

Forward Plan reference number: FP/820/09/20

Report title: Optimisation of Essex Housing – Contract Novation and Loan Agreements	
Report to: Cabinet	
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Date: 15 December 2020	For: Decision
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County Divisions affected: All Essex	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Purpose of Report

- 1.1 Essex Housing is ECC's in-house development arm which works with public sector partners across Essex. It was established in 2016 to identify and bring forward surplus land in order to help address general, specialist and affordable housing need, generate capital receipts and deliver revenue benefits.
- 1.2 In July 2020, Cabinet agreed to the establishment of a limited liability partnership, Essex Housing Development LLP (the Development LLP). The Development LLP will be used to undertake all Essex Housing development activity in accordance with its delivery plan. This decision seeks approval to novate the necessary contracts and provide loans to the Development LLP for each site to undertake these obligations.

2. Recommendations

- 2.1 Agree the novation of all contracts set out in Appendix A to Essex Housing Development LLP.
- 2.2 Agree to provide Essex Housing Development LLP with a credit facility for each site up to the amount listed in the Confidential Appendix, with repayment terms to be set in accordance with paragraph 2.3.
- 2.3 Agree that interest rates will be set by the Section 151 Officer at the lowest benchmarked rate but that if it is not possible to benchmark then at the prevailing Public Works Loans Board (PWLB) rate at the time plus the applicable EU reference rate.

- 2.4 Authorise the disposal of Rocheway and Essex County Hospital to Essex Housing Development LLP following valuations at the point of disposal at a price to be approved by the Cabinet Member for Economic Development in accordance with paragraph 3.8 of the report.

3. Summary of issue

- 3.1 Essex County Council has established a limited liability partnership, Essex Housing Development LLP. It is 99% owned by ECC and 1% owned by an ECC owned company, Seax Trading Limited. Cabinet approved the Development LLP's Annual Delivery Plan, which outlines the sites that the Development LLP will be taking forward over the next 12 months.
- 3.2 To date, Essex Housing has access to approved funding within Essex County Council's capital programme to bring forward 895 homes (41% of which are specialist or affordable). Of these:
- 64 have been built and either sold or are currently being marketed
 - 194 have planning permission in place
 - 163 are awaiting determination
 - The remaining units are in design
- 3.3 Currently, the delivery of these homes is spread across the following approved projects:
- Harlowbury, Harlow
 - Rocheway, Rochford
 - Shernbroke, Waltham Abbey
 - Mundon Road, Maldon
 - Purford Green, Harlow
 - Essex County Hospital, Colchester
 - St Peter's, Chelmsford
 - The Friary, Maldon

Essex Housing Contracts

- 3.4 For each site, ECC procures expertise from a variety of consultants and contractors. Depending on the nature and constraints of each site, these include architects, engineers, planners and agents. As the Development LLP has been established to undertake development activity on behalf of ECC, it is proposed to novate these contracts to the Development LLP to take forward these projects as agreed by Cabinet as part of the Development LLP's Annual Development Plan. The contracts that are proposed for novation, with effect from 1 February 2021, are set out in the Appendix A.
- 3.5 As the Development LLP has no staff, the Essex Housing team will provide development management services for the novated contracts to the LLP as part of the services provided by ECC to the LLP. The providers under the contracts that novate to the LLP will continue to deliver the services that they

were procured to provide and there will be no change to the services or how they are managed.

Rocheway and Essex County Hospital

- 3.6 Rocheway is owned freehold by ECC and was occupied by a vacant school building, which was built in 1937. The school building was most recently used by Adult Community Learning. The site was vacated in July 2015 and the buildings were demolished in November 2018. The site is surplus to ECC educational requirements. ECC approved a decision in 2016 (FP/315/11/15) to work up a planning application for the site comprising of private homes and an independent living scheme for older people. Full planning consent was granted for 14 private homes and a 60 unit independent living scheme for older people (30 affordable, 30 private). A subsequent decision approved ECC awarding the build contract for the first phase of 14 private homes and site infrastructure to Rose Builders. This phase is in construction with completion due in 2021.
- 3.7 In 2018 ECC agreed to purchase Essex County Hospital subject to full planning consent. A report has been presented to this Cabinet to request authority to purchase the site, procure a contractor to undertake demolition and procure a separate contractor to construct the first phase of circa 63 residential units.
- 3.8 It is proposed that the Rocheway site and (if Cabinet approves the separate Essex County Hospital decision) the Essex County Hospital site will transfer to the LLP. The LLP will then progress the construction of both schemes through to completion. The work being undertaken on the two sites means that the value of the schemes will continue to increase up until the point of transfer. Section 123 of the Local Government Act 1972 requires ECC to secure the “best consideration that can reasonably be obtained” or seek formal consent for the disposal. As a result, a valuation will be undertaken at the point of transfer to inform the decision to dispose of these properties to the LLP which will be undertaken by the Cabinet Member for Economic Development.
- 3.9 Following completion of the schemes by the LLP, the completed units will either be sold or retained for rent which will be subject to a further decision by ECC, following a recommendation by the LLP.

Financing Arrangements

- 3.10 In addition to the novation of contracts, Essex Housing Development LLP requires both capital and working capital funding to enable delivery of the projects outlined in the Confidential Appendix.
- 3.11 It is proposed that ECC provide funding to the Development LLP via loan agreements, on a project by project basis. The loan agreements will cover funding to support capital project costs such as, the values of contracts novated in Appendix A, demolition costs and construction costs. The ‘Development Financing’ required for all approved business cases is outlined in the confidential appendix.

- 3.12 All funding provided by ECC to the LLP will be subject to an approved CMA and supporting Business Case, which will authorise spend relating to due diligence, design and any other necessary pre-construction work. A subsequent Business Case and CMA will be required to approve any funding in relation to construction and disposal costs. All decisions will be reviewed in accordance with ECC's governance.
- 3.13 In addition, the loan agreements will also facilitate the transfer of existing Essex Housing "assets under construction" or "Work In Progress" to be transferred to the Development LLP. This will cover all capital expenditure incurred to date by ECC for Essex Housing projects. The loan agreements that will be put in place will allow for the LLP to pay for these assets over time. Values by project are outlined in the Confidential Appendix.
- 3.14 The Development LLP will require working capital funding in the form of a working capital loan from the Council to enable it to initially operate at a loss. The terms of this loan will be determined in accordance with 6.1.10 and will be funded from the Council's own working cash balances. Cashflow management support is expected to be provided to the LLP with the aim of keeping their accounts in a broadly neutral position each day. This funding will be managed through ECC's own cash balances.
- 3.15 Supported by the LLP's annual budget setting processes, the Cabinet Member for Economic Development and Cabinet Member for Finance (in conjunction with the S151 Officer and Monitoring Officer) will determine which schemes are supported by the Council and approve the funding needed to undertake planning and to procure a contractor.

4. Options

- 4.1 Option 1 – novate the contracts, establish loan agreements and transfer land to Essex Housing Development LLP. This would enable the Development LLP to begin operation (recommended option). Essex Housing has successfully delivered a number of housing schemes. Based on learning to date it is believed there is an opportunity to deliver even greater benefits more efficiently through improving Essex Housing's operating arrangements and operating part of Essex Housing through a Limited Liability Partnership (LLP) structure.
- 4.2 Option 2 – do nothing. This would mean Essex Housing Development LLP cannot be implemented and the subsequent benefits of the proposed model would not be realised.

5. Links to Essex Vision

- 5.1 This report links to the following aims in the Essex Vision
- Enjoy life into old age

- Provide an equal foundation for every child
- Strengthen communities through participation
- Develop our County sustainably
- Connect us to each other and the world
- Share prosperity with everyone

For more information visit www.essexfuture.org.uk

5.2 This links to the following strategic aims in the Organisational Plan:

- Enable inclusive economic growth
- Help people get the best start and age well
- Help create great places to grow up, live and work
- Transform the council to achieve more with less

6. Issues for consideration

6.1. Financial Implications

- 6.1.1 It is assumed that any future capital expenditure arising in respect of Essex Housing development activity will increase the Council's Capital Financing Requirement (CFR) i.e. because the Council will finance this activity from borrowing.
- 6.1.2 The Council must set cash resources aside to repay its CFR. In relation to the Essex Housing loans, this means that the Council must either apply the capital receipts generated from the repayment of the loans by the LLP to repay the related CFR or make Minimum Revenue Provision (MRP) annually to repay the debt (or a combination of the two). This will be determined by ECC.
- 6.1.3 It is expected that capital receipts generated by the LLP will be used to repay the loans provided by the Council, which will be defined under the repayment terms agreed set out for each project.
- 6.1.4 It is recommended that ECC provide capital loan financing on a project by project basis, with this approach (i.e. Project Financing) to be reviewed annually, by ECC and Essex Housing Development LLP.
- 6.1.5 The estimated capital loan funding requirements, by scheme, based on a Project Financing approach, are set out in the confidential appendix. Outlined below are the maximum total loan values to be authorised for 2020/21 and 2021/22:

Loans Provided To LLP	2020/21 £	2021/22 £
WIP Funding	11,043,134	0
Land Funding	To be agreed	0
Development Funding	2,015,471	12,332,171
Total Loan Value	13,058,605	12,332,171

- 6.1.6 Any additional funding which exceeds the values outlined in 6.1.5 and all funding for future years beyond 2021/21 will be subject to further decisions and approved Business Cases for each project.
- 6.1.7 Working capital loan funding will be capped at £5m and will be funded by the council's own working cash balances, with terms to be approved by the S151 Officer on an annual basis.
- 6.1.8 ECC is expected to receive income as a result of providing loans to the LLP. Repayment terms and the expected income to be realised will be agreed on a project by project basis in-line with 6.1.10 and will be subject to S151 Officer approval.
- 6.1.9 ECC will be borrowing at PWLB rates which are likely to be lower than the rate at which ECC will lend to the LLP. Any margin between the two rates will be realised by ECC as income. This will be established through the framework set out in 6.1.10.
- 6.1.10 The interest rate to be paid by the LLP will be set in line with State Aid rules. As a result, benchmarking against comparable entities will be undertaken and the rate will be set at the lowest benchmarked rate. If it is not possible to undertake benchmarking then the interest rate will instead be set at the prevailing PWLB rate at the time plus the applicable EU reference rate. Following Brexit, the interest rate to be paid by the LLP will continue to be set in line with the State Aid rules in effect at the time.

6.2 Legal implications

- 6.2.1 The proposal seeks to novate the agreements set out in Appendix A from Essex County Council to Essex Housing Development LLP. The original agreements contain provisions that permit the Council to transfer the agreement to a third party. Transfer of these contracts from the Council to the Development LLP is in line with the Public Contracts Regulations 2015.
- 6.2.2 The proposed loans from the Council to the Development LLP are to be provided in accordance with state aid rules and set out within loan agreements.
- 6.2.3 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 Local Government Act 1972. A further decision will be put forward to outline the terms of the disposal that would achieve best value for the Council.

7 Equality and Diversity implications

- 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

Appendix A – List of Contracts to be Novated

Confidential Appendix

EqIA

9 List of Background papers

None