

Agenda Item No:

Report To: Cabinet

Date of Meeting: 27th May 2021

Report Title: HRA acquisition - Chilmington s106

Report Author & Job Title: Mark James
Development Partnership Manager

Portfolio Holder Cllr. Bill Barrett
Portfolio Holder for: Housing



Summary:

A golden opportunity has arisen for the Council to acquire a small residential stake in the Chilmington development and work with a reputable developer from whom it has previously secured quality homes for affordable housing.

The site is known as Parcel 'P' at Chilmington and 10 homes on the site will be part of the section 106 (s106) agreement.

In October 2019, in endorsing the council's affordable housing delivery plan, Cabinet members agreed that the Council's housing team could intervene in the market and acquire s106 homes delivered through the planning system if no registered providers (RPs) were in a position to (the report sets out the reasons why this may be).

Furthermore, Cabinet members had the vision to afford the housing service delegated authority to make acquisitions outside of Cabinet meetings to accelerate the delivery of its housing stock and to act quickly in the marketplace so opportunities were not lost.

This is one such opportunity that has multiple benefits as outlined in the report.

Under the Corporate Plan one of the three emerging themes is 'Caring Ashford' citing the Council's ambition for high quality housing to be brought forward and this acquisition will absolutely fit into that mould.

Key Decision: YES

Significantly Affected Wards: Weald Central

Recommendations: **The Cabinet is recommended to:-**

- I. **Note the content of the report and endorse the acquisition of the homes for affordable housing subject to the conclusion of legal discussions between the Council's and developer's solicitors.**

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| Policy Overview: | <p>Building on solid foundations: delivering affordable homes in Ashford – our delivery plan for 2019-2023</p> <p>Housing Strategy Framework Priority 1 – Improve the supply of affordable housing to meet local housing needs in urban and rural areas, and Housing Statement 2018-2023</p> <p>Reform of Housing Revenue Account (HRA) – Cabinet endorsed five key priorities for further spend, as a result of greater freedom within the HRA.</p> <p>National Housing Strategy 2011 – delivering new homes under the affordable rent model.</p> <p>A Charter For Social Housing Residents – Social Housing White Paper 2020.</p> <p>A Guide to Developing Affordable Homes in Rural Communities (Kent Housing Group [KHG]) – February 2021</p> |
| Financial Implications: | <p>The purchase amount is detailed in the report itself. This project will sit within the Council’s Housing Revenue Account. This programme has been viability tested and does not pose a risk to any other project being delivered in the Council’s HRA Business Plan.</p> |
| Legal Implications: | <p>The Council is formally required to have a 30-year HRA Business Plan. Note no Homes England grant is available for s106 homes as these are deemed to be something that should be delivered through the planning system. Though they represent additionality to the Council they do not represent additionality to Homes England in this sense.</p> |
| Equalities Impact Assessment: | <p>See attached Appendix A</p> |
| Data Protection Impact Assessment: | <p>Assessment on the impact on data protection will be undertaken at the appropriate time</p> |
| Risk Assessment (Risk Appetite Statement): | <p>A viability risk assessment has been undertaken on this acquisition and its place in the HRA Business Plan. Further evaluations of risk will be undertaken at the appropriate time on the acquisition but the principle of the acquisition is sound and that is driving the purchase.</p> |
| Sustainability Implications: | <p>Under the Corporate Plan one of the three emerging themes is ‘Green Pioneer’ citing the Council’s ambition for carbon neutrality. This project will be bound by the s106 in terms of its green credentials but its sustainability will be further assessed during the acquisition process.</p> |
| Other Material Implications: | <p>Local Plan Policies and Supplementary Planning Documents (SPDs), Lifetime Homes (a standard the Council has set out for Registered Social Landlords) and Code for Sustainable</p> |

Homes level 3 (which has been committed to for Homes England purposes), and level 4 on energy. Emphasis on the building envelope will deliver the greatest benefits for landlord and tenant.

**Exempt from
Publication:**

No

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Report Title:

Introduction and Background

1. Each autumn, members receive an annual report from the Council's housing and finance services that underlines the proactive work being undertaken to increase the delivery of homes within the HRA. This includes the new-build programme, and housing's off-plan acquisitions as well as purchases of homes on the open market, many of which are former Council properties once sold under the right to buy scheme.
2. Recently the Council has acquired a strong reputation among local estate agents and developers for its proactive approach to looking for land and off-plan acquisitions, as well as its ability to step in and intervene in the marketplace if there are no RPs in a position to acquire s106 homes that are being provided in the borough. This was an approach validated by members in 2019 when the Council's affordable housing delivery plan was endorsed.
3. This is how this opportunity has been presented to the Council and it provides an opportunity to continue a relationship that has seen the Council previously acquire homes of a very similar specification from the same developer elsewhere in the borough.

Proposal

4. An opportunity has arisen for the Council to take on 10 two-bedroomed s106 homes (six for affordable rent and four for shared ownership) on the flagship Chilmington site. These will be on Parcel 'P' of the site that is being built out by Jarvis Homes. The location and acquisition has several advantages.
5. Jarvis built some of the homes the HRA recently acquired in 2019, again through a s106 acquisition, at Chequers Green in Shadoxhurst. These were felt to be of excellent quality, and though the Council acquires these units as a straightforward purchase with no influence whatsoever over specification – this is necessary to comply with strict procurement rules – the product was strongly endorsed by development and maintenance colleagues within the housing team. With the Chilmington homes of a similar specification there is very limited risk entailed in the acquisition when both the product and the developer are known.
6. No RPs were in a position to acquire the homes on Parcel 'P' as the size of s106 element, at 10 units, is below the minimum of what many RPs are looking to deliver. Most RPs are looking at sites that have 20-30 s106 homes or above. This is because many have good grant levels and so are looking at land-led opportunities rather than simply s106 homes (which do not qualify for Homes England grant), and many state that the same level of administrative work is taken to purchase five units as it is to purchase 50 units, so they try to

deliver houses in bigger numbers. There is the ongoing management of those units once acquired too, as if an RP does not have stock in a rural area, they will not consider acquiring homes in those areas, as they may struggle to manage them going forward. The Council has offered itself as a management solution to RPs as a way of trying to overcome this issue.

7. One RP has looked at the site but having agreed a price decided not to proceed purely as they are at capacity for the number of s106 sites they wish to deliver out at the current time, many of which are in the Ashford borough. Therefore, without any RPs prepared to take these units on, the Council is seeking to do so. The housing service has the endorsement of cabinet colleagues to intervene in the market in exactly these circumstances – where the homes are effectively either bought by us or lost to a commuted sum that gives us money to the value of the build cost for these units but does not give us the asset there and then which can house a household on our waiting list.
8. The acquisition is important not just so that the s106 allocation is taken up, but it will have significance, as the HRA will then have a residential stake in the development at Chilmington, which it has advocated the need for over many years. This will reflect the residential stake the HRA has in the town centre with the New Quarter blocks, Somerset heights and Stour Heights.
9. The Council is able to manage shared ownership homes through its leaseholder services team and its area management teams in housing. Existing procedures are in place and all teams within the service will be fully briefed in order to play their part. Agents will be instructed to sell the shared ownership homes and they will also feature on the Help-to-Buy website.
10. Furthermore, for those organisations who own affordable housing on Chilmington there is the potential of a seat for an affordable housing representative on the Chilmington board. While the process of how that representative would be selected has yet to be discussed, they would need to represent all RPs and their tenants – something that perhaps the Council is uniquely placed to do given the development forums that it hosts for RPs and the forums that it sits on from a management perspective, in addition to its work with KHG. This could therefore allow the Council's housing team to continue its role as communicator and coordinator of RPs.
11. The Council has secured these homes for a competitive price. The acquisition falls well within the delegated authority that Cabinet afforded housing services in 2019. Contracts are therefore being organised and this report is brought to members for them to note the positive news. The acquisition offers an excellent rate of return and does not impact on other priorities within the HRA Business Plan.
12. In discussions, the developer, and indeed the previous RP, have both been transparent about the price that had been agreed and the Council is stepping in to take these homes on at that price.
13. Early work will be undertaken to understand annual estate costs and service charges for all residents in these homes.

Equalities Impact Assessment

14. Members will note the equalities impact assessment appended to this report at Appendix A. No adverse impacts are shown as a result of the assessment.

Consultation Planned or Undertaken

15. Consultation was carried out when the application was submitted to planning, and housing has alerted both borough council ward members to the likelihood of the potential acquisition.

Other Options Considered

16. The Council could of course choose not to intervene in the market and not to acquire these units, but for the reasons illustrated above that would represent a missed opportunity to purchase high-quality properties on this strategically important site through this developer.

Reasons for Supporting Option Recommended

17. At any given time there are around 1,350 households awaiting housing on the Council's waiting list. It is imperative that the Council continues to build and acquire homes. It has three projects on site at the moment and several more in the planning, or pre-application planning process. All of its acquisitions as well as its new-build programme are strategically thought through and this purchase demonstrates good value for money.

Next Steps in Process

18. A representative from the Council's legal services team is already working on the contracts with the solicitors from the developer's side and subject to the satisfactory conclusion of these negotiations, staged payments will be made to smooth the build process. Closer to the completion date the Council will advertise the homes on the portals relevant to both affordable rent and shared ownership and agree the occupiers.

Conclusion

19. This acquisition represents another opportunity for the Council to illustrate the proactive approach it takes to deliver quality affordable homes for residents of the borough. It enables the Council to have a residential stake on the Chilmington development and it potentially enables the Council to have a representative on the Board. It enables the Council to continue its good rapport with Jarvis, whose products are well respected by housing services. With certainty over the product, the tenure, the size and type of the homes and the price, this therefore represents as close to a risk-free acquisition as you could achieve in the current marketplace.

Portfolio Holder's Views

20. This off-plan purchase pleases me for many reasons. It continues to grow our stock, not just of affordable rented homes but supporting those who want to get on the housing ladder. It gives us a residential stake in a major development that we long advocated the need for as a Council. We know the homes will be of good quality, as we have bought a very similar specification product from the same developer elsewhere recently. But most of all we know that the buildings we are acquiring here will give affordable housing tenants the opportunity to be truly proud of their home.
21. These are the right homes in the right place at the right price. This is just another example of how innovation, being in touch with the market and engagement with key stakeholders is setting us apart as a Council to do business with. Housing have a proven track record of delivering, obtaining grant and both building and buying quality homes over the last decade. And we won't stop here as we seek to house those in need.

Contact and Email

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Equality Impact Assessment

Appendix A to Chilmington report for May 2021

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:
- Age
 - Disability
 - Gender reassignment
 - Marriage and civil partnership*
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex
 - Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
 - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
 - encouraging people with certain protected characteristics to participate

in public life or in other activities where it is disproportionately low.

7. How much regard is 'due' will depend on the circumstances. The greater the potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.
8. In terms of timing:
 - Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
 - Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
 - The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

Case law principles

9. A number of principles have been established by the courts in relation to the equality duty and due regard:
 - Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
 - Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.

- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a policy, for example, is being developed and agreed but also when it is implemented.
- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

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| Lead officer: | Mark James |
| Decision maker: | Cabinet |
| Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop | <p>The Cabinet is recommended to:</p> <p>Note the content of the report and endorse the acquisition of the homes for affordable housing subject to the conclusion of legal discussions between the Council's and developer's solicitors.</p> |
| Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision. | 27 th May 2021 |
| Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? | Note the content of the report and endorse the acquisition of the homes for affordable housing subject to the conclusion of legal discussions between the Council's and developer's solicitors. |
| Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. | <p>Building on solid foundations: delivering affordable homes in Ashford – our delivery plan for 2019-2023</p> <p>Housing Strategy Framework Priority 1 – Improve the supply of affordable housing to meet local housing needs in urban and rural areas, and Housing Statement 2018-2023</p> <p>Reform of Housing Revenue Account (HRA) – Cabinet endorsed five key priorities for further spend, as a result of greater freedom within the HRA.</p> <p>National Housing Strategy 2011 – delivering new homes under the affordable rent model.</p> <p>A Charter For Social Housing Residents – Social Housing White Paper 2020.</p> <p>A Guide to Developing Affordable Homes in Rural Communities (Kent Housing Group [KHG]) – February 2021</p> |
| Consultation: <ul style="list-style-type: none"> • What specific consultation has occurred on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? | <p>Consultation has taken place with colleagues in Finance, the Housing Development Team and Corporate Property Services.</p> <p>Consultation with the community took place through the planning process in establishing the principle of the development.</p> <p>The ward members have been notified.</p> <p>There are no adverse impacts on any individuals as a result of this acquisition.</p> |

- What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics?

Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

| Protected characteristic | Relevance to Decision High/Medium/Low/None | Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral |
|-----------------------------------|---|---|
| <u>AGE</u> Elderly | Low | Positive (minor) |
| Middle age | Medium | Positive (major) |
| Young adult | Medium | Positive (major) |
| Children | Medium | Positive (major) |
| <u>DISABILITY</u> Physical | None | Neutral |
| Mental | None | Neutral |
| Sensory | None | Neutral |
| <u>GENDER RE-ASSIGNMENT</u> | None | Neutral |
| <u>MARRIAGE/CIVIL PARTNERSHIP</u> | None | Neutral |
| <u>PREGNANCY/MATERNITY</u> | None | Neutral |
| <u>RACE</u> | None | Neutral |
| <u>RELIGION OR BELIEF</u> | None | Neutral |
| <u>SEX</u> Men | None | Neutral |
| Women | None | Neutral |
| <u>SEXUAL ORIENTATION</u> | None | Neutral |

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| <p>Mitigating negative impact:</p> <p>Where any negative impact has been identified, outline the measures taken to mitigate against it.</p> | <p>Where the assessment has been carried out above it is on the basis of the new acquisition.</p> |
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| <p>Is the decision relevant to the aims of the equality duty?</p> <p>Guidance on the aims can be found in the EHRC's Essential Guide, alongside fuller PSED Technical Guidance.</p> | |
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| Aim | Yes / No / N/A |
| 1) Eliminate discrimination, harassment and victimisation | N/A |
| 2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it | N/A |
| 3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it | N/A |

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| <p>Conclusion:</p> <ul style="list-style-type: none"> • Consider how due regard has been had to the equality duty, from start to finish. • There should be no unlawful discrimination arising from the decision (see guidance above). • Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified. • How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported? | <p>Due regard has been considered throughout this proposal to each protected group.</p> <p>No unlawful discrimination has arisen from the decision.</p> <p>The effect on the community will be positive due to the aims of the programme delivery. No adjustments required.</p> <p>The Council's lettings policy will be followed and the allocations carefully managed at the point the properties are ready to be let.</p> |
| <p>EIA completion date:</p> | <p>14th May 2021</p> |