

Key Decision Required:	No	In the Forward Plan:	No
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**PORTFOLIO HOLDER FOR HOUSING & PLANNING DECISION REPORT
RELATING TO THE TRANSFER OF Plots 82-87, 109, 110 and 111 (inclusive) Finches Park
Kirby Cross (inclusive), also known as 11, 9, 7, 5, 3, 1, 2, 4 and 6 Grain Drive Kirby Cross
Essex CO13 0GB**

30 JANUARY 2024

(Report prepared by Saira Mahboob)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To authorise acceptance of the transfer of Plots 82-87, 109, 110 and 111 (inclusive) Finches Park Kirby Cross (inclusive), also known as 11, 9, 7, 5, 3, 1, 2, 4 and 6 Grain Drive Kirby Cross Essex CO13 0GB to the Council as Affordable Housing Dwellings for the sum of One Pound (£1.00) each and agree to acquiring a shareholding in Finches Park (Frinton-on-Sea) Management Park Limited (Company No. 11738949).

EXECUTIVE SUMMARY

Planning application under reference number 15/01234/OUT was submitted and following an appeal by Elizabeth Honor Clarke and Welbeck Strategic Land II LLP to the Planning Inspectorate under Appeal reference APP/P1560/W/15/3140113, planning permission was granted for the erection of up to 240 dwellings with a community hub including a 40 bed space care home or healthcare facility, parking facilities and open space. A Section 106 Agreement (“Agreement”) was entered into on 20 July 2016 which included the provision of gifting eighteen Affordable Housing units to the Council in two phases. The development is developed by Linden Limited.

In phase 1 of the development the Council is receiving nine units. 3, 5, 7 and 9 Grain Drive are maisonettes and properties numbered 1, 2, 4, 6, 9 and 11 Grain Drive are houses. Property types of the remaining plots to be transferred to the Council have yet to be confirmed.

Affordable housing is the subject of the Schedule 2 of the Agreement and provides for dwellings to be constructed in accordance with an Affordable Housing Plan which was to be agreed with the Council. The dwellings must be constructed in accordance with the Specification approved by the Council, and capable of being occupied for their intended purpose.

The dwellings have been inspected and any transfer will not be completed until the Housing Service are satisfied.

The Schedule 1, Part 1 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 under Schedule 1, Part 2 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 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:

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.

- Shareholder of Management Company:

The Council is required to be a Shareholder of Finches Park (Frinton-on-Sea) Management Park Limited (Company No. 11738949) ("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.

- Maintenance Charge:

The Council is responsible to pay to the Management Company the Maintenance Charge as set out in Schedule five of the Transfer Deed (Appendix A).

The Maintenance Charge per annum is yet to be confirmed. The Developer has been requested to cap this figure between £200-£250 per annum, due to the fact that the property is to be used for Affordable Housing purposes and therefore

should be treated differently. The Developer has declined to agree to cap the service charge at this figure, on the basis that the Management Company will be transferred to the residents when each plot has completed, and the Developer does not foresee that such residents would want to charge themselves more than is necessary. Although it has not been 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 development is privately maintained by the Management Company. Cost of any repair or maintenance works required to The Laurels development will be recharged to the property owners within the development.

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 & Planning notes the contents of the report and approves:

- i) Acceptance of the transfer of Plots 82-87, 109, 110 and 111 (inclusive) Finches Park Kirby Cross (inclusive), also known as 11, 9, 7, 5, 3, 1, 2, 4 and 6 Grain Drive Kirby Cross Essex CO13 0GB to the Council; and,
- ii) Acquiring a shareholding in Finches Park (Frinton-on-Sea) Management Park Limited (Company No. 11738949) with the official representative of the Council to be nominated by the Chief Executive.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The content of this report helps to support key themes of the Corporate Plan for 2024 -28.

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.

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.

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

Planning Appeal Decision APP/P1560/W/15/3140113 and Section 106 Agreement dated 20 July 2016 relating to Land East of Halstead Road Kirby Cross Essex CO13

APPENDICES

Appendix A: Draft Transfer Deed TP1

Appendix B: Memorandum of Association and Articles of Association for Finches Park (Frinton-on-Sea) Management Park Limited (Company No. 11738949).