

Agenda Item No: 5
Report To: Selection and Constitution Review Committee
Date of Meeting: 11 May 2017



Report Title: **Chilmington Green Development – nomination of a council appointee Trust Director to the board of a new community trust for Chilmington Green**

Report Author & Job Title: Paul Naylor, Strategic Officer Lead for Chilmington Green Community Management Organisation

Summary: Following completion of the Chilmington Green Section 106 Agreement and Outline Planning Permission being issued preliminary infrastructure work has commenced on the Chilmington Green development. Housebuilding will commence later possibly in the summer and autumn periods. Work to create the planned new community stewardship organisation (a community trust and a requirement of the Section 106) is now entering its next phase. This is likely to involve incorporation of a company trust at some point over the summer/autumn with its board then taking direct responsibility for completing the set-up work in readiness to receive first residents in late spring 2018 (current plans). The trust takes responsibility for community open spaces, buildings, certain public realm and other facilities. The Borough, County and Parish Councils will continue to represent the community and provide a range of services covering the development area. The trust's governance arrangement is made up of developers' representatives, a range of local stakeholders, including the council, and residents who all may appoint trustees to its board. This report explains the background and asks the Committee to consider a nomination from the Council to the trust board who may take up the position later in the year.

Key Decision: NO

Significantly Affected Wards: Great Chart with Singleton North, Washford, Weald South

Recommendations : **The Committee is asked to determine a nomination to the position of a Council appointee to a new community trust serving the Chilmington Green development**

Policy Overview: A community management organisation for the new Chilmington Green development is an important policy and planning principle for the Council. Ultimately this new organisation will take responsibility for securing effective

arrangements to own, manage and maintain a large amount of endowed assets. The Council helping to create a sound and sustainable basis for this organisation is also an important aim.

Financial Implications:

There are none that arise directly from this report. The financial arrangements for the new organisation are now set within the completed Section 106 Agreement and are in accordance with planning policy and the agreed Heads of Terms approved by the Planning Committee in 2014.

Legal Implications

This report is about a nomination to a Council appointee trust director. Trustees will act in the best interests of the trust and in accordance with charity and company legal requirements. A separate contractual framework agreement between the trust, the Council and the developers is to be entered into to safeguard the important interests of the Council and the developers. All trust directors will be required to enter into an undertaking to acknowledge the terms of this agreement.

Equalities Impact Assessment

No

Other Material Implications:

None

Background Papers:

None

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Introduction and Background

1. Following the completion of the Chilmington Green Section 106 Agreement and outline planning permission being issued attention is now turning to the immediate next steps prior to house construction. Work on road accesses is underway and the developers are submitting detailed plans in respect of planning conditions and reserved matters.
2. These next steps also include creating a formal community trust for Chilmington Green (previously referred to as the CMO) and the initial step of forming a trust company (limited by guarantee) preceding an application by the company for charitable status later in the year. Over the 20 plus years of the development this trust will take on the long-term stewardship role of significant amounts of endowed land. Further the trust will be endowed with buildings and public realm for community use, a quantity of built commercial estate, a financial grant from the developers (over ten years) and contributions to management costs from residents. The trust would provide service to the community alongside the work of the Borough, County and Parish Councils.
3. Under the governance arrangements built into planning policy and the Section 106 Agreement the trust's directors (trustees) shall include representatives of local stakeholders (including the council) as well as developers' representatives and residents (up to five by the end of the development).
4. From last December a council appointed member (Councillor Neil Shorter – shadowed by Councillor Jessamy Blanford in her capacity as a ward member) has represented the council's interests on a Partnership Working Group (PWG). This group is advisory to the developers and the council as to the creation of the Trust and on responses to planning consultations from a 'CMO' perspective. On current plans the PWG will continue to handle preparatory work until later in the summer/early autumn when, subject to development progress generally, it is planned to have the new company incorporated with its initial Board then in place to take up the reins. PWG will then be stood down.
5. Accordingly, Members are being asked to consider making a single nomination for a Council appointed trustee director; please note the formal trust governance arrangement does not provide for substitutes.

Current Position

6. In December the Committee received a report explaining the background to the community management policy which is embedded in the Chilmington

Area Action Plan and now within the completed and binding Section 106 Agreement.

7. Though work by the developers to discharge planning conditions and reserved matters is still in hand preliminary access work has commenced. One such matter was the submission to the Council of the first business plan for a community trust. Work on housebuilding above foundation level may only start once approval is received by the developers to the plans for the trust. This plan was produced in liaison with the Council and was endorsed by the PWG.
8. The trust company itself must be created and properly registered before any dwelling is occupied. In practice and to allow the trust company to complete all necessary set-up work and put this to the test the aim is to create the company at the earliest opportunity. This includes the provision of its first on-site premises in 2018.
9. Work is in hand to ensure the required tasks are completed. This is work the council is contributing to in partnership with the developers – a financial contribution to our costs is committed from the developers' CMO set up payment.

Context – the drivers for a new trust and its scope

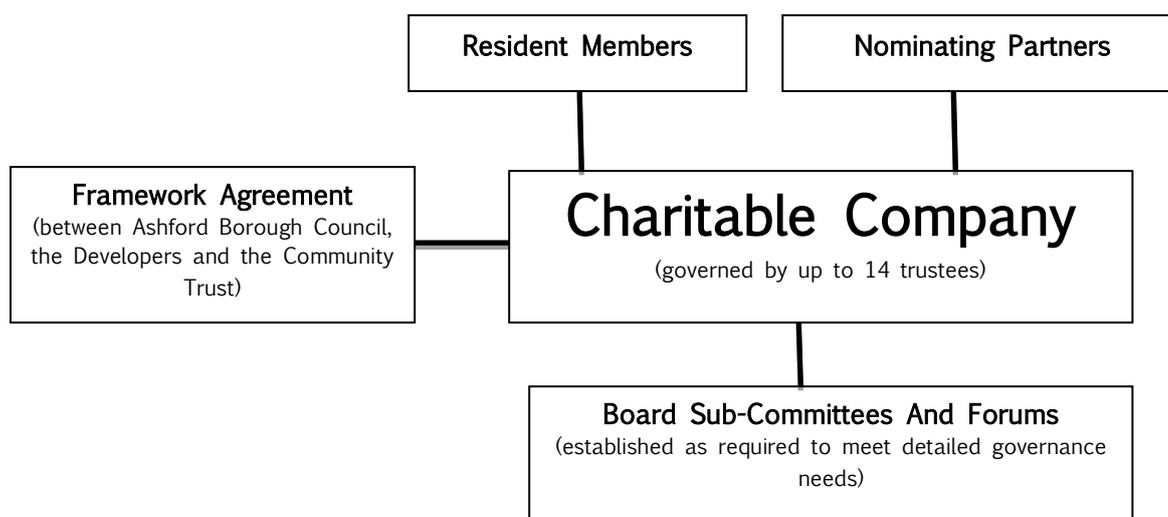
10. Establishing an independent community-focused (ultimately community-led) organisation to take responsibility for a range of community assets was an important policy objective for the council. Partly this was to overcome the risks of a number of developer appointed private management companies being established across the development. As the Council has seen with some other management company arrangements there are associated risks of these lacking proper accountability to and real input and influence from local residents. In shaping the arrangements for a trust at Chilmington Green many observations have been made of other similar organisations up and down the country, learning lessons accordingly.
11. The governance and operational arrangement for Chilmington Green is not unique, similar models can be found at Chatham Maritime, at Bourne in Lincolnshire, and a large former social housing and commercial estate in Sheffield are just some examples. It is the scale, the potential breadth of responsibility and the long development period that make Chilmington Green different. Both the development and the trust model for Chilmington have received wide publicity, through the Town and Country Planning Association and the National Housing Forum, with a good number of other places taking a keen interest in exploring our arrangement, including Ebbsfleet, Shepway (re.Otterpool), and Cherwell among others.
12. For the developers, the Council and its local stakeholders the key drivers for a long-term sustainable stewardship structure are:
 - a) For the developers to have an organisation with a clear responsibility for owning and managing community land, buildings and facilities to a high standard, and an organisation that helps to support place-making to differentiate Chilmington Green

- b) For the Borough Council to agree an independent sustainable and economically viable model for long-term stewardship, but which is transparent, community-focused and accountable, given the council's planning policy position not to adopt the associated open spaces and community facilities (now reflected in the planning permission).
- c) For the developers, the council and partners to have a locally managed organisation with responsibility to take the initiative to plan and support community development to help build a strong sense of community.

Trust Governance

The structure of governance

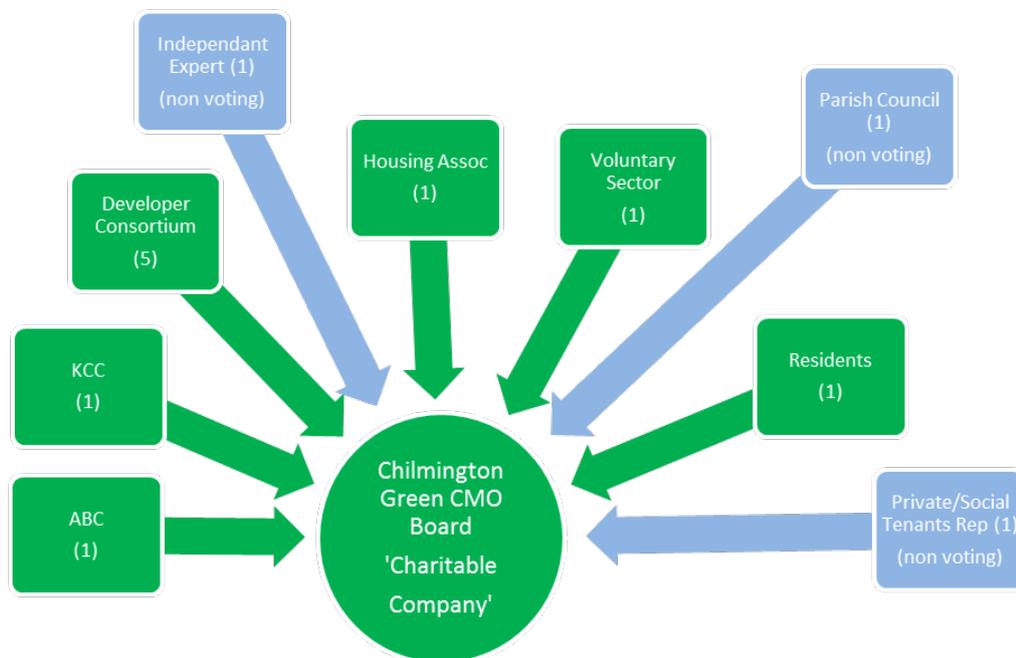
13. The model of a charitable limited company is adopted as it provides a sufficiently robust and dynamic structure with the necessary legal framework for community ownership of assets and responsibility for resources. It should also deliver strong management and accountability for service delivery and demonstrable public benefit. Much attention has been focused on building appropriate policies and detailed governance processes that underline this point. The community trust for Chilmington Green will operate within the framework summarised in the diagram below:



The Charitable Company and Framework Agreement

13. The Section 106 Agreement contains the full legal documents for the trust, including its Articles as its governing document. Its formal Objects are fully set out in the Appendix to this report and are written in general terms in order to provide a degree of flexibility. The Appendix also includes a summary of the trust's planned range of responsibilities and its funding sources. The Objects provide the scope. Supplementing the Objects are Powers that allow the trust do a number of things in pursuance of its Objects. For example these include powers to own and manage property for commercial letting (up to 50,000sq ft will be endowed), and powers to enable community engagement and development among other things.

14. The board structure is summarised in the diagram below:



15. In the interests of reconciling developers', the council's, other stakeholders and residents' interests the governance arrangement balances interests in such a way to achieve no overall control by any one party, as is required for a charitable model. However, the arrangement for Chilmington Green is supplemented by a contractual Framework Agreement that the trust, the developers and the Borough Council are to be parties to that aims to provide solid assurances and a safeguard to protect the important interests of these key parties. It is intended this agreement does not interfere heavily with the function of the board and its management of the trust on a day-to-day basis. This is tantamount to a 'members' agreement that can exist for companies (as is the case with the Borough Council's arms length companies).
16. Initially the Articles provide for up to ten trustee directors with voting rights, though the emphasis will be on consensual decision-making. The arrangements also allow the board to appoint Observers without voting rights, with a requirement that observers to represent the parish councils (one place) and tenants (one place) are at least offered. Observers may also be advisors to the Board.
17. Directors may serve for a three-year term and are unpaid. Appointee (or nominated) directors may be re-nominated by their parent body and would be re-appointed without the need for election at an AGM. The same position would apply to a parent body nominating a different person. Resident directors can only be re-appointed by an election at an AGM. A director can

resign, retire or be removed (by the parent body) or otherwise not qualify or be deemed by the board not suitable to continue in certain circumstances.

18. Initially one resident trustee director is to be appointed and then four further resident trustees can be appointed over the course of the development. By completion the maximum number of trustees would total 14.
19. Voting rights are to be balanced throughout the development period on an equal basis between the developers' trustees and non-developers' trustees, irrespective of the number of trustees at any one point. This principle of no overall control extends to the chair of the trust board not having a casting vote, emphasising the need for trustees to work together in the best interests of the trust. The appointment of the chairman and vice-chairman of the board is a matter for the directors to determine. In the event of any 'deadlock' the board would be required to reconvene and reach a clear decision; a formal disputes process is provided for in the unlikely event of a prolonged disagreement.
20. As trustees the directors' primary responsibility is to the trust. Though nominated by an appointing body they are not mandated to represent and act with the interests of that party in mind; this equally applies to the developers' appointed trustees. This is of course the legal position for any trustee or director of a company or trust where they are appointed by a nominating body. These directors bring to a board their skills and expertise, and their willingness to support and promote the objects of the company/trust for the benefit of its residents. In this case the stakeholder organisations bring individual and collective local interest in the development with backgrounds from different perspectives.
21. Ultimately at the completion of the development the longer term intention is for the trust to become resident-led. A new governance arrangement would be established at that time, reflecting the withdrawal of the developers and a review of positions by local stakeholders.
22. Monthly meetings of the Board are anticipated initially to complete the set-up, supported by officers and the developer's staff and advisors. Early in 2018 the trust will recruit its first staff, building up its own capacity over the course of Main Phase 1 (five to six years of housebuilding) as early activity will be relatively low.

Members of the Trust

21. Members of the trust will be new residents that opt-in to membership, as well as the Trust Directors. Members of a trust (similar to shareholders of a company) have statutory rights associated with attending and voting at General Meetings (these are not Board Meetings - at least one must be held annually to conduct formal business of the Trust – approving the Directors' report, adopting the accounts, appointment of directors if necessary, and the appointment of auditors). The Articles contain rules relating to general meetings and the voting arrangements, and contain provisions for members' 'special resolutions' (a mechanism for members to place items on general meeting agendas, subject to a certain number of members supporting a proposal). The Trust will encourage a high level of membership opt-in as part

of the marketing and conveyancing stages for the development, including re-sales and re-lettings.

22. Membership of the Trust is not directly linked to the requirement for residential property freeholders to contribute to the Trust's costs through an estate rentcharge. An estate rentcharge is to be a separate legal undertaking secured on freehold property for which payers also have legal rights (the terms for this agreement are included in the Section 106).

Summary

23. An important step has been reached with the Chilmington Green development commencing and the prospect of first occupations occurring in 2018. With the Section 106 Agreement fully completed the associated planned arrangements for long-term stewardship of community land, building and facilities through an independent community focused organisation are now a firm commitment. Its success depends on a number of things, including the commitment of its trustees as directors and the skills and backgrounds they bring to the trust.
24. Possibly by the summer/early autumn of this year, subject to development progress, a company trust will be incorporated and then able to focus on completing the set-up tasks. As planned this work will be supported by a small team of officers working in partnership with the developers, and external advisors.
25. The governance arrangement provides for one Council appointee trustee for which members are now invited to consider making a nomination.

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Summary of Community Trust's Formal Objects, Functions and Key Responsibilities

Objects

The Company's Objects are specifically restricted to the following:-

- to provide maintain and equip parks gardens landscaped areas woodlands open spaces playing fields playgrounds recreational amenity spaces and other elements of the public realm within the Area of Benefit (the Chilmington Green development area) for the benefit of the inhabitants thereof;
- to advance public education in the Area of Benefit for the benefit of the inhabitants thereof with particular regard to horticulture arboriculture wild plants and wildlife;
- to provide or assist in the provision of facilities for recreation or other leisure time occupation in the interests of social welfare and with the object of improving the conditions of life for the inhabitants of the Area of Benefit;
- to promote the conservation, protection management maintenance and improvement of the physical and natural environment in the Area of Benefit for the benefit of the inhabitants thereof;
- to promote, protect, preserve and advance all or any aspects of the health of the inhabitants of the Area of Benefit; and
- to establish, manage or assist with the establishing and management of health facilities, community centres, arts centre, workshops, groups for educational play, deprived youth and old people in need and centres residential or otherwise for activities in the Area of Benefit all being for the benefit of the inhabitants thereof.

Functions

- Public open space – ownership, management and maintenance
- Buildings assets - ownership, management and maintenance
- Community development
- Financial management and investment

Key Responsibilities

- Over 50% of the site is open space
- Capital investment by the Developers of over £24m+ in community facilities and open spaces, plus £3.5m in specific ecological features
- The key features include:
- CMO first temporary premises
- Discovery Park, (the first element only which provides sports facilities and some open space)
- Community Hub (multipurpose community building including GP practice)
- Chilmington Hamlet (tennis, bowls & cricket, etc)
- Informal/Natural Green Space
- Formal open space including public realm
- Allotments (X4)
- Play spaces (x 6)
- Local community centres (x2)
- Woodland (new and existing)
- Ecology (ecologically managed farmland, SuDS)