

Development Sub Committee – 20 May 2024



Title	<i>Ashford Victory Place</i>
Purpose of the report	To seek approval to terminate the conditional contract to transfer Ashford Victory Place to Knowle Green Estates Limited.
Report Author	<i>Richard Mortimer – Development Advisor</i>
Ward(s) Affected	Ashford Wards
Exempt	No in respect of the report and Appendix 2. Yes in respect of Appendix 1.
Exemption Reason	Appendix 1 to this report contains exempt information within the meaning of Part 1 of Schedule 12A to the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985 and by the Local Government (Access to information) (Variation) Order 2006 Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information because, disclosure to the public would prejudice the financial position of the authority in any lease, contract or other type of negotiation with the tenant or developer, who could then know the position of the Council.
Corporate Priority	Addressing Housing Need
Recommendations	<p>Committee is asked to:</p> <ol style="list-style-type: none"> 1. Approve the request to formally terminate the Conditional Contract dated 3rd March 2022 between the Council (1) and Knowle Green Estates Limited (2) for the sale and purchase of Land at Ashford Hospital London Road Ashford (Ashford Victory Place Contract) and 2. Authorise the Group Head of Corporate Governance to enter into any legal documentation to terminate the Ashford Victory Place Contract
Reason for Recommendation	To enable the Council to progress with a third-party disposal of the site.

1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> KGE is currently the beneficial owner of the site having exchanged a contract in March 2022. The terms of this sale contract require the Council to deliver 127 completed units in accordance with the planning consent. 	<ul style="list-style-type: none"> The Ashford Victory Place Contract is conditional upon the practical completion of the development by 25 March 2025. Whilst the contract has been frustrated as the Council is no longer in a position to deliver the scheme, a prospective purchaser will require reassurance that Knowle Green Estates Ltd (KGE) no longer has any legal interest in the site. A formal termination of the Ashford Victory Place Contract is recommended. – KGE approval to the termination is also required. If this is not addressed now, then a sale of the site may not be able to proceed or could be delayed.
This is what we want to do about it	These are the next steps
<ul style="list-style-type: none"> This Committee and KGE need to extinguish the current sale contract between the Council and KGE to allow an orderly sale of the site to a third-party developer. 	<ul style="list-style-type: none"> This Committee's approval is required so that the Council's Legal Team can be instructed to prepare documents to terminate the Ashford Victory Place Contract The KGE Board will need to also approve the termination of the Ashford Victory Place Contract. The site is then able to be sold free of this constraint.

2. Key issues

History

- 2.1 The site was granted planning permission for 127 residential units in March 2022. At that point in time, one of the Council's key corporate objectives was the direct delivery of affordable and key worker homes. As the Council was unable to enter into a S106 Legal Agreement with itself, a contract was exchanged with KGE (as an arms-length entity) to enable this to be completed. The Ashford Victory Place Contract with KGE was exchanged on 3 March 2022 and legal completion is to take place upon the first anniversary

of practical completion of the 127 residential units (Appendix 1). The Section 106 Legal Agreement is attached at Appendix 2

Current position

- 2.2 The Council's new Administration decided that whilst the delivery of affordable and key worker housing remains a corporate priority, it will not raise further capital/debt to undertake this directly. Therefore, under this policy strategy, the Council is unable to fulfil its obligations to KGE under the terms of the Ashford Victory Place Contract. The Ashford Victory Place Contract is conditional upon the first anniversary of the practical completion of the scheme occurring by 25 March 2025
- 2.3 Furthermore, due to increases in interest rates and build costs, the scheme is not currently viable for both the Council and KGE. Therefore, it is mutually beneficial to terminate the current contractual arrangements.
- 2.4 Under the terms of the Ashford Victory Place Contract the Council and KGE only currently have the contractual right to terminate the contract **after** 25 March 2025 if the scheme has not been delivered by that date. Agreement to terminate earlier would need to be reached with KGE
- 2.5 This Committee has approved the marketing and sale of this site. Unless the Council and KGE agree to terminate the Ashford Victory Place Contract **prior** to 25 March 2025, the sale of the site to a third-party developer may be unnecessarily delayed.

Next Steps

- 2.6 The Council's Legal Team will work with KGE to terminate the current contract as soon as possible. This will also be subject to KGE Board approval.
- 2.7 Once both parties' approval is obtained, the contract can be terminated and the site will be capable of being sold to a third party developer.

3. Options analysis and proposal

- 3.1 **Terminate the Ashford Victory Place Contract with KGE** - this option is recommended as it formally releases the Council from all legal obligations it is unable to fulfil.
- 3.2 **Do Nothing - not recommended.** This option will delay the ability to progress delivery of the planning approved scheme whether via partnership working or a third-party disposal.
- 3.3 **Proceed In meeting The Council's and KGE's Obligations Under the Current Contract- not recommended.** The Council has already committed to not raising further debt to undertake direct delivery of new housing. Therefore, this is not a viable option.

4. Financial

- 4.1 There are no direct financial implications as a result of the recommendation set out within this report. However, the extinguishment of the contract is required in order to sell the site to a 3rd party in order to get a capital receipt.

5. Risk Management

6. If the contractual position is not terminated, the Council may be subject to contractual obligations it cannot fulfil as set out in this report.

7. Procurement comments

7.1 Not Applicable

8. Legal comments

8.1 Under the terms of the Ashford Victory Place Contract completion of the transfer of the site to KGE is to take place 20 working days after the first anniversary of the practical completion date of the scheme. Either party may terminate the contract if the first anniversary of practical completion has not occurred by 25 March 2025 (Longstop Date).

8.2 The condition of the Ashford Victory Place Contract is incapable of being satisfied by the Longstop Date. Whilst the contract has been frustrated it is recommended that the contract is formally terminated to prevent any avoidable delay to subsequent disposals of the site.

8.3 Under the terms of the unilateral undertaking (s.106) given by the Council in its capacity as Landowner (together with KGE as an interested party) to the Council in its capacity as Local Planning Authority (LPA), the terms of the s.106 are to be enforceable against successors in title. In the event that a third party acquires an unconditional legal interest in the site, it will be required to enter into a Confirmatory Deed with the LPA. In the Confirmatory Deed the third party is to covenant to comply with the obligation in the s.106.

8.4 In the event that both this Committee and the KGE board agree to terminate the Ashford Victory Place Contract, the Legal Team will prepare an agreement to terminate.

9. Other considerations

None.

9. Equality and Diversity

9.1 Not applicable

10. Sustainability/Climate Change Implications

Not applicable

11. Timetable for Implementation

11.1 Once the Council and KGE Board have approved the extinguishment of the current sales contract, this can happen with immediate effect.

12. Contact

12.1 Richard Mortimer (Assets Team)

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12.2 Jo Clare – (Legal)

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Background papers:

Appendix 1: Conditional Agreement relating to the sale and purchase of Land at Ashford Hospital London Road Ashford Staines upon Thames Surrey dated 3 March 2022 between Spelthorne Borough Council (1) and Knowle Green Estates Limited (2)

Appendix 2: Unilateral Undertaking Given by Deed dated 11 March 2022 between Spelthorne Borough Council (in its capacity as landowner) (1) Knowle Green Estates (2) and Spelthorne Borough Council (in its capacity as Local Planning Authority) (3)