

Cabinet

29 January 2020



Title	Review of Knowle Green Estates Ltd		
Purpose of the report	To make a decision		
Report Author	Terry Collier, Deputy Chief Executive Michael Graham, Head of Corporate Governance		
Cabinet Member	Councillor Ian Harvey	Confidential	Report - No Appendix - Yes
Corporate Priority	Financial Sustainability		
Recommendations	<p>Cabinet resolves as follows:</p> <ol style="list-style-type: none">1. Authorise the Head of Corporate Governance to establish a group holding company – Knowle Green Estates Group Ltd.2. Authorise the Head of Corporate Governance to establish a Lettings Agency and to subscribe to one share in this company in the name of the Council and thereafter to transfer the share to Knowle Green Estates Group Ltd3. Authorise the Head of Corporate Governance, subject to their confirmation of willingness to be so appointed, to appoint the Directors of Knowle Green Estates Ltd as the Directors of Knowle Green Estates Group Ltd and the new letting agency company.4. Authorise the Head of Corporate Governance to recruit an additional independent Director for the Group5. Appoint Spelthorne Borough Council as the Company Secretary for Knowle Green Estates Group Ltd and any subsidiary companies and delegate the Head of Corporate Governance to undertake that function and update the scheme of delegation accordingly6. Authorise the Head of Corporate Governance to transfer the Council's shareholding in Knowle Green Estates Ltd (KGE) to Knowle Green Estates Group Ltd.7. Authorise the Head of Corporate Governance to establish a Limited Liability Partnership with Knowle Green Estates Group Ltd for the development at Block E of London Road (Berkeley Homes scheme).8. Authorise the Head of Corporate Governance to establish a Limited Liability Partnership with Knowle Green Estates Group Ltd for Ceaser Court.		

	<p>9. Authorise the Head of Corporate Governance to establish a Limited Liability Partnership with Knowle Green Estates Group Ltd for Thameside House.</p> <p>10. To approve the Knowle Green Estates Group business plan 2020-2024 submitted and approved by the Board of Knowle Green Estates Ltd (Exempt Appendix 1).</p> <p>11. To appoint the Leader of the Council as the Shareholder representative for Knowle Green Estates Group Ltd and all subsidiary companies.</p>
Reason for Recommendation	To review the purpose of Knowle Green Estates Ltd in light of its first three years of operation. To recommend a new corporate structure for the business which is in keeping with the Council's ambitious development plan. To document the relationship between the Council and the Company and a proposed Group holding company.

Executive summary

As the Council has developed a billion pound property investment function and a development pipeline of approx. £350 million for local housing, it is evident that the 2016 strategy of establishing a single housing company will not cover the complexity of the different schemes which have emerged and are now ready for development.

This report now explains that the Council should do as follows:

- Establish a Group of companies with the same Board for all the entities
- Establish Special Purpose Vehicles for the larger developments
- Establish a lettings agency to employ staff (if required) by the Group

In this report a reference to "Company" is a reference to the pre-existing company Knowle Green Estates Ltd. A reference to the "Group" is a reference to the company group structure which would be formed if Members are content with this report and the recommendations it makes.

Background

1. On 3 April 2016, the Cabinet agreed to the purchase of the Harper Hotel (now Harper House) in Ashford and delegated the Chief Finance Officer to establish a holding company for the purchase if he considered it appropriate. Subsequently, Knowle Green Estates Limited (the Company) was incorporated and the Council purchased Harper Hotel in the name of the Company. Whilst the property was, until recently, used as Emergency Accommodation for homeless persons, the Council considered that it may not always be required for that purpose and hence Harper House was held in the Company to allow for maximum flexibility in the longer-term so that other developments on the site could be considered.
2. Knowle Green Estates Ltd was established as a company limited by shares with the Council retaining 100% shareholding.
3. The Corporate Plan for 2016 – 2019 envisaged the need for the Council to take a more direct role in the provision of much needed housing for the Borough's residents. A number of schemes have since been formulated.
4. In 2017, the Cabinet considered the purpose of the Company. It was acknowledged that the formation of the Company was in part a response to the challenges the Council faced to address emergency and affordable accommodation pressures both in terms of supply and impact on the Revenue Budget.
5. In 2017 it was envisaged that a property and investment strategy delivered by a commercial trading company would enable the Council to:
 - provide a source of revenue for the General Fund
 - bring forward its own sites quickly
 - enable the Council to operate in a fast paced competitive market place and in areas where the Council cannot currently act
 - grant shorthold assured tenancy agreements to allow for the greatest flexibility in developing a lettings strategy
 - access opportunities in other boroughs without restriction
6. Between 2017 and 2019, further work was undertaken to develop the business model and the financial projections of the Company in different scenarios. This has taken longer than expected for a number of reasons:
 - The original purpose of Harper House has been reviewed. Plans for its redevelopment and for refurbishment have been commissioned. The conclusion of this work is that refurbishment will only improve a poor property to a moderate degree and it will always be an expensive property to maintain. Safety and comfort of residents, ease of management, and overall efficiency call for the rebuilding of the property. This development is now anticipated on the proviso that grant aid from Homes England is forthcoming. A separate paper was presented to Cabinet on 26 September 2018 which discussed this option and agreed £2.6m gross budget for demolition and rebuild of the facility. If grant is awarded for this project, then the grant conditions are such that the Council must own and manage it, so the Company will transfer it back to the Council to enable this to happen.

- The scale of the Council's development portfolio has increased since 2016. A number of key town centre sites have been purchased by the Council and this means that the role of the Company in the regeneration of Staines-upon-Thames could now be a matter of much greater significance than first envisaged. Some of these schemes are large enough that they may require the Council to deliver them with a joint venture partner:
 - Thameside House
 - Communications House
 - Bridge Street and Hanover House combined site
 - The early projects of the Company have come to fruition. Whilst it was originally envisaged that these properties would be let to provide a source of revenue generation for the General Fund, that strategy has changed. The General Fund has stabilised because of the Council's success in acquiring a number of excellent investment assets. This means that the Council was able to let these two initial projects (former Churchill Village Hall and former Bugle Returns Public House) as 100% affordable rented schemes (even though there was no planning requirement to do so).
 - Those two schemes have also demonstrated how the provision of affordable housing can positively impact the General Fund by reducing the need for the Council to fund expensive emergency accommodation.
 - The establishment of a Residential Portfolio of several hundred units, in line with the development opportunities now available to the Council, dictates the need to consider how this business will be set up and managed.
 - We need to establish a function for the management of residential properties
 - We need to establish a lettings function which will allow us to deal effectively with tenants
 - Advice from the Company's accountants (Wilkins Kennedy) is that the properties owned by the Company should be held in a separate legal entity to any trading business which may have employees.
 - Advice from the Company's accountants (Wilkins Kennedy) and solicitors (Freeths) is that substantial projects should not be grouped into one company but should each have their own legal entity for purposes of good risk management.
7. Since 2016, the Company has been managed by a small board of senior officers and councillors (Board of Directors).
 8. From May 2016 until May 2019 there were just two Directors – Terry Collier and the then councillor Howard Williams who was the Finance Portfolio Holder at the time.
 9. In May 2019, Howard Williams resigned his Board position as the Company Articles required for Directors who were no longer councillors. Cllr Harman was appointed in his place. Shortly thereafter Mr Williams was reappointed to the Board, (not as a councillor but as an independent director) first in an interim capacity to provide continuity and stability to the Board, but after a round of recruitment in September 2019 this was confirmed as a three year appointment.

10. At present these Directors are Chief Finance Officer – Terry Collier, the Portfolio Holder for Finance – Cllr Tony Harman and since May 2019 the former Portfolio Holder for Finance - Mr Howard Williams). So there are two Directors with a direct link to the Council (Terry Collier and Cllr Harman) and one Independent Director (Mr Williams).
11. This lean structure allowed for maximum speed of response and flexibility. It operated within the usual officer / member protocols for decisions on property matters but such a small internally focussed corporate structure is unlikely to be suitable for the scale of the development which the Council is now considering.
12. If the Council wishes to appoint a further independent director to the Company, with additional skills from outside the Council, they could contribute to the overall governance of the Company and relationships with the shareholder which could be beneficial for the Council and the Company.

Current situation

13. Members may consider it helpful to think of the Council's property holdings in three different views. This will assist in considering the way which the Knowle Green Estates Group might develop and work in future.
14. **Investment Portfolio.** These are the commercial properties such as BP Sunbury, 12 Hammersmith Grove, Thames Tower etc which have been acquired as investments. They are not being held for redevelopment. The Council owns these properties directly for the revenue they generate; they are akin to financial instruments. The Council will continue to hold these properties directly – their ownership is not being transferred to any company. There is no role for the Group in any of these properties.
15. **Municipal Portfolio.** These are the buildings used by the Council to deliver its local government operations: Knowle Green Offices, the depot, the day centres etc. This Portfolio also includes the community assets such as scout huts etc which are leased to community groups so they can provide their services and facilities to the community. . The Council will continue to hold these properties directly – their ownership is not being transferred to any company. There is no role for the Group in any of these properties.
16. **Residential Portfolio.** These are the residential properties that the Council is now developing. These will be owned by an entity outside the Council. Knowle Green Estates Ltd currently owns 3 houses in Churchill Way, 8 flats in Bugle House, 42 Kingston Road and a house in Cranford Avenue, Stanwell. These will be owned by the Group and let through the Group to provide housing in the Borough.
17. **Strategic Portfolio.** These are the properties such as Thameside House, Ceaser House, Communications House etc which will be developed in the future either for the purposes of housing or other commercial use. When the properties are developed for housing they will be in the Residential Portfolio and they will be owned by the Group and let through the Group.
18. **The Asset Management Plan.** This new revised document will shortly be presented to members and it will outline how the Council will protect the portfolios. The same structures will be used by the Council to manage the residential portfolio for the Knowle Green Group.

Lettings Agency and Property Management

19. Property management sits in the Council Asset Management team. This means that most of the property management and lettings activity is currently done in-house and then recharged back to KGE Ltd.
20. So although the property management function exists in the Council, it may be that some new directly employed staff need to be hired to develop the lettings agency and the residential property management business. It may not be appropriate to continue to hire increase the Council payroll if most of the work is being charged back to the different companies. In case this happens, it is proposed to establish a company for the purpose. This company is proposed to be called Knowle Green (Lettings) Ltd. It will be a dormant company and it will sit under the Group will come into use if and when required for this purpose so that staff are not employed in the property holding entities (KGE Ltd and the SPVs). This is in accordance with the professional advice the Company have been given by its accountants and its solicitors.
21. The following table may assist to summarise the position as to what is proposed:

	Owned by	Developed by	Managed by
Investment Portfolio	Council	N/A	Council
Municipal Portfolio	Council	Council	Council
Strategic Portfolio	Council	Council	Council and then KGE
Residential Portfolio			
- Affordable	KGE Ltd	Council	Council for KGE Ltd
- Private	Development vehicle LLP*	Council	Council for LLP or KGE (L) Ltd

*LLP – Limited Liability Partnership – discussed below

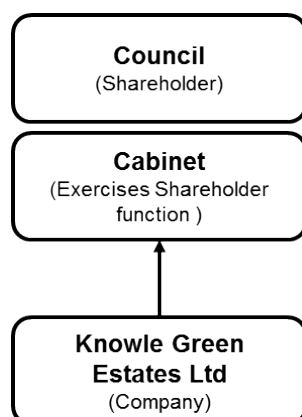
Statutory powers

22. Under section 1 of the Localism Act 2011 local authorities now have a general power that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation. Section 4 of the same Act directs that anything which is done for a purely commercial purpose should be done through a company.
23. When it was established, it was envisaged that Knowle Green Estates Ltd would be operating for commercial purposes. As it now provides affordable housing it is recognised that this is a company which is operating for the general needs of the area. Although it may make a profit, and it is not a non-profit vehicle, profit is incidental to the main purpose which is delivery of affordable housing.

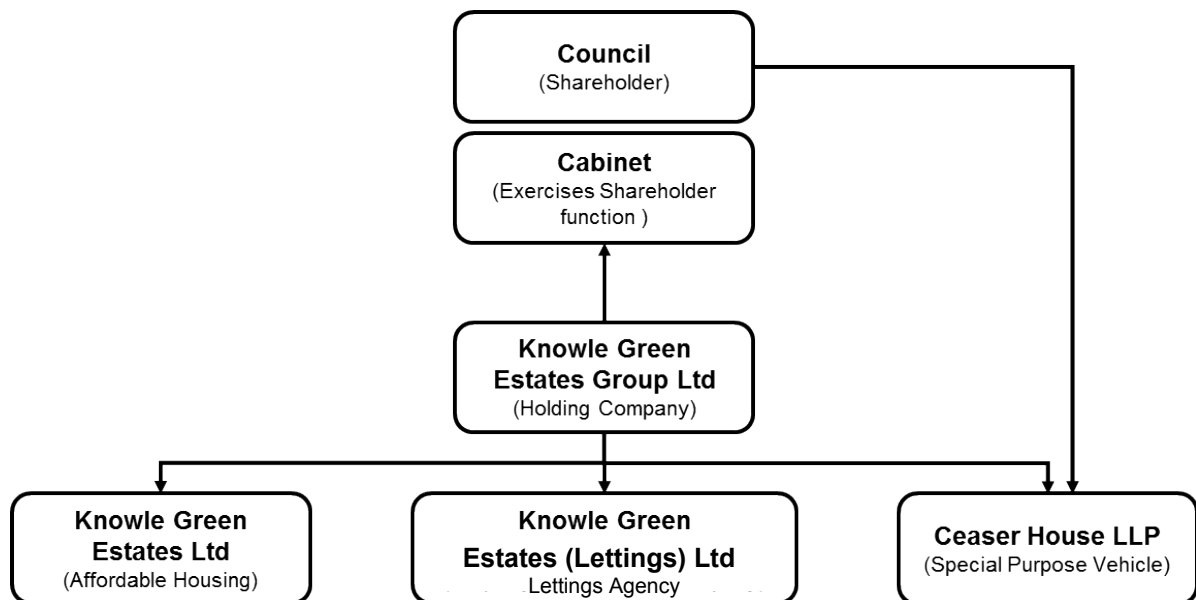
24. The Company is a controlled company as defined in the Local Government and Housing Act 1989 as it is a subsidiary company of a local authority and as such the shareholder (the Council with 100%) has ultimate control over the activities and operational matters of the Company.

Company Structure and Governance

25. The current structure is as set out in the following diagram.



26. If Members follow the recommendations of this report then a number of changes will be made to that structure. In 2016, we initially envisaged that one company would do everything (possibly with subsidiaries) now that need for subsidiaries is here and the need is as follows:
27. An entity to hold the affordable housing – this will stay as the existing Knowle Green Estates Ltd (as the properties are already in it).
28. An entity to employ any staff (if required) – this is a new lettings company and it is proposed to be called Knowle Green Estates (Lettings) Ltd. It may adopt a more succinct trading name in the future.
29. An entity for each of the significant developments which are envisaged. For instance in relation to Ceaser House, this will be Ceaser House LLP. The significance of the LLP is described below.
30. An entity which will bring all this together and manage it under the auspices of one board which will be accountable to the Council. This is will be Knowle Green Estates Group Ltd
31. This new structure is demonstrated below:



LLP special purpose vehicles

32. Placing major projects into a Limited Liability Partnerships is an established way of dealing with regeneration schemes and joint ventures. The features and benefits of an LLP are as follows:
33. Limited Liability Partnership:
 - The partnership has limited liability which protects the Group and the Council in case of project insolvency
 - Has more than one partner involved but is flexible to accommodate many investors and developers if and when the need requires
 - The partners can decide how they divide investment, risk and reward – it doesn't have to be in strict proportion to shares (as there are no shares)
 - The governing document is a Partnership Agreement which is private and not lodged at Companies House
 - Any profits paid to the partners are not taxed in the LLP – they are taxed according to the status of the owner. So for instance, companies pay corporation tax but a LLP is "tax transparent". If one partner is an individual he or she will pay income tax on profits, if one partner is a company it pays corporation tax on profits, if one partner is a council it does not pay tax on its profits.
34. In this instance it is envisaged that the special purpose vehicles created by the Council will be owned by the Council in conjunction with the Group Holding Company. Other funders or developers will be able to join the LLP on a case by case basis. This might be necessary for especially large developments in the town centre. In each instance it would be the intention of officers to agree the Council's side of the Partnership Agreement through Cabinet. For the purposes of this report, permission is being requested for the principle of establishing special purpose vehicles for regeneration schemes. Permission is also sought to establish Ceaser House LLP, Block E LLP and Thameside House LLP as the first such projects and to note that a form of Partnership Agreement will be brought back to Cabinet in the near future.

Shareholder Function

35. The Group shareholder has ultimate control over the companies and the LLPs. The shareholder of the Group will be the Council. The Council will have 100% ownership of the Group. The Group will control the companies in a variety of ways; the appointment of directors (including independent directors), provision of funding and amending Articles of Association but operational matters can also be included in a Shareholder's Agreement as described below.
36. It is proposed that the Shareholder function of the Council is primarily executed through Cabinet with the Leader agreeing most of the Reserved Matters (issues which the company directors could determine for themselves, but which they agree to defer to the shareholder). Where there are particularly controversial Reserved Matters, the Leader will have the ability to refer that matter to Cabinet. This principle was agreed in May 2017. Since that time the Leader has exercised a Reserved Matter twice. The first time in May 2019 to appoint an interim Director and secondly in October 2019 to confirm the appointment of Mr Williams.
37. The Shareholder will (through a Shareholder Agreement) set out the performance levels required for the Group and the tolerances (e.g. financial and decision making) within which the Group may operate.
38. The Council as Shareholder can change the make-up of the Board of Directors and can change the Company Secretary in the same way.
39. The Articles of Association can make provision for the Shareholder to appoint Directors by serving notice in writing to the Company and to appoint any other person to be a Director in place of a Director who leaves office by whatever means. This can take immediate effect by service to the Company Secretary.
40. The Group and companies with it (but not the LLPs) will be defined as a 'controlled company' under the Local Authority Government and Housing Act 1989 and as a result will be subject to the Local Authorities (Companies) Order 1995. The order sets out regulations that are specific to controlled companies and starts from the basis that the public should be aware that the company they are dealing with is controlled by the local authority. The Council must provide information about the affairs of the Group to any Member of the local authority as they shall reasonably require for the proper discharge of the Member's responsibilities, they must also provide information required by the Council's auditors.

Board of Directors

41. The Board of Directors will be responsible for delivery of the expected outcomes within the Business Plan. They will have oversight of the performance, financial and operational management of the Group within the parameters agreed with the Shareholder. The Board of Directors will be agreed by the Cabinet.
42. It is proposed that the Group Board will initially comprise of three Directors, a senior officer, the Chief Finance Officer, one senior councillor the Cabinet Portfolio Holder for Finance (who is also Deputy Leader at this time) and an independent Director Mr Howard Williams.
43. The Council will act as Company Secretary of the Group and other entities. The Head of Corporate Governance will attend all Board meetings and advise

the Group and will organise the Company Secretarial function through Legal Services but will not be a Director.

44. The typical areas for the Directors to consider and approve include:
 - a. Specific transactions – acquisitions, sales, letting, agreement for leases, surrenders, borrowing and other key transactions.
 - b. Appointment of service providers – accountants, auditors, solicitors, agents, valuers, architects, property managers, and other professionals as deemed appropriate.
 - c. Reporting – reporting arrangements to the Cabinet.
45. Whilst the Council's Chief Finance (section 151) Officer will be part of the board this is with a clear understanding of the separation of functions. This also applies to officers providing advice to the Shareholder on behalf of the Council. At the present it is not envisaged that fundamental conflicts will emerge but this will be kept under review and arrangements modified to accommodate any change in circumstances.
46. The statutory duties for directors of a company are set out in sections 171 – 177 of the Companies Act 2006. The statutory duties are in summary:
 - a. The duty to act within powers
 - b. The duty to promote the success of the company
 - c. The duty to exercise independent judgement
 - d. The duty to exercise reasonable skill and care
 - e. The duty to avoid conflicts of interest
 - f. The duty not to accept benefits from third parties
 - g. The duty to declare an interest in a proposed transaction or arrangement with the company
47. Directors will also be subject to other duties set out elsewhere in law, including a large number of very important legal obligations around making investments, disposing of land, health and safety requirements, data protection obligations and employment laws, to name but a few. In particular, there are very important responsibilities on directors in the event that an insolvency situation seems likely. There are serious consequences for directors (including personal liability) in situations which fall within the statutory definitions of wrongful trading or fraudulent trading.
48. Consideration has been given to ensuring that key expertise (such as financial and legal advice) are available to advise both the Council as shareholder and the Company. From time to time it may be necessary to buy in specialist corporate, property, marketing, legal and financial advice on a normal commercial basis to supplement the experience available to the Board. .

Independent Directors

49. It is proposed that to assist the Governance of this new structure that a new Board members (Director) is appointed as follows:
 - A board member with property experience
50. A process was launched in August 2019 for the recruitment of two independent directors for the Board to nominate to the Council. One

candidate emerged from that process with financial experience and was nominated to the Council.

51. It is proposed that the Head of Corporate Governance undertakes a further process this year to find the additional Board member to nominate to the Council.

Company Resources

52. It is anticipated that some of the support services which will be required by the Group will continue to be contracted out to the Council. The Group will have to pay for these services so that the Council Taxpayer is not subsidising the Group.
53. Where Council staff may be required to be loaned to the Company this will be agreed by the Chief Executive in the normal way. Any additional payments to be made to Council staff for working above their current duties are a matter for the Head of Paid Service to determine (but currently there are none).

Documentation required for the overall governance of the Company

54. The following documentation will assist to determine the overall governance arrangements between the Council and Company:
- a. Articles of Association – the Group Company constitution setting out the rules governing the running of the company. Whilst a set of rules will be specified by default at incorporation, the Council and the Company can change these to a more suitable model.
 - b. Shareholder Agreement – this will be a key document as it will capture how the Council Shareholder will exercise its control over the Group Company and the expectations for performance delivery.
 - c. Loan and Drawdown Agreement – this will set out the details of the funding arrangements between the Council and the Group.
 - d. Business Plan – the business plan attached covers an initial 5-year period of activity and will outline the Company's planned operations. The Business Plan will be reviewed and agreed annually and will cover the following:
 - Company objectives (as established in the Shareholder Agreement) but these are expected to develop over time.
 - Governance arrangements - sufficiency of the arrangements and any planned changes to the Board.
 - Operational plans.
 - Financial model, including income and expenditure, balance sheet and cashflow and assumptions.
 - Rents, sales and development assumptions.
 - Distribution Policy – whether all trading profit to be returned to the shareholder or is any retained for future investment and/or running capital.
55. Articles of Association exist for the Company and similar articles will be employed for the Group. The Company and the Council have agreed a Loan and Drawdown Agreement as envisaged in May 2017. A similar document

will be proposed for the Group and the LLPs and will be brought to Cabinet. A Resourcing Agreement was proposed in May 2017 – it is now proposed to review this for the Group and the Company and bring it back to Cabinet.

Articles of Association

56. The Articles of Association will deal with the following matters:

- The articles are for a company limited by shares
- There will be one shareholder being Spelthorne Borough Council
- The liability of the Council is limited to the nominal value of its shareholding - £1
- If a Director ceases to be employed by the Council then he or she will ordinarily cease to be a Director of the Group or the Company and a replacement sought.
- Similarly, if a Director (who is a councillor) ceases to be a member of the Council then he or she will ordinarily cease to be a Director of the Group or Company and a replacement sought
- Quorum for a meeting of the Directors and to be able to vote on the decisions of the Company – two Directors
- Some decisions, as reserved matters, can only be taken at a general meeting by the Council as Shareholder e.g. to allocate extra shares, to reappoint the directors, to declare a dividend, to change the articles of association, etc.
- Requirements to sign documents on behalf of the Company

Objects

57. Since 2009 most companies do not have objects clauses relying on the fact that the objects of the Company are generally unrestricted. The Group can then reflect the wide powers granted to the Council under the Localism Act 2011 to use a company to do anything commercially that individuals may generally do.

Shareholder Agreement

58. A Shareholder Agreement would operate in addition to the Articles of Association. The Shareholder Agreement will regulate the actions of the Group and give rights to the Council that would not be appropriate to be included in the Articles. It represents a finer level of detail and control such as:

- The setting of investment targets each year and the associated budget
- Approving and / or removing directors etc
- Agreement of any borrowing arrangement and giving security in respect of borrowing

59. The Shareholder Agreement for the Company and Group will be reviewed and brought back to Cabinet.

Partnership Agreement for LLPs

60. A Partnership Agreement for the major projects in special purpose vehicles would operate instead of Articles of Association. The Partnership Agreement will regulate the actions of the LLP and give rights to the Council and

describes the relationship with the other partners. It represents all the controls for the Council such as:

- The setting of investment targets each year and the associated budget
 - Approving and / or removing representatives
 - How any LLP Board will work
 - Arrangements for the sharing of risk, reward and investment
 - Agreement of any borrowing arrangement and giving security in respect of borrowing
61. Each project will have its own Partnership Agreement and these will be reviewed and agreed by Cabinet for the Council (in addition to being agreed by each partner according to its own corporate governance arrangement). So for instance if another partner is Knowle Green Estates Group Ltd then the Board of the Group would sign-off the Group's involvement and this would have to be approved by the independent directors. This ensures that the arms' length nature of the Group is exercised and it is appropriate for the Group to play a part in the LLP.

Tax liability

62. The Group Company and any companies within it will be liable to corporation tax in the normal manner on profits, and will need to charge VAT.
63. Any LLP is tax transparent as described in this report. In the case of Ceaser House LLP, if the two partners were the Council and the Group then these would both be taxed independently according to their own status.
64. Every property opportunity would be looked at on its own merits to decide whether to purchase through the Council, a Company or an LLP dependent upon the taxation and legal implications of the opportunity concerned.

Risks

65. Members will be concerned to ensure that all risks of operating in a new way have been thoroughly considered.
66. The proposals in this report contain a number of checks and balances to ensure that the company operates within agreed parameters and can assure members that there is no greater financial risk to the Council than at present:
- a. The Articles of Association will set out the powers available to Directors.
 - b. The Shareholder Agreement will set out further controls around dealings with properties. Similarly the LLP partnership agreements will set out controls and limits on exercising of powers.
 - c. The Cabinet will hold the Directors accountable for delivery of the business plan. This is no different to the current arrangement whereby officers are held to account by members.
 - d. Funding provided by the Council and properties to be subject to development by the Council will have to be agreed by the Cabinet. Funding from the Capital Programme and / or funding from prudential borrowing has to be agreed by Council.
 - e. Any asset transferred to the Group by the Council will be subject to the usual requirements of best value and section 123 of the Local Government

Act 1972. The Council will have independent up to date valuation advice before any transaction proceeds.

- f. Assets transferred to the Group by the Council can also be subject of charge by way of legal mortgage to protect the Council's interests should the company face financial difficulties.
- g. There will be ongoing liaison (as exists at present) between officers and members to ensure there are clear channels of communication and that councillors remain comfortable at all times with proposed deals/developments.
- h. The Cabinet's shareholder function can be called in or scrutinised by the Overview and Scrutiny Committee in the same way as any other Executive function.
- i. Any project which poses more of a commercial risk, for instance an out of borough joint venture, can be contained in a subsidiary company or LLP (as appropriate) so as not to risk the Group or the Council. This is a normal way of containing risk in property transactions and it applies here as it would in the general property market. Where new Council involvement is envisaged in a new entity then a report will be brought to Cabinet as at present.
- j. The Group will have its own auditors and will be subject to the requirements of company law and filing at Companies House.

State Aid

- 67. Regulations ensure that the Group cannot be subsidised by the Council. This means the Council must recover the costs of any accommodation, goods, services, employees or any other support it supplies to the Company. State Aid will also include any loans to the Company and the rate of interest that loans to the Company will need to be charged. This will be reviewed on an ongoing basis. Specialist advice will be sought when making acquisitions or receiving loans if there is any doubt and in order to ensure that State Aid regulations are complied with.
- 68. Advice has already been sought with regard to the loans made to KGE Ltd so that this company can deliver affordable housing. These loans are made on a rate which is equivalent to PWLB rates.

Company Loan Facilities

- 69. As set out above the Company will seek loans from the Council that comply with State Aid requirements. Loans would include drawdown provisions that meet the need of the business plan. Where property acquisitions are made by the Group, loans from the Council would be secured against the property by way of a legal charge (or mortgage) in favour of the Council.
- 70. The loans may be sourced from the Council's capital reserves - where the Council would loan some equity - or will be sourced from the banking sector or through Public Works Loan Board.

Legal Implications

- 71. Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the 'general power of competence'. A local authority may exercise the general power of competence for its own purpose, for a

commercial purpose and/or for the benefit of others i.e. this includes the setting up of a property company or LLP as described in this report. In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duties it owes to its rate and local tax payers) and to the public law requirements to exercise the general power of competence for a proper purpose.

Powers to fund the Company

72. The Council has the power to borrow under the Local Government Act 2003 for the purposes of the prudent management of their financial affairs, or in connection with any of their functions. The borrowing must be prudent and comply with the Prudential Code.
73. As outlined, the Council may borrow monies and in turn support the property company through the provision of loans and subscription to share capital. This is permitted by virtue of the Localism Act 2011. In addition the Council has a power to provide financial assistance to a company providing privately let accommodation under section 24 of the Local Government Act 1988.
74. Where it is appropriate for the Company to develop Council owned land, the Council is entitled to dispose of land to the Company provided it complies with Section 123 of the Local Government Act 1972 which is the duty to obtain best value for property disposals.

Procurement

75. The Council is establishing the Group and the lettings company for a commercial purpose. They may be funded from a variety of sources, including Council money, other public money and private funding. It is intended that the company will have a commercial character so as not to count as “a body governed by public law” for the purposes of the Public Contract Regulations. This means that the requirements of the Regulations would not apply to the company. This position will be kept under review. The Company would intend to tender significant developments (for example building works) to ensure that value for money can be proven to the Council shareholder.
76. The Council establishes the LLPs for purposes of regeneration and the improvement of the economic, environmental and social well-being of the Borough. As such these entities will count as “a body governed by public law” for the purposes of the Public Contract Regulations. This means that the requirements of the Procurement Regulations will apply to the LLPs.

Other considerations

77. The decisions recommended are not considered to have an impact under the Equality Act (Equality Impact Assessment).
78. The decisions recommended are not considered to give rise to any impact under the Data Protection Act (Privacy Impact Assessment).

Financial implications

79. Full financial information set out in the exempt information at Part 2 of this Agenda.
80. The recommended option complies with the Council's financial priority to optimise its finances as set out in our Medium Term Financial Plan (December 2018) and Treasury Management Strategy as agreed by Council in February

2019. It is also consistent with the Council's Capital Strategy approved in February 2019.

Background papers: There are none

Confidential Appendices:

(1) Business Plan – Knowle Green Estates Group Ltd

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972:

Information relating to the financial or business affairs of any particular person (including the authority holding that information) as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information on the basis that the confidential business case contains commercially sensitive information which the Company requires to be protected in order to procure development schemes and rent properties in a competitive commercial environment