

5 June 2019

Report of	Assistant Director Policy & Corporate	Author	Andrew Tyrrell
Title	Update on Transfer of Development Site to Colchester Amphora Homes Ltd		282390
Wards affected	Lexden		

1. Executive Summary

- 1.1 In October 2018 the Cabinet agreed the finance arrangements for the first phase of housing development by the Colchester Amphora Homes Limited (CAHL) and related property transfers of 4 sites. The developments will result in over 300 new homes, including over 100 much needed affordable homes. This report focuses specifically on the transfer of Creffield Road from the Housing Revenue Account (HRA) to the General Fund (GF), to facilitate the subsequent disposal of the site to CAHL; setting out the Council's powers to appropriate (and the restrictions applying to) land held under Part II of the Housing Act 1985.
- 1.2 Essentially, the original report focussed more generally on the transfers. Appropriation is the legal route to achieve this, so whilst the delegation given in October allows for the actual land transfers, the legal advice obtained recommends that the Cabinet explicitly confirms the reasons for the appropriation so that they are clearly set out. This demonstrates the appropriation route satisfies the restrictions that apply (which this confirmatory report now seeks to do) and ensure the process completes in an open and transparent manner.

2. Recommended Decision

- 2.1 To confirm the appropriation of Creffield Road from the Housing Revenue Account to the General Fund for the reasons set out in this confirmatory report, subject to obtaining Secretary of State consent.

3. Reason for Recommended Decision

- 3.1 The principal power to appropriate land is found in Section 122 of the Local Government Act 1972 and this power is available when land is no longer required for the current purpose for which it is held. However, these S.122 powers are also subject to Section 19(2) of the Housing Act 1985 where land is held under Part II of the Housing Act 1985.
- 3.2 The site at Creffield Road is no longer required for the purposes for which it was previously held as Council-owned stock, for the reasons detailed in this confirmatory report. However, although the site is vacated and no longer in use, the transfer of the site will still be subject to the Secretary of State's consent for appropriation from the HRA to the General Fund (from where it will then be sold) because it still contains "a property" on it for the purposes of the 1985 Act.

4. Alternative Options

- 4.1 The Council could proceed without setting out the reasons (and the process), but this would not be following the legal advice obtained on best practice and the Council will still require Secretary of State's approval for the appropriation of Creffield Road (because it is a statutory requirement).

5. Background Information

- 5.1 There is a national housing crisis and Colchester is no different to anywhere else in requiring more homes, especially affordable homes. The Council has an established and clear ambition to provide more new affordable homes for our community that was affected by the Government's 2015 introduction of a 1% rent reduction for 4 consecutive years. This removed around £140m of rental income from the Housing Revenue Account (HRA) over its 30-year Business Plan. The existence of a "debt cap" was a barrier limiting how much additional money the Council could borrow to build new homes (and maintain existing homes).
- 5.2 After 3 years, in late 2018, the Government recognised the role local authorities have in helping to solve the housing crisis; abolishing the "debt cap" so that the Council is now once again able to build new affordable homes (using prudent borrowing solely for social and affordable housing purposes). Under prudential borrowing rules the Council must still be satisfied that development models represent value for money and the borrowing is affordable over the lifetime of a development.
- 5.3 In addition, in early 2018, the Council also formed a wholly-owned housing company, Colchester Amphora Homes Limited (CAHL), so that it could deliver mixed-tenure sites that integrate private market houses for sale, with 30% affordable housing. This not only helps deliver affordable homes through other delivery models (to traditional s106 planning gain, or prudent HRA borrowing), but accelerates delivery of all types of housing development to meet more of the boroughs overall housing needs.
- 5.4 As a result, the Council now has diverse options available for proactive housing delivery that can be tailored to each sites circumstance. Consequently, for the first time in a generation the Council is undertaking several new housebuilding projects; making best use its collaborative partnerships with both the Council's housing company (CAHL) and its ALMO, Colchester Borough Homes (CBH).
- 5.5 Specific to this report, the October 2018 decision agreed the transfer to, and subsequent development of 4 sites by, CAHL. These mixed-tenure models result in over 100 affordable homes. A further decision (January 2019) agreed that the Council will progress several other proposals for 100% affordable housing developments, using the restored borrowing capacity of the HRA. These schemes include:
- Building approximately 35 new homes via a second phase of garage site developments, following on from the successful delivery of 34 affordable homes in 2014.
 - Continuing to buy back up to 10 properties a year for 5 years using the "Right to Buy Back" clauses on former Council-stock, which was piloted in 2018 with 8 purchases.
 - The purchase of up to 20 other former council homes a year for a 5-year period through open market purchases.
 - Reinvigorating the sheltered housing review programme, to increase and modernise such property following on from previous successful redevelopments of Worsnop House and Enoch House as "fit for purpose" housing.

- The development of approximately 32 homes across 3 sites using “Airspace”; an innovative use of modular construction on top of flat roofs to provide additional homes, which has not been seen outside of London, nor delivered by any Council so far.
- A third phase of garage sites and incidental sites within existing HRA estates.

- 5.6 Overall, through the current agreed schemes, the Council has already identified an ambitious intention to borrow up to £75m over 5 years (in addition to use of retained “Right to Buy” reserve) to deliver up to 350 new affordable homes, for local people from our housing needs register.
- 5.7 As part of this bigger picture, the redevelopment of Creffield Road will see this property sold to CAHL, for the Councils wholly-owned company to redevelop. The scheme is private market-led to make the redevelopment viable. Even with the new borrowing capacity, it would not be suitable for an 100% affordable housing scheme, which is why it had not been redeveloped as such previously.
- 5.8 The property at 60 Creffield Road was a residential House of Multiple Occupancy (HMO) in Lexden, Colchester. Until 2019 it was used for temporary accommodation, although the property was increasingly being under-occupied and has now ceased all use. Although it is currently vacant and secured, as the building remains on site this affects the appropriation route that can be followed in transferring the site.
- 5.9 It has been a long-term intention to cease the use of this property for these purposes because the accommodation was not fit for purpose and did not meet modern day standards (also explaining why it has been increasingly under-occupied). The property is aged and requires some work and investment. It consists of several single room “bedsit” units, sharing communal facilities. The single room units contained sleeping, living and cooking/dining space in one open plan layout. The units themselves had no bathrooms or toilets, which were shared facilities. In addition, the laundry area was also a communal room to the rear of the building, within an extension to the original building.
- 5.10 This form of accommodation is not consistent with modern standards of accommodation and similar properties have been phased out of the Council’s housing stock as part of the approved Asset Management Strategy. In fact, the decision to dispose of the property was made in 2009, following a review of the Councils temporary accommodation. It was only through very good work between the Council and Colchester Borough Homes that the property was kept in use for so long; but it could not be used any longer. It does not represent the best value for money to the HRA to invest in this property, without the financial returns that private market sales would bring to subsidise the necessary work. The previous temporary accommodation need has also been absorbed within the existing housing stock already (because of the accommodation standards here, and another reason why occupation had reduced here).
- 5.11 Although the site is “vacant” in practice as it is no longer in use, the site is not “vacant” as defined within Part II of The Housing Act 1985, where the relevant appropriation powers are set out. Some appropriation has provisions under a general consent but, specifically, Section 19(2) of The 1985 Act does not grant a standalone appropriation power and is subject to Secretary of State consent because the land at Creffield Road still consists of “a house or the part of a house” for appropriation purposes.

- 5.12 Legal advice has suggested the best practice would be a confirmatory report that specifies the reasons for the appropriation and identifies the restrictions that apply to minimise any uncertainty. For probity purposes this suggestion has now been followed herein.

6. Equality, Diversity and Human Rights implications

- 6.1 There are no equality issues identified in respect of the appropriation of Creffield Road from the Housing Revenue Account to the General Fund.

7. Strategic Plan References

- 7.1 There are no specific strategic plan references

8. Consultation

- 8.1 With regard to Creffield Road, the October report already confirmed that their disposal accorded with the Asset Management Strategy, which underwent consultation. Any subsequent planning application will also be subject to statutory consultation.

9. Publicity Considerations

- 9.1 No specific issues arise herein in respect of this report

10. Financial implications

- 10.1 There are no key financial implications in this confirmatory report although should the Secretary of State not give consent that may impact on the Asset Management Strategy and the disposal of the site.

11. Health, Wellbeing and Community Safety Implications

- 11.1 There are no specific health, wellbeing and community safety implications raised by this confirmatory report

12. Risk Management Implications

- 12.1 If Secretary of State approval is not obtained or it is subject to conditions it may impact on the Asset Management Strategy and the disposal of the sites. However, the guidance and advice on appropriation has identified no reason why consent would not be forthcoming.