

## SOUTH HOLLAND DISTRICT COUNCIL

**Report of:** Portfolio Holder for Assets and Planning  
Executive Director - Commercialisation (S151 Officer)

**To:** Cabinet – 27<sup>th</sup> April 2021  
Council – May 2021

**Author:** Katie Nicol, Housing Development Programme Manager

**Subject:** Acquisition of S106 affordable housing for the Housing Revenue Account

**Purpose:** To set out details of the potential for the authority to acquire eight s106 affordable homes on a development site in the district.

### **Recommendations to Cabinet:**

- 1) To approve the business case and approve the acquisition of eight homes within Surfleet for the HRA.
- 2) To delegate to the Executive Director – Commercialisation (S151) to agree the contractual matters (including any terms and conditions which may represent a minor variation to the scheme approved in the business case) such as signing the contract/transfer document and other incidental actions that may be required and approving the associated due diligence and valuation required to purchase the properties.

### **Recommendations to Council:**

- 3) To amend the Capital Programme to identify the project as an approved scheme in the 2021/22 Budget.

## **1.0 BACKGROUND**

- 1.1 In the last 5 years South Holland District Council has increased investment in new housing within the district and more recently has strengthened the capacity of the Strategic Housing Development team. This team appraises potential acquisition and development schemes; project manages on site delivery; and oversees the handover of new homes into management for South Holland’s various delivery vehicles.
- 1.2 Since 2017/18, the Council has supported ten new development schemes:

Scheme name	Delivery vehicle	Number of dwellings	Timescale	Development type	Status
Walters Close, Spalding	Welland Homes	15	Properties completed 2017/18	Acquisition of completed dwellings from developer, with discount on OMV.	Complete

Tennants Close, Long Sutton	Welland Homes	5	Properties completed 2018/19	Acquisition of completed dwellings from developer, with discount on OMV.	Complete
Pankhurst Close, Spalding	Welland Homes	10	Properties completed in May 2019.	Welland Homes design and build contract.	Complete
Acquisition of S106 homes from Ashwood (Moulton, Cowbit, Donington)	HRA	18	Properties completing in phases from March 2019 to March 2020.	Acquisition of completed dwellings from developer, with discount on OMV due to S106 agreement.	Properties complete. End of defects stage.
Small Drove, Weston	HRA	34	Deadline to complete properties is March 2021 (as per Homes England grant terms).	Design and build contract.	In progress
Bentley Court, Spalding	Welland Homes	5	Purchase Complete	Acquisition of completed dwellings from developer, with discount on OMV.	Complete
Donington market acquisitions	HRA	7	Purchase complete	Acquisition of completed dwellings from developer, with discount on OMV.	Complete
Wignals Gate, Holbeach	HRA	19	Properties completing in phases from October 20 to October 2022	Acquisition of completed dwellings from developer, with discount on OMV due to S106 agreement.	In progress
Northons Lane, Holbeach	Welland Homes	4	Properties completing April 2021	Acquisition of completed dwellings from developer, with discount on OMV.	In progress
Cobgate, Whaplode	HRA	7	Properties due to complete Jan – March 2022	Acquisition of completed S106 dwellings from developer, with discount on OMV.	In progress

- 1.3 The SHDC Housing Development team has been seeking new development opportunities. This has involved liaison with agents, property developers and housing associations that are delivering mixed-tenure schemes within the district. Through these discussions, a new scheme to provide eight S106 affordable homes at Surfleet has been identified.

## 2.0 SCHEME BUSINESS CASE

- 2.1 Officers have liaised with a local developer regarding the acquisition of eight two-bedroom dwellings which is the entire commitment of S.106 affordable housing on the development at Station Road, Surfleet.
- 2.2 The units consist of a row of four two-bedroom terraced dwellings for Affordable Rent tenure together with four semi-detached dwellings for shared ownership. The site has Planning consent and accordingly the layout and mix of dwellings and tenures has been approved by SHDC.
- 2.3 As the homes have been designated as affordable homes in the Planning consent, they have been designed specifically for that purpose and accordingly are considered appropriate for the HRA.
- 2.4 The SHDC Housing Management team have been consulted regarding the scheme and are supportive of SHDC taking additional homes in this location. They have indicated that the delivery of these homes would meet housing need as evidenced a Section 6 below.
- 2.5 Accelerating the delivery of new homes for the HRA will mitigate the impact on the HRA business plan of the loss of homes through RTB sales. However, it should be noted that if these properties are purchased and let as affordable homes, the Right To Buy (RTB) will also apply to these properties. In the event of a RTB application, the 'cost floor' rule will ensure that a tenant's discount does not reduce the RTB sale price below the amount that has been spent on the property in the 15 years prior to RTB; this includes the capital costs of acquisition.
- 2.6 The details of the eight homes at the centre of this business case are detailed in the table below.

Location	Plot	Type	Tenure	Indicative handover date
Station Road, Surfleet	10	2 bed semi-detached house	Shared Ownership	May 2021**
	11	2 bed semi-detached house	Shared Ownership	May 2021**
	18	2 bed end terrace house	Affordable Rent	July 2021**
	19	2 bed mid terrace house	Affordable Rent	July 2021**
	20	2 bed mid terrace house	Affordable rent	July 2021**
	21	2 bed end terrace house	Affordable Rent	July 2021**
	27	2 bed semi-detached house	Shared Ownership	May 2021**
	28	2 bed semi-detached house	Shared Ownership	May 2021**
<b>TOTAL</b>		<b>8</b>		

\*\*Developer anticipated programme subject to confirmation.

- 2.7 Officers have undertaken a business planning exercise for the delivery of these eight homes which is provided as a financial evaluation at Appendix A.
- 2.8 An offer has been made to the developer subject to contract, legal due diligence, and full approval. This offer has been accepted.
- 2.9 A formal valuation has been completed on these units by a RICS accredited valuer, which confirms that the offer price represents good value for money.
- 2.10 The financial assessment assumes that the Affordable Rented tenure homes will be let at 80% of the local market rent value or at the Local Housing Allowance in accordance with the S106 agreement. Homes England stipulate a requirement to approve Affordable Rents being charged on any site which is not grant funded. However, this consent is likely to be forthcoming. Officers will submit a request to Homes England as part of the due diligence process. The S106 agreement allows the rented homes to be provided as Affordable Rent or Social Rent tenure. In the event that Homes England does not provide consent for the homes to be provided as Affordable Rent tenure, they will still be purchased but will be provided as Social Rent tenure instead. This creates a risk as set out in paragraph 11.4.4.
- 2.11 In terms of the overall Capital Programme for HRA Housing Development, there is total approved provision of £13m for schemes subject to detailed approval for the period 2021/22 to 2024/25. To date one HRA scheme has been approved. Accordingly, there is still sufficient capacity to deliver this project.
- 2.12 Officers will negotiate a contract for the purchase of these properties which seeks to provide the most advantageous position for the authority. A solicitor will be appointed to act on SHDC's behalf in order to ensure thorough due diligence will be undertaken, prior to entering contract.
- 2.13 Given the nature of the homes as S106 affordable housing and the construction stage they are at (due to practically complete in May 2021), the authority will have limited influence over the style and construction methodology of the properties. However, they will have to be delivered in accordance with the contract and with all appropriate regulatory certification in place. In addition, the properties will be required to benefit from a NHBC/LABC warranty for a minimum of 10 years. These key documents will be listed within the contract and will need to be provided prior to completion taking place. The quality of the homes will also be checked by a Buyers Representative appointed to act in the authority's best interests.
- 2.14 In the event, that the homes are not constructed in accordance with the terms of the contract, the authority will not have to purchase the homes. Officers will maintain regular contact with the developers through the build process to seek to ensure where possible that the homes are delivered as agreed and the properties will be required to be provided with a Warranty for a minimum of 10 years to provide additional insurance
- 2.15 The process of due diligence may impact contract negotiations as more information is identified about the scheme. The contract is a negotiation between parties and officers will endeavour to negotiate the best position for the authority throughout. Any elements that are different to those assumed at approval will be reviewed as part of the due diligence review and approved by the Section 151 Officer in their role to agree the contractual matters to purchase the properties.
- 2.16 The development consists of 32 homes in total with both adopted roadways and private shared driveways present. The developer has confirmed that no management company

charge will be applicable to the dwellings contained in this report. The developer has confirmed that affordable homes will not be party to any management company which may be established for the remainder of the site, or any additional service charges.

### **3.0 SHARED OWNERSHIP SALES**

- 3.1 The proposed acquisition includes four shared ownership homes. The Council has already approved the delivery of 29 shared ownership properties on other sites across the district which have been selling well. Officer delegations relating to the sale of shared ownership properties are set out in paragraph 11.1.4 of this report.
- 3.2 The specialisms surrounding the marketing and sale of the shared ownership homes is provided by an external agent, Platform Housing Group, following a procurement exercise.
- 3.3 The financial appraisal provided at Appendix A assumes an initial sale tranche of 35% of the value of the shared ownership dwellings. This is based on learning from other SHDC shared ownership sales which has indicated that smaller initial shares are more likely to be affordable to households in the district.
- 3.4 The purchaser of any Shared Ownership property is required to buy as much of an initial share as they can afford and as such if the purchasers can afford more, a larger tranche will be sold to them resulting in additional cash receipts at initial sale and an improvement on the financial performance of the scheme. Additionally, if purchasers cannot afford a 35% initial share, they will be able to purchase 25% or more of the market value.
- 3.5 This site is within a Designated Protected Area. However, as the authority will not be seeking Homes England capital grant funding, it is not necessary to apply to Homes England for a waiver to enable the purchasers of any shared ownership homes to staircase to full home ownership. Accordingly, the lease agreement will enable the purchasers of the shared ownership homes to staircase to full home ownership in due course.
- 3.6 It is recognised that the value of the units will fluctuate through the life of the project, just as the housing market fluctuates. A valuation will be carried out at various points: prior to purchase; at completion of shared ownership properties if required; and annually once the homes are in ownership to ensure that officers monitor the assets in a robust manner. The offer for these properties has been based on a formal valuation that has been received and reviewed.
- 3.7 For rented units the findings of a valuation do not impact on the return generated by the units because the open market values are not part of the appraisal inputs. However, for the Shared ownership homes, the open market values will impact on the sale price of the homes and subsequently, the income received through the shared ownership rental stream (as this is determined by the unsold equity).
- 3.8 In November 2020, MHCLG launched a consultation seeking views on how best to implement a new model for Shared Ownership. The outcome of this consultation is not yet known. However, officers will monitor any changes to legislation or advice provided by MHCLG or Homes England. Officers have modelled this scheme on the existing shared ownership model.
- 3.9 Whilst it is proposed that this project will be delivered on the existing shared ownership model, there is a risk that the delivery of shared ownership homes on other sites which are based on the 'new' version of shared ownership may be more desirable to prospective

purchasers. This could impact the desirability of homes built under the existing shared ownership model. The proposal for the new model includes some repairs liability for the landlord and the flexibility to purchase a smaller first tranche as well as smaller increments. Officers are monitoring the roll out of the new model and will be seeking to market the four dwellings on this site promptly once within contract.

- 3.10 Sale of the shared ownership dwellings is dependent upon timely registration of SHDC's ownership of the homes, by the Land Registry, upon completion of the acquisition. Delays with registration have been experienced recently as a result of national lock-down restrictions. In order to mitigate this potential external delay, officers will seek to submit the application to register the sale immediately following purchase. If a dwelling has been reserved there is a route by which a request can be made to expedite the application at the Land Registry, and this will be requested if appropriate. This then gives time for the registration to occur concurrently with the onward conveyancing to identified purchasers.

#### **4.0 RIGHT TO BUY SALES RECEIPTS**

- 4.1 On the 19<sup>th</sup> March 2021, Government published its response to a consultation on the use of receipts from RTB sales. The consultation response sets out changes to the RTB receipts system to help local authorities build more council homes. The reforms seek to give authorities substantially increased flexibilities.
- 4.2 The changes include extending the timeframe that local authorities have for spending RTB receipts from 3 years to 5 years; the ability to utilise the receipt for a higher percentage of a project's costs; enabling shared ownership tenure dwellings to be funded by receipts; introducing a cap on the use of RTB receipts for acquisition projects.
- 4.3 This business case does not take account of the newly published reforms. Appendix A provides a financial evaluation assuming both that RTB receipts are used to part-fund the rented dwellings and that RTB receipts are not utilised to fund any dwellings.

#### **5.0 Key Considerations**

- 5.1 There are a number of key matters to consider relating to this scheme which are as follows:
- An offer for the dwellings has been submitted and accepted by the developer.
  - The units are designated s106 affordable homes and as such they are restricted to use as affordable homes.
  - RTB receipts held by SHDC could be utilised for this project. Accordingly, if the RTB receipts part-fund the acquisitions, the return to SHDC will increase as the direct capital invested decreases.
  - This project has been financially modelled both with and without utilising RTB receipts (as shown in Appendix A). The modelling for utilising RTB receipts is based on the criteria for the use of RTB receipts prior to the announcement of 19<sup>th</sup> March (as referenced in Section 4). For the avoidance of doubt this means that the modelling assumes RTB receipts will be applied to rented dwellings and will support 30% of project costs. If, as part of the due diligence process, a decision is made to utilise RTB receipts based on the reformed RTB scheme the financial return to the authority is likely to improve as more receipts could be utilised.

- The Housing Strategy & Enabling Officer has confirmed that there is housing need identified in this location for two-bedroom accommodation and Housing Services Manager has been consulted on the project and is supportive of the acquisition.
- The financial appraisal assumes that four units are let as Affordable Rent tenure. This means that Homes England will be required to approve the charging of Affordable Rent and if the scheme is supported by Members a request will be made to Homes England to confirm this tenure can be applied.
- It is acknowledged that this is not the only scheme which the authority could pursue and that there are other development sites in the district. However, this business case should be considered on the basis of the scheme specific information provided.

## 6.0 HOUSING NEED

- 6.1 New affordable homes contribute towards meeting housing need in the district.
- 6.2 The Strategic Housing Market Assessment identifies a need for 282 new affordable homes to be provided in the district each year.
- 6.3 On average, 67 new affordable homes (including rented and shared ownership) have been provided in the district each year (2016/17 to 2020-21) by SHDC and other Registered Providers. Between 1<sup>st</sup> April 2020 and 31<sup>st</sup> March 2021, there were 103 affordable housing completions in the district, 46 of which were for rent.
- 6.4 It is anticipated that the demand for affordable housing will increase as a result of the pandemic. Analysis of the SHDC Housing Register indicates that the number of applicants on the register has increased from 350 at the end of March 2020 to 460 at mid-April 2021. Additionally, an increased number of people are unable to address their housing need once they are threatened with homelessness and are therefore presenting as homeless.
- 6.5 The housing register indicates demand for 28 two-bedroom homes within Surfleet and 125 for the district as a whole, as at April 2021.

## 7.0 PROPOSED TIMETABLE

- 7.1 If this scheme is supported, the proposed timetable for future activity is as follows:

Indicative date	Activity	Decision
April 2021	Cabinet	To approve the business case for the acquisition of the properties. To delegate authority to sign the contract documentation to S151 Officer or similar, subject to satisfactory legal due diligence.
May 2021	Council	To amend the Capital Programme to approve the spend for this project.
July 2021	Exchange on contract	Delegated to Officers.
July 2021 *	Completion. Handover of properties	Delegated to Officers
July 2022	End of Defects	Delegated to Officers

*\*Developer anticipated programme subject to confirmation.*

## 8.0 OPTIONS

### 8.1 **Option 1: To approve the business case for the purchase of eight s106 affordable homes; to delegate authority to Officers to conclude the due diligence and complete the purchase; to amend the HRA Capital Programme.**

Under this option, due diligence and contract negotiations would be undertaken, and external legal services commissioned. SHDC would exchange on the contract, with the purchase and transfer to occur once the properties are complete.

### 8.2 **Option 2: Do Nothing.**

Under this option, the authority would not proceed to purchase the properties. As a consequence, the expected benefits listed in Section 9 will not be realised. Officers would seek to identify alternative appropriate schemes for consideration by Cabinet and Council.

## 9.0 REASONS FOR RECOMMENDATION(S)

9.1 The recommendations to proceed with the purchase of eight affordable homes relates to the expected benefits detailed in section 10.

## 10.0 EXPECTED BENEFITS

10.1 It is anticipated that the report recommendations will support the realisation of the following benefits:

- **A return on investment, and the generation of capital receipts from the sale of the initial tranche of shared ownership properties.** As set out within the financial evaluation (Appendix A), there is a positive business case associated with the proposed investment.
- **The delivery of 8 additional dwellings into the HRA.** These homes meet the needs of those who require low cost rented and shared ownership accommodation.
- **Meeting housing need.** The homes proposed will meet housing need in a location where there is evidence of a need for additional affordable homes.
- **The replacement of homes sold through RTB.** On average, 23 Council homes have been purchased by tenants each year since 2017, by virtue of the RTB. Since 1<sup>st</sup> April 2020, a further 14 properties have been sold to tenants. The delivery of new affordable homes can replace those homes lost each year, mitigating the impact of these losses on the HRA business plan.
- **The new homes can be part-funded from the time limited RTB receipts.** Investing the RTB receipts on new rented housing ensures that the receipts do not have to be returned to Government. Additionally, the return to SHDC will increase as the direct capital invested decreases.
- **Market confidence.** The Council acting as a proactive purchaser of s106 properties, will provide confidence to local developers of the authority's aspiration to facilitate sites to come forward and maintain demand for S.106 affordable homes in the district.

## **11.0 IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

### **11.1 Constitutional & Legal**

11.1.1 Approving the business case for this project is an Executive function.

11.1.2 Council will be asked to consider amending the Capital Programme to allocate the budget for this project.

11.1.3 As per previous s106 acquisitions, the legal support for the contract negotiations and purchase will be provided by an external firm.

11.1.4 As per the decision of the Portfolio Holder for HRA and Private Sector Housing regarding Shared Ownership sales, which became effective from 3<sup>rd</sup> September 2019, the following delegations regarding Shared Ownership sales are already in place and will apply to this scheme:

- That authority be delegated to officers to fulfil all necessary activities concerning initial sales, purchase of additional shares and resales of individual shared ownership properties to leaseholders.
- That authority be delegated to the Executive Manager – Property and Development, to agree the value of shared ownership properties at initial sale, resale, and acquisition of additional shares.
- That authority be delegated to the Executive Manager – Governance to approve and sign any mortgage offer.
- That authority be delegated to the Senior Legal Officer (as defined in the Constitution - currently the Executive Manager – Governance) and any officer authorised by the Executive Manager – Governance to sign any contracts/agreements which form part of the Shared Ownership sale and stair-casing procedures which are not under seal.

### **11.2 Contracts**

11.2.1 A contract will be required between SHDC and the developer. The handover of each property will take place as the homes are ready to be occupied. The contract will contain a list of requirements and the properties will not be purchased until these requirements have been met. Additionally, SHDC will appoint a Buyers Representative to provide quality assurance at handover.

### **11.3 Corporate Priorities**

11.3.1 The recommendations contained within the report will make a notable contribution to the realisation of the Council's corporate priority around 'Your Home'.

11.3.2 The scheme supports "delivery of housing solutions to meet local needs and aspirations."

11.3.3 The recommendations also support the Council’s objective to “ensure that our residents are enabled to live in high-quality housing no matter the tenure.”

#### 11.4 **Financial**

11.4.1 There is a detailed financial evaluation with financial implications set out in confidential Appendix A.

11.4.2 In terms of financial capacity, there is a total approved capital provision of £13m in the Capital Programme for the acquisition of new affordable homes by the HRA, for the period 2021/22 to 2024/25.

11.4.3 The Executive will decide whether to support the business case for this project. Council will consider amending the Capital Programme to include this scheme as an approved scheme. Both approvals will be necessary for this scheme to proceed.

11.4.4 In the event that Homes England does not provide consent for the homes to be provided as Affordable Rent tenure, they will still be purchased but will be provided as Social Rent tenure instead. This creates a risk that the anticipated financial return will be lower as the rental income for social rented housing is lower. Sensitivity analysis has been prepared which indicates that the scheme will still provide a positive financial return if the properties are provided as Social Rent tenure.

#### 11.5 **Reputation**

11.5.1 Risks around reputation are mitigated through a robust project management structure. The Housing Development team work closely with colleagues in Communications on all projects and meet on a regular basis to ensure that a Communications Plan is in place where appropriate.

11.5.2 Regular engagement with the developer will be arranged once the site is in progress and quality assurance will be carried out by an externally appointed Buyers Representative.

#### 11.6 **Risk Management**

11.6.1 Acquisition and development activity has within it inherent risks. Officers strive to identify and manage risk at each stage of the project.

11.6.2 Each project has a risk register that is reviewed throughout the lifecycle of a project by the Project team.

11.6.3 Risks around acquisition activity are sought to be mitigated through regular review and the appointment of professional expertise to provide legal due diligence, and accredited valuation advice to ensure value for money, in terms of the cost of the project.

11.6.4 There are specific risks associated with the delivery of shared ownership. A review of these was summarised in Portfolio Holder decision which became effective from 3<sup>rd</sup> September 2019. The decision report reviewed the risks associated with shared ownership including:

- If a leaseholder secures a mortgage on a property it will be the first charge. In the event of mortgage default, the lender can repossess the property and sell its leasehold and/or freehold interest in the property and can offset their reasonable

expenses against the price they pay to the authority for the Council's remaining shares. The maximum claim is the lower of the outstanding mortgage debt (including costs, interest, and any rent paid by the lender) or the total of the Council's share. Any shortfall remains a debt owed to the authority by the leaseholder.

**Mitigation:** Full affordability assessments will be undertaken to ensure the purchaser can afford the property prior to purchase. Additionally, the authority can signpost the occupier to the Housing Advice team or external money advice services to prevent the threat of possession action.

- As prices fluctuate the value of SHDC's assets will change and some homes will cease to be shared ownership dwellings if the occupier purchases additional shares in the property up to 100% including freehold.

**Mitigation:** For each sale, staircase or resale, a reassessment of the value of the property will be undertaken to determine the appropriate sale price. Officers will obtain expert valuations to determine the appropriate value and ensure the authority receives the appropriate return in accordance with the business plan.

- Following negotiation, the authority and potential purchaser may be unable to agree the value of the property and accordingly officers may decline a potential purchaser's offer to acquire a property.

**Mitigation:** Officers will obtain expert valuations to determine the appropriate value and ensure the authority receives the best return value.

- A sale price which is lower than assumed in the business case may be agreed and this could affect the return on investment.

**Mitigation:** Officers have and will continue to use prudent financial assumptions to prepare each business case for new schemes and will obtain independent property valuations to determine the appropriate value of each home on sale or resale.

11.6.5 As part of the Portfolio Holder decision report, a series of delegations to officers were agreed in order to reduce any risk by ensuring review at each stage of the process. These are detailed again in section 11.1.4 of this report.

11.6.6 Officers are ensuring that the increasing number of shared ownership homes owned by SHDC, is monitored as part of the approval process for each new sale and that any learning from other sales is carried forward.

11.6.7 The impact of the consultation on a new shared ownership model (as described in paragraph 3.9) is also being monitored by officers. Whilst this project will be delivered on the existing shared ownership model there is a risk that the delivery of shared ownership homes on other sites which are based on the 'new' version of shared ownership may impact the desirability of homes built under the existing shared ownership model. However, officers will be seeking to market the four dwellings on this site promptly once within contract.

## 11.7 Stakeholders / Constitution / Timescales

11.7.1 The delivery timetable will be reviewed once final scheme approval is in place. However, the developer has suggested that the units will be completed in July 2021.

11.7.2 As four of the homes are Affordable Rent tenure these homes are obliged, as a statutory tenure, to be declared to Homes England. Officers will write to Homes England to seek their consent to provide these homes as Affordable Rent tenure. Therefore, whilst not grant-funded units, Homes England are a stakeholder in this acquisition. Consent has been provided to SHDC, by Homes England, for other S106 schemes which have been delivered by the authority.

## 12 **WARDS/COMMUNITIES AFFECTED**

Pinchbeck and Surfleet ward

## 13 **ACRONYMS**

HRA – Housing Revenue Account

MHCLG – Ministry of Housing, Communities and Local Government

RTB – Right to Buy

### **Lead Contact Officer**

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**Key Decision:** Y

**Exempt Decision:** Exempt appendix

### **This report refers to a Discretionary Service**

### **Confidential Appendices attached to this report:**

Please note that the following appendices are not for publication by virtue of Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information

### **Confidential Appendices attached to this report:**

Confidential Appendix A - Financial Evaluation