

## Report to Governance Committee

27 September 2022

### Governance arrangements Property Joint Venture Partnership

#### Report by Director of Law and Assurance

Electoral divisions: all

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#### Summary

The County Council has entered into an arrangement with a commercial partner for the establishment and operation of a joint venture for the development and commercial use of Council-owned land. Whilst the proposals for the governance of the partnership were set out in the executive decisions which established the joint venture those governance arrangements are now brought to the Committee for endorsement and inclusion in the Council's constitution as the partnership is approaching a stage at which decisions need to be planned and processed.

#### Recommendations

- (1) That the governance arrangements for the operation of the County Council's involvement in its property joint venture partnership through an arm's length company be endorsed;
  - (2) That the proposed changes to Appendix 3 and the new Appendix 22 of Part 3 of the Constitution, as set out at Appendix A, be recommended to the County Council for approval; and
  - (3) That the Leader be recommended to add the role of the Cabinet Member for Finance and Property in the governance arrangements to the list of portfolio responsibilities in Part 3, Appendix 2 of the Constitution, as set out at Appendix A.
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#### Proposal

##### 1 Background and context

- 1.1 In June 2019 the then Cabinet Member for Finance and Resources approved a decision for the County Council to enter into a joint venture with a commercial partner for the development of land in the Council's ownership in order to secure a financial return of greater benefit to the Council than could be secured by a simple sale of the land surplus to service requirements (decision [FR5\(19/20\)](#) refers). In March 2021 the Council completed the procurement of a commercial partner and the joint venture partnership was commenced (decision [OKD69\(21/22\)](#) refers).

- 1.2 The arrangement is a 'Public-Private Partnership' where the Council and the commercial development company are equal 50:50 partners in the partnership. The Council will provide land for development and, if appropriate, funding. The commercial partner will provide expertise, resources, risk management, resilience, innovation and funding to deliver developments identified.
- 1.3 The objective of the partnership is to create an arms-length operating arrangement which is independent from the County Council. This will enable the partnership to operate commercially in a way that maximises the financial returns from surplus land that is held by the County Council.
- 1.4 The legal position is that the County Council is discharging a legitimate function in its plans to develop land for sale. The aim is to promote a commercial return for the longer term benefit of the Council's broader aims. In order to avoid any concern that the County Council would be directly undertaking commercial activity the decision was taken to create a wholly owned company to enter into commercial arrangements with the partnership. This ensures that the arrangement is fully operating within a company commercial environment. It enables that company to take commercial decisions quickly within the constraints of the overall principles and aims imposed by the County Council. This should enable the joint venture partnership to proceed with schemes and initiatives in a more timely and effective way.
- 1.5 The company used by the County Council was already established but its articles of association and board establishment have been revised to meet the requirements of the joint venture and the company – called Edes Estates Limited – has now been activated as the County Council's commercial body within the partnership. The requirement is for these arrangements to be more fully recorded within the Council's constitution to reflect how the Company will act on behalf of and in the interests of the County Council.

## **2 Proposal details**

- 2.1 The County Council will ensure that any commercial activities undertaken on its behalf in relation to property under its control take place at arm's length through an independent company operating in accordance with company law and the financial regime applicable to a commercial company. The Council's company, registered at Companies House, Edes Estates Limited, will act as the partner in the joint venture in accordance with previous executive decisions.
- 2.2 The company's articles of association restrict its activities to those related to land under the control of the County Council and the activities required for the aims of the joint venture. The company is and will at all times remain wholly owned by the County Council. Its Board will comprise officers of the Council at a senior level with direct expertise in the relevant field and who will be required to discharge the business of the company in accordance with company law and in order to meet the aims of the company as identified by the County Council.
- 2.3 In accordance with company law the company's activities will be directed by a 'shareholder group'. As the County Council is the sole shareholder of the company this simply means that the Cabinet Member for Finance and Property will be the decision-maker on behalf of the County Council as the 'shareholder group' advised by senior officers, but not those acting as officers of the company.

- 2.4 All transactions, including funds which may be made available to the company by the County Council, will take place on a fully commercial basis. The company will account to the County Council for its activities through the shareholder group – to the Cabinet Member for Finance and Property who will take any decisions related to property under the Council’s control in the usual way and those together with any decisions to declare land surplus to service requirements will be subject to all the usual council governance and scrutiny. In the event that any land is transferred to the company for the purposes of the company any decisions and actions will be taken by the company and in accordance with the governance and legal requirements of the company.
- 2.5 To provide transparency to these arrangements the Council’s scheme of delegation should be amended to include explanations for how the responsibilities of cabinet member, officers and the wholly owned company are discharged and how the interests of the County Council as the sole owner of the company are safeguarded. The proposals are set out in Appendix A.

### **3 Other options considered (and reasons for not proposing)**

- 3.1 The proposals are those that are required by law and to meet the expectations of the Council’s constitution. No other provisions would meet the requirements whilst fully enabling the joint venture arrangements to take effect.

### **4 Consultation, engagement and advice**

- 4.1 The arrangements have been arrived at in line with external legal advice secured to assist the setting up of the joint venture partnership. The relevant officers who will act as officers of the company have been consulted and are content to act in the way described in the arrangements. The Cabinet Member for Finance and Property is also aware of the governance proposals.

### **5 Finance**

- 5.1 There are no direct financial consequences from the proposals for setting out the governance arrangements for constitutional purposes. All of the financial and accounting arrangements for the company and the joint venture partnership have previously been set out in the decisions for the creation of the joint venture and the appointment of the commercial partner. This included the approach to value for money from the more efficient use of capital assets.

### **6 Risk implications and mitigations**

| <b>Risk</b>  | <b>Mitigating Action (in place or planned)</b>   |
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| Absence of transparency may lead to challenge of validity of commercial decisions.           | As a public body the Council is being transparent in the arrangements it is making for the governance of these commercial arrangements.                    |
| Need to avoid the County Council being directly involved in commercial property development. | The establishment of the arm’s length company is strictly in accordance with company law and the company will operate independently of the County Council. |

## **7 Policy alignment and compliance**

- 7.1 Policy alignment has been addressed in the previous executive decisions relating to the establishment of the joint venture partnership. The current proposals ensure that the County Council complies with the need for any commercial or property development activity to be undertaken at arm's length.
- 7.2 **Legal implications** – the proposals are intended to meet the legal obligations applicable to the operation of a commercial company wholly owned by a local authority.
- 7.3 There are no implications for the Public Sector Equality Duty nor for Human Rights as the proposals are for internal governance arrangements and have no impact on individuals.
- 7.4 There are no implications for the Council's climate change strategy nor for obligations related to Crime and disorder or public health. The Council's social value framework was relevant to the original executive decisions referred to in this report.

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### **Appendix A**

Proposed text for inclusion in Constitution – Scheme of Delegation

#### **Background papers**

None