

<b>Key Decision Required:</b>	<b>No</b>	<b>In the Forward Plan:</b>	<b>No</b>
-------------------------------	-----------	-----------------------------	-----------

## PORTFOLIO HOLDER FOR HOUSING

30 March 2021

(Report prepared by Saira Mahboob)

### PART 1 – KEY INFORMATION

#### PURPOSE OF THE REPORT

To authorise acceptance of the transfer of plots 3, 39 and 44 also known as 10, 36 and 30 Bramwood Road Clacton-on-Sea, Essex CO16 9FW to the Council as Affordable Housing Dwelling for the sum of One Pound (£1.00) each and agree to acquiring a shareholding in Bramwood Management Company Limited (Company No. 11811784).

#### EXECUTIVE SUMMARY

Alan John Sherwood and Daniel Ronald West submitted a planning application, following the Planning Committee's approval planning permission was granted under reference number 16/02017/FUL for residential development of up to 47 bungalows, 2 houses with garages access and public open space upon completion of a Section 106 Agreement ("Agreement"). The Agreement was dated 13 October 2017 which included the provision of Affordable Housing. The land was subsequently sold to Stockplace Homes Limited by transfer dated 28 November 2017. The planning permission was further amended under reference 18/00735/FUL dated 5 December 2018 and under reference 19/00143/FUL dated 2 August 2019. The Agreement was further amended on 3 December 2018

Affordable housing is the subject of the second schedule of the Agreement and provides for three dwellings to be constructed in accordance with an Affordable Housing Plan which was to meet Lifetime Homes Standard (as in force at 5 July 2010) and to be agreed with the Council. The dwelling must be constructed in accordance with the Specification approved by the Council, and capable of being occupied for its intended purpose.

The dwellings have been inspected and Housing Services are satisfied with the build work/construction of the dwellings.

The second 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 income and local house prices in accordance with the definition of "Affordable housing" set out in Annex 2 of the National Planning Policy Framework.*" Further, 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 or has been granted a shared ownership lease in respect of that person's statutory right in respect of the dwellings.

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

1. A grant by the owner to the Council of 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;

2. A reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and
3. Such other covenants and reservations as the Owner may reasonably require having regard to the covenants it imposes on the Market Dwellings and 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:

Clause 12.8 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.

Clause 12.7.3 states the covenants in Clause 12.8 will cease to bind the purchasers after the expiry of the Restriction Period (five years from 1 January 2019) or the transferor having parted all legal interests in the developed estate.

- Shareholder of Management Company:

The Council has informed the developer's solicitors that it will be a Shareholder (and not a director) of the Bramwood Management Company Limited (Company No. 11811784) ("the Company") which has been set up to manage, maintain, uphold, cleanse, repair, tidy and renew the Managed Facilities.

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.

- Estate Service Charge:

The Council is responsible to pay to the Management Company the Estate Service Charge as set out in The Schedule Parts 3 and 4 of the Transfer Deed (Appendix C).

The Estate Service Charge has been estimated to be £267.39 for the current financial year with a view that it may increase over the years to come. The Developer has been requested to cap this figure at £250 per annum, 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 Estate 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 cost of Estate 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 Estate Service Charge we recover through the tenancy agreement can be reviewed when there is a change to the costs incurred.

- New Build Mark Warranty/NHBC

It is standard practice for developers to apply for New Build Mark Warranty or NHBC equivalent upon build completion of each dwelling. In this case the developer has declined to provide such warranties for the dwellings on the basis that the Council did not specifically request for these and has strongly declined to provide these at its own cost. The Council has liaised with its insurers if it can obtain insurance cover for the lack of New Build Mark Warranties and the insurers have declined to provide this as no such cover is available. The Council initially took the view that it requires these warranties as form of protection from any claims relating to structural defects in the dwellings from prospective tenants. Therefore, it is in the Council's interest to obtain these warranties. The developer initially confirmed that it will obtain such warranties at the Council's cost. The costs range from £1500-£2000 per dwelling.

The case for insisting for new Build Mark warranties was based on the following points:

- The warranties provide assurance that the properties have been constructed to a standard set by the warranty provider. Without this, it is not known which warranty provider's standards the properties are built.
- The warranties last for ten years and will cover any structural damage, defects to walls, roofs foundation caused by the developer's failure in meeting the warranty provider's standards relating to the build work during the first two years of the warranty. Thereafter there are differing levels of insurance protection relating to internal structures.
- The warranties also provide insurance cover for any notices related to contaminated land within the first 2 years of the properties being built.

However, after having requested for actual costs for of the warranties for the dwellings, the developer's solicitors provided a figure of £9,088.40 exclusive of VAT. The Council was of the view that this was an extortionate cost for the warranties and was not cost effective, and liaised with its insurers if they would reconsider their position regarding cover for lack of New Build Mark Warranties. The insurers confirmed that it would be unable to offer such cover and that it would be very difficult to find an insurer who is willing to provide such cover given the costs of any structural remedial works could potentially be very costly and the premiums are likely to be expensive. The Council's Housing Services carried out its own inspection/survey of the dwellings and is satisfied with the build work/construction work the dwellings and has agreed to proceed with the transfer of the dwellings without the New Build Mark Warranties. Should any one of all of the dwellings require any structural remedial works, the Council has the option of making a claim to the developer under the Defective Premises Act 1972 for the works or carry out the works using funding from within the HRA repairs and maintenance budget.

## **RECOMMENDATION(S)**

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

- (i) Acceptance of the transfer of Plots 3, 39 and 44 also known as 10, 36 and 30 Bramwood Road Clacton-on-Sea, Essex CO16 9FW;
- (ii) Acquiring a shareholding in Bramwood Management Company Limited (Company No. 11811784) with the official representative of the Council to be nominated by the Chief Executive.
- (iii) The Council will take the transfer of the dwellings without the New Build Mark Warranties and will insure the dwellings under its insurance policy in the same way it insures its housing stock. If any structural remedial works are required to be carried out in the first two years of the completed build work the Council has a remedy under the Defective Premises Act 1972 to ask the developer to carry out the remedial works at its own cost. Alternatively, the Council has the option to carry out the works at its own costs using the HRA repairs and maintenance budget.

## **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.

Repairs and maintenance, including those arising as a result of defects in the original build will be funded from within the HRA repairs and maintenance budgets in the same way as for other homes owned by the Council.

#### **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 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.

The possibility of the Council making a claim against the developer for defective structural works to carried out to the dwellings if it comes to the Council’s attention the structural remedial works to the dwellings are required under Defective Premises Act 1972.

Without the New Build Mark Warranties a tenant may not be able to exercise its Right to Buy during the first ten years of the new build because lenders are reluctant to lend funds due to the potential costs of structural repair works to the dwellings, if required.

#### **OTHER IMPLICATIONS**

Any person exercising their Right to Buy in respect of this property would have to observe the same obligations and covenants as outlined in the Transfer Deed.

#### **BACKGROUND PAPERS FOR THE DECISION**

Original Planning Permission under reference 16/02107/FUL and The planning permission was further amended under reference 18/00735/FUL dated 5 December 2018 and under reference 19/00143/FUL dated 2 August 2019. The initial Section Agreement is dated 13 October 2017 and was further amended on 3 December 2018

#### **APPENDICES**

**Appendix A:** Draft Transfer Deed TP1

**Appendix B:**Memorandum of Association and Articles of Association Bramwood Management Company Limited (Company No. 11811784)

**Appendix C :** Copy Estate Service Charge Budget