Key Decision Required:	No	In the Forward Plan:	No

Cabinet

11th OCTOBER 2019

REPORT OF THE HOUSING PORTFOLIO HOLDER

A.1 HOUSE BUILDING BY TENDRING DISTRICT COUNCIL

(Report prepared by Paul Price)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT
This report sets out the proposed aspiration of the Council to deliver good quality, affordable housing to support economic growth within the District and to ensure that the Council delivers on its commitment to further underpin the housing led renewal process in Jaywick Sands by providing safe new housing as part of the housing led regeneration strategic priority.

EXECUTIVE SUMMARY

- Tendring, together with London and other parts of the South East, is facing a shortage of homes of all tenures and in particular, a shortage of good quality homes which are affordable to those on lower to middle incomes. The shortage of homes is pushing up market sale prices and rents to unaffordable levels for some households. Equally it is recognised that to attract new employment a good mix of aspirational as well as more affordable housing must be available for workers;

- Many new developments are designed to maximise development profit and so properties are frequently small, lacking storage space and are unimaginatively designed;

- However, recent planning approvals and build out rates across Tendring suggest that the local market may be reacting differently but this may be just a lag ahead of the slow down which has seen house prices fall in London, indeed they have fallen for the last 18 consecutive months, this will no doubt have an impact on build out rates but is also squeezing space standards and suitability of new homes;

- Until such time as the housing market stabilises it would be premature to look to undertake new build other than to deliver housing at social rents to ensure that for those priced out of the market the Council can support these households. Should the market change and the option for the Council to enter the “home ownership” market then at that time a further options report will be brought forward;

- Clearly there are also areas such as Jaywick Sands where it is difficult to attract traditional developers due to the lack of market confidence. This is another area where Tendring District Council can take a lead to reshape the market. The Council has been recognised as “Housing Business Ready” following an audit by the Housing and Finance Institute and so we need to build upon the good foundations already established within the Council to influence the market and deliver new homes ourselves;

- Detailed proposals will be brought forward on a site specific basis as and when development opportunities are identified, but this report sets the overall framework and context within which such decisions will be set;

- Each site specific proposal as well as this framework will also take into account the overarching direction which will be established by the emerging Housing Strategy;

- The report also advises Members on the proposed approach to some small complications which have arisen on gifted units, which, as this is a unique proposition, do not appear to have arisen previously or anywhere else in the country and, therefore, there are no precedents to rely upon.

RECOMMENDATION(S)

That Cabinet

- **Endorses the approach proposed in respect of building new Council owned homes;**
- **Agrees the “in principle decision” to build 200 new Council houses on the basis that any proposed specific site development opportunities are agreed by Cabinet on an individual business case and reflect the overarching direction established via the emerging Housing Strategy;**
- **Approves accepting Gifted Units under Section 106 Planning Agreements with on-going responsibility for service charges incurred by management companies and in some instances a requirement for the Council to become shareholders in such companies.**
- **Delegates to the Corporate Director, Operational Services in consultation with the Portfolio Holder for Housing and Head of Governance and Legal Services authority to agree the final terms and conditions for the transfer of Gifted Units including the management company governance arrangements.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The delivery of new, good quality affordable housing will support economic growth and underpin the renewal process in Jaywick Sands.

The Council’s Corporate Plan makes a commitment to “ensure that all residents live in high quality housing which meets local needs” and to “regenerate the District and improve deprived areas”. These new homes will be high quality, cost effective, meet local need, will facilitate regeneration and are in an area of acute deprivation.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Following the relaxation of borrowing headroom arrangements for the HRA (these were the capping rules put in place following the changes to the HRA subsidy system) Councils are now in a position to, in theory, borrow above their previously capped limit. The borrowing cap was an arrangement which government put in place when the HRA subsidy system was removed and sought to ensure that Council's did not expose their 30 year business plan to significant risk by borrowing above what was affordable within their business plan. Members may be aware that in removing the HRA subsidy system the government sought to claw back lost income from the subsidy system over future years. Whilst the system was called a subsidy system, Tendring District Council was paying into the system approximately £2 million per annum at the date of its removal. In stopping the subsidy system the Council was required to pay the government a one off payment of £36 million. This sum was added to the overall borrowing of the HRA. As part of the business plan process the government set a notional total borrowing figure, which was sustainable (affordable) within the business plan and capped borrowing at this level. As with all borrowing, as the capital borrowed is repaid so the borrowing headroom increases and whilst the cap has now been lifted any additional borrowing has got to be affordable in terms of the HRA's revenue income ability to pay it together with any interest charges.

At present the HRA borrowing headroom is around £20m if the government's business plan methodology is applied and whilst this methodology is fairly conservative in terms of its risk profile, straying too far from that risk profile would not be prudent given the recent record of government intervention in the Council's ability to raise income from rents to repay any loans.

As Members will appreciate the Council would not borrow capital to build out any specific scheme until such time as it was required and as such detailed financial breakdowns would be brought forward as decisions were sought on specific building projects as interest rates, income profiles etc. will change over time as will potentially the source and terms of such loans. This means that individual reports will come to Members for decision on any proposal to build in any location in advance of any new development coming forward. However, based on prevailing PWLB interest rates, any development land already being in the Council's ownership and build costs remaining comparatively stable building 200 new homes at a build out rate averaged at 20 per year is achievable. One of the complicating factors in considering overall viability is the Right to Buy. Whilst the application of the "cost floor" (over the first 15 years after the build the Council can recover the capital cost of building the property) does protect the Council to some extent, if there are no changes to the current discount levels or other scheme parameters the Council will lose capital on every new unit if it is purchased. However, this does have to be set against the savings in revenue achieved by not having to accommodate increasing numbers of residents in very expensive temporary accommodation due to the shortage of affordable housing. The previous Housing Minister launched a consultation in 2018 to review the operation of the RTB and in particular how long Councils' have to spend any receipts and whether the cost floor should be extended but the outcome of that consultation has yet to be published.

<u>Gifted Units:</u>

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 service charge levels for the gifted properties do 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

Following the ending of the HRA subsidy system in 2012 rent policy has been changed by government four times. The original business plan was modelled on a government mandate of 10 year rent increases set at RPI +1%, but within two years this had changed to CPI+1% and within another year that moved to four years at – 1% - stripping some £30million from our 30 year business plan. From 2021 rents will again be set at CPI +1% for five years. Clearly such uncertainty in income makes accurate profiling difficult and so a significant degree of caution must be taken when considering income to pay back any loans.

Right to buy levels and discounts is another variable over which we have little control and so the best we can do is to make estimates of sales based on historic rates and projects of house prices utilising analysts such as Savills.

The Housing Act 2016 provided a legislative framework for bringing forward areas such as a levy on Councils to pay for RTB in the PRP sector, fixed term tenancies etc. Fortunately, these proposals have now been scrapped but if for example the levy had been introduced most projections estimated that it would take between £1million to £2million each year from our business plan completely negating any opportunity for the Council to build at scale.

LEGAL

The Council has the necessary powers which enable it to build new Council housing and the powers to sell a limited number, currently up to five per year.

Part A of the General Housing Consents 2013 provides consent for the disposal of land held for housing purposes within the Housing Act 1985 (HA 1985). Under paragraph A3.3.1 a local authority may dispose of an unoccupied dwelling house to a person who intends to use it as their only or principal home subject to paragraphs 3.3.2 to 3.3.4. Where a person (a) is not a secure tenant, the local authority may dispose of the unoccupied dwelling house at a price which is not less than an amount equal to the purchase priced defined in section 126 (right to buy purchase price) to which the minimum discount, as provided for by section 129, has been applied.
The commentary to the General Consent provides some further explanation for each part and states at clause 3:

> *"paragraph 3.3 permits local authorities to dispose of dwellings at discounts equivalent to the Right to Buy discount to existing council tenants and others who, the local authority has decided, need help accessing home ownership in the area (for example, key workers or ex-military personnel, although that is for the local authority to decide)."*

If the Council has to acquire land to build new homes Section 17 of the HA 1985 provides the principal power for acquisition of land for housing purposes (as defined in Section 9 of the 1985 Act) including land as a site for the erection of houses.

To enter the commercial house building sector we would need to set up a Local Authority Trading Company (LATC) or Wholly Owned Local Authority Company (WOLAC).

Whilst it is not proposed at present to set up a Council housing company it is important that Members understand the powers and mechanism which exists which would enable it to do so. These powers have already been exercised in setting up the North Essex Garden Communities company.

The power to trade through a company was introduced under section 95 of the Local Government Act 2003 which enabled local authorities to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions.

The Localism Act 2011 extended the power to trade enabling the Council to do for a commercial purpose anything it is empowered to do as a result of the exercise of the General Power of Competence ("GPoC"), with any commercial activity only being undertaken within a company structure. The GPoC is available for activities where there are no other powers or restrictions existing under other legislation.

The establishment of a Wholly Owned Local Authority Company (WOLAC) creates a new legal entity under the Council's ownership but with the ability to charge for services in such a manner as to recover not only the cost of providing the services but at a profit. The surplus generated by the company is available to the company to reinvest or may be made available to the Council to use as it chooses.

In order to set up a trading company, the Council must comply with the Local Authorities (Best Value Authorities) (Power to Trade) (England) Order 2009 (as amended). This requires local authorities to consider and approve a suitable business case for establishing a company. That business case must include details about the objectives of the business, the investment and other resources required to achieve those objectives, any risks the business might face and how significant these risks are, and the expected financial results of the business together with any relevant outcomes that the business is expected to achieve.

The Trading Order also provides that any accommodation, services, staff or other support provided by the Council must be charged for by the Council at least covering the costs in full but potentially at market rate to demonstrate that the company is not being subsidised by the Council. Similarly, any financial assistance in the form of grants, loans or guarantees should be provided for a limited period and under the terms of a formal agreement entered into for a commercial purpose.

Gifted Units:

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 Council adopted a policy of seeking Affordable Housing contributions through gifted unit obligations, which forms part of the Section 106 Planning Agreement ("Agreement").

The Affordable Housing provisions vary slightly in case but in general terms the principle is that a plot is 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 properties are inspected by housing service prior to any transfer being completed. The Agreement contains additional obligations over the tenure and transfer of the dwelling. The obligations and restrictions contained within the Agreement however, do 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.

As part of the transfers, developers are inserting covenants concerning management companies (a non-trading company in that its purpose is simply to set up to be responsible for the management of the estate 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.

Acting under his delegated powers, the Portfolio Holder has agreed to the acceptance of a number of gifted units and this report requests Cabinet's approval of this approach, being delegated to Officers in consultation with the Portfolio Holder, due to the number of properties expected to be gifted (this is likely to be in excess of 150 properties, but the number is entirely dependent upon developments being delivered and so is not in the gift of the Council.).

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Consultation/Public Engagement

Crime and Disorder

Consideration has been given to the Crime and Disorder Act 1998. There are no direct implications.

Ward

All

PART 3 – SUPPORTING INFORMATION

CURRENT POSITION
The Council has traditionally delivered housing through its Housing Revenue Account (HRA); it is the largest provider of social housing in the District. Changes introduced as part of the Housing and Planning Act 2016 and welfare reform changes have reduced the resources available within the HRA to continue to develop new build affordable housing but those resources do still exist. Whilst it is clear that the vision set out by Government for people to own rather than rent their homes is not as overwhelmingly enshrined in currently policy thinking as it was in the Act it is clear that many of the key principles are still in place. It is not yet clear what the current Housing Minister's direction of travel will be (the third Minister in 18 months) but given the background of the new Prime Minister's Chief of Staff and the direction set out by the former Housing Minister it is likely that policy will be tenure blind with support across sector aimed at delivering high housing output rather than this being mono tenure. It is clear that the government supports the provision of affordable housing through tenures such as rent to buy rather than the traditional models of social or affordable rent but pragmatically government has accepted that to deliver increased numbers all tenures need to be encouraged to grow. The Council has and can deliver Council Housing via the Housing Revenue Account and there are a multitude of mechanisms which can be deployed to actually develop the homes but homes delivered through the HRA or via the General Fund will be subject to the provisions of the Housing Act 1985 so tenants will have the various rights and obligations enshrined in that Act. If the Council wants to develop new forms of tenure these new types of tenure can only be developed by the Council outside of the HRA. Should the Council want to support those who are unable to access market housing, either through home ownership or renting, by delivering new homes at scale, it will need to do so through a commercial entity. It is also the case that if the Council wishes to explore options to develop market housing for sale so as to meet need where the traditional new build market is not delivering, for a variety of reasons, it can only do so via the establishment of a company. The Coalition Government recognised the trend of local authorities starting to use their freedom and flexibility within the Localism Act to create local authority housing companies and different delivery vehicles. It commissioned a review (the Elphicke-House report) of the activities and the role that English local authorities could play in creating more housing supply. The report highlighted that by taking a strong lead in relation to the housing market and proactively exploring different delivery options, councils can realise a range of benefits, including: • the bringing forward of housing development which would otherwise have been

delayed/or not built at all;

- the ability to be directly involved in local housing delivery organisations, ensuring that the speed of delivery and type of housing meets the needs of its local population; and
- the creation of a revenue/investment return for the General Fund, rather than the HRA.

It is recognised that a number of these benefits are aligned to the outcomes that the Council is looking to achieve as it seeks to develop its approach to building more residential housing within the District. It should also be noted that the Council has been working extensively with one of the authors of the report, Natalie Elphicke OBE, on the renewal of Jaywick Sands.

Members will be cognizant that the Council is already party to a newly established company which has been formed jointly with Essex County Council, Colchester Borough Council and Braintree District Council to drive forward the establishment of the Garden Communities.

Establishing a Wholly Owned Local Authority Company (WOLACo) offers the opportunity to enable the Council to directly increase the supply of a range of different tenure homes within the District and it is clear from growing demands on the housing options team that the market, across the board, is just not meeting current need.

Nationally it is thought that there are now over one hundred Local Authority owed housing companies but few are developing new homes as establishing a WOLACo is not necessarily a panacea to fix a broken housing market, but it is an option which we do need to consider. However, until such time as government policy becomes clearer as regards its support or otherwise for Local Housing companies it is not proposed to bring forward plans to establish a company given the resource input required to do so, but it is important that Cabinet is sighted on this being a potential option to deliver homes at scale and if government policy was to change in terms of withdrawal of support for local authority new build it may be the only viable option to deliver on the Council's wish to increase the number of council homes. This would also be the route if the Council aspired to directly intervene in the commercial housebuilding market so as to drive changes or to generate revenue surpluses to support other areas of development.

One of the key considerations and costs for any new build property is land and in particular the cost and location of such land. Members will be aware that as one element of the Jaywick sands housing led renewal process the Council purchased approximately 30Ha of mainly greenfield land within the Jaywick sands settlement. Clearly, delivering the Council's ambition to deliver 100 new homes for local people in Jaywick sands can be accommodated, notwithstanding technical and logistical challenges, on this land. However, the Council does hold within the Housing Revenue Account parcels of land across the district, many of which are suitable for development and would provide opportunities for residents to be accommodated in areas across the district where there is currently no housing available. Many of these sites will provide challenges to bring them forward for development but the housing department have been requested to undertake an audit of the available land to determine whether 100 new homes can be accommodated on existing council owned land rather than having to compete with the market to acquire land for development.

Members will also be cognizant of the emerging Housing strategy, which will be brought before Council in due course for agreement. Any emerging matters arising from the consultation on the strategy which are pertinent to this framework will be taken into account when site specific proposals are brought forward so that Cabinet can ensure that the most up to date position is factored into any specific site proposal.

Whilst focusing on the Council's ambition to build two hundred new homes it would be useful to also identify that the Council will also bring into its stock approximately 180 new homes when these are gifted to the Council under historic s106 agreements. Members may recall that in response to a very low take up by Private Registered Providers of affordable housing units which were offered as part of s106 planning agreements (this followed following changes to rent controls in social housing), the Council developed a unique gifting solution to bring forward affordable housing units but without placing a unsustainable financial burden on the Council. The gifting solution was a time bound arrangement until financial circumstances changed and has now been withdrawn from use other than in exceptional circumstances.

Although it will take some time and is not in the gift of the Council to determine when or if these developments come forward and as a consequence when the gifted units become available, we are beginning to see some now reaching a point where transfers of the properties are being finalised with developers . A trend is emerging with developments across the district. One of the consequences of receiving these units, which are in the main on private, homeownership estates, is that there are specific estates management arrangements in place which tend to be unique to each development. The majority have some type of estates maintenance service charge and/or for owners of the dwellings to become part of the management arrangements for the development, through the establishment of management companies. The service charge element is akin to other service charge costs within other HRA developments and so can be included as a service chargeable element of the rent, which by negotiation the Head of Governance and Legal Services has in some cases agreed a capped annual charge, based on actuals, so as to not cause rents to fluctuate significantly from year to year. If the property is purchased from the Council under the "right to buy" such capping arrangements would not apply.

As regards the management companies, the objects of which are in general to manage the common parts of the estates and collect the service charges, and the Council is being expected to become a Shareholder in these companies, together with other property owners. The liability of the Council, as shareholder would be limited to the cost of the share, if unpaid and the service charge payments. The Council would be required to nominate a representative for the shareholder. It has been concluded that given the potential for tenancies to change it is recommended that the Estates Manager should be the Council's representative within any arrangements. This would also be consistent with the Estates Manager also overseeing estates management arrangements on other Council estates.

The terms and conditions for each gifted unit is slightly different and all decisions for their individual acceptance will be supported with a detailed report, recorded and published in accordance with the Council's Access to Information procedures.

OPTIONS FOR CONSIDERATION

All options carry with them risks, challenges and opportunities and it may well be that no single option or a combination of options will be the most appropriate delivery mechanism at any point in time. However, what is important is that in considering the most appropriate mechanism for delivering particular forms of housing and in specific geographic areas, Cabinet is cognisant of the range of options available before deciding which to deploy in that circumstance.

Setting aside the Garden communities development from this review, if the Council's objective is to deliver 200 new Council homes these could be commissioned and even developed directly by the Council. They would be accounted for and management within the HRA and all would, to all intents, be just added to the Council's existing housing stock. Whether development is undertaken by the Council via its in house staff or via a contracted arrangement will make little difference to the deliverability of this option but clearly capacity and the availability of readily developable land will determine the pace of that development. Any homes build would be subject to the same tenants' rights as all other housing stock.

The Council could establish a Council owned development and management company to build out the units and on lend finance at a margin to the company. This could generate a small surplus from the on lending, speed up delivery and provide for the new homes being let as Assured Shorthold Tenancies (AST) which is more likely to ensure that these homes remain in rental, in perpetuity. However, there would be some significant costs in setting up the company, establishing governance structures, separate accounting and auditing requirements etc. which given the scale of proposed development would likely make this option not viable. There has also been some very clear communications from government that it would like to extend the RTB to WoLACo's which would negate the benefits of being able to let properties as AST's. This is particularly the case if the Council is unable to demonstrate that the company has not been established so as to avoid the RTB.

If the Council's ambition was to directly compete in the commercial housebuilding market then the costs associated with creating the company may well be more than offset by any return generated but as has been set out earlier in the report there does not at present appear to any need to directly intervene in the market and with significant market uncertainty and potentially a significant downward market correction to house prices it would not be a good time to set about a major programme of housebuilding when capital returns may be difficult to achieve and would certainly put the Council at significant financial risk.

Unless the Council has an ambition to directly compete in the private housing market, Cabinet is recommended to not set up a company at this time, but to commission Council housebuilding directly via its in-house team and for that team to procure suitably qualified contractors to undertake design and build works on a development specific basis with separate reports being brought back to Cabinet for approval.

FURTHER HEADINGS RELEVANT TO THE REPORT
None

BACKGROUND PAPERS FOR THE DECISION
None

APPENDICES
None