

# PRIVATE AND CONFIDENTIAL

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

## PORTFOLIO HOLDER FOR FINANCE AND CORPORATE GOVERNANCE, PORTFOLIO HOLDER FOR LEISURE AND PUBLIC REALM AND PORTFOLIO HOLDER FOR ASSETS

19 May 2025

### **B.1 TRANSFER OF PUBLIC OPEN SPACE LAND SOUTH OF 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 and allotments at south of Cockaynes Lane Alresford, Colchester (“Open Space Land”) directly from Taylor Wimpey UK Limited (“Developer”) to Alresford Parish Council (“Parish Council”) pursuant to paragraphs 3 Schedule 2 of the Section 106 Agreement dated 1 February 2016 (S106 Agreement”) relating to planning application 14/01823/OUT/FUL dated 5 December 2014 (“Planning Application”) submitted by the (“Developer”) and the Appeal Decision APP/P1560/W/15/3124775 dated 1 June 2016 (“Appeal Decision”). The Open Space Land is registered under freehold title register EX961690. Tendring District Council (“the Council”) is holding £57,500.00 indexed linked (total amount held is £65,085.58) as Open Space Maintenance Contribution (“Contribution”).

To seek authority to transfer the Contribution 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 south of Cockaynes Lane Alresford, Colchester pursuant to the Planning Application and Appeal Decision.

Under Schedule 2 of the S106 Agreement, the Developer is required to transfer the Open Space Land to the Council or to the Council’s nominee. The Council wishes the transfer of the Open Space Land to be transferred directly from the Developer to the Parish Council as a recreational facility for members of the public to use at all times.

Paragraph 3.4 of Schedule 2 of the S106 Agreement requires the Council to hold the Contribution 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 Contribution to the Parish Council and the Parish Council will covenant to use the Contribution for the purpose of maintaining the Open Space Land as prescribed under the S106 Agreement.

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## RECOMMENDATION(S)

**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 Paragraph 3 Schedule 2 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 Contribution 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 Land; 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 Contribution to the Parish Council on the date of the transfer in accordance with the Council's accounting practices.**

## REASON(S) FOR THE RECOMMENDATION(S)

Consenting to the transfer of the Open Space Land and Contribution or to transfer the Open Space Land and to transfer the Contribution to the Parish Council reduces future work for the Council in terms of work or monitoring the works carried out to the Open Space Land by the Parish Council and keeping financial records relating to the Contribution.

## ALTERNATIVE OPTIONS CONSIDERED

1. Not to consent to the transfer of the Open Space Land and the Contribution to the Parish Council. Not proposed. Would incur additional demand on TDC resources.
2. Transferring the Open Space Land to the Parish Council and retaining the Contribution. Not proposed. Transferring the land but retaining the money would be unfair and lead to dispute.

## 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...” The transfer of the land and funds to the Parish Council matches the approach taken to the nearby site to the North of Cockaynes Lane and will facilitate efficient and harmonious public space management.

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## Championing our local environment

"...create and maintain spaces for leisure, wellbeing and healthy lifestyles, and deliver access to open spaces and community resources..." The land is provided as part of the development as a planning requirement for the use and amenity of local people.

## Working with partners to improve quality of life

"...promote safer, healthier, well connected and inclusive communities by working with our partners across government, public, private and third sectors..." The proposal is to transfer the land and commuted sum direct to the Parish Council to facilitate local management.

## 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 £65,085.58 as Open Space Maintenance Contribution (£57,500.00 indexed linked) ("Contribution"). The Open Space Contribution is to be used for future maintenance of the Open Space Land.

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

|                          |                                                                                                                                 |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | <b>The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:</b> |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------|

No comments in addition to those included in the report.

## OUTCOME OF CONSULTATION AND ENGAGEMENT (including with the relevant Overview and Scrutiny Committee and other stakeholders where the item concerns proposals relating to the Budget and Policy Framework)

The proposed decision follows on from the planning consideration on the site which included necessary consultation and an appeal decision.

## 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                               | <input type="checkbox"/> Significant effect on two or more wards<br><input type="checkbox"/> Involves £100,000 expenditure/income<br><input type="checkbox"/> Is otherwise significant for the service budget |
|                                                                     |        | And when was the proposed decision published in the Notice of forthcoming decisions for the |                                                                                                                                                                                                               |

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| <b>LEGAL</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                |                                                                          |  |
| <p>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.</p> <p>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.</p> <p>The Open Space Land is registered under freehold title register EX961960 owned by Taylor Wimpey UK Limited.</p> <p>In this case the Council is party to the S106 Agreement. Under Schedule 2 of the S106 Agreement</p> <p>the Council has nominated the Parish Council to receive the transfer of the Open Space Land as a recreational facility for members of the public to use at all times without exclusion, cost or hindrance. The S106 Agreement 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.</p> <p>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 Contribution to the Parish Council and the Parish Council will covenant to use the Contribution 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 EX961960 and the S106 Agreement insofar as they relate to the Open Space Land including the Contribution and will keep the Developer and the Council indemnified against all proceedings, costs, claims and expenses arising from failure to do so.</p> <p>Essex County Council consent to the variation (by way of a deed of variation) of the Section 106 Agreement dated 1 February 2016 to authorising the Developer to transfer the Open Space Land to Alresford Parish Council and the for the Contribution currently held by Tendring District Council to be transferred to Alresford Parish Council upon completion of the transfer of the Open Space Land.</p> <p>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.</p> |                                                                                                                                |                                                                          |  |
| <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:</b> |                                                                          |  |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| No comments in addition to those included in the report.                                                                                                                   |                                                                                                                                                                                                   |
| <b>USE OF RESOURCES AND VALUE FOR MONEY</b>                                                                                                                                |                                                                                                                                                                                                   |
| 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;                                               | The land has an associated commuted sum that is currently held by the District Council. The transfer of the land and commuted sum will remove any financial/resource implication for the Council. |
| B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and                                                        | The Council has a mature constitution and scheme of delegations. The proposed decisions lie within those parameters and are intended to defray risk.                                              |
| 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. | The proposed decision is intended to maximise efficiency by facilitating common ownership and management of adjoining areas of land and to maintain geographical focus of Council resources       |
| <b>MILESTONES AND DELIVERY</b>                                                                                                                                             |                                                                                                                                                                                                   |
| Subject to decision the transfers can be progressed directly by the solicitors for the parties.                                                                            |                                                                                                                                                                                                   |
| <b>ASSOCIATED RISKS AND MITIGATION</b>                                                                                                                                     |                                                                                                                                                                                                   |
| The proposed transfers address the risk associated with the District Council financial outlook and longer term resourcing of the service.                                  |                                                                                                                                                                                                   |
| <b>EQUALITY IMPLICATIONS</b>                                                                                                                                               |                                                                                                                                                                                                   |
| The open space area is fully accessible.                                                                                                                                   |                                                                                                                                                                                                   |
| <b>SOCIAL VALUE CONSIDERATIONS</b>                                                                                                                                         |                                                                                                                                                                                                   |
| The open space areas provide recreational and amenity space for residents.                                                                                                 |                                                                                                                                                                                                   |
| <b>IMPLICATIONS RELATED TO DEVOLUTION AND/OR LOCAL GOVERNMENT REORGANISATION</b>                                                                                           |                                                                                                                                                                                                   |
| The transfer of the land and funding direct to the Parish Council avoids any uncertainty as regards the future structure or capacity of the future Unitary Council.        |                                                                                                                                                                                                   |
| <b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050</b>                                                                                                           |                                                                                                                                                                                                   |
| The proposed transfer of ownership has no effect on the potential emission or absorption of carbon dioxide.                                                                |                                                                                                                                                                                                   |
| <b>OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS</b>                                                                                                                       |                                                                                                                                                                                                   |
| 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                                                                                                                                                         | The open space will provide opportunities for encouraging diversionary activities.                                                                                                                |

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| <b>Health Inequalities</b>                                                                                   | The open space will provide opportunities for encouraging improvement to public health and well-being both for young people and others including the elderly. |
| <b>Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)</b> | There are no proposed subsidies involved in the decision.                                                                                                     |
| <b>Area or Ward affected</b>                                                                                 | Alresford and Elmstead.                                                                                                                                       |

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

The Developer was granted planning permission under the Appeal Decision for 145 dwellings, associated landscaping, public open space and allotments, together with access from Cockaynes Lane, and a pedestrian / cycle link from Station Road; and demolition of the garage to No 56 Station Road at Land South of Cockaynes Lane, Alresford, Essex.

Schedule 2 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.
- ii) The transfer of the Open Space Land to the Parish Council, hold the Contribution 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 the Contribution to the Parish Council was proposed by the Council and this proposal is accepted by the Developer and the Parish Council.

Point to note, the Council consented to the transfer of open space land at the north of Cockaynes Lane Alresford Colchester from the Developer on 29 November 2024 under which the Council transferred contributions to the Parish Council as referred to in the S106 Agreement dated 11 September 2019.

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## PREVIOUS RELEVANT DECISIONS

15 October 2024 [Transfer of Public Open Space Land at Cockaynes Lane Alresford, Colchester](#) – North of Cockaynes Lane.

04 November 2024 (Completing) [Transfer of Public Open Space at Land North of Cockaynes Lane, Alresford, Essex](#) – North of Cockaynes Lane.

## 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 – Appeal Decision

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

Appendix D - Agreed deed of variation to the S106 Agreement

## REPORT CONTACT OFFICER(S)

|                        |                                                                                          |
|------------------------|------------------------------------------------------------------------------------------|
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