



Internal Audit Report 2018/19

Company Governance Aylesbury Vale Estates

March 2019

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Distribution List

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For information:	Andrew Small (Director and Section 151 Officer) Audit Committee

This report has been prepared only for Aylesbury Vale District Council in accordance with the agreed terms of reference. The findings should not be relied upon by any other organisation.

1. Executive summary

Background and summary of findings

Background

Aylesbury Vale District Council and Akeman Partnership LLP (Akeman) established Aylesbury Vale Estates (AVE) as a Limited Liability Partnership in October 2009. Each party has a 50% ownership of AVE.

The purpose of AVE is to manage, improve and develop the Council's commercial property portfolio and provide an income stream to the Council. On establishment, the Council transferred the majority of its commercial and industrial estate to AVE at market value.

A Partnership Board oversees AVE's work. The Council has three representatives on the Partnership Board. Akeman also have three representatives on the Partnership Board. A Members' Agreement governs the relationship between the partners (AVDC and Akeman), and AVE's relationship with the Council. The Members' Agreement sets requirements regarding the frequency and content of annual business plans, which in turn provides the framework and budget within which AVE manages the assets it holds. Akeman Asset Management LLP manages AVE's assets on a day-to-day basis, through a contract let by AVE.

Guidance on the principles to be applied in the governance arrangements of the Council's owned or partly owned companies is set out in the document "Guide to creation and working with companies in which AVDC has a financial interest". This "Guide" was approved by Cabinet in March 2015 and has subsequently been updated following the independent review of the Council's governance arrangements for Aylesbury Vale Broadband (AVB). The updated Guide was approved by Audit Committee in January 2019 and Full Council in March 2019.

This review has evaluated the effectiveness of the Council's governance of AVE, based on the expectations set out in the Guide. The Guide is based on language pertaining to the legal structure of companies and the respective roles and responsibilities of shareholders and directors as set out in Company Law. AVE, as a Limited Liability Partnership (LLP) is slightly different. For example, it does not have 'Directors' as distinct from a 'Shareholder' as is the case for a company limited by shares.

The Guide does however set out many expectations of "good governance" which are applicable when considering oversight of council spend and operations. Therefore this review is based on whether the spirit of the requirements in the Guide is met by AVDC and AVE (e.g. regular and good quality information available to provide sufficient scrutiny, with certain legal rights reserved by the Council to control AVE's activities) rather than whether AVE follows the Guide verbatim.

Summary of findings

AVE is compliant with the significant majority of expectations set out in the Guide. However this review highlighted two areas where governance arrangements could be strengthened:

- The Council should work with AVE to clarify who is empowered to discharge certain roles (and functions assigned to those roles) set out in the AVE Members' Agreement. The Council has taken a custom and practice approach to fulfilling these functions but would benefit from clarifying which committees/people are empowered to discharge them in the event of any future dispute.
- The Council should work with AVE to update the Members' Agreement to clarify instances where the Council is required to approve sale, transfer or issuance of shares. This is currently referenced in the Members' Agreement but is worded in a way where it would only apply in certain instances (i.e. should it be required by central government).

Good practice noted

In a number of areas considered there was evidence that good governance procedures have been undertaken and in accordance with the spirit of the Guide:

Business planning

AVE produces an annual business plan which is approved every year by the Council's Cabinet. This business plan is also subject to annual scrutiny by the Council's Economy and Business Development Scrutiny Committee.

AVE's 2017/18 business plan was checked against the requirements set out in the Guide. The business plan contained the expected elements including reporting of historic performance against Key Performance Indicators (KPIs), Key Performance Targets (KPTs) for the upcoming year, which are aligned to the objectives of AVE as set out in the Members' Agreement (e.g. enhancing the property value of the estate and maintaining and enhancing an income stream for the Council), a statement of the Council's current investment position, profit and loss for the preceding year, risks facing the business both internally and from the market, a review of performance against KPIs and KPTs set out in the previous business plan, and profit and loss forecasts for the next three years.

Board composition

AVE's Partnership Board is composed of sufficiently senior and skilled individuals – both from within the Council and through AVE's private sector partner (Akeman Asset Management). Board members are furnished with a letter of appointment, setting out the obligations and expectations of them as representatives, when they join the Board and are unremunerated. The letter of appointment issued binds representatives to uphold the Members' Agreement in its entirety, including the process in the Members' Agreement regarding managing conflicts of interest either within AVE or between AVE and the Council.

The review has confirmed that signed letters of appointment are in place for each of the Council's representatives on AVE's Partnership Board.

Reporting to Council

The Council receives regular reporting on its financial and non-financial performance from AVE. This happens twice per year. AVE's business plan is approved by Cabinet each year and is scrutinised by Economy and Business Development Scrutiny Committee. Separately Cabinet and Economy and Business Development Scrutiny Committee are given the opportunity to scrutinise AVE's performance at the end of each financial year. These meetings receive a sufficient level of financial and non-financial information to enable scrutiny. Members have opportunity to ask questions to representatives from AVE at these meetings. The content of meetings, based on review of minutes, suggests that scrutiny does occur.

Conflicts of interest

AVE has taken steps to avoid potential conflicts of interest as set out in the Guide and the Members' Agreement sets out how conflicts of interest should be managed. The Leader, Chief Executive, Monitoring Officer and Section 151 Officer are not on the Board of AVE. Whilst a Cabinet Member does sit on the AVE Partnership Board this is permissible by the Guide where it enhances the skills and competency of the Board. The Cabinet Member in question runs a construction business and therefore adds value to the Board in terms of scrutinising project costs and development programmes. The Cabinet Member in question leaves meetings prior to Cabinet votes on decisions relating to AVE.

Relationship between the Council and AVE

There is a Members' Agreement in place between AVE and the Council which codifies how the relationship between the two organisations should work in practice. This covers expectations set out in the Guide such as payment of dividends, dispute resolution, frequency of Board meetings, reporting requirements to Council and large capital outlays. The Members' Agreement adequately reflects the substance of a "Shareholder Agreement", as outlined in the Guide.

The Council does not provide AVE with any formal services. The Council does provide meeting space for AVE and a minute taker for Board meetings. There is no SLA underpinning these two services and the Council does not charge AVE for them. However, this is reasonable given that the note taker is provided by the Council at the Council's request (to ensure a clear and accurate record of Board meetings) and the meeting rooms in question are internal rooms which are not charged for in the normal course of business. There is therefore no opportunity cost for the Council.

Management comments

Thank you for the report and its findings and I welcome the endorsement of the good practice it identifies.

We will address the issues raised under 1.1 through a statement of clarification as to where these matters sit within the existing constitution.

In relation to recommendation 2.1 we will seek to agree this amendment with the Private Sector Partners, but ultimately we will be reliant upon their agreement.

2. Detailed findings

1 Roles and responsibilities

AVE has a Members' Agreement which sets out the relationship between AVE, the Council and Akeman (the private sector partner (PSP)), and the principles for governance within AVE (e.g. how the Partnership Board works).

The Members' Agreement ascribes rights and responsibilities to a number of different roles. These are defined in Schedule 1 (Definitions and Interpretations) of the Members' Agreement as follows:

- Members – *“means (subject to any such persons ceasing to be a Member in accordance with this Agreement) AVDC, the PSP and any other persons who may from time to time and for the time being be admitted as Members of AVE LLP in accordance with the terms of this Agreement”*.

This role is similar to that of a “Shareholder” as defined by the Guide.

- AVDC Representatives – *“means the representatives (or alternate representative) appointed by AVDC to the Partnership Board”*.

The Members are entitled to elect and appoint three Representatives to the Partnership Board provided that there shall always be (Clause 8.5):-

- at least two Representatives on the Partnership Board appointed by each Member;
- an equal number of Representatives appointed by each Member; and
- at least one of the AVDC Representatives appointed to the Partnership Board is an Officer of AVDC.

The AVDC Representatives are the Assistant Director for Commercial Property and Regeneration (AVDC Officer), Cllr. Warren White, and Cllr. Julie Ward.

Clause 8.12 of the Members' Agreement states that the Representatives shall have a duty of care to act in the best interests of AVE LLP.

On AVDC's website Cllr. Ward and Cllr. White are described as “shareholder representatives”, using the language of the Guide. However, on the rare occasions when the interests of AVE and the Council are in conflict, an individual cannot simultaneously act in the best interest of both (i.e. for AVE as Representative on the Partnership Board and for AVDC as a de facto Shareholder Representative).

Clause 27 of the Members' Agreement sets out the procedures in the event 'deadlock' whereby AVDC's Chief Executive (or, failing him, a senior officer of AVDC), is entitled to act

as arbiter on the Council's behalf.

The Scheme of Delegation (Schedule 6) included in the Members' Agreement sets out certain functions which require approval by 'Members' rather than just AVE's 'Partnership Board'. These are generally matters of a more significant nature. For example, Schedule 6 requires Member approval or adoption of each business plan, approval of alteration of the business outside of the business plan, disposal/acquisition of assets where not specifically mentioned in the business plan, or approval of statutory accounts. Additionally, Clause 13.2 requires twice annual Members' Meetings as distinct from meetings of the Partnership Board.

The Council does generally discharge these functions, either through a committee of the Council (e.g. Cabinet signs off AVE's annual business plan) or an individual of the Council (e.g. the Council's Section 151 Officer reviews the annual accounts as part of consolidating them with the Council's main accounts).

However, the Council should clarify specifically which committee and/or individual is empowered to discharge the roles and responsibilities of 'Member' to ensure the Council's interest is upheld for matters which exceed the Partnership Board's remit. The Partnership Board has clearly defined representatives from the Council and references to 'Members' in the Members' Agreement should be similarly clearly defined.

Recommendations

- 1.1 The Council should work with AVE to clarify which person, or what committee of the Council, fulfils the role and functions of 'Member' as set out in the Members' Agreement.
 - 1.2 The Council should update its website based on the clarifications made by Recommendation 1.1.
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2 Sale, transfer or issuance of shares

Schedule 6 of the Members' Agreement makes provisions for who can approve the sale, transfer or issuance of shares or the formation of subsidiaries.

The Members' Agreement specifically refers to the decision relating to "Forming any subsidiary, acquiring shares in any other company (subscription or transfer) such that AVE LLP becomes a subsidiary, entering into joint ventures or partnerships". To do this, is distinguishes between Member approvals being required "*where DCLG/BIS approval is required*" and being permissible by AVE's Board where "*DCLG/DTI consent already obtained*".

When the agreement was drawn up in 2009, and a partnership between a council and a private sector partner to manage commercial property was unusual, a clause was included to provide for some ongoing central government input. However, it is unclear what the basis for consultation with central government would be now.

There are several potential issues with this wording:

- What is permissible by DCLG (Department for Communities and Local Government), BIS (Department for Business, Innovation and Skills) and DTI (Department of Trade and Industry) is not clear, particularly as BIS and DTI are government departments which no longer exist.
- The current Members Agreement, in theory, allows AVE's Partnership Board to form subsidiaries, acquire shares, or for AVE to become a subsidiary without Member approval. This is counter to the expectations set out in the Guide.

Recommendations

2.1 The Council and AVE should work together to update the provisions included in Schedule 6 of the Members' Agreement regarding sale, transfer and issuance of shares so that the Council's approval (as 'Member' in whatever guise so defined by Recommendation 1.1 of this report) is required in order for AVE to sell, transfer or issue any shares.

Appendix 1. Terms of Reference

Introduction

This review is being undertaken as part of the 2018/19 internal audit plan approved by the Audit Committee.

Background

Aylesbury Vale District Council and Akeman Partnership LLP (Akeman) established Aylesbury Vale Estates (AVE) as a Limited Liability Partnership in October 2009.

The purpose of AVE is to manage, improve and develop the Council's commercial property portfolio and provide an income stream to the Council. The Council transferred the majority of its commercial and industrial estate to AVE at market value.

A Partnership Board manages AVE. The Council has three representatives on the Partnership Board. A Members' Agreement governs AVE's relationship with the Council, setting requirements regarding the frequency and content of annual business plans, which in turn provides the framework and budget within which AVE manages the assets it holds. Akeman Asset Management LLP manages AVE's assets on a day-to-day basis.

In June 2015, the Council produced guidance on the governance requirements for wholly or partly-owned ventures – 'Guide to creation and working with companies in which AVDC has a financial interest'. This guidance was updated following internal audit's review of another commercial venture (Aylesbury Vale Broadband) and to reflect the recommendations contained in the subsequent BDO report (June 2018). The updated guidance was agreed by the Audit Committee on 28 January 2019.

Objectives and scope

This review will evaluate the effectiveness of the Council's governance of AVE, using the Council's updated "Guide to creation and working with companies" as a reference point.

Approach

We will use a combination of interviews with relevant staff and document review to form conclusions and make recommendations regarding each of the following questions:

- Does AVE produce regular business plans/annual reports providing an update on historic and forecast performance of the company?
- Do the AVE Partnership Board receive appropriate financial and performance information on AVE's operations?
- Do Council committees have an opportunity to scrutinise the performance of AVE?
- Are the meetings of AVE's Partnership Board minuted and decisions formally recorded?
- Does AVE comply with Council guidance regarding conflicts of interest?
- Is there an agreement in place between AVE and the Council setting out the rights and responsibilities of respective parties?
- Is there a scheme of delegation in place between the AVE Partnership Board and Akeman Asset Management LLP setting out the rights and responsibilities of respective parties?
- Are services provided by the Council to AVE underpinned by a contract, with invoices raised for services rendered?
- Are signed loan agreements in place between the Council and AVE to cover loans made between the two parties?

Reporting

The output of this review will be a short, advisory-style report to Management and the Audit Committee. This report will set out our key findings and recommendations.

Exclusions

This review will be limited to the Council's relationship with Aylesbury Vale Estates. It will not consider the Council's relationship with any other companies the Council owns or part-owns.

This review focuses on the Council's current governance arrangements for Aylesbury Vale Estates and does not constitute an assessment of the governance arrangements for Aylesbury Vale Estates throughout the whole life of the company.

In order to maintain the boundaries between the Council (as a shareholder) and Aylesbury Vale Estates, this review will not cover the day-to-day operations and internal processes of Aylesbury Vale Estates.

Where this review pertains to the Council's legal obligations, including, but not limited to State Aid compliance, this review does not constitute legal advice but checks whether the Council has followed an appropriate process before taking a decision.

Key contacts – Internal Audit Team

Adam Leeder Senior Consultant, BDO

Key contacts – AVDC

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Andrew Small Director (s151 Officer)

Timetable

Planned audit days – 10
Fieldwork start - 4 February 2019
Draft report issued - 1 March 2019
Final report issued - 8 March 2018
Audit Committee report - 25 March 2019