Overview of the Hastings Commons Neighbourhood Ventures Shareholders' agreement

HASTINGS COMMONS

Introduction

The social enterprise property development company Hastings Commons Neighbourhood Ventures Ltd (HCNV) is a limited company and its articles ensure that the work of HCNV is aligned with the charitable objectives of the CLT with an 'asset lock' to ensure funds are used for those purposes.

HCNV was established in 2014 by Meanwhile Space CIC and Jericho Road Solutions Ltd, two socially-driven entrepreneurs. They immediately granted 10% of the shares in the company to local community organisation White Rock Trust. After WRT collapsed in 2016-17, Rock House funder Power to Change supported a transition of the shares to Heart of Hastings CLT (which is now Hastings Commons CLT Ltd),equalising the shareholding so each partner held 1/3 of the company.

The plan has always been that the risk-taking organisation (HCNV) will eventually reach 'steady state' where the buildings are earning enough to sustain themselves and at that point the CLT would buy all the shares from the founder investors so bringing the company and all its assets into 100% ownership by the CLT. Eventually it is anticipated that the value will at least match the original input of the founder investors while still being a strong, sustainable and relatively low-risk asset for the CLT. Statement of intent

This is a deliberately new approach to achieving neighbourhood change for community benefit and is part of why Hastings Commons has been successful because it has allowed us to take risks that few community organisations would have taken alone. For example, just prior to signing the shareholder's agreement and equalising the shareholdings with the CLT the founder investors had built up significant value of more than £1.6m through the development of Rock House. They decided to mortgage Rock House to fund the purchase of the Observer Building, putting that value at risk in furtherance of the mission and purpose of HCNV.

Creation of shareholders' agreement

The shareholders' agreement was independently negotiated and agreed between the trustees of the CLT and the founding shareholders of HCNV in July 2020. At this time there was no overlap between the trustees and directors of either organisation. This was before the ecosystem of organisations that make up Hastings Commons began to meet as a single 'superboard' in 2021, and before Jess Steele was appointed as CEO of Hastings Commons in 2022.

Governance of HCNV

The agreement specifies that:

- HCNV must work towards the same purpose and objectives as the CLT.
- The CLT has at least one board seat on HCNV as well as a right of veto on any suggested changes to HCNV's articles or the shareholders' agreement itself.

Share purchase

Timing

The agreement specifies that the share transfer is to take place at the earlier of:

- 10^{th} anniversary of the signing of the agreement (14^{th} July 2030); or
- 5 years after 'steady state' is declared by all shareholders. Steady state indicates a moment in time where the business is deemed to be on a secure and sustainable footing (currently estimated that steady state would be declared at the end of 2026, so 5 years later would be beyond the July 2030 date)
- At any other earlier point that all shareholders agree.

This is to ensure that there is both a set timetable for transfer to full CLT ownership, and also that the founding shareholders who have invested their time, knowledge and money at risk have reasonable time to create value.

Price

The agreement specifies that the share transfer price will be set as follows:

Item	How calculated	Current calculation*
Asset Value of HCNV	Independent market valuation of the completed portfolio, with its capped rents and social mission (recognising that the development has sought to maximise social value rather than financial land value uplift)	£7.1m
Less		
Outstanding liabilities		£6.6m
Less		

all charitable purpose capital grants that have contributed to increased value of those assets in proportion since the shareholder's agreement was signed.	The terms of each grant are reviewed by independent legal advisors and shared with the Hastings Commons board. Based on this advice the Hastings Commons board determine whether the grant is a charitable purpose grant. The total investment in that asset versus its current valuation determines the change in value (which can be both positive or negative). The percentage of investment that is considered charitable versus non-charitable determines the specific contribution of charitable funding to the change in that assets value and therefore what should be deducted from the price. This reflects a fair assessment of the contribution charitable funds have made to the total asset value.	£1.7m
And subject to		
Adjustment for affordability for the CLT	The proposed price is also checked to ensure it can be met without the CLT having to carry overall debt that is higher than 50% of the value of the portfolio (including any debt used to finance the purchase of shares), so that assets transferred are genuinely sustainable and cash flow positive for the CLT.	N/a
TOTAL		**Minus £1.2m**

*This is based on draft calculations and has not yet been formally approved by the boards of the CLT, HCNV or the founding shareholders. This will be reviewed and confirmed at the end of the current calendar year i.e. December 2024. However, the final price will need to be reviewed by all parties again at the time of transfer. This is currently not estimated to take place until July 2030 as noted above.

Since 2014 up to 31 March 2024 the two founding investors have invested cash at today's prices (i.e. adjusted for inflation) of over £400k and contributed over 1,380 unpaid days (an average of 138 days per year combined, assuming 7 hour days). As of 31 March 2024 the price of the shares and return they would receive would be zero in accordance with the formula in the Shareholder's Agreement. However, the transfer will not take place until up to 5 years after 'steady state' is achieved in order to provide fair opportunity for founding investors to earn a fair return, or July 2030 being the ten year anniversary of the agreement (whichever is earlier). Any return or repayment of the initial investment remains at significant risk.

Had we sought equivalent investment from alternative sources, e.g. banks, social investors they would have required less risk, formal charge on buildings as security and regular returns from the start. We would not have been able to provide this, so it would have been too expensive and impossible to raise alternative finance of this type.

If this formula was to be applied right now, the value of the shares would be less than zero, underlying the purpose of the timing of the share transfer and highlighting the at-risk nature of the founder shareholder investments. Eventually it is anticipated that the value will at least match the original input of the founder investors while creating a strong, sustainable and relatively low-risk asset for the CLT.

See appendix below for a statement on the Shareholders' Agreement from Anthony Collins LLP the independent legal advisors that prepared the document on behalf of the CLT and HCNV

David Alcock, Partner in the governance, funding and corporate team at Anthony Collins said: “Acting for Hastings Commons Neighbourhood Ventures (“HCNV”), I provide below clarity on the governance work we carried out.

Whilst HCNV is set up as a company limited by shares, there are some important safeguards built into the governance structure, which means that for all intents and purposes the company is run as a social enterprise.

First, the company has a clear purpose to promote the common good, by reference to section 172(2) of the Companies Act 2006. This means that the directors have to make all their decisions regarding the work of HCNV in the light of that fundamental purpose, **instead of** the interests of the shareholders. This purpose is then amplified by the various specific objects, regarding:

- bringing difficult buildings back into public use;
- growing the local economy;
- providing affordable housing;
- generating positive social benefit; and
- acting as a positive social resource for young people.

Secondly, the Articles contain an asset lock in identical wording to the mandatory asset lock for community interest companies, at Article 4. This asset lock prohibits any transfer of assets for less than the market value, unless that transfer is to another asset locked body (a CIC or a charity) or for the benefit of the community. This has the effect of protecting the assets of the company from any “asset stripping” or similar; the assets that it owns are locked in for community benefit.

Thirdly, if HCNV is wound up, then any assets left over (after payments to creditors) may not be distributed to the shareholders, but are to be passed to another asset locked body (a CIC or a charity).

Finally, any dividend payable requires the unanimous approval of all the shareholders, including the charity Hastings Commons CLT. Each year, a minimum of 50% of distributable profits must be either retained to further the purposes of HCNV, or transferred for social or environmental benefit.

Taken together, these measures apply the same level of protection as if HCNV were a community interest company, and also mean that HCNV meets the criteria for the “Social Enterprise Mark” as awarded by Social Enterprise Mark CIC (information here: https://www.socialenterprisemark.org.uk/).

The Articles can only be changed by a 75% majority vote, meaning that Hastings Commons CLT would have a veto over any changes.

The constitution is supported by a shareholders’ agreement, which reinforces the obligation on all three shareholders to work together for community benefit in line with the charitable purposes of Hastings Commons CLT.

The agreement provides that any sale of shares to anyone other than Hastings Commons CLT requires the consent of all shareholders (including the CLT).

It also gives Hastings Commons CLT the ability to buy out the other two shareholders, but only in a situation where HCNV is in a financially stable and profitable position, and for a defined price. That price is defined as the value of the fixed assets owned by HCNV, taking into account the capped rents covenant in place, and discounted by any outstanding debt and also by the value of any capital grants received by HCNV from the date of the agreement until the point of sale (unless all parties agree in relation to any specific grant that it would not be appropriate to do so).

Therefore, any grant funding received by HCNV would not alter or inflate the purchase price for Hastings Commons CLT.

As with the Articles, any changes to the agreement would require the consent of Hastings Commons CLT.”