

Forward Plan reference number: FP/179/10/21

Report title: Land for Development in Harlow	
Report to: Cabinet	
Report author: Councillor Lesley Wagland, Cabinet Member for Economic Renewal, Infrastructure and Planning	
Date: 18 January 2022	For: Decision
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County Divisions affected: Harlow South East	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraphs 3 and 6 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Everyone's Essex

- 1.1 This report asks Cabinet to approve the transfer of this site from the County Council to Essex Housing Developments LLP to enable the development of new, sustainable and energy efficient homes in Harlow.
- 1.2 The focus of this development will be to build high quality homes fit for the future – each property will be fitted with air source heat pumps and photovoltaic cells to generate sustainable energy, and there will be access to electric vehicle charging points across the development to encourage the use of more sustainable transport. There will also be an emphasis on high quality external space for both communal spaces, such as a woodland walk which retains existing trees and landscaping, and for each individual property.
- 1.3 This project supports the strategic aim of Everyone's Essex to create a high-quality environment for our residents by helping reduce residential carbon emissions and support the uptake of more sustainable transport methods, as well as creating great places for our residents to live.

2 Recommendations

- 2.1 Agree the transfer of freehold ownership of the land shown edged red on the Plan appended to this report ('the Site') from the Council to Essex Housing Development LLP for the price shown in the Confidential Appendix.
- 2.2 Note that the purchase price is £230,000 below market value to reflect the cost of additional energy efficiency measures contained within the scheme including air source heat pumps, photovoltaic cells and electric vehicle charging points.

- 2.3 Agree to reimburse Essex Housing Development LLP up to £564,375 representing the costs it has incurred on site remediation and demolition before the date of this report.
- 2.4 Agree to provide Essex Housing Development LLP with a development loan for the value shown in the Confidential Appendix as part of a development loan facility made by Essex County Council (the Council) to Essex Housing Development LLP ('The LLP').
- 2.5 Agree that the Section 151 Officer may amend the period of the loan agreement and the repayment amounts and dates.
- 2.6 Agree to the drawdown of £187,431 from the working capital fund (for marketing and professional fees that cannot be capitalised) as set out in the confidential appendix.
- 2.7 Agree, in its role as a member of Essex Housing Development LLP, that:
 - 2.7.1 Essex Housing Development LLP enters into an agreement with Essex County Council to take out a development loan for the value shown in the Confidential Appendix.
 - 2.7.2 Essex Housing Development LLP enters into a design and build contract for the building of 35 units on the Site.
 - 2.7.3 Essex Housing Development LLP is authorised to establish a management company for the management of communal areas of the Site and dispose of its interest in the Company to the buyers of the units.

3 Background and Proposal

- 3.1 Essex Housing was established in 2016. Its aim is to provide much-needed homes, shape great places for our residents to live and provide a return to the taxpayer. By developing with a social conscience, Essex Housing, as delivered by Essex Housing Development LLP, is able to develop much needed high quality, sustainable homes and create fantastic places to live, while reinvesting returns into important public services and improved outcomes for the residents of Essex.
- 3.2 The development of land at Purford Green strongly supports the delivery of the Council's plan, 'Everyone's Essex', providing a high-quality environment, strong, inclusive and sustainable economy, promoting health, wellbeing and independence for all ages.
- 3.3 The development of Purford Green is proposed to be delivered by Essex Housing Development LLP, which became operational in February 2021 to deliver its ambitious development programme.

- 3.4 The LLP was created to bring forward surplus land and assets to build private, affordable and specialist homes to help address housing need throughout the County. The freehold of the Site is currently owned by ECC and following the transfer of the land from the Council to the LLP, the LLP will seek to award a contract for 35 homes to be built with 29 for private sale and six affordable units (comprising three affordable rent and three shared ownership units). After consultation with social services we are not proposing to include specialist accommodation on this site as it appears that there is insufficient demand for a scheme in this location.
- 3.5 The design and build contract is to be awarded by the LLP following transfer of the land from the Council to the LLP. Income will come to the Council from the sale of the land to the LLP and any surplus made by the LLP on completion of unit sales.
- 3.6 Below is an indicative timeline for the project:

Milestone Description	Target Date
Transfer of Site to the LLP	December 2021
Contractor Appointment by the LLP	April 2022
Construction Start	April 2022
Construction Complete	September 2023
LLP completes sales	December 2023

- 3.7 As set out in this report, there are a number of decisions required in order for the Council to dispose of the Site to the LLP and matters that are reserved to the Council acting in its role as Member of the LLP.

Disposal

- 3.8 The Site is a Council owned site of 1.05ha and is the former junior block at Purford Green. It is located in Little Brays, about a mile and a quarter to the southeast of Harlow town centre in a primarily residential area. The amalgamated primary school remains on the eastern boundary of the Site. The property formerly comprised a former single storey junior school building in a poor state of repair, exposing the Council to ongoing maintenance liabilities. The building was vacated as part of the amalgamation of the junior and infant school to form Purford Green School.
- 3.9 Since December 2018, the following has been done by the Council or by the LLP:
- 3.9.1 A scheme design has been prepared by the design team appointed by Essex Housing comprising of Stanley Bragg Architects and Oxbury Chartered Surveyors with planning advice provided by Phase 2 Planning and Development Limited and market advice provided by LSL Land and New Homes.
- 3.9.2 The Site has been cleared, demolishing the vacant buildings, and undertaken Site remediation works to remove ground contamination including asbestos and heavy metals.

- 3.9.3 Sought planning permission from Harlow DC to construct 35 units at the Site, with the current situation being that there is a resolution to grant planning permission, subject to a S106 Agreement.
- 3.9.4 Reviewed the title deeds of the site, with key identified issues being summarised in the Confidential Appendix.
- 3.10 It is proposed that the Purford Green Site is transferred to the LLP for the price shown in the Confidential Appendix. The LLP will then progress the construction of the scheme through to completion, including sale of any dwellings that have been completed. Section 123 of the Local Government Act 1972 requires the Council to secure the 'best consideration reasonably obtainable' or obtain consent for the disposal. As a result, a valuation has been undertaken, as set out in the Confidential Appendix, to inform the decision to dispose of the Site to the LLP. The LLP will pay for the land and the construction costs with money borrowed from ECC. The loan will be repaid to the Council through the proceeds of sale of units built on the Site.
- 3.11 The sale of the units is in accordance with the LLP's Annual Delivery Plan and will see:
- the sale of 29 general needs units undertaken through the traditional approach of open market sale to individual purchasers
 - sale of 6 affordable units will be made to a Registered Provider
 - freehold of the leasehold units and the common parts of the site will be disposed of to a specialist freehold management company. This may be undertaken by creating a scheme specific management company which is then disposed of or it may be a direct disposal of the land to the company.

Project Financing

- 3.12 There will be a development loan provided by the Council to cover any capital costs involved in the development of Purford Green. These costs are detailed in the Confidential Appendix and include construction fees. The development loan will include the value of any land transferred from the Council to the LLP.

ECC as Member of Essex Housing Development LLP

- 3.13 Essex Housing Development LLP is 99% owned by Essex County Council with Seax Trading Limited owning the remaining 1%. The LLP is constituted and governed by an LLP Agreement entered into between Essex County Council, Seax Trading Limited and the LLP dated 29 January 2021. This provides that the LLP shall have a Management Board which shall carry on and conduct the LLP's day-to-day business and that a range of reserved matters are reserved solely to the Council. Where the LLP seeks to enter into arrangements over £2,000,000, the LLP requires the Council's approval. It is therefore recommended that the Council approves the LLP entering into an agreement for the funding for Purford Green as set out in the Confidential Appendix and is authorised to enter into a design and build contract following a successful procurement process carried out by the LLP.

- 3.14 The LLP requires the Council's authority to become the owner of any shareholding in or a member of any other company or body corporate and before it disposes of any interest in any other company or body corporate. The Site has communal parts, the freehold of which is to be transferred to a new private company limited by guarantee of which the LLP will be the initial member and initial director of the management company. When a unit is purchased, the buyers will become members and directors of the company. Once a director and member of the company is appointed following a sale, the LLP will step down as member and director. The residents will manage the private company limited by guarantee with an external property management service provider that will provide day-to-day maintenance of communal spaces included any unadopted road or drain. Purchasers will pay a fee into the company which will then fund the works required for the communal areas.

Refund of cost of the Works undertaken by LLP to the Site

- 3.15 The LLP has already paid for works to the Site including demolition and decontamination at its own risk. Although the Council is not required to do so, it is recommended that we reimburse the LLP for the cost of this work as it has improved ECC's land and made it more saleable.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision

- Develop our County sustainably

- 4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:

- 4.2.1 Promote the use of low carbon heating systems in the delivery of housing in Essex.

- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- **A strong, inclusive and sustainable economy**
 - **Infrastructure:** we will deliver and maintain high quality infrastructure to improve opportunities for people living in Essex as well as supporting a growing economy and the delivery of new homes and communities by investing in the region of £1bn by the end of this Council.
 - **Future growth and investment:** we will help grow existing businesses and the economic sectors of the future in Essex, including the arts, and secure high levels of new investment by working with partners to promote the County, by creating the conditions for growth and by maximising the impact of public sector spend within the county.

- **A high-quality environment**

- **Net zero:** we will work across the Council and the County to hit our net zero targets, by ensuring that the Council significantly reduces its carbon footprint whilst also supporting an acceleration in the progress towards sustainable housing and energy, and active and alternative forms of travel across the county.
- **Transport and built environment:** we will deliver a step change in sustainable travel across the county, by growing passenger transport and active travel and will ensure we support the move towards net zero, climate resilient developments including our new garden communities, by delivering sustainable and healthy neighbourhoods for the future.

5 Options

Disposal

- 5.1 Transfer the freehold ownership of the Site to the LLP in order to secure the development of the site (**recommended option**). The benefits of this option are that it enables greater flexibility and financial benefits to support the delivery of housing.
- 5.2 Retain ownership of the Site by the Council. The Council will then be responsible for completion of the development. Retaining ownership of the site by the Council will forego the benefits highlighted above. The Council would also need to cover the total costs spent to date which would be considered abortive costs as outlined in the Confidential Appendix.

Project Financing

- 5.3 Option 1: The Council providing development loan subject to land transfer and ongoing capital costs. This will allow the LLP to fund the land transfer and pay for the ongoing project related capital costs. The LLP can take forward the development of housing on the Site (**recommended option**).
- 5.4 Option 2: The Council not providing funding but the transfer still goes ahead. This would require the LLP to go back to the Council as a reserved matter if the land is transferred to obtain funding from a third party. This will take additional time in sourcing new funding and purchasing the site, which is likely to cause delays to the construction of units and sales completing.
- 5.5 Do nothing. The Council would need to cover total costs spent to date which would be considered abortive costs as outlined in the Confidential Appendix.
- 5.6 It is therefore recommended that the Site transfer to the LLP and that the Council provides a loan facility to the LLP. This will permit the Site to be developed by the LLP as set out in this report. This is the recommended option, delivers the greatest benefits to local residents and is financially viable. A

breakdown of the financial benefits of developing the scheme are set out in the Confidential Appendix.

6 Issues for consideration

6.1 Financial implications

- 6.1.1 The land is assessed to have the value shown in the Confidential Appendix. The land disposal value is based on an undervalue against the red book market valuation for costs incurred by the LLP for supplementary sustainable measures. The proposed land will be disposed for the undervalue after ECC have reimbursed the LLP for site specific clearance and demolition costs.

6.2 Legal implications

- 6.2.1 The Council is obliged to obtain the best consideration reasonably obtainable on the disposal of its own property unless the Secretary of State consents to the disposal or the disposal falls within the terms of the disposal consents issued under the Local Government Act 1972.
- 6.2.2 The Confidential Appendix confirms that the recommended proposal is to dispose of the site for £230,000 less than the best consideration reasonably obtainable. The Secretary of State has provided general consent for disposal of any interest in land that the authority considers will help secure the promotion or improvement of the economic, social or environmental well-being of its area and the difference between the value of the land and the disposal value does not exceed £2,000,000 under the Local Government Act 1972: General Disposal Consent (England) 2003 (the Consent).
- 6.2.3 The development includes supplementary sustainability measures such as air source heat pumps, photo voltaic panels, and electric vehicle charging points. It is likely that these measures would directly promote or improve environmental well-being of persons residing or present in the Harlow area due to their positive environmental impact and reliance on sustainable energy sources, in compliance with the requirements of the Consent.
- 6.2.4 The proposal to dispose of the site at an undervalue of £230,000 is not likely to constitute a prohibited subsidy under the Subsidy Control Rules as the value of the undervalue is below the Small Amount Exemption which permits assistance of up to 325,000 Special Drawing Rights (approximately £310,000) over a three-year period to a single economic operator.
- 6.2.5 Essex Legal Services will be commissioned to carry out the conveyancing work for the Council's disposal of the Site.
- 6.2.6 In accordance with the LLP Agreement between the Council, Seax Trading Limited and Essex Housing Development LLP dated 29 January 2021, the decision to enter into agreements over £2,000,000 and to establish a management company is reserved to the Council. The decision by the Council recorded by this report is as effective as the decision of the Member of the LLP.

6.2.7 With respect to the reimbursement of the costs for the improvement of the Site, it is lawful and reasonable for ECC to reimburse the LLP. If this is not reimbursed there is a risk that ECC is being unjustly enriched at the expense of the LLP due to the improvement of ECC's land by a third party.

6.2.8 Commercial legal issues relating to development are set out in the confidential appendix.

7 Equality and Diversity Considerations

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8 List of Appendices

- 8.1 Equality Impact Assessment
- 8.2 Confidential Appendix
- 8.3 Plan – showing land to be transferred edged red

9 List of Background papers

None