Key Decision Required:	Yes	In the Forward Plan:	Yes

CABINET

17 JUNE 2022

REPORT OF THE HOUSING PORTFOLIO HOLDER

A.5 JAYWICK SANDS – FUTURE OF NEW BUILD HOMES & APPLICATIONS TO HOMES ENGLAND REGARDING DESIGNATED PROTECTED AREAS

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT
To update Cabinet on the current situation regarding the Council's recently built discounted homes for sale in Jaywick Sands and to recommend an alternative option for the future of the dwellings; and To seek delegations for applications to be made to Homes England for the waiver of Designated Protected Areas.

EXECUTIVE SUMMARY
In November 2017, Cabinet endorsed the development of 10 new homes in Jaywick Sands. Five were to be retained in the Council's housing stock and the other five were to be offered for discounted sale to Key Workers in line with the Government's Starter Homes policy. Cabinet also endorsed the adoption of a Local Lettings and Sales Policy for the site which was adopted in March 2021. Whilst the five homes for rent have now been let in accordance with the Council's lettings policy, the five homes for discounted sale remain vacant and have been marketed for sale since March 2021. So far none have been sold for the reasons set out within the report. Cabinet is asked to consider an alternative option to retain the homes as part of the Council's housing stock and held in the Housing Revenue Account and let in accordance with the Council's lettings policy Homes England has agreed that under certain conditions, it will waive particular conditions of grant relating to Designated Protected Area (DPA) status. This will enable Registered Providers to develop grant funded shared ownership stock on these sites (not within the Council's ownership) and allowing buyers to staircase to 100% without an obligation on the provider to buy back the property if the leaseholder wished to sell. To consider waiving the DPA lease requirements Homes England requires an application to be made by the relevant Local Authority. If the Authority considers that a particular site to be developed does not meet the criteria set out in the original classification of why an area should be protected, or indeed has other reasons why they think that grant funded shared ownership stock does not need to be protected in perpetuity, they can approach Homes England to request that the conditions of grant pertaining to Designated Protected Area status be removed. This relaxation specifically relates to Homes England's conditions of grant for shared ownership homes developed in DPAs. It is not related to rural exception sites or other section 106 agreements.

RECOMMENDATION(S)
It is recommended that Cabinet: **(a) notes the contents of this report;** **(b) agrees to the retention of the five unsold properties within the Council's housing stock for letting in accordance with the local lettings and sales plan;** **(c) delegates authority to the Corporate Director – Operations & Delivery, in consultation with the Portfolio Holder for Housing, to sign any amended grant agreement proposed by Homes England in respect of the Starter Homes funding received in 2015; and** **(d) delegates authority to the Assistant Director – Housing & Environment in consultation with the Portfolio Holder for Housing to make applications where appropriate to Homes England for the waiver of Designated Protected Areas made under the Leasehold Reform Act 1967 and The Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2009.**

REASON(S) FOR THE RECOMMENDATION(S)
The recommendations are aimed at bringing the dwellings into use as soon as possible. The final recommendation is required in order to provide an appropriate delegation to officers to make Designated Protected Area waiver applications on behalf of Registered Providers as required by Homes England.

ALTERNATIVE OPTIONS CONSIDERED

JAYWICK SAND HOMES:

A number of alternative options have been considered including altering the sale price, altering the sales policy and creating a rent to buy option.

Options Appraisal

In summary, the options considered were:

Option	Pros	Cons
Option 1 Retain the current asking price and keep the policy unchanged i.e. retain the status quo.	Offers the best possibility to maximise income and to meet the criteria set out in the policy	The lack of interest expressed so far at a time where the housing market remains buoyant means that extra costs are being incurred in terms of council tax and security for the site and the homes may be over-valued making sales more difficult. A failure to achieve occupation of the homes could damage the Council's reputation.

Option 2 Retain the current asking price but amend the terms of the policy to make it less restrictive.	Opens up the potential for more people to purchase the dwellings subject to there still being some eligibility criteria e.g. the requirement to occupy as an only or principal home to deter buy-to-let or other investors.	There is no guarantee that the homes will be sold to Key Workers or residents in Jaywick Sands as originally intended albeit the policy does allow the homes to be sold to households who have resided in the district for at least three years.
Option 3 Reduce the asking price but keep the policy unchanged.	Reducing the asking price will potentially allow Key Workers or residents of Jaywick Sands to purchase the homes in line with the adopted policy.	Reducing the price will impact on the revenue the Council receives from the future sales.
Option 4 Reduce the asking price and amend the policy.	Reducing the asking price and amending the policy will maximise the opportunities to sell the homes. The Council can still insist on some eligibility criteria but less restrictive than currently.	Reducing the price will impact on the revenue from future sales and amending the policy to shift the homes away from an affordable housing product could result in having to repay some or all of the £200, 000 the Council received from the Homes and Communities Agency to fund starter homes on the site
Option 5 Seek to sell the homes as a different product and retain the current valuation and existing policy.	The Council could look to sell the homes on a shared ownership basis so they are more affordable for Key Workers or eligible applicants. The homes will remain an affordable housing product and applicants can eventually purchase the property outright.	As the Council will only be selling a share of the homes' value, the Council will not receive the anticipated revenues through sales costs. There is little expertise at the Council for the sale and management of shared ownership homes. Applicants may have difficulty obtaining a shared ownership mortgage as the number of providers offering shared ownership mortgages is limited.
Option 6 End plans to sell the	Renting the homes will result in them being	The Council will receive no revenue from sales,

homes and convert into social rental homes – **the proposed option.**	occupied quicker and they will be let to households in need on the Housing Register. The lettings criteria in the policy to give priority to Jaywick Sands residents will still apply.	but as a stock-retained landlord, the Council has sufficient expertise to manage socially rented homes. However, the Council has publically stated the homes are for sale and not rent which could affect its reputation. Converting the homes into social rented homes may require the Council to pay back the grant it received under the Starter Homes funding initiative.

DESIGNATED PROTECTED AREAS WAIVER APPLICATIONS:

For the purpose of this report and relating to the sole recommendation seeking a delegation for officers to make DPA waiver applications the only alternative to consider would be for the authority to make the applications being delegation to the Portfolio Holder or retained by Cabinet. For the reasons set out below it is recommended that the applications are made at an officer level for operation reasons. The Portfolio Holder for Housing supports this approach.

Only two options can be considered when a waiver request is received and they are that the Council either supports the request for a waiver application or it does not. Generally the default position is to support the request although the final decision will be based on an assurance that there is a justified need presented by the registered housing provider for the restrictions on stair casing being lifted. Ultimately, Homes England makes the final decision in any event.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The decisions will contribute to the following priorities in the Corporate Plan 2020-2024:

Community Leadership Through Partnerships

The decision will contribute to the overall aims of the Housing Strategy as additional affordable housing will be provided in the district and will help to improve the lives of households in need of high quality, sustainable, affordable housing

Building Sustainable Communities for the Future

Good quality housing contributes to positive health and wellbeing that are the key foundations of a sustainable community.

OUTCOME OF CONSULTATION AND ENGAGEMENT

Consultation has been undertaken with:

The Housing Solutions Manager, who confirms that the properties can be readily let to those on the Council's Housing Register.

The Chair of the Tenants' Panel who agrees to the principle of purchasing properties that meet the acquisition priorities.

LEGAL REQUIREMENTS (including legislation & constitutional powers)			
Is the recommendation a Key Decision (see the criteria stated here)	**YES/~~NO~~**	**If Yes, indicate which by which criteria it is a Key Decision**	☐ **Significant effect on two or more wards** X **Involves £100,000 expenditure/income** ☐ **Is otherwise significant for the service budget**
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	26 April 2022

The land was acquired through the Housing Revenue Account under **Section 17 of the HA 1985** (the 1985 Act) which 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.

The decision being sought does not impact upon the powers previously used to acquire the properties, as they have been held within the Housing Revenue Account for disposal as Starter Homes, as permitted by **Part A of the General Housing Consents 2013.** The purpose of the report is to move them from Starter Homes for disposal and designated to traditional Council housing. Section 24 of the 1985 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 legislation and powers concerning DPAs is set out within the Report.

☐	**The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:**

Officers acting under delegated powers are required to publish Officer Decisions setting out the decision made, reasons and options considered, this process ensures maximum transparency for the DPA process, as identified within the report.

FINANCE AND OTHER RESOURCE IMPLICATIONS

Finance and other resources

In 2015 the Council received a grant of £200,000 from Homes England (then known as the Homes and Communities Agency) to facilitate the provision of Starter Homes on the site. A grant agreement was signed in December 2015.

Officers have received verbal indication from Homes England that repayment of the grant will not be expected so long as some form of affordable housing remains on the site. Based on this and in the absence at the current time of any written confirmation or a varied grant agreement from Homes England officers believe that the proposal to retain the five homes in the Council's housing stock will not trigger a requirement to repay the £200,000 grant.

To date the cost of building the ten homes in Jaywick Sands has totalled £3.3million, with 50% of this amount (£1.65m) therefore representing the cost of the 5 properties that are the subject of this report.

The build costs have been fully funded within the HRA capital programme and so there would be no direct impact from foregoing the potential capital apart from further investment opportunities.

In line with the Housing Development and Acquisition Policy, a whole life costing exercise has been undertaken along with a review of the potential impact from Right to Buy.

Before reviewing the outcome of the whole life costing analysis associated with bringing the properties within the Council's existing stock holding, it is worth highlighting the key financial points associated with continuing with the option of selling the properties as follows:

- Taking the current market selling price of £175k (the top of the range set out elsewhere in this report), the total sales proceeds would be £875k. This would represent a loss of £775k against the total build cost of £1.65m.
- As highlighted earlier, security and council tax costs would be incurred. In line with the recently introduced council tax premium on long term properties, the council tax liability could increase subject to the length of time the properties remain empty. Based on current estimates, it is expected that in respect of both security and council tax, there is likely to be an annual cost of approximately £50k.
- It is likely that further costs would be incurred over and above the direct security and council tax costs such as damage and minor repairs. Although it is difficult to accurately estimate such costs, it is assumed that a 'contingency costs of £25k per annum would be prudent to be included.
- Taking all of the above into account, the total cost associated with the properties remaining empty and available for sale could be as high as £850k. This represents the current costs which would rise year on year if the properties remained empty and unsold for a further period of time.

Based on the figures highlighted above and the ongoing annual costs, the total loss could be as high as £963k over a three year period. Any option to continue with marketing the properties for sale would therefore result in the 'crystallisation' of this cost now. This is an important figure and provides the context against which to consider the proposed option of bringing the properties back into the existing HRA stock as social housing.

As mentioned above, a whole life costing exercise has been undertaken in terms of bringing the properties within the existing HRA stock as social housing, with some key assumptions and highlights as follows:

- An assumed social rent chargeable of £98.37 per week.
- Voids and bad debt at 2%. (this is the average set out within the wider HRA business plan which are likely to be lower on an individual basis for the 5 properties that are the subject of this report)

- CPI of 2%
- No major repairs contribution required for the first 25 years based on major component lifecycles.
- Notional management and maintenance costs based on the existing HRA business plan approach.
- The total surplus generated over a 30 year period would be approximately £500k. This represents a yield of 1.01%. This is lower than the yield across the whole Council stock of 3.01%. However, it is still a positive yield and could deemed to acceptable given the unique circumstances associated with this ‘acquisition’.
- As has been discussed before, the HRA is in the position of taking a very long term view in respect of the provision of social housing and based on this approach, the total costs of the properties of £1.65m would be recouped over a 70 year time period.
- Although the above is a relatively long time period, it would not be inappropriate to consider such timescales given the age of the existing stock which has been maintained as social housing for periods considerably longer.
- The above does not fully reflect the time value of money, so the position is likely to be more favourable if discounted to today’s value.

Set against the above analysis, compared to the option of selling the properties, which would see the ‘crystallisation’ of the loss immediately, the alternative approach of bringing the properties into the existing HRA stock would provide the opportunity to recover the cost of building the properties in the long term.

However, the analysis undertaken above ignores the impact from Right to Buy (RTB). Therefore, in-line with the Housing Development and Acquisitions Policy, the potential impact from RTB has been reviewed with a summary of some assumptions and key point as follows:

- A ‘cost floor’ calculation is undertaken following a RTB application from a tenant, which results in the minimum amount that the Council would be obliged to sell the property for. For the first 15 years following the date the property was, built this minimum amount is the actual costs incurred. Therefore, there would be no loss to the Council for the first 15 years.
- After 15 years the maximum right to buy discount for a tenant who has lived at the property for 15 years would be 45%. (This would increase to 70% if they have previously been a housing tenant and have accrued the maximum RTB discount from a previous tenancy).
- The RTB discount increases by 1% each year rising to a maximum of 60% in year 30.
- For the purposes calculating the RTB discount, it is assumed in year 15 the selling price of each property would be £185k, with house price inflation of 2% a year thereafter. (This is a relatively conservative estimate with house price inflation potentially exceeding this figure over a 15 to 30 year period)
- Taking all the relevant calculations into account, if one of the 5 properties was sold in year 15, the estimated ‘loss’ to the Council would be £240k. This would reduce to £198k in year 30 due to an inflationary house price uplift year on year.

- In the unlikely event that all 5 properties were sold under RTB in year 15, the 'loss' would be £1.2m, reducing to £990k if no properties were sold until year 30.

Given the permutations of the level of RTB discount and if / when tenants would exercise their right to purchase the property, the actual 'loss' is likely to be somewhere between the two figure highlighted in the last bullet point above. However, if no tenant exercised their right to buy their properties, then the cost of building the properties would be recovered over 70 years.

However, in terms of a comparison with the option to continue to market the properties for sale where the estimated 'loss' was £963k, both options are relatively similar in overall cost.

With the above in mind, the proposed option of bringing the properties into the existing HRA stock not only enables the Council to meet its short term social housing need / demand, it also provides the potential flexibility to recover costs over the long term, although recognising the risk of RTB.

It is also worth highlighting that although the Right to Buy is expected to be maintained by the Government for the foreseeable future, revisions to the associated rules and regulation may change over the next 15 to 30 years. Given the level of discounts currently provided and the very limited 'cost floor period' of 15 years that underpins the minimum sale value under RTB, any changes would likely be more favourable to the Council's estimated position set out above.

In terms of the DPA waiver applications, these will be made be made by Officers under operational arrangements within existing resources and do not incur any costs.

☐ **The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:**

There are no additional comments over and above the financial information / commentary already set out elsewhere in this report.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	Refer to finance and other resource implications
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Refer to legal requirements
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Refer to finance and other resource implications

MILESTONES AND DELIVERY

Subject to Cabinet approval and final written agreement from Homes England in respect of the original grant funding, it is expected that the homes can be let during Summer 2022.

ASSOCIATED RISKS AND MITIGATION

Officers have not identified any significant risk associated with the proposals.
EQUALITY IMPLICATIONS
The proposal does not impact on the protected characteristics of any individuals
SOCIAL VALUE CONSIDERATIONS
None identified
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030
The dwellings have been built to a high specification including energy efficient lighting, double glazed windows, and air source heating. They set a benchmark for future housing development by the Council.
OTHER RELEVANT CONSIDERATIONS OR 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	Consideration has been given to the Crime and Disorder Act 1998. There are no direct implications other than the fact that occupying the buildings will reduce the risk of vandalism
Health Inequalities	The delivery of new, affordable, sustainable homes has helped to address health inequalities in the district.
Area or Ward affected	West Clacton & Jaywick Sands

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Jaywick Sands Homes

The discounted homes for sale have been marketed for sale since March 2021 and have an asking price of £200,000 each, They were initially valued by the estate agent commissioned to sell them at an open market value of £250,000 each and this value was discounted by 20% as required by the Local Lettings and Sales Policy adopted in March 2021.

Officers obtained valuations from other local estate agents who have valued the properties on the open market at a value between £175,000 and £195,000 which are lower than the discounted price that they are currently being marketed at. There is a concern therefore that the properties are currently over-valued. A formal valuation was obtained for the purposes of setting the rents on the rental homes and the properties were valued at that time as having an open-market valuation of between £160,000 - £175,000.

Disappointingly, there has been very little interest from potential buyers who are eligible to purchase the properties according to the terms of the policy. The Policy gives priority to residents living in Jaywick Sands and to qualifying Key Workers. The Policy mirrors the legislation passed by Parliament on Starter Homes (but subsequently not enacted) and so there are restrictions on who can purchase the dwellings. In summary, the eligibility criteria are:

a) the applicants must be first-time buyers;
b) the applicants must work in the Tendring District or have resided in the Tendring District for at least three years;
c) the applicants must be aged 23 or over but no older than 40;
d) the applicants must have a household income no greater than £80,000 per annum;
e) the applicants need to obtain a minimum 25% mortgage and;
f) the applicants are required to occupy the property as their only or principal home.

Furthermore, applicants are required to repay some or all of the discount on a tapered basis if they choose to sell the home within five years.

Whilst there has been some interest from applicants, only one applicant was able to make an offer at the current asking price who had a mortgage offer in situ. This applicant subsequently decided not to pursue the sale. Other applicants expressed an interest in the homes but were unable to obtain a mortgage at the purchase price required. There are concerns that whilst the properties are built to a high standard, the policy itself, whilst well-intentioned, could be restricting the Council's ability to dispose of the homes, especially at a time when the housing market remains buoyant and demand far outstrips supply. Other options for sale, such as shared ownership, have not been considered.

There are five homes on the site that are retained for Council housing and all are currently let at a weekly rent of £98.84. The preferred option is be to convert the discounted homes for sale into rental homes so they remain within the Council's retained housing stock. The Local Lettings and Sales Policy requires that priority is given to households living in Jaywick Sands for the rental homes.

Designated Protected Areas

Shared ownership schemes are seen as an important element in the delivery of more affordable homes and increase home ownership. Usually shared ownership schemes operate by purchasers buying an initial minimum share of 25% of the equity of a home owned usually by a Registered Provider (RP), and pay rent on the remainder. The provider retains the freehold and grants a long lease to the purchaser. The leaseholder may then buy further equity shares (known as 'staircasing') until the property is owned outright.

However, if a leaseholder of a shared ownership property comes to own it outright, they will be able to sell it and it will cease to meet an affordable housing need. Legislation passed in 2008, and associated Regulations, recognise that this can be a significant problem in some rural areas and so some protection has been provided.

The Housing and Regeneration Act 2008 provides a mechanism to ensure that shared ownership houses in defined areas where they would be difficult to replace, can be leased on terms that do not include the usual entitlement to gain full ownership, whilst ensuring that such leaseholders cannot acquire the freehold through "leasehold enfranchisement". The aim is to avoid such homes being lost to the affordable housing sector; and to remove the risk of financial loss to housing providers resulting from early acquisition of full ownership by the leaseholder. The 2008 Act terms such areas as Designated Protected Areas (DPAs).

Homes England requires that if a development site is in a DPA, the Registered Provider granting the shared ownership lease must include one of the two DPA fundamental clauses, either:

- to restrict the maximum share to 80%; or
- if the lease allows purchase of a share exceeding 80%, an obligation for the leaseholder to sell their share back to their RP landlord (or a nominee, which must also be an RP) at market value when they wish to sell the property (to enable the RP to resell the property on shared ownership terms to another local person in housing need).

Registered Providers are required to record all shared ownership homes within their development programmes with Homes England, and consequently any such homes within a designated area are subject to the requirement for restrictions on shared ownership leases. Several areas and parishes within Tendring are "Designated Protected Areas".

As the availability of shared ownership stock is no longer such an issue in some of the areas designated as DPAs (such as planned urban extensions, new towns and suburban sites where levels of existing or proposed development indicate that shared ownership homes would not be hard to replace), Homes England is able to waive the particular conditions of grant relating to the DPA status of a site. Where a waiver is granted, the RP can grant shared ownership leases without the requirement to include one of the two DPA Clauses. However, although the housing stock is not within the Council's ownership or control, applications for a waiver of DPA conditions need to be made through the local authority.

Homes England also points out that Registered Providers developing grant funded shared ownership housing, where staircasing is restricted can sometimes be affected by the limited availability of mortgages for purchasers; also many RPs have raised concerns over their financial ability to guarantee to buy back properties as required by the shared ownership lease if the leaseholder wishes to sell. Homes England has therefore agreed that under certain conditions, it will waive the particular conditions of grant relating to Designated Protected Area status. All other conditions of grant would remain. This would enable providers to develop grant funded shared ownership stock on these sites allowing buyers to staircase to 100% without an obligation on the provider to buy back the property if the leaseholder wished to sell.

To consider waiving the DPA lease requirements Homes England requires an application to be submitted by the relevant Local Authority (i.e. TDC). If the Authority considers that a particular site to be developed does not meet the criteria set out in the original classification of why an area should be protected, or indeed has other reasons why they think that grant funded shared ownership stock does not need to be protected in perpetuity, they can approach Homes England to request that the conditions of grant pertaining to Designated Protected Area status be removed. This relaxation specifically relates to Homes England's conditions of grant for shared ownership homes developed in DPAs. It is not related to rural exception sites or other section 106 agreements. If the Local Authority wishes to impose conditions through a section 106 agreement then those cannot be waived by Homes England. However, Homes England would suggest that the Authority carefully consider the merits of such a restriction if it imposes the same barriers to development that Homes England is seeking to overcome in these particular areas.

This policy can equally be applied to existing sites and leases, for example where some shared ownership homes have been sold on shared ownership terms but further sales are proving difficult. In these cases the Local Authority can make a request in the same way as for new sites.

PREVIOUS RELEVANT DECISIONS

Cabinet 10 November 2017 - Report of the Housing Portfolio Holder - B.1 - Land east of Lotus Way, Jaywick, Clacton-on-Sea – Minute number 111.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL
Local Letting & Sales Plan Lotus Way Jaywick Sands

APPENDICES
None

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