

Key Decision Required:	No	In the Forward Plan:	No
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PORTFOLIO HOLDER FOR HOUSING

9 SEPTEMBER 2019

(Report prepared by Lisa Hastings and Peter Russell)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To authorise acceptance of the transfer of Plot 11 (House No 12) at Avocet Place, Clacton Road, Thorrington, Colchester, Essex to the Council as an Affordable Housing Dwelling and agree to acquiring a shareholding in Avocet Place Management Company Limited (Company Registration Number 11084219).

EXECUTIVE SUMMARY

Mr Edwards and others submitted a planning application under reference number 16/01137/FUL, and following the Planning Committee's approval, permission was granted for residential development of up to 16 bungalows upon completion of a Section 106 Agreement ("Agreement"). The Agreement was dated 14th December 2016 which included the provision of Affordable Housing.

Affordable Housing is the subject of the Second Schedule of the Agreement and provides for the option to accept one 3 bedroom bungalow being Plot 11 to be transferred to the Council for the sum of One Pound in lieu of the delivery of the Affordable Housing Scheme. The Dwelling must be constructed in accordance with the Specification approved by the Council, and capable of being occupied for its intended purpose.

Affordable Housing is defined as meaning "*housing provided to a Person in Housing Need whose needs are not met by the market with eligibility determined with regard to local incomes and local house prices in accordance with the definition of "Affordable Housing" set out in Annex 2 of the National Planning Policy Framework (NPPF).* Persons in Housing Need are defined as "*a person or persons registered on the Council's Housing Needs Register*".

The property is due to be inspected and any transfer will not be completed until the Housing Service are satisfied with the property.

Schedule contained additional obligations over the tenure and transfer of the dwelling.

The obligations and restrictions contained within the Agreement shall not bind a Protected Tenant, meaning any tenant who has exercised any statutory right to buy in respect of the Dwelling.

In accordance with the Agreement, the Transfer Deed to the Council should contain:

1. All rights of access and services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings and for the purpose of the Development; and
2. Such other covenants and reservation as the Owners may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

The Transfer Deed (shown attached as **Appendix A**) has been received from Scott Residential Limited, who took ownership of the property on 19th October 2017. The draft deed includes standard provisions, rights and covenants in respect of the Property to be transferred, however particular attention is drawn to the following:

- Restrictive Covenants:

Section 12 of the Transfer Deed, which lists the Additional Provisions, contains a number of restrictive covenants which the Council will be bound by in addition to observing and performing the covenants stipulations and restrictions set out in Schedules 1 and 3. Paragraph 12.5 sets out matters which will need to be included within the tenancy agreement to the nominated tenant so as to ensure the Council can control performance of its obligations. None of these are unreasonable and compliance will be monitored through the normal tenancy management arrangements.

- Shareholder of Management Company:

The Council is required to be a Shareholder of Avocet Place Management Company Limited (Company Registration Number 11084219) ("the Company") which is set up to responsible for the management of the Managed Facilities.

The objects for which the Company is established is to:

- (a) Undertake the management, administration and maintenance of the attenuation pond, the roads, verges and footpaths now and hereafter constructed including drainage, lighting and landscaping and to grant rights of way over the roads, verges and footpaths located at the Estate; and
- (b) To manage any land, buildings or other property and to collect rents and income and to supply to lessees, residents, tenants and occupiers and others heating, lighting, cleaning, gas, water and electricity and other services conveniences, lifts, garages and other advantages and amenities and to maintain the same and in connection therewith to engage and employ gardeners, companies and persons; and
- (c) To carry on any other trade or business which may seem to the Company capable of being conveniently carried on in connection with the objects specified in articles (a) and (b) hereof or calculated directly or indirectly to enhance the value of or render profitable any of the property or rights of the Company.

In accordance with the Articles of Association (shown attached as **Appendix B**) the liability of the Shareholder is limited to £1.00. Members shall also pay to the company a fair proportion (determined by the Company acting reasonably) of all costs reasonably and properly incurred by the Company for the up keep and maintenance of the Estate (this is recovered as service charge).

Upon completion of the transfer of the dwelling, the Council would call for the allotment of a transfer of membership in the Company, with reference to the dwelling it owns.

The Directors of the Company are responsible for the management of the Company's business, for which they may exercise all the powers of the Company. The Council will not be a director, therefore its liability and exposure is limited to the shareholding. The Council should nominate and authorise an Officer to represent the Council as shareholder at any relevant meetings.

- Service Charge:

The Council is responsible for the Service Charge and shall pay to the Management Company all costs and expenses incurred by enforcing payment of sums due to be paid under the terms of the Transfer.

Service Charge is defined as a sum equal to the proportion of the total amount incurred or estimated to be incurred by the Management Company on those matters specified in Schedule 2 and 3. The matters are as follows:-

1. To manage maintain uphold cleanse repair and renew the Managed Facilities and any facilities situate therein.
2. To maintain tidy and cultivate any verges hedges or open spaces or other floral

areas within the Managed Facilities.

3. To maintain properly repaired renewed replaced and cleansed -
 - (a) any footpaths and any other hard landscaping areas which form part of the Managed Facilities and which are not maintained at the public expense;
 - (b) any boundary walls railings hedges or fences on the Managed Facilities (whether on the boundaries or otherwise);
 - (c) any Service Installations serving the Managed Facilities and any facilities situate therein.
4. (a) To keep the Managed Facilities insured against all risks including public and third party liability from time to time included in the insurer's comprehensive policy (including subsidence and heave) and such other risks as the Management Company shall in its absolute discretion deem necessary.
 - (b) To make all payments necessary for the above purpose within twenty one days after the same shall become due.
 - (c) To produce to the Transferee on request (and only once in each year) a copy of the policy of such insurance and the receipt for each such payment.
 - (d) To cause all monies received by virtue of such insurance to be forthwith expended in rebuilding and reinstating the Managed Facilities or for the payment of any claim arising from public and third party liability, and
5. To pay all rates taxes assessment and outgoings charged imposed or assessed in respect of the Managed Facilities.

Schedule 3 Part II - Expenditure to be recovered by means of the Service Charge are as follows:

1. The sums spent by the Management Company in and incidental to the observance and performance of the covenants on the part of the Management Company contained in Schedule 2 and Part I of this Schedule.
2. All reasonable fees charges expenses salaries wages and commissions paid to any auditor accountant surveyor valuer architect solicitor or any other agent contractor or employee whom the Management Company may employ in connection with the carrying out of its obligations under this Transfer including the costs of and incidental to the preparation of the estimates notices and accounts referred to in Part I of this Schedule.
3. The costs of effecting and maintaining in force the insurance policy referred to in Schedule 2 and any other insurance policy which the Management Company may effect in respect of the Managed Facilities
4. All rates (including water rates) taxes assessments and any other outgoings payable in respect of the Managed Facilities
5. All sums paid by the Management Company for the repair maintenance cleaning lighting security and managing of the Managed Facilities and any other structures comprised therein whether or not the Management Company was liable to incur the same under its covenants herein contained
6. Any tax (including Value Added Tax) paid or payable by the Management Company to the extent that the same is not recoverable by the Management Company
7. Any interest or other charges incurred by the Management Company in borrowing money (including the cost of procuring any guarantee or bond for repayment) for the purpose of any of the matters referred to in this Schedule
8. The costs incurred by the Management Company in bringing or defending any reasonable actions or other proceedings against or by any person whomsoever in

- connection with the Managed Facilities or recovery of arrears of Service Charge
9. The reasonable costs of administering the Management Company including the costs of preparing and auditing accounts the expenses of the Directors and the Secretary the printing and sending out of notices circulars reports or accounts the holding of meetings and all fees payable to any statutory body or any other body.
 10. Such reasonable sum as the Management Company shall determine as desirable to be set aside in any year towards a reserve fund to make provision for expected future substantial capital expenditure

Maintenance Expenses and Service Charge ("Service Charge") has been estimated to be £150 per annum and the Developer has not agreed to cap this figure at the estimate, however, it is anticipated that this figure will always be below the cost of using temporary accommodation and therefore, cost effective.

The cost of Service Charge can be recharged to the secure tenant through the usual rent arrangements under the Housing Revenue Account, so long as they are reasonable charges and informed at the outset. It is unlikely that the charge will exceed the maximum covered by benefits, so as to ensure the rents are affordable for the tenants. In addition, the amount of Service Charge we recover through the tenancy agreement can be reviewed when there is a change to the costs incurred. Four weeks notice is provided of any increase or decrease in the Service Charge or other charges, therefore although the estimated Service Charge and actual amounts will not accord with the Council's annual rent setting, changes can be accommodated through providing notice.

RECOMMENDATION(S)

That the Portfolio Holder for Housing notes the contents of the report and approves:

- (i) Acceptance of the transfer of Plot 11 (House No 12) at Avocet Place, Clacton Road, Thorrington, Colchester, Essex to the Council as an Affordable Housing Dwelling; and
- (ii) acquiring a shareholding in Avocet Place Management Company Limited (Company Registration Number 11084219) with the official representative of the Council to be nominated by the Chief Executive.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Cabinet announced its emerging Corporate Plan and Priorities at its meeting in July, the content of this report helps to support Building Sustainable Communities for Future Generations and managing our own homes under Delivering Quality Services.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Under the Local Government and Housing Act 1989, s.76, local housing authorities are under a duty to prevent a debit balance on the Housing Revenue Account. This requires an authority to set and implement their rent levels to avoid such a debit. While this exercise does not necessarily require the setting of individual rents, as opposed to a global figure for rental income, it will necessarily have an impact on the levels of rent. The requirement in s.76 (6) is to review rent levels and take reasonably practicable steps, if it becomes apparent that a debit will arise on the H.R.A. This may also require authorities to

implement a rent increase.

The property does not increase the financial risk in terms of maintenance over and above the existing stock and maintenance schedule within the overall broad principles and considerations in HRA budget setting. It is important that this risk is kept under review.

The secure tenancy of the property will be managed as part of the normal estate management responsibilities.

Risk

The risks and mitigation are set out within the body of the report.

LEGAL

Pursuant to Section 9 of the Housing Act 1985 ("the 85 Act"), a local housing authority may provide housing accommodation by acquiring houses. Section 24 of the 85 Act provides that the Council acting as a housing authority may make such reasonable charges as they may determine for the tenancy or occupation of their houses.

The Management Company is a non-trading company in that its purpose is simply to set up to be responsible for the management of the Managed Facilities and to collect Service Charge.

The Council is empowered to acquire minority interests in companies pursuant to Section 71(1) of the Local Government and Housing Act 1989. Minority interest companies are those where the local authority hold less than 20% of the voting rights at company board meetings. The Council must make arrangements to enable its members to put questions about activities of the company to the Council's official representative at general meetings of the company (subject to an express exemption from disclosure of confidential company information).

The appointment of an Officer to any external body is a Council function in accordance with the Council's Scheme of Delegation (Local Choice Functions) (Part 3 Schedule 1) and, with the exception of the Chief Executive, the power has been delegated to the Chief Executive to nominate.

The Portfolio Holder has the delegated powers to make this decision on an individual property however, a report on the approach will be presented to Cabinet in due course, due to the number of gifted units anticipated over the next 12 months.

OTHER IMPLICATIONS

The acceptance on one gifted dwelling whilst satisfying the Affordable Housing obligations under the UU, does have an impact on the Council meeting its Affordable Housing for Local Plan and planning purposes.

BACKGROUND PAPERS FOR THE DECISION

Section 106 Unilateral Undertaking Agreement dated 14th December 2016 relating to land west of Edwards Drive, Clacton Road, Thorrington, Essex.

APPENDICES

Appendix A: Draft Transfer Deed TP1

Appendix B: Articles of Association for Avocet Place Management Company.

