applications should be an exceptional occurrence.

LL advised that all committee members must sign the code of conduct and that TC Young would guide Rosehill through the process of rejection and to take SHR along with the process to show why people were being refused. Provision can be made into the rules to cap for example the number of owners that can join. However LE pointed out that care needs to be taken if specifying a maximum number in different categories of committee members as you can find

that you have vacancies that cannot be filled from that particular category. LL agreed that this can be an issue and gave an example.

Q. Is there a model membership policy produced by SFHA?

A. Currently nothing available but a checklist of items to consider may be developed.

Q. Can non tenant members be ousted from Committee?

A. Only through the annual assessment process or if subject to an investigation. They would have had to go through the normal nomination process to serve and all elected members are the same.

Q. Would we change the maximum number of committee members?

A. No, committee size would remain the same. Under the current constitution we can have 12 Committee Members. LE advised some RSLs have kept a maximum of 15 but currently operate at only filling 12 places which leaves the potential to co-opt if required. Co-opted members can make up no more than a 1/3 of the overall committee.

Q. Do we need to consult with tenants?

A. No specific requirement to consult with tenants, we just need a favourable vote at the SGM but we would need to do a campaign to promote amongst our members (who are all tenants) as they would need to approve the rule change.

Q. What happens with the waiting list for housing?

A. Nothing would change. The allocations policy would operate as normal. However, the process would be made easier as it would no longer be a requirement to become a member before a tenancy would be granted.

Q. What would happen to existing memberships?

A. They would just transfer. Current members of Rosehill as a housing co-operative would continue to be members of Rosehill as a housing association,

Q. Would you be able to opt out if you were an existing member?

A. There is no legal process. As the co-op would become an association then a tenant could cancel membership but then no invite to AGM, cannot stand for committee.

Q. Can you lose membership if you don't attend 5th AGM in a row?

A. Yes, if the model rules are adopted, membership at that point would be lost. Although it would be expected that Members are notified of the potential for their membership to be cancelled if they missed the next AGM.

- Q. Can you cancel membership and then become a member again?
A. Yes
- Q. If you lose your membership by non-attendance at AGM, you can just join again?
A. Yes
- Q. What happens if members don't attend the SGM to vote?
A. They miss out. The opportunity to influence the decision is at the SGM where it will be put to a vote. However, the SGM would need to be quorate with enough members attending or nominating a proxy.
- Q. Do tenants even care?
A. General discussion regarding how over time the ethos of the co-op is now lost to members. They pay a £1 to buy the share to enable them to get a property. The emotional connection to the co-op is potentially still there so the benefits of the change will need to be promoted.
- Q. Can we go back to being a co-op?
A. No. Once registered as a charity all assets can only be transferred to another charity if cease trading.

Post session note: Just to be clear, there is no transfer of assets taking place to convert from a fully mutual to a housing association, that is done by changing the rules. However it is correct to say that on winding up a charity can only transfer its assets to another charity.

Generally a fully mutual is not in a position to also be a charity and so going back to a co-op would likely mean relinquishing charitable status. Technically a charity can write to OSCR and relinquish its charitable status if it chooses to do so but that option would create other regulatory issues for Rosehill.

Although we did not specifically discuss this in relation to this question, there was a lot of general discussion about membership of Rosehill and obviously going from a housing association to a co-op would leave you with any number of challenges around membership, tenants who are not members and potentially committee members who are not tenants. These things, together with regulatory challenges, would prevent converting back from a housing association to a co-operative.

- Q. Can you lose charitable status?
A. Yes, if you do non-charitable activities. This would be of concern to SHR and a breach of the rules.
- Q. Does gaining charitable status change what we do on a day to day basis?
A. No, just an additional return to OSCR who would become an additional regulator of Rosehill. We will exist for the wider community and not just

our tenants. On a practical level all day-to-day activity associated with the business of managing the letting of houses will remain the same except name change and charitable status on letterhead. Becoming a Charity has the potential for us to access charitable funds and potential capacity to expand wider role activities as no longer “limited” to providing services for tenants.

Q. Can OSCR regulate what we do?

A. OSCR would be an additional Regulator, however, SHR has an agreement with OSCR that they are the lead regulator for housing. For example in relation to Notifiable Events, OSCR has confirmed it is satisfied if NEs are notified to SHR. So yes OSCR can regulate but it would not be as “present” in the day-to-day running of Rosehill as SHR is.

Q. Is this change just about financial benefits?

A. No, the driving force is strengthening the committee membership by widening the net and allowing others to join the committee. Lots of committees have a balance of members that give you a stronger committee.

Q. What does it mean “non profit”?

A. This is currently the same as what we do – our surplus = profit. Our surplus is used for development and the 30 year programme of repairs and maintenance and other business costs. There is no distribution of any surplus to shareholders etc and our business model is based on affordable rents.

Q. What timescales will the potential changes happen?

A. Would plan for this to happen at the next AGM which would be Aug/ Sept 2024 due to the change in year end. We would map back from this date to work out what needs to be done when.

Q. Is it worthwhile getting a tax expert in to discuss the benefits?

A. The auditor has already advised that there would be a benefit.

General discussion about looking for negatives but not finding any. Linda Ewart reminded committee that this approach was good governance to see it from both sides and question it.

Q. Can we advertise for committee members?

A. Yes, but they will be doing exactly the same as existing committee members.

- Q. Can someone from another housing association join the committee?
A. Potentially yes if the organisation they work for is remote enough. There could be a conflict of interest but they must sign the code of conduct.
- Q. Could a Rosehill contractor join the committee?
A. No
- Q. Why are we looking at this now?
A. The right to buy legislation changed in 2016 along with the committee recruitment and the auditor suggesting we consider it as well. It would also tie in with the changing of our year end.

Discussion took place of when committee would be happy formally making the decision or if they required further information or time to consider the change. Committee agreed that they would be happy for it to be added to the agenda May 2023 meeting.