

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

9 JULY 2020

(Report prepared by Saira Mahboob and Megan Blake)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To authorise acceptance of the transfer of:

Plot 29, 30 Keats Crescent, Brightlingsea, Essex CO7 0FT (Phase 1 edged red)

Plot 30, 32 Keats Crescent, Brightlingsea, Essex CO7 0FT (Phase 2 edged red)

Plot 72, 37 Middleton Mews Brightlingsea, Essex CO7 0FU (Phase 2 edged blue)

Plot 73, 39 Middleton Mews Brightlingsea, Essex CO7 0FU (Phase 2 edged blue)

Plot 82, 38 Middleton Mews Brightlingsea, Essex CO7 0FZ (Phase 3 edged green)

Plot 83 40 Middleton Mews Brightlingsea, Essex CO7 0FZ (Phase 3 edged green)

to the Council as Affordable Housing Dwellings for £1.00 per property and agree to acquiring a shareholding in Colne Meadow (Brightlingsea) Management Company Limited (Company No. 11982612).

Please note that confirmation is being sought by the Council from the developer regarding whether units 72 and 73 or units 73 and 74 as edged blue on the transfer deed plan are being gifted to the Council.

EXECUTIVE SUMMARY

Hopkins Homes Limited (“the Developer”) submitted a planning application under reference number 17/01318/FUL and following the Planning Committee’s deferral, approval was granted for residential development of up to 115 dwellings at Robinson Road, Brightlingsea, Essex CO7 0ST (the “Development”) upon completion of a Section 106 Agreement (“Agreement”). The Agreement was dated 28 August 2018 which included the provision of Affordable Housing.

Affordable housing is the subject of the third schedule of the Agreement and provides for six of the dwellings to be constructed in accordance with an Affordable Housing Plan which was to be agreed with the Council. Two dwellings are to be transferred in each phase of the development. The two dwellings which are being transferred to the Council are part of Phase 1 of the development, and consist of two, two bedroom bungalows. The dwellings must be constructed in accordance with the Specification approved by the Council, and capable of being occupied for its intended purpose.

The two dwellings are due to be inspected and any transfer will not be completed until the Housing Service are satisfied.

The third schedule contained additional obligations over the tenure and transfer of the dwellings.

The dwellings shall be occupied for no purpose other than as Affordable Housing, which 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 and includes*” in accordance with the definition of “Affordable Housing set out in

Annex 2 of the National Planning Policy Framework.” Further definitions are contained within the Agreement.

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 dwellings.

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

1. A requirement that the Affordable Housing Dwellings shall be occupied solely as Affordable Housing;
2. A covenant by the transferee that it shall not without the prior written consent of the Owners use or permit the use of the Affordable Housing Dwellings other than as Affordable Housing.
3. An obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Management Company to discharge its obligations under Part 2 of Schedule 2, maintain the surface water features on the Development and maintain ancillary landscaped areas on the Development.
4. Such other covenants as the Owners may reasonably require for 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 the Developer includes standard provisions, rights and covenants in respect of the Property to be transferred, however particular attention is drawn to the following:

- Restrictive Covenants:

The Third Schedule of the Transfer Deed, which lists a number of Restrictive and Positive Covenants which the Council will be bound by. These are matters which will need to be included in 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.

The two dwellings share a joint accessway and will both be responsible, as owners and occupiers of the site, for the joint and proportionate expenses incurred in maintaining and repairing any adjoining land in the Development (including any joint accessways, joint footpaths, soakaways (if any), joint drains and sewers and other joint conducting media, house/garage walls and boundary walls and fences, chimney stacks, flues, rainwater goods and including any party structures, party walls and party fence walls.

- Shareholder of Management Company:

The Council is required to be a Shareholder of the Colne Meadow (Brightlingsea) Management Company Limited (Registration Number 11982612) (“the Company”) which is set up to manage, repair, maintain, replace, renew, inspect, survey, garden, insure, light and clean the Managed Land and any facilities situate therein within the Development and to collect the Service Charge.

In accordance with the Memorandum of Association and Articles of Association (shown attached as **Appendix B**) the liability of the Shareholder is limited to the amount, if any, unpaid on the shares held by them. A Share Certificate will be issued upon completion of the transfer. 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 shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action. The Council should nominate and authorise an Officer to represent the Council as shareholder at any relevant meetings.

- Service Charge:

The Council is responsible to pay to the Management Company the Maintenance Expenses and the Maintenance Charge as set out in Schedules seven and eight of the Transfer Deed (Appendix A).

Service Charge has been estimated to be £117.20 per annum, inclusive of both the Maintenance Expenses and the Maintenance Charge. The Developer has been requested to cap this figure at the estimate, due to the fact that the property is to be used for Affordable Housing purposes and therefore should be treated differently. Negotiations are still on-going on this point however, should it not be possible to reach agreement on the Service Charge cap, it is anticipated that this figure will always be below the cost of using temporary accommodation and therefore, be cost effective.

The Service Charge includes Maintenance Expenses which are sums incurred by the Developer or the Management Company for the management and administration of the Management Company; and further details of this are contained within the Seventh Schedule of the Transfer Deed. The Service Charge also includes the Estate Services for the maintenance expenses in relation to the Managed Land.

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.

RECOMMENDATION(S)

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

The acceptance of:

Plot 29, 30 Keats Crescent, Brightlingsea, Essex CO7 0FT (Phase 1 edged red)

Plot 30, 32 Keats Crescent, Brightlingsea, Essex CO7 0FT (Phase 2 edged red)

Plot 72(or Plot 73), 37 Middleton Mews Brightlingsea, Essex CO7 0FU (Phase 2 edged blue)

Plot 73 (or Plot 74), 39 Middleton Mews Brightlingsea, Essex CO7 0FU (Phase 2 edged blue)

Plot 82, 38 Middleton Mews Brightlingsea, Essex CO7 0FZ (Phase 3 edged green)

Plot 83 40 Middleton Mews Brightlingsea, Essex CO7 0FZ (Phase 3 edged green); and

Acquiring a shareholding in Colne Meadow (Brightlingsea) Management Company Limited (Company Number 11982612) with the official representative of the Council to be nominated by the Chief Executive.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Cabinet recommended its Corporate Plan for 2020 to full Council, which was adopted at its meeting in January 2020.

The content of this report helps to support Building Sustainable Communities for the Future and building and managing our own homes.

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 current estimated Maintenance Expenses and Service Charge level has been assessed and will not have a negative impact on the HRA but it is important that these elements of the rent for the council dwellings are kept under review and the impact on the HRA is regularly assessed.

It is important that the service charge element of the rent for the council dwelling is kept under review and the impact on the HRA is regularly assessed.

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 manage, repair, maintain, replace, renew, inspect, survey, garden, insure, light and clean the Management Land, Essential Conduits, Essential supplies, any entrance gates and any turning circles, within the Development 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

Any person exercising their Right to Buy in respect of this property would have to observe the same obligations and covenants in respect of the Management Company.

BACKGROUND PAPERS FOR THE DECISION

Section 106 Agreement dated 28 August 2018 relating to land at Robinson Road, Brightlingsea, Essex.

APPENDICES

Appendix A: Draft Transfer Deed TP1

Appendix B: Memorandum of Association and Articles of Association for Colne Meadow (Brightlingsea) Management Company Limited