

Forward Plan reference number: FP/206/11/21

Report title: Transfer of land at former Essex County Hospital, Colchester to Essex Housing Development LLP	
Report to: Cabinet	
Report author: Councillor Lesley Wagland, Cabinet Member for Economic Renewal, Infrastructure and Planning	
Date: 21 December 2021	For: Decision
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County Divisions affected: Drury	

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This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.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

- 1.1 The development of land at the site of Colchester's former Essex County Hospital strongly supports the delivery of the Council's plan, 'Everyone's Essex', which has the aim of providing a high-quality environment, strong, inclusive and sustainable economy, promoting health, wellbeing and independence for all ages.
- 1.2 This scheme would see the delivery of 120 new homes through the restoration of the Grade II listed main hospital building and other heritage assets to create 70 dwellings, plus a further 50 new build homes would be constructed on the site.
- 1.3 Our ambitious plans to hit our net zero targets and accelerate the progress towards sustainable housing are embodied in this development. As standard, dwellings are equipped with high levels of thermal efficiency, photovoltaic panels on the roof to generate sustainable energy and reduce grid consumption and electric vehicle charging points, creating a green community of new residents who are empowered to make the transition to a zero-emissions vehicle to reduce air pollution. Homes are provided with an exterior bin store, receptacles, and literature to encourage positive behaviours.
- 1.4 This development also supports our commitment to renew the economy through the creation of jobs in construction which will support levelling-up and provide a range of new jobs in Colchester.

2. Recommendations

- 2.1 Agree to enter into a contract for the transfer of the freehold ownership of land shown edged red on the Plan from the Council to Essex Housing Development LLP for the value shown in the Confidential Appendix in three phases.
- 2.2 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').
- 2.3 Agree revenue expenditure value as shown in the Confidential Appendix to be drawn down from the Working Capital facility provided by the Council.
- 2.4 Note that the Section 151 Officer has delegated authority to amend the period of the loan agreement and the repayment amounts and dates.
- 2.5 Agree in its role as Member of Essex Housing Development LLP that:
 - 2.5.1 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.
 - 2.5.2 Essex Housing Development LLP enters into an agreement with Essex County Council to purchase the Site.
 - 2.5.2 Essex Housing Development LLP enters into a design and build contract for the building of 63 units on the site for Phase 1.

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 deliver great 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 Essex County Hospital 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 the former Essex County Hospital is proposed to be delivered by Essex Housing Development LLP, which became operational in February 2021 to deliver its ambitious development programme. The LLP was created to bring forward surplus land and assets to build private, affordable

and specialist homes to address housing need throughout the County. The land is to be developed in 3 phases (Phases 1, 2 and 3).

- 3.4 The freehold of Phase 1 is currently owned by ECC and following the transfer of the land for Phase 1 from ECC to the LLP, the 63 homes will be developed by the LLP and constructed and then sold at market rates with income provided to ECC from both the sale of the land to the LLP and through the surplus made by the LLP on completion of unit sales.
- 3.5 ECC previously agreed to procure the design and build contract for Phase 1 as the land was owned by ECC. However, as it is proposed that the land is now transferred to the LLP for the LLP to develop the site, the LLP is to undertake the procurement for a design and build contractor for the construction of 63 units in Phase 1. The design and build contract is to be awarded by the LLP following the transfer of the land from the Council to the LLP. Income will come to the Council from both the sale of the land to the LLP and any surplus made by the LLP on completing of unit sales.
- 3.6 Phases 2 and 3 consist of land for the construction of 38 homes and 19 homes (120 homes in total for all 3 phases). Both phases will transfer from ECC to the LLP as indicated in the table below. As it is proposed that the land for phases 2 and 3 will be owned by the LLP, the design and build contracts for these 2 phases are to be procured by the LLP. These phases will be sold at market rates with income to ECC from both the sale of the land to the LLP and through the surplus made by the LLP on completion of unit sales.
- 3.7 Below is an indicative timeline for the project:

Milestone Description	Target Date
Transfer of Phase 1 to the LLP	January 2022
Phase 1 Construction Start	April 2022
Transfer of Phase 2 to the LLP	December 2022
Phase 2 Construction Start	January 2023
Transfer of Phase 3 to the LLP	February 2023
Phase 3 Construction Start	November 2023
Sales Start	May 2023
Sales completes	May 2025

- 3.8 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. Some of these decisions are taken by the Council as the landowner and others are taken in its capacity of 99% owner of the LLP.

Deed of Covenant

- 3.9 Under the sale contract between ECC and East Suffolk and North Essex NHS Foundation Trust (the NHS Trust), if ECC transfers the site (either as a whole or in parts) ECC is required to first procure from their buyer a Deed of Covenant. In the Deed of Covenant, ECC's buyer, the LLP, will agree

covenants directly with the NHS Trust to comply with the overage provisions contained in the sale contract including the obligations to make any future, additional payments due to the NHS Trust linked to the profitability of the site relating to the development or if the site is sold (other than a plot sale) which will reduce ECC's liability to the NHS Trust with regard to such future obligations. The LLP is required to sign such a Deed of Covenant with the NHS Trust before the transfer of Phase 1 and similarly for Phase 2 and Phase 3.

Disposal

- 3.10 The site is 1.76 Ha (4.34 acres) and is the former Essex County Hospital, which closed its doors in 2018. It is located in Colchester. The former Essex County Hospital site is proposed to be developed in 3 phases (Phases 1, 2 and 3). Phase 1 is 0.88 HA (2.17 acres), Phase 2 is 0.52 HA (1.27 acres) and Phase 3 is 0.36 HA (0.9 acres). ECC is under contract to acquire all three phases of the site by 23 February 2023. The Council purchased Phase 1 on 24 February 2021 and will purchase Phases 2 and 3 before 23 February 2023. The Phases will be purchased by ECC in order to transfer them to the LLP to develop further housing across the wider site. ECC will enter into a contract with the LLP to agree to transfer the land to the LLP following purchase by ECC of each phase.
- 3.11 It is proposed that all Phases of the Essex County Hospital site will be transferred to the LLP in three tranches for the price shown in the confidential appendix. The LLP will progress the construction of the scheme through to completion, including marketing and sales. Section 123 of the Local Government Act 1972 requires the Council to secure the "best consideration that can reasonably be obtained" or otherwise seek formal consent from the Secretary of State for the disposal unless the undervalue is permitted by Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003. In accordance with Section 123 of the Local Government Act 1972 a valuation has been undertaken and is set out in the Confidential Appendix to inform the decision to dispose of all Phases to the LLP. The value will form part of the development loan and be repaid to the Council through the proceeds of sale of units built on the site. The creation of the LLP and transfer of all Phases to the LLP means that disposal of dwellings and other interests to buyers must be from the LLP.
- 3.12 The sale of the units is in accordance with the LLP's Annual Delivery Plan and the sale of 120 general needs units should be undertaken through the traditional approach of open market sale to individual purchasers.

Project Financing

- 3.13 There will be a development loan provided by the Council to the LLP to cover any capital costs involved in the development of all Phases of Essex County Hospital. These costs are detailed in the confidential appendix and include design and construction fees. The development loan will include the value of any land transferred from the Council to the LLP.

ECC as Member of the LLP

- 3.14 Essex Housing Development LLP is a company owned by Essex County Council 99% and Seax Trading Limited 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 proposed in this report that the Council approves the LLP entering into an agreement for funding for Essex County Hospital as set out in the Confidential Appendix, is authorised to enter into a design and build contract following a successful procurement carried out by the LLP and is authorised to enter into an agreement to transfer the Essex County Hospital site to the LLP once purchased by the Council.

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:

As standard, dwellings are equipped with high levels of thermal efficiency, photovoltaic panels on the roof to generate sustainable energy and reduce grid consumption and electric vehicle charging points, creating a green community of new residents who are empowered to make the transition to a zero-emissions vehicle to reduce air pollution. Homes are provided with an exterior bin store, receptacles, and literature to encourage positive behaviours.

- 4.3 This report links to the following strategic priorities in '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 To transfer the freehold ownership of the land (in three phases) 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 land (all three phases) by the Council. The Council will then be responsible for completion of the development. Retaining ownership of the site by the Council will forego benefits highlighted above. Contracts that have previously been novated to the LLP by ECC will be required to be novated back to the Council. The Council would also need to cover total costs spent to date which would be considered abortive costs as outlined in the Confidential Appendix.

Project Financing

- 5.3 The Council providing development loan subject to land transfer and ongoing capital costs. This will allow LLP to fund land transfer and pay for ongoing project related capital costs. The LLP can take forward the development of housing on the Site (**recommended option**).
- 5.4 The Council not providing funding. 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. This value is part of the development loan that will be provided by the Council to the LLP for this project.

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 meets best value.
- 6.2.3 Essex Legal Services and Essex Legal Services Ltd will be commissioned to carry out the conveyancing work associated with the disposal.
- 6.2.4 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 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.
- 6.2.5 Commercial legal issues relating to development are set out in the confidential appendix.

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.
- a. 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).
- b. 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

Confidential Appendix.
Title Plan
EQIA

10. List of Background papers

None