

Key Decision Required:	No	In the Forward Plan:	No
------------------------	----	----------------------	----

**PORTFOLIO HOLDER FOR HOUSING DECISION REPORT
RELATING TO THE TRANSFER OF PLOTS 37-41 (inclusive) ASTHERWOOD , SCHOOL
ROAD also known as 1-4 and 6 OAK CLOSE ELMSTEAD COLCHESTER ESSEX CO7 7XH**

16 December 2024

(Report prepared by Saira Mahboob)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To authorise acceptance of the transfer of Plots 37-41 Astherwood, School Road also known as 1-4 and 6 Oak Close Elmstead Colchester Essex CO7 7XH to the Council as Affordable Housing Dwellings for the sum of One Pound (£1.00) from Hills Residential Construction Ltd (“Developer”) each and agree to acquiring a shareholding in Astherwood School Road (Management Company) Limited (Company No. 14403988).

EXECUTIVE SUMMARY

Outline planning permission allowed by appeal APP/P1560/W/17/3169150 dated 5th February 2018 and Planning Permission 21/01552/FUL dated 5th August 2022.

Planning permission granted for 62 dwellings, associated garaging, parking and infrastructure at land east of School Road, Elmstead Market, Colchester registered under title number AA37009. Section 106 Agreement (“Agreement”) was entered into on 7 June 2017 which included the provision of gifting five Affordable Housing units to the Council. The development is developed by Hills Residential Construction Limited.

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 Astherwood School Road (Management Company) Limited (Company No. 14403988) ("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 current Maintenance Charge per annum is £209.93 per plot. 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 Asterwood 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 37-41 Plots 37-41 Asterwood, School Road also known as 1-4 and 6 Oak Close Elmstead Colchester Essex CO7 7XH to the Council; and,
- ii) Acquiring a shareholding in Asterwood School Road (Management Company) Limited (Company No. 14403988) 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 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.

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

Outline planning permission allowed by appeal APP/P1560/W/17/3169150 dated 5th February 2018 and Planning Permission 21/01552/FUL dated 5th August 2022; and S106 Agreement dated 7 June 2017 relating to Land at Brook Park West, Clacton-on-Sea CO15

APPENDICES

Appendix A: Draft Transfer Deed TP1

Appendix B: Memorandum of Association and Articles of Association for Asterwood School Road (Management Company) Limited (Company No. 14403988).