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Key Decision Required:	No	In the Forward Plan:	No
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PORTFOLIO HOLDER FOR FINANCE AND CORPORATE GOVERNANCE, PORTFOLIO HOLDER FOR LEISURE AND PUBLIC REALM AND PORTFOLIO HOLDER FOR ASSETS

05 September 2024

B.1 TRANSFER OF PUBLIC OPEN SPACE LAND AT COCKAYNES LANE ALRESFORD, COLCHESTER

(Report prepared by Saira Mahboob and Andy White)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek authority to consent to the transfer of open space land at north of Cockaynes Lane Alresford, Colchester (“Open Space Land”) directly from Taylor Wimpey UK Limited (“Developer”) to Alresford Parish Council (“Parish Council”) pursuant to paragraph 1.6 Schedule 3 of the Section 106 Agreement dated 20 September 2020 (S106 Agreement”) relating to planning application 18/00367/FUL dated 27 March 2018 (“Planning Application”) submitted by the (“Developer”). The Open Space Land is registered under freehold title register EX961636. Tendring District Council (“the Council”) is holding £49,274.27 as Open Space Maintenance Contribution and £52,016.27 as Open Space Play Equipment Contribution (“Contributions”).

To seek authority to transfer the Contributions held by the Council to the Parish Council on the date of the transfer of the Open Space Land to the Parish Council.

EXECUTIVE SUMMARY

The Open Space Land transfer relates to the development of land north of Cockaynes Lane Alresford, Colchester pursuant to the Planning Application.

Under Schedule 3 of the S106 Agreement, the Developer is required to transfer the Open Space Land to the Council and on the same date of the transfer the Council is required to further transfer the Open Space Land to the Parish Council as a recreational facility for members of the public to use at all times.

Schedule 3 of the S106 Agreement requires the Council to hold the Contributions and pay cost of works and or maintenance of the Open Space Land incurred by the Parish Council. It is agreed by all three parties to the transfer of Open Space Land that the Developer will transfer the Open Space Land to the Parish Council with the Council as a party consenting to this transfer. It is further agreed that the Council will under the transfer deed of the Open Space Land will transfer the Contributions to the Parish Council and the Parish Council will covenant to use the Contributions for the purpose of maintaining the Open Space Land as prescribed under the S106 Agreement.

RECOMMENDATION(S)

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That the Portfolio Holder for Corporate Governance and Portfolio Holder for Leisure and Public Realm and Public Spaces and Portfolio Holder for Assets note the content of this report and agree:

- (a) Upon no objection being raised by the Developer/Owner that the Open Space Land as referred to, be transferred to Alresford Parish Council, on the condition that they hold the land as a recreational facility for all members of the public to use at all times without exclusion, cost or hindrance;**
- (b) consent to the transfer of the Open Space Land directly from the Developer to the Parish Council, in accordance with the intention as set out in Schedule 3 of the Section 106 Agreement, relating to the Planning Application, with the Council being a party to the transfer providing such consent;**
- (c) the authorisation of the Contributions held by the Council to be transferred to the Parish Council on the date of the transfer of the Open Space Land for the specific purposes of maintaining the Open Space and the Open Space Play Equipment and;**
- (d) Officers undertake the necessary administrative functions and activities to facilitate and complete the transfer of the land as proposed and to forward the Contributions to the Parish Council on the date of the transfer in accordance with the Council's accounting practices.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The recommendations if approved will contribute to the following corporate priorities:

Pride in our area and services to residents

Promoting clean and tidy communities

Championing our local environment

create and maintain spaces for leisure, wellbeing and healthy lifestyles, and deliver access to open spaces and community resources.

Working with partners to improve quality of life

promote safer, healthier, well connected and inclusive communities.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The land is to be transferred for the nominal consideration of £1.00 payable by the Parish Council to the Developer.

The Council is already in receipt of the £49,274.27 as Open Space Maintenance Contribution (£38,555.00 indexed linked) and ((£51,260.63 indexed linked) £52,016.27 as Open Space Play Equipment Contribution ("Contributions").

The Open Space Contribution is to be used for future maintenance of the Open Space Land over a period of 25 years. Any unused sums will be returned to the Developer.

The Open Space Play Equipment Contribution is to be used for the provision and maintenance of play equipment in Alresford. This contribution is not restricted to this particular Open Space Land over a period of 15 years. Any unused sums will be returned to the Developer.

To not consent to the transfer of the Open Space Land and Contributions or to transfer the Open Space Land and not to transfer the Contributions to the Parish Council could potentially create

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additional work for the Council in terms of monitoring the works carried out to the Open Space Land by the Parish Council and keeping financial records relating to the Contributions.

LEGAL

Section 120(1) of Local Government Act 1972 provides for the Council to acquire land either within or outside the District for any purpose within that or any other Act or for the benefit, improvement or development of the area.

Section 106 of the Town and Country Planning Act 1990 provides for the Council to enter into legal agreements to secure community and other benefits that relate to planning permissions.

The Open Space Land is registered under freehold title register EX961636 owned by Taylor Wimpey UK Limited.

In this case the Council is party to the S106 Agreement. Schedule 3 of the S106 Agreement requires the Developer to transfer the Open Space Land to the Council and on the same date of the transfer the Council is required to further transfer the Open Space Land to the Parish Council as a recreational facility for members of the public to use at all times without exclusion, cost or hindrance. The S106 Agreement further requires the Council to hold the Contributions and pay for the cost of maintenance or works to the Open Space Land when incurred by the Parish Council. The Contributions consist of two separate payments held over two different period of time, namely:

The Open Space Contribution (£49,274.27) is to be used for future maintenance of the Open Space Land over a period of 25 years. Any unused sums will be returned to the Developer.

- i) The Open Space Play Equipment Contribution (£52,016.27) is to be used for the provision and maintenance of play equipment in Alresford. This contribution is not restricted to this particular Open Space Land over a period of 15 years. Any unused sums will be returned to the Developer.

It has been agreed by the Developer, the Council and the Parish Council that the Developer will transfer the Open Space Land to the Parish Council with the Council as a party consenting to this transfer. It is further agreed that the Council will on the date of the transfer deed of the Open Space Land will transfer the Contributions to the Parish Council and the Parish Council will covenant to use the Contributions for the purpose of maintaining the Open Space Land as prescribed under the S106 Agreement. The Parish Council will further covenant with the Developer and the Council by way of indemnity only, to observe and perform the incumbrances, covenants and restrictions contained or referred to in the property and charges registers of title number EX961636 and the S106 Agreement insofar as they relate to the Open Space Land including the Contributions and will keep the Developer and the Council indemnified against all proceedings, costs, claims and expenses arising from failure to do so.

Essex County Council consent to the variation (by way of a deed of variation) of the Section 106 Agreement dated 11 September 2019 to authorising the Developer to transfer the Open Space Land to Alresford Parish Council and the for the Contributions currently held by Tendring District Council to be transferred to Alresford Parish Council upon completion of the transfer of the Open Space Land.

The Council being a party to the S106 Agreement requires the authority to consent to the transfer of the Open Space Land from the Developer to the Parish Council and for the Council to transfer the Contributions to the Parish Council under s106 agreements is delegated to the Corporate Director in consultation with the Portfolio Holder for Finance and Corporate Governance and Portfolio Holder for Leisure and Public Realm and Portfolio Holder for Assets and the Finance Department in accordance with the current Property Dealing Procedures of Council's Constitution.

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

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Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

The open space will provide opportunities for encouraging improvement to public health and well-being both for young people and others including the elderly.

The open space area is fully accessible.

Area or Ward Affected

Alresford and Elmstead

Cllr Scott raised a number of issues to be addressed by the developers in relation to the land and the estate. The respective teams have taken up with the developers and report that issues being are or have been addressed.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Developer was granted planning permission reference 18/00367/FUL dated 27 March 2018 for the development of 84 dwellings including with the provision of affordable homes together with means of access, parking, garaging associated landscaping and public open space provision.

Schedule 3 of the S106 Agreement provides for the provision of open space and on completion of a public works completion certificate signed by an independent chartered surveyors confirming the Open Space Land has been laid out in accordance with the Open Space Land specification agreed by the Developer and the Council, the Developer is to transfer the Open Space Land to the Council and the Council is to simultaneously transfer the Open Space to the Parish Council.

The Council has received the completion certificate for the Open Space Land and the Contributions The Developer has fully complied with the conditions of the Section 106 agreement and has requested the transfer of the land in accordance with the s106 Agreement.

The Council considered:

- i) The transfer of the Open Space Land is located remotely from the Council's other properties and contains a play area and SUDs tank.
- ii) The transfer of the Open Space Land to the Parish Council, hold the Contributions and account for works carried out by the Parish Council to the Open Space Land as prescribed under the S106 Agreement.

It is likely that management of the Open Space Land and/or accounting of the Contribution would be disproportionately burdensome on the Council's financial/planning/Leisure and Public Realm Departments. Therefore, a direct transfer of the Open Space Land and Contributions to the Parish Council was proposed by the Council and this proposal is accepted by the Developer and the Parish Council.

CURRENT POSITION

The Council has received the signed the public open space works completion certificate in respect of the Open Space Land to be transferred as required under the s106 agreement.

APPENDICES

Appendix A – S106 Agreement

Appendix B - Agreed transfer and plan showing the area of land to be transferred.

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Appendix C Agreed deed of variation to the S106 Agreement