

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

19 NOVEMBER 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 4, 8 Brunswick Gardens, Mistley, Manningtree CO11 1FN to the Council as an Affordable Housing Dwelling and agree to acquiring a shareholding in Harwich Road Management Limited (Company Registration Number 11627235)

EXECUTIVE SUMMARY

In November 2015, Mr Sharer and Mr Glausiusz submitted a planning application under reference number 15/01787/FUL and following the Planning Committee's approval, planning permission was granted in September 2017 for the erection of 25 two and three bedroom bungalows at site to the south of Pound Corner, Harwich Road, Mistley, Essex upon completion of a Section 106 Agreement ("Agreement"). The Agreement was dated 21 August 2017 which included the provision of Affordable Housing. The land was subsequently sold to Go-Develop (Mistley) Limited ("the Developer") on 8 February 2018.

Affordable Housing is the subject of the First Schedule of the Agreement and provides for one three bedroom Dwelling to be transferred to the Council for the sum of One Pound (£1.00). The Dwelling must be constructed in accordance with the Specification approved by the Council, and capable of being occupied for its intended purpose. The Schedule contained additional obligations over the tenure and transfer of the dwellings.

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

Affordable Housing is defined in the First Schedule as meaning *"housing within the definition of Annex 2 of the National Planning Policy Framework and which is to be provided to Persons in Housing Need whose needs are not met by the market with eligibility determined with regard to local incomes and local house prices."* Persons in Housing Need are defined as *"a person or persons registered on the Council's Housing Needs Register"*. 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 Dwelling shall be occupied solely as Affordable Housing;
2. All rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwelling;
3. A reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and

4. 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 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:

Section 12 of the Transfer Deed, which lists the Additional Provisions, contains a number of restrictive covenants which the Council will be bound by. Clause 12.4.2 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 will be required to become a Shareholder of the Harwich Road Management Limited (Company Registration Number 11627235) ("the Company") which is set up to provide the Management Company Services: namely to clean, repair, maintain the estate road and estate sewers until such time they are adopted, and any public liability insurance, tree maintenance, lighting, electricity, gates, security devices or other commonly used services necessary for the benefit of the estate; 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.

- Management Company Services:

The Council is responsible for 1/25th of the expense incurred by the Management Company and shall pay to the Developer and/or Management Company (as the case may be) on a full indemnity basis all costs and expenses incurred by enforcing payment of sums due to be paid under the terms of the Transfer.

The estimated cost for each dwelling has been estimated to be £462.00 per annum and 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. The Developer has not agreed to cap the Service Charge, however, it is anticipated that this figure will always be below the cost of using temporary accommodation and therefore, be 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 chargers 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:

- (i) Acceptance of the transfer of plot 4, 8 Brunswick Gardens, Mistley, Manningtree, Essex, CO11 1FN
- (ii) Acquiring a shareholding in Harwich Road Management Limited (Company Registration Number 11627235) 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 have 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 dwelling 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 21 August 2017 relating to land to the south of Pound Corner, Harwich Road, Mistley, Essex.

APPENDICES

Appendix A: Draft Transfer Deed TP1

Appendix B: Memorandum of Association and Articles of Association for Harwich Road Management Limited (Company Registration Number 11627235)