

Southend-on-Sea Borough Council

Report of Executive Director of Finance and Resources
To

Special Cabinet

On
24 November 2020

Report prepared by:
Alan Richards – Director of Property & Commercial

Agenda
Item No.

Roots Hall and Fossetts Farm

Relevant Scrutiny Committee: Policy and Resources Scrutiny Committee
Cabinet Member: The Leader of the Council, Councillor Ian Gilbert

Part 1 Public Agenda Item and Part 2 Confidential Appendix

1. Purpose of Report

- 1.1 To provide an update to Cabinet on the proposed development of housing for rent at both Roots Hall and at Fossetts Farm and further to enable Southend United Football Club (SUFC) to secure the delivery of the new football stadium at Fossetts Farm.
- 1.2 To enable the legal documentation to progress to completion as set out in the report.
- 1.3 To highlight that in order for the developments to proceed, decisions will also separately need to be made by all members of the Council in their capacity as Trustees of the Jones Memorial Trust, Youth Commemoration Ground Trust and the Victory Sports Ground Trust. These decisions will be considered separately at Full Council on 10 December 2020.
- 1.4 **It is important to note that this report deals with the proposed land and leasing transactions. While the planning context is mentioned in this report, the planning application recently submitted for Roots Hall (Ref: 19/01985/FULM) and any amendment to the existing planning application or any new planning application for Fossetts Farm must be considered quite separately by the Council as local planning authority through the Development Control Committee.**
- 1.5 It should be noted that the principles of the transactions set out in this report have been endorsed pursuant to Standing Order 46 by all Group Leaders and that the [SO.46 report](#) was considered by Cabinet on 9 June 2020 (minute 69 refers). The report was referred to Policy and Resources Scrutiny Committee on 11 June 2020 and noted (minute 45 refers) and subsequently noted at Full

Council on 25 June 2020 (minute 97 refers). The Part 1 part of the SO.46 report is referred to in the background papers with a link included for background and ease of reference. The SO.46 was clear that prior to the completion of the transactions, a full Cabinet authority would be required.

2. Recommendations

2.1 That authority be given to enter into all necessary transactions to facilitate the developments at Roots Hall and Fossetts Farm, as set out in this report, subject to the following pre-conditions:

2.1.1 The submission of due diligence reports on the following matters which are satisfactory to the Executive Director of Finance and Resources in consultation with the Leader of the Council:

- i) Independent financial review;**
- ii) Review by the Council's external auditors;**
- iii) Property report by Cushman Wakefield;**
- iv) Legal report by Gowling WLG; and**

2.1.2 The developer reimbursing the Council the sum of £100,000 in respect of certain costs incurred to date (further costs will be reimbursed to the Council as development costs as the developments progress).

2.2 The transactions referred to in 2.1 will not become unconditional until:

i) Planning Permission (including 30% affordable housing and the resolution of any required highway matters) has been granted for the developments at both Roots Hall and Fossetts Farm; and

ii) the necessary Charity Commission consents have been obtained in respect of the matters involving Jones Memorial Trust, Youth Commemoration Ground Trust and the Victory Sports Ground Trust

2.3 That the income strip leases for the Roots Hall and Fossetts Farm developments (each comprising a series of land transactions¹) are granted directly to the Council with the options to acquire the freehold reversions for £1 being granted to the Council's Housing Investment Company to ensure that the transaction is tax effective, fundable at the optimal rate and the reversionary interests are suitably protected.

2.4 That authority be granted to the Executive Director of Finance and Resources in consultation with the Leader of the Council to:

¹ Under Regulation 10(11) of the Public Contract Regulations 2015 - land transactions meaning contracts for "the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or which concern interests in or rights over any of them" are exempt from the Regulations. . In the alternative, the Council could rely on Regulation 32(2), which provides an exemption from the Regulations that applies where a landowner can, through its control (or anticipated control) of substantial parts of a site, be regarded as having the exclusive right to carry out the project.

- 2.4.1 Agree any final adjustments to the terms of the transactions, or the final documentation, including any adjustments required as a consequence of the due diligence reviews; and
 - 2.4.2 Authorise the completion of all necessary agreements to progress the transaction including but not limited to the sale of the Council's land at both Roots Hall and Fossetts Farm, the leases in and the options to acquire the freeholds at the end of the leases; and
 - 2.4.3 Authorise any necessary management and contracting arrangements for the new affordable and private rented accommodation. (Note: long-term property management has been considered but does not need to be concluded at this stage).
 - 2.4.4 Agree the use of all capital and revenue income from the developments and in particular the holding of reserves to ensure that the Council's long-term position is protected.
- 2.5 To note that the authority to complete the following Trust matters will be separately considered by Full Council (acting as sole trustee² of the three relevant trusts) and any necessary Charity Commission consents will also need to be obtained:
- a) the proposed easement over Jones Memorial Ground Trust land relating to the 'Supporters' Way' access from Sutton Road and ancillary access to Fossetts Farm residential development; and
 - b) the lease agreement required in relation to replacement parking for Jones Memorial Ground.
 - c) the minor boundary adjustment to Victory Sports Ground accommodate the required highways changes on the Sutton Road/Eastern Avenue roundabout; and
 - d) a shared use agreement between the Youth Commemoration Ground Trust and the Loxford Trust to enable the release of the former Cecil Jones Junior School playing field land to the north of the Jones Memorial Ground (subject to the agreement of the Secretary of State for Education and the Charity Commission which Loxford trust may require).

The decisions for the Council as Trustee, set out above, need to be taken in the best interests of each Trust. This requirement should be met as the arrangements will enable the development and generation of capital and long-term income for the Trusts to help support their objectives.

3 Background

- 3.1 Cabinet agreed a report titled '[Housing and Development Pipeline](#)' on [17 September 2019](#) agreeing *"the principle that the Council is minded to enter into an income strip lease transaction in relation to the proposed residential development at Roots Hall subject to subject to the completion of the relevant due diligence and to ensuring the long-term financial sustainability for the Council. To note that if a suitable transaction can be agreed, the terms of that*

² Note all councillors act collectively as the Trustee for the Jones Memorial Ground Trust, Youth Commemoration Ground Trust and Victory Sports Ground Trust.

transaction will be put to Cabinet for consideration” ([Minute 324](#) refers). Cabinet has since then received regular updates on the project.

- 3.2 Cushman & Wakefield (C&W) and Gowling WLG were appointed to advise the Council, on property and legal matters respectively, and to negotiate and refine the proposals from Citizen Housing (CH) and Southend United Football Club (SUFC). They have advised comprehensively on the use of a phased series of income strip leases to provide a long-term sustainable income for the Council whilst at the same time enabling the developments at both sites. C&W has significant previous experience in concluding comparable transactions. Other distinct pieces of advice have been obtained as required. Letters from C&W and Gowling are appended to this report at **Appendix 1** and **Appendix 2** to provide additional assurance.
- 3.3 Some of the parties involved in this transaction are linked parties and it is important that these relationships are made clear from the outset.
- 3.4 Citizen Housing LLP (Citizen) was established in 2018 and is a 50:50 joint venture between Lenrose Housing Ltd and Allied Commercial Exporters Ltd (Allied Commercial). Whilst Citizen and Lenrose Housing Ltd are new companies, Allied Commercial was founded in 1946 and is the UK investment vehicle of the Dellal Family. The investment activities of Allied Commercial are supported through the significant, discretionary cash resources made available by the Dellal family trusts.
- 3.5 The principals of Citizen Housing LLP have collective real estate experience of over 110 years across residential and commercial sectors and have financed, structured and developed over 160 real estate transactions with a combined value of over £3.8billion.
- 3.6 In 2018, Citizen made its initial investment into the regeneration of Roots Hall and Fossetts Farm by funding the recapitalisation of Roots Hall Limited (corporate entity that owns Roots Hall). Citizen Housing LLP bought out Sainsbury’s interests and so has a live and significant stake. Citizen Housing LLP has therefore funded the early stage risk capital. Citizen Housing LLP will then be responsible for procuring the longer-term funding, which will be sourced as each phase is ready for delivery. It is very possible there will be more than one funder across the scheme.
- 3.7 Ron Martin (Chairman of SUFC) and Jack Martin (Lenrose Housing Ltd, which is one of the members of Citizen Housing LLP) are father and son and have common interests in multiple companies, some of which are involved in these proposed transactions. The development proposals across both sites will enable the release of Roots Hall for development, and the grant of a lease of the new football stadium to SUFC. The Council is not involved directly in the stadium element (however controls are in place to ensure the new stadium is open before Roots Hall closes).
- 3.8 Homes England is supportive of the project and is proposing to support it with a substantial loan to finance infrastructure and fund the stadium construction on the basis that the overall arrangement delivers a substantial quantity of new housing.

4. Overview of the proposed funding model – What is an income strip?

- 4.1 Income strips are structured transactions within the real estate sector, whereby the real estate asset is acquired by an investor subject to a lease which reverts, generally, to the tenant on expiry for a nominal sum. The price is predicated on the terms of the lease and covenant.
- 4.2 In summary terms, an “income strip” structure comprises an occupier or investor (in this case the Council) taking a long-term head lease over an asset in return for the right to occupy the asset or receive the underlying income (and usually a profit rent) and an option to acquire the freehold (or long leasehold) reversion of the asset at expiry of the lease for a nominal sum. Under such a proposal, the income strip tenant will be entitled to receive the full passing rental income less operational management costs from occupational tenants (under-tenants) in return for paying the contracted annual rental of the head lease (subject to indexation), to the landlord.
- 4.3 The suitability of the structure largely depends on the underlying asset fundamentals and it can be applied across a diverse range of scenarios, for example, large scale re-development for rented housing or for regeneration of a retail shopping centre, leisure development or wider town centre. Naturally, a large proportion of the deals done to date have included a public sector covenant however there are examples of private sector, educational and healthcare covenants utilising such a structure.
- 4.4 The analysis of the projected underlying rental flows remains key in ensuring there is reduced real estate risk to the income strip tenant.
- 4.5 For these reasons, specialist advice is required to ensure that the Council is in a position to enter in to the arrangements with confidence that the terms are financially prudent, reflective of the wider market, institutionally fundable and most importantly, that the long-term financial sustainability of the transaction is robust.
- 4.6 The Council may need to limit its exposure to this type of transaction. The combination of the developments at Roots Hall and Fossetts Farm would constitute one of, if not the largest income strip transaction undertaken by a Local Authority in the UK to date and it may limit the Council's ability to enter in to further similar transactions, certainly of comparable scale and type. Advice will be required from the Council's financial advisers and external auditors in this regard as part of the necessary due diligence.
- 4.7 Tenant rationale:
 - 4.7.1 Income strips appeal to head-tenants for various reasons, commonly one of more of the following:
 - a. Facilitate redevelopment or regeneration in which the income strip tenant has a vested interest without a requirement for upfront capital.
 - b. Political or strategic desire to acquire/secure mission critical assets or bolster its estate.

- c. Potentially cheaper or more readily accessible source of capital than alternatives e.g. bank borrowing, Public Works Loan Board (PWLB) or bond issuance. No up-front capital from the Council is required.
- d. Opportunity to receive a cashflow surplus, benefitting from 'profit rent' gained from the underlying asset (net of head rent and all lettings, void, and management costs).
- e. Other financial or economic considerations including Council Tax and rates receipts, employment, housing delivery...

5. The application of the model to Roots Hall and Fossetts Farm

- 5.1 Having discussed the Income Strip model in general terms above, its application to the developments at Roots Hall and Fossetts Farm can now be explained and the principle terms set out.
- 5.2 An income strip model is suitable for these schemes for the following reasons:
 - a. Roots Hall and Fossetts Farm, as residential Build to Rent/affordable housing schemes within the borough fit the criteria in principle.
 - b. The Council can provide the requisite covenant strength as a result of the prudent financial management and its financial position.
 - c. Delivery is not straightforward, requiring the relocation of SUFC which adds complexity, phasing requirements and direct links between the two sites. The stadium and infrastructure requirements also add substantial abnormal costs which would not be applicable in the case of a typical greenfield or vacant brownfield site and which present significant viability challenges on a conventional development appraisal basis.
 - d. The developments will contribute enormously to the Council's progress in meeting the necessary housing delivery targets and in providing large numbers of affordable and market rented homes over which the Council will ultimately have control over the pricing. Arguably, the number of units could be such that they will provide the Council with the ability to influence market rates across the borough however the Council needs to bear in mind at all times the cashflow risks and the risk of a future deficit position before the reversionary interest passes to the Council. Financial prudence is required in relation to the use and/or investment of any share of development profit, capital contributions, profit rent and other surpluses generated and the build-up of a substantial ringfenced sinking fund.
- 5.3 It is proposed that under the agreements for lease, Citizen Housing LLP will be responsible for the facilitation and delivery of the developments, including securing a suitable funding, although C&W will be retained to jointly support this work and ensure that the Council's position is represented and optimised.
- 5.4 On completion of the relevant phase of the development, the Agreement for Lease will compel the Council to take the lease of that phase. The Council will then be entitled to all the rents received from the completed development which will include a profit rent. The Council will be responsible for all maintenance, voids and management and, for the payment of an index-linked rent to the funder.

- 5.5 At the end of the lease term the freehold interest in the whole development would transfer to the Council for £1 (per lease), rent would no longer be paid by the Council and the Council will be entitled to receive 100% of the rent directly.
- 5.6 The delivery of the developments at Roots Hall and Fossetts Farm would make a significant impact on housing delivery numbers both in terms of affordable, and market housing. Homes England are aware, and are supportive of the proposed arrangements in principle, subject to the Council taking the lease. They have also agreed to provide substantial funding to enable the delivery of the new stadium and enabling infrastructure which in turn facilitates the housing delivery.
- 5.7 The developments at Roots Hall and Fossetts Farm are inextricably linked by the need to provide a new stadium for SUFC whilst maintaining the existing stadium until the new one is operational. A new stadium is a very long-held ambition for the SUFC which has been supported by the Council previously however the previously proposed delivery arrangements have proved to be unviable for a variety of reasons.
- 5.8 As has been well aired in previous reports, the Council has been working closely with SUFC and has encouraged them to reconsider the proposed retail development at Fossetts Farm and to consider residential enabling development instead for the following reasons:
- 5.8.1 To focus retail emphasis in the Town Centre so that the full benefit of linked trips, associated spend, consequential investment focus on the Town Centre provide it with the best possible prospect of survival and the potential to thrive.
- 5.8.2 More housing development is required on a large scale to meet the Council's Housing delivery targets and to meet the housing list and general housing demand.
- 5.8.3 Homes England proposing to support the project through a loan to fund the enabling infrastructure and the stadium construction.
- 5.8.4 The current and predicted future retail challenges.
- 5.9 SUFC has demonstrated that the significant cost associated with the development of these two sites together with the Council's requirement that 30% affordable housing must be provided on each site, the proposed development is not viable on conventional terms.
- 5.10 By working closely together, the Council, SUFC and Citizen Housing LLP have identified an alternative financing model which presents an excellent prospect of achieving the objectives (all subject to planning).

6. Roots Hall Proposed Development and transactions

6.1 The proposed development at Roots Hall is principally on land belonging to the football club although it also includes a comparatively small area of land owned by the Council at 291-301 Victoria Avenue.

6.2 The proposed development, which is presently the subject of a live planning application (Ref: 19/01985/FULM) is described as:

“Demolish existing stadium and buildings, erect 9 buildings between 2 and 8 storeys comprising of 502 residential units (Use Class C3), lay out associated car and cycle parking, amenity space, landscaping and highways works to form vehicular access from Fairfax Drive, Roots Hall Avenue and Shakespeare Drive and pedestrian/cycle access only from Victoria Avenue”

6.3 The 502 new homes include 30% Affordable Housing (151 homes³) which will be Affordable Rented Housing with rents capped at the Local Housing Allowance (LHA) rate, which are generally subject to periodic increases the balance of the development will all be homes for private rent⁴ and these have been modelled on market rents to ensure that the development can be made to be viable and generate a surplus. The Council will determine how the returns can be used to deliver additional housing development (including affordable housing).

6.4 Officers have undertaken considerable work with property advisers Cushman & Wakefield's (C&W) specialist investment and residential teams to assess and refine a proposal for the Council to enable the development at Roots Hall through an income-strip lease structure.

6.5 The plan at Fig.1 below indicates the distribution of the affordable rented units within the Roots Hall Scheme which has been carefully reviewed by officers having regard to the location, distribution across the scheme, management considerations, development financing, deliverability and the Council's reversionary interest. The proposed mix and distribution of tenures meets the Council's requirements.

³ 151 affordable proposed, split between 1, 2 & 3 bed apartments representing 30%.

⁴ 351 private rented units (PRS) proposed, including 338 apartments and 13 x 3 or 4 bed houses.

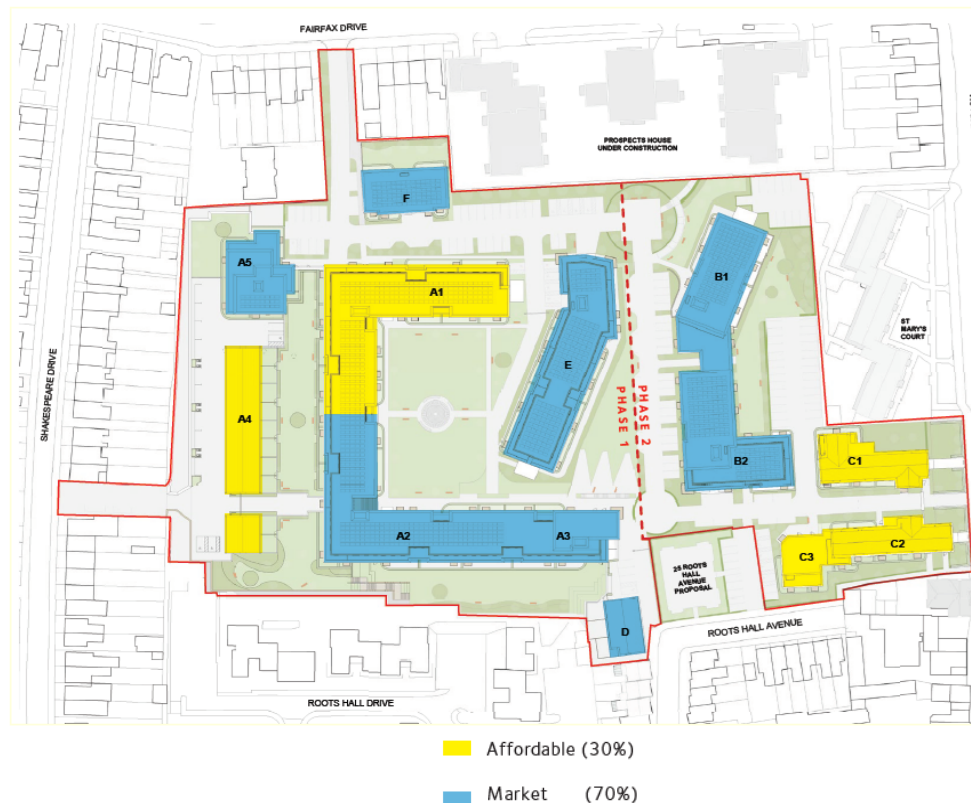


Fig.1 – Proposed Market and Affordable housing distribution – Roots Hall

Note: Roots Hall is the subject of a live planning application and the above are therefore only indicative and provided for context.

- 6.6 It is proposed that the 502 homes at Roots Hall will be delivered in two main development phases with each phase delivering 30% affordable housing. The first phase (351 homes) would see the A, D, E and F blocks delivered to the west of the site with the second phase (151 homes) delivering the B and C blocks fronting Victoria Avenue to the east of the site. The proposed unit mix across the phases is set out in Fig.2 below:

Phase 1		Phase 2		Total	
Affordable		Affordable		Affordable	
1 Bedroom	25	1 Bedroom	21	1 Bedroom	46
2 Bedroom	29	2 Bedroom	18	2 Bedroom	47
3 Bedroom	33	3 Bedroom	5	3 Bedroom	38
4 Bedroom	19	4 Bedroom	0	4 Bedroom	19
Total	106	Total	44	Total	150
Private		Private		Private	
1 Bed Apartment	46	1 Bed Apartment	42	1 Bed Apartment	88
2 Bed Apartment	76	2 Bed Apartment	35	2 Bed Apartment	111
3 Bed Apartment	83	3 Bed Apartment	30	3 Bed Apartment	113
4 Bed Apartment	40	4 Bed Apartment	0	4 Bed Apartment	40
3 Bed House	0	3 Bed House	0	3 Bed House	0
4 Bed House	0	4 Bed House	0	4 Bed House	0
Total	245	Total	107	Total	352

Fig.2 – Roots Hall proposed unit mix across phases.

7. Roots Hall Financial Considerations

- 7.1 The way that the transaction works is that in agreeing to take a lease of the completed development, the Council agrees to pay to the fund (yet to be sourced) a rent which is calculated based on the following basis:

Initial Council rent payable = 85% of estimated Day 1 Net Operating Income (NOI)

(NOI = gross estimated residential rents less 25% operating costs)

- 7.2 A considerable amount of work has been done on the appraisal to ensure that the Council is sufficiently protected by the 15% 'buffer' between NOI and the rent it will have to pay to the fund once the lease is granted.
- 7.3 In addition, Gross Rent Received (this is the income the Council will receive from all tenancies across the development once it is 'let up') is supplemented at the start by a capital contribution to compensate the Council for any voids during the 'letting up period'. There is an additional capital contribution on a per-unit basis which the Council will receive on completion to compensate for any voids before first letting.
- 7.4 The financial model for Roots Hall is set out in the **Confidential Appendix** illustrating how the Council will receive a day-1 profit rent of approximately £0.67m p.a.
- 7.5 Noting that the scheme remains subject to planning, below are some indicative computer-generated images (CGIs) showing what the development is expected to look like which help to provide context.

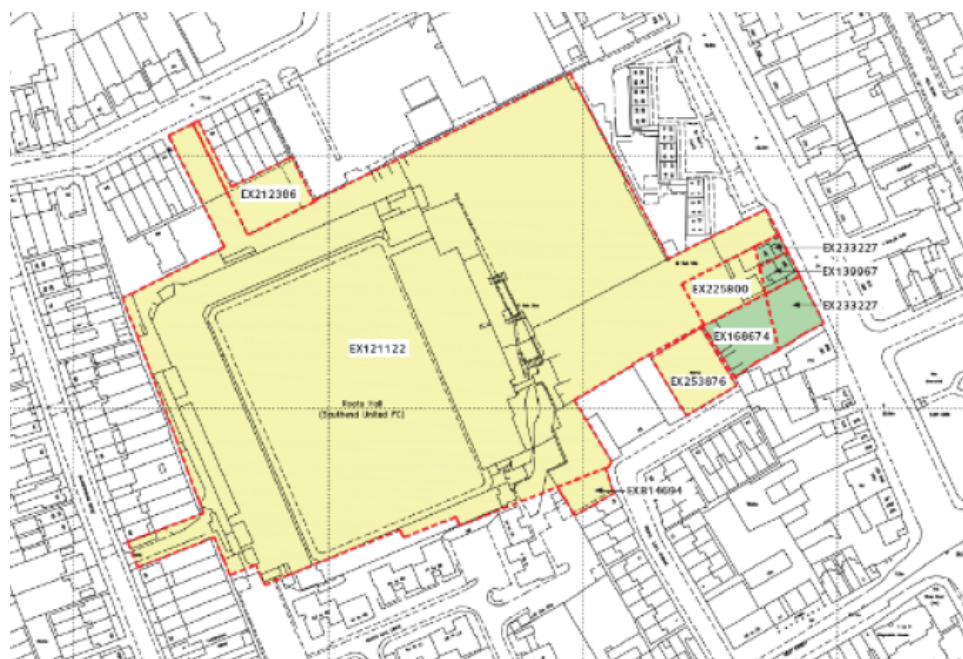




The full information on the development, which is the matter of a live planning application, can be accessed via the planning portal and the above images are provided purely for context.

- 7.6 In relation to the Council's small area of freehold land ownership at 291-301 Victoria Avenue, the freehold of this land will be sold to Roots Hall Ltd (which owns the rest of the land at Roots Hall) to complete their land ownership. This will be sold in at market value calculated on the percentage of the overall market value of the whole development area of which the land forms part (3.83%) The valuation will happen before start on site and the value will be fixed at that date. Based on the current assessment, the value of the Council's land interest is expected to be c.£590,000. The Council will receive the capital sum when the freehold is transferred in for development.

- 7.7 The Council's land ownership at 291-301 Victoria Avenue is shown shaded green on the plan below so it can be seen in the context of the whole development area:



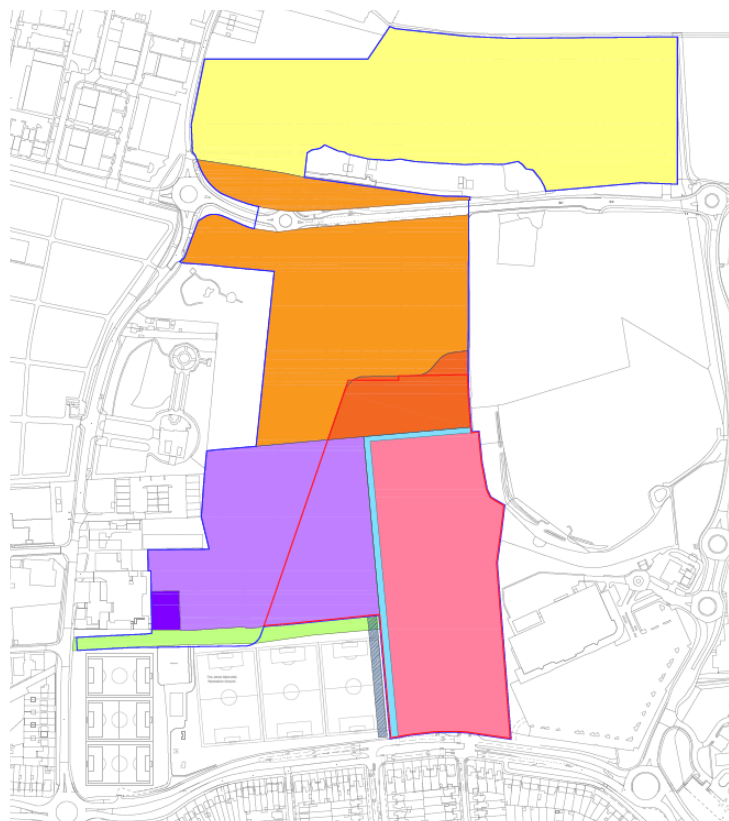
Note: Plans above for identification purposes, not to scale.

- 7.8 Whilst the Council will need to sell its freehold for the scheme to be delivered, it will then lease the land and buildings back once they are completed; and further the freehold of the land and buildings will return to the Council for a fee of £1 at the end of the lease period. This will be secured via an option agreement which will be granted to the Council's Housing Investment Company to ensure that all reversionary opportunities remain available to the Council.
- 7.9 In addition to the profit rent and capital contributions that the Council will be entitled to receive, assuming the average home is assessed in Band C (2020/21 £1,519.92 p.a.) for Council Tax (comparable to other new 2-bed properties in the borough) then this will also generate gross Council Tax income of c.£0.76m p.a. before the relevant deductions for Essex Police and Fire.

8. Fossetts Farm Proposed Development

8.1 Land Ownerships

- 8.2 The development proposed at Fossetts Farm is on land in multiple ownership and is more complex than Roots Hall although the delivery model proposed is an extension of that described for Roots Hall.



8.2.1 The above plan shows the ownerships and land interests for the development at Fossetts Farm as follows:

- Those in yellow, light and dark orange and blue are owned by Thames Plaza Plc and Roots Hall Ltd, both controlled by SUFC.
- The land coloured light and dark purple is owned by the Loxford Trust and is to be acquired by Thames Plaza Plc.
- The dark purple area is part of the light purple freehold and is leased to the Council.
- The land coloured pink (the SUFC Training ground) is owned by the Council and leased to South Eastern Leisure Ltd, controlled by SUFC.
- The land coloured green is owned by the Jones Memorial Trust for which the Council is the Trustee.

- 8.3 As at Roots Hall, the Council will need to transfer the freeholds of the training ground (independently valued at £265k) to Thames Plaza Plc as part of the series of transactions to enable the development to progress and to enable the leases to be granted back to the Council as the phases are completed. Again, as at Roots Hall, the Council (through the Housing Investment Company) will have the option to acquire the reversionary freeholds for the sum of £1 at the end of the leases.

- 8.4 The Council's land interest in the training ground, which is leased to South Eastern Leisure and subject to a restrictive covenant in favour of the blue land, owned by Thames Plaza Plc will be transferred in at Market Value. This value has been assessed independently by the District Valuer (acting for the Council) and by Lambert Smith Hampton, acting for Citizen Housing and the parties have agreed the land will transfer in at the higher of these two values (£265,000).

9. The Planning situation

- 9.1 It is proposed that the current scheme for Fossetts Farm is revised and SUFC/Citizen Housing and their consultancy team are working on the details of the application amendment. A request for a scoping opinion has been submitted (Ref: 20/01261/RSO) and the applicant is expected to submit the amendment imminently – certainly before the end of 2020 and quite possibly before this meeting of Cabinet on 25 November 2020.
- 9.2 While the stadium elements will remain as in the live planning application (ref 17/00733/FULM), the entire retail element will be switched out for residential development totalling a further 1,119 homes over and above those already included in the application. This will include 850 homes for the Council with the balance being delivered through market sales and other joint ventures between SUFC and developers directly.
- 9.3 The homes would be supported by a small amount of convenience retail, a concierge/management office and various small community spaces. This is proposed mostly around the plaza outside the stadium although the concierge is likely to be delivered to the south of the development in the initial phase so that it can also serve as a marketing office and on-site management is available from the outset. Citizen housing will meet the apportioned construction cost for, and take 150 year leases of the commercial space with options for the Council to acquire at market value on a rolling 15 year break after the end of the lease so if major change or redevelopment is required in the future, this can be delivered. The concierge and community spaces will sit with the Council at no capital cost and the revenue cost of these is accounted for within the overall management cost allowances.
- 9.4 Officers have been unequivocal with SUFC and Citizen Housing LLP that if the Council agrees the principles of the proposed transactions set out in this report that doing so will in no way fetter the Council's statutory Local Planning Authority function and no comfort that planning permission will be forthcoming can be given, or is implied if this report is agreed.
- 9.5 The 850 new homes for the Council would be the subject of income-strip leases (for each block or phase) to the Council. This will include:
- 254 homes for affordable rent, with rents capped at LHA rate, (subject to 1.5% p.a. inflation); and
 - 596 homes will be homes for private rent for the duration of the leases.

All Phases

Affordable Rent	
Unit Type	No
1 Bedroom	102
2 Bedroom	115
3 Bedroom	34
4 Bedroom	3
Total Affordable Rent	254

Private Rent	
Unit Type	No
1 Bedroom	90
2 Bedroom	208
3 Bedroom	268
4 Bedroom	30
3 Bed House	
4 Bed House	
Total Private Rent	596

Fossetts Farm proposed unit mix across all phases.

- 9.6 The distribution of the affordable units within the proposed Fossetts Farm development has not yet been determined as detailed designs are at an early stage although it will follow the same principles as at Roots Hall to ensure that to the location, distribution across the development, management considerations, development financing, deliverability. Letting considerations and the Council's reversionary interest are considered.
- 9.7 As proposed at Roots Hall, the development at Fossetts Farm will be delivered in a maximum of 8 phases - and the affordable housing will be distributed between the phases. The number of phases will be determined by the market forces at the time and the pace at which the developer can deliver the development. Presently this is expected to be at approximately 200 homes per annum and it is likely that the development will be delivered using off-site constructed modular housing (MMC).

9.8 Fossetts Farm Financial Considerations

- 9.9 The financial model for the 850 units proposed at Fossetts Farm follows the model for Roots Hall, albeit scaled up and over more phases.
- 9.10 The formula for rent payable by the Council is again as follows and there is the same 15% buffer between NOI and rent payable.

Initial Council rent payable = 85% of Estimated Day 1 Net Operating Income (NOI)

(NOI = gross estimated residential rents less 25% operating costs)

The financial model for Fossetts Farm is set out in the **Confidential Appendix** illustrating how the Council will receive a day-1 profit rent of approximately £1.21m p.a.

- 9.11 At this stage, further work is required on how the phases are arranged and it is anticipated that the homes for the Council at Fossetts will be delivered in up to 8

development phases with the expectation that approximately 200 homes p.a. will be delivered at each of Roots Hall and Fossetts Farm.

- 9.12 In addition to the profit rent and capital contributions that the Council will be entitled to receive and assuming the average home is assessed in Band C (2020/21 £1,519.92 p.a.) for Council Tax (comparable to other new 2-bed properties in the borough) then 850 homes will also generate gross Council Tax income of c. £1.29m p.a. before the relevant deductions for Essex Police and Essex Fire.
- 9.13 As explained the development at Fossetts Farm remains subject to planning, and an amended application however the computer-generated images below help to provide some context for the proposed development:



10. Roots Hall and Fossetts Farm combined:

- 10.1 The total forecast Day 1 Profit Rent to the Council across the combined Roots Hall and Fossetts Farm developments is projected at £1.875m. There is further information on this in the **Confidential Appendix**.

On the basis set out above (i.e. Band C average assumption) then the estimated Council tax for the combined developments will be c.**£2.05m p.a.**

- 10.2 In relation to both Roots Hall and Fossetts Farm, it is also important to note that the final figures will be subject to change as follows over time:

Gross Rents Received - the gross rent is split:

- On 70% of the development, the rent will be Market Rent
- On 30% of the development the rent will be Affordable Rent, capped at LHA rate.

- 10.3 The Market Rents have been independently verified as reasonable and achievable by an independent block management and lettings specialist.

- Market Rents – these rents will be reassessed 3 months before start on each scheme and the rent's reviewed at that point. The market rents for the purposes of calculating the Council rent are set at a minimum level in line with the December 2019 independent rent assessment.
- Affordable Rent – this is capped at Local Housing Allowance rate and will fluctuate with that rate. These will continue to be based on the LHA rate for the duration of the leases.

10.4 Operating Cost:

- This will vary year on year and includes an allowance for a sinking fund for major repairs and replacement of elements as required during the leases. As all the homes are for rent, there will be no service charges and the Council will be responsible for all repairs and maintenance together with all management and lettings. Lower maintenance costs in the early years should help subsidise later costs.

- 10.5 The operating cost will be up to the Council to control but this has been set at 25% of gross rents based on the experience of C&W's residential team and verified by an independent block management specialist. This will include an element of sinking fund together with all the normally expected management and letting costs.

10.6 Net Operating Income:

- As this is the Gross Rent less the Operating cost, this is variable as a product of those two inputs.

10.7 Rent Payable to the fund:

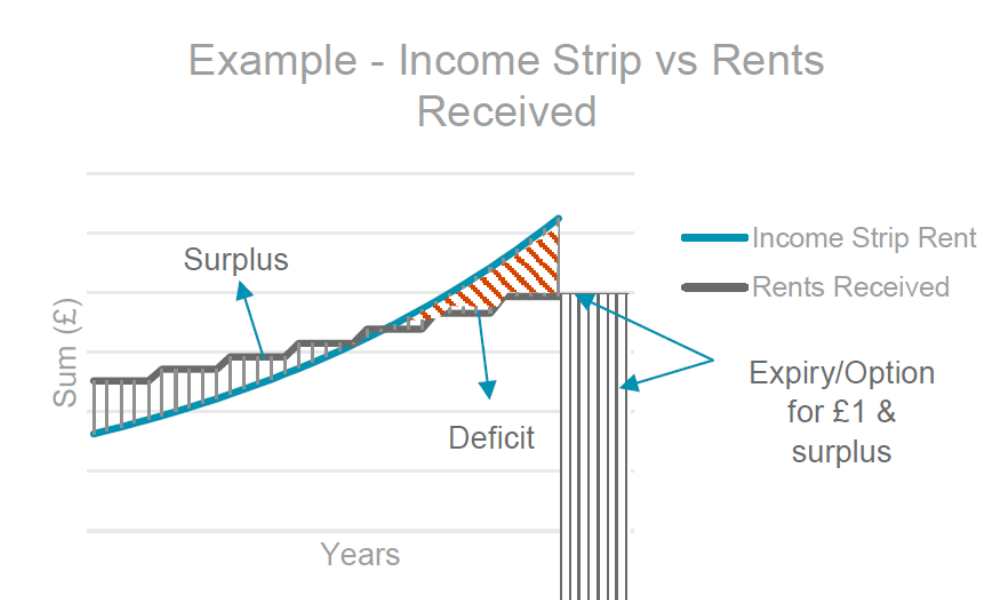
- This will be fixed 3 months prior to start on each phase and will be calculated by the formula set out above: Council rent payable = 85% of Estimated Rents less 25% allowance for operating costs. Affordable rents are then

benchmarked to prevailing levels at completion of each phase with a similar allowance for operating costs and the 85% Council rent adjusted accordingly.

- Once set for each lease, the rent will then be annually reviewed and linked to the Retail Prices Index (RPI) subject to the cap (4%) and collar (0%) mechanism as for Roots Hall.
- On completion the developer is to pay a lease up contribution equivalent to 9 months' gross rent (i.e. before netting off operating costs) to cover the costs of setting up and getting each phase to full occupancy. Assuming a progressive letting campaign with some units agreed to be let before completion this will cover a considerably longer period, if required, to full letting.

10.8 The cap at 4% and a collar at 0% on the RPI linked rent ensures that if there is no rise in RPI, that the rent which the Council pays out will not rise and also that if there is a surge in RPI, that any rise will be capped at 4% per annum.

10.9 This is one area of considerable risk to the Council and the modelling does predict a point at which the Council's RPI-linked rent-out may well exceed the Net Operating Income. The graph below illustrates this position.



It can be seen from this model (which is purely indicative), the Council must make prudent decisions from the outset in relation to the sinking fund element of the Operating Cost and the profit rent and take a long-term view. Any variations to RPI and/or Market Rent will mean that the illustrated position will change. It is recommended that the Council retains any un-spent capital contributions, profit share, all of the sinking fund and 50% of the profit rent in a holding fund to assist in funding any potential gap which may develop in the later years of the lease. This position should be reviewed every 5 years.

10.10. The Council will have no up-front capital expenditure. In addition to the lease up contribution the Council will receive a capital contribution for each completed unit when the leases for the phases are taken by the Council. This is to compensate the Council for any initial voids and management costs during the letting up period with the balance to be used to kick-start the ringfenced sinking

fund. The capital contributions the Council will receive are set out in the **Confidential Appendix**

- 10.11. Unlike a conventional lease where the tenant's interest depreciates over the lease until there is very little value left at the end, here, at the end of the lease the Council has the option to acquire the freehold interest in the asset for £1 after which point it will own the asset out-right and be entitled to receive all the rents without paying away a rent to the fund.
- 10.12 It is intended that the option is granted to the Council's Housing Investment Company rather than direct to the Council to ensure that all options remain available to the Council on the reversion of the leases. At that point, the Council could retain all the homes, regear the leases, sell all the homes, redevelop the area or agree to any combination of sale or retention to suit the needs of the Council at that time.
- 10.13 It is worth noting that allowing for 5 years for development, this will be in the 2070s and the development may by then require considerable investment although prudent management of the sinking fund and the development generally should mitigate this risk considerably. Again, this risk can be managed by keeping open to the Council all options at the end of the leases.
- 10.14 The Council's covenant strength is crucial to the transaction and to the funding rate and therefore the other main consideration here for the Council to be aware of is that the leases will not be assignable, other than once to a covenant of equal or better financial standing – in other words a similarly sized or larger local authority, public body or government department so in practice, it is unlikely that the Council will be able to assign its interest although it will be free to do as it wishes with the development after the end of the leases.
- 10.15 The developments also bring inward investment of c. £500m to the borough and the significant economic benefits that come with this.
- 10.16 During construction at Roots Hall, it is estimated that an annual average of 123 Full Time Equivalent construction jobs will be created over the duration of the construction period. This has been estimated by RPS as part of the Socio-Economic Environmental Statement chapter for Roots Hall planning application.

Longer term employment at Roots Hall is more limited although there will be additional demand on services, supply chain and in terms of property management all supporting long term direct and supply chain employment.

- 10.17 During construction at Fossetts, it is estimated that around 515 direct new jobs will be created over the construction period. This has been determined using the Government's Employment Density Guide.

Following construction, the proposed development would see an increase in FTE employed directly by the football club to 136 and an increase in match day jobs from 136 to around 250.

In total, the development at Fossetts Farm is estimated to provide a net additional 1,092 direct new jobs at the stadium, hotel and conference facilities.

The total jobs created at the Fossetts Farm site, including those re-provided from the Roots Hall development is therefore 1,352. This would make a significant contribution towards Southend's employment target of 7,500 new jobs as set out in the council's Core Strategy and DPD Policy CP8.

11. Profit Share arising from the development

- 11.1 In addition to the profit rent described above, there will in addition be a profit share arrangement for the development.
- 11.2 As with any development, the developer is entitled to a reasonable level of profit commensurate with risk and the profit rates are set out in the **Confidential Appendix**. Cushman & Wakefield are appointed to ensure the Council's interests are represented and protected in this respect.
- 11.3 The profit will be crystallised following practical completion of each phase and the profit will be held in an escrow account for each Roots Hall and Fossetts Farm until the final phase is completed and the final balancing payment has been made.
- 11.4 The developer's profit will be used to repay debt while the Council's profit share will be held in escrow⁵ throughout the phases and subject to a true-up when all the development accounts are reconciled, when it will be payable to the Council.
- 11.5 It is recommended that the Council's profit share is invested in the long-term and applied to any future rent gap which may develop in the future as described at 10.9 above.

12. Various Trust Matters affecting the Fossetts Transactions

Note: Sections 12, 13 and 14 below are included for context here, there will be a separate paper dealing with all the trust matters together.

12.1 Jones Memorial Ground

- 12.2 The land identified in green on the Fossetts Farm ownership plan (see para 8.2 above) is part of the Jones Memorial Ground. This land is required principally to provide access for supporters on match days. It will also provide access to the residential development which will be leased to the Council and to Jones Memorial Ground itself. It is proposed that the Trust grants an easement over this land to enable the construction and landscaping of a pedestrian and cycle route, referred to in the planning documents (to be amended) as 'Supporter's Way'. The route will provide access to the land to the east and north which is to be developed to provide residential accommodation, a new football stadium and associated ancillary commercial and community uses and car parking. Rights are proposed to be granted in common with the Trust, the Council, the public and all owners, occupiers and visitors to the development on the land to the east and north (the development) of the easement strip. Rights would be reserved to ensure that the Council can access Jones Memorial Ground and the

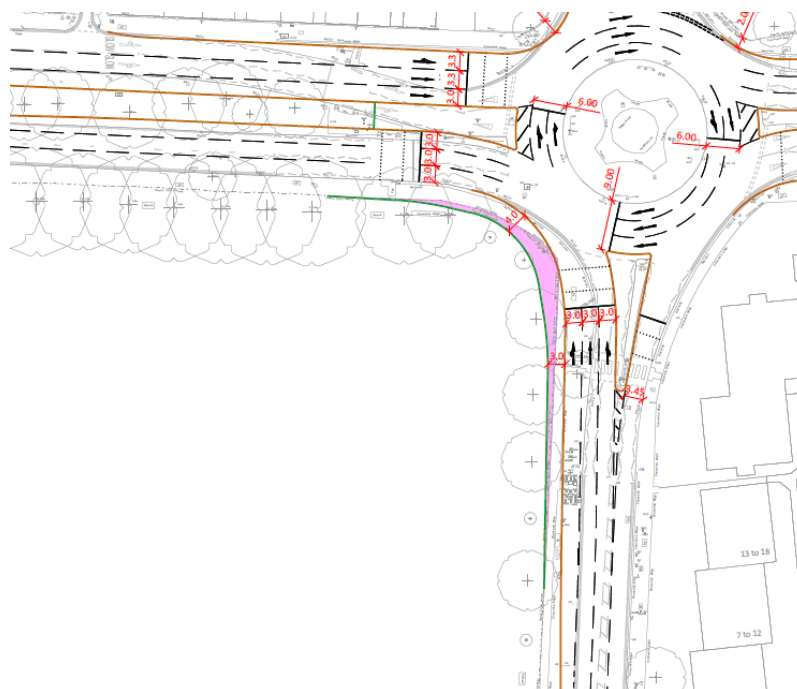
⁵ Escrow is a legal concept describing a financial instrument where money is held by a third party on behalf of two other parties that are in the process of completing a transaction.

children's play area for maintenance. The easement strip does not impact on the use of the land as playing areas and will enable an income to be generated for the trust which will assist its sustainability.

- 12.2 The easement has been independently valued by the District Value at £135,000 on the basis that a one-off premium will be paid to the Jones Memorial Trust. The easement would be required to be granted in perpetuity.

13 Victory Sports Ground

- 13.1 A very small sliver near the Sutton Road roundabout will be required to deliver the increased junction capacity. This land is part of the Victory Sports Ground and will need to be made subject to Highway rights under a s.278 Agreement. The area is shown shaded pink on the extract from the indicative general arrangement drawing below:



14. The Youth Commemoration Ground

- 14.1 As reported to Cabinet on 15 September 2020, the Council and the Football Club have been working on the principles of a shared use agreement in relation to Cecil Jones' use of the Youth Commemoration Ground (YCG) Trust land, to enable the former Cecil Jones junior school playing fields (which are no longer used as playing fields and are identified in light and dark purple on the plan above)) to be released by the Loxford Trust so that that land can then form part of the Fossetts Farm development.
- 14.2 The principle is that the Loxford Trust will benefit from a capital receipt for its land, the YCG Trust will benefit from investment to improve facilities (probably a refurbishment of the changing facilities via s.106) and therefore better income generation opportunities, all whilst operating within the objects of the trust.

- 14.3 The Council would also benefit from this arrangement indirectly. It is proposed that if the School needs to use the playing fields then a contribution will be made to the YCT to compensate it for the increased maintenance costs and the use of the playing fields and therefore the Council would need to subsidise the YCG Trust to a lesser extent. The Council should not rely heavily on this income because at present Loxford Trust does not intend to use the land but the position does help to safeguard future secondary school capacity.
- 14.4 This matter needs to be finalised between all parties, including the Youth Commemoration Ground Trust, the Loxford Trust, the Council, the Football Club, Citizen, the Charity Commission and the Department for Education and this is expected to take some time. The shared use agreements will be made conditional on these matters being resolved.
- 14.2 At the time of writing, this matter is not finalised and it is unclear whether the shared use agreement will be required at all.

15. Other Options

- 15.1 The Council could opt not to pursue negotiations for an income-strip lease for the development at Roots Hall and Fossetts Farm however it is difficult to see a way that the developments could be delivered by conventional means. The transaction is structured such that the Council only take up leases when the development phases are certified practically complete. The developer will therefore take the construction risk. Funding for the project is to be provided from commencement of construction works through the entire life of each phase, ensuring delivery.
- 15.2 The Council could encourage Citizen to identify an alternative partner to progress the developments with however given they are both within Southend's administrative boundary and the Council has the opportunity to benefit from the income generation and freehold reversion while enabling substantial housing development and the relocation of the stadium then the Council has a particular interest the developments progressing.
- 15.3 The Council could look at only one or other site however the transaction only reaches viability when the opportunity across both is captured and the sites are inextricably linked by the need to relocate the stadium and have it operational before the exiting stadium can close.

16. Reasons for Recommendations

- 16.1 To enable the Roots Hall and Fossetts Farm development proposals to be progressed with Citizen Housing, Homes England (if/as required) and SUFC and the following objectives can be achieved:
- 502 homes at Roots Hall in partnership with the Council (subject to planning)
 - 850 homes at Fossetts Farm in partnership with the Council (subject to planning)

- Affordable housing which is policy compliant (30%) for both sites
- The construction and longer term job creation and wider economic benefits arising from £500m of private investment in the developments
- The opportunity for the Council to become a major player in the Southend Private Rent market and to drive quality and safety standards.
- The potential for further additional homes at Fossetts Farm under a separate joint venture partnership between other parties.
- The opportunity to deliver a profit rent as commercial income/dividend for the long term and to benefit from the full value of the reversion.
- A new football stadium and new training ground for SUFC at Fossetts Farm to replace the current stadium at Roots Hall, which is nearing obsolescence and presents a significant risk to the future of SUFC, and current training ground at Boots & Laces
- As set out above, the Council will receive profit rent, capital contributions and profit share and the combined developments will deliver substantial additional council tax income to the Council.

16.2 With the Council's commitment, the opportunity for a further joint venture partnership between SUFC/Citizen Housing LLP and a third party is enabled to deliver additional housing at Fossetts Farm is also enabled.

17. Corporate Implications

17.1 Contribution to the Southend 2050 Road Map

17.2 The development of the housing and regeneration pipeline, the proposed acquisition of property to be utilised for affordable housing in the borough both work towards the Southend 2050 Safe and Well outcome of **"We are well on our way to ensuring that everyone has a home that meets their needs"**.

17.3 The development of a regeneration framework and pipeline are also key contributors to the Opportunity and Prosperity outcomes "We have a fast-evolving, re-imagined and thriving town centre, with an inviting mix of shops, homes, culture and leisure opportunities" and **"Key regeneration schemes, such as Queensway, seafront developments and the Airport Business Park are underway and bringing prosperity and job opportunities to the Borough"**.

17.4 Southend's *Housing, Homelessness & Rough Sleeping Strategy* aims to provide 'decent high quality, affordable and secure homes for the people of Southend' and the development and purchase of affordable contributes to this.

18. Financial Implications

18.1 In entering into the transactions related to these developments, the Council will be contracting to make long-term increasing rental payments. Because the Council's covenant strength is key to making the arrangement work, the Council will need to commit to pay the rent for the lease term.

- 18.2 In entering into the leases, the Council will also have the opportunity to receive the gross rents from the developments. The proposed arrangements have been financially modelled, and headroom is built into the heads of terms to ensure that the Council will receive a profit rent.
- 18.3 Based on the current rental analysis, a day-1 profit rent after costs will be available of approximately £1.875m p.a. The Council would be able to draw some of this as a dividend whilst reserving some within the holding company accounts as a ringfenced sinking fund to off-set the risk of later-year's deficit prior to the reversion passing to the Council.
- 18.4 There is also the opportunity to further 'top-slice' this accumulating fund to support the ambition to develop a cyclical investment fund to finance the progression of other housing development schemes and potentially to supplement the delivery of a higher ratio of affordable housing within some schemes.
- 18.5 The Council will also receive substantial Council Tax income (c.£2.05m) from all the units at both sites (potentially 1,352 homes for the Council plus additional via private JV(s)) and business rates income from the stadium and any commercial and training areas. As the Council's revenue support grant further reduces, it will be increasingly reliant on Council Tax, Business Rates and commercial income and the proposal has the opportunity to deliver all of these income streams in the long-term to support the medium to long term financial sustainability of the Council. It is important to note that the additional homes/residents will of course place additional burden on Council and Health services which needs to be taken into consideration. There may also be an opportunity for further income generation via the Council's building control team if appointed on the developments and this will be encouraged (but cannot be mandated or required) over private approved inspectors.
- 18.6 A fund monitoring role will be put in place to ensure that the development is delivered to the appropriate quality and for the right cost to ensure that the Council's financial position is protected and any profit share element due to the Council is secured and optimised.
- 18.7 The Council will also receive a combined capital receipt of circa £0.855 m for the sale of the parcels of freehold land to allow the scheme to progress.
- 18.8 Further and more detailed financial information is set out in the **Confidential Appendix** to this report.

19. Legal Implications

- 19.1 The legal implications are largely set out in the report and the Council has been represented by Gowling WLG with support from in-house lawyers to ensure up-skilling opportunities are captured.

20. People Implications

- 20.1 These represent significant development schemes and the Council will need to make resourcing provision to ensure that it can meet the requirements for delivery as the projects progress.
- 20.2 The costs incurred in relation to the schemes will be recoverable by the Council as development costs.

21. Property Implications

- 21.1 As set out in the report.
- 21.2 The Trust property implications are the subject of a separate report.

22. Consultation

- 22.1 SUFC & Citizen Housing LLP have presented the Roots Hall Scheme to councillors during 2019, prior to submission and subsequently the proposed Roots Hall development has been subject to the usual planning consultation process.
- 22.2 No consultation has been undertaken in relation to the revised scheme proposed for Fossetts Farm at this stage although the current stadium plans have been consulted on as part of the planning process and have received significant media attention.
- 22.3 Cabinet agreed a report on 17 September 2019 setting out the high-level principles of the transactions proposed in this report and has received updates regularly since that time which have been discussed at Cabinet and Policy and Resources Scrutiny Committee.
- 22.4 The principles were endorsed by SO46 by all Group Leaders and that the SO.46 report was considered by Cabinet on 9 June 2020 (minute 69 refers). The report was referred to Policy and Resources Scrutiny Committee on 11 June 2020 and noted (minute 45 refers) and subsequently noted at Full Council on 25 June 2020 (minute 97 refers).

23. Equalities and Diversity Implications

- 23.1 The relevant equality assessments will be undertaken where necessary.

24. Risk Assessment

- 24.1 The key risks as they stand at this stage are set out below with comments on proposed mitigation:
 - 24.1.1 Long lease commitment (including obligation to pay rent/invest over the long term) and the lease will be non-assignable or very limited. This is mitigated through the gross to net ratio to ensure that the Council will benefit from an appropriate level of surplus/profit rent and there is a up-front payment

considered to be sufficient to mitigate early void and let-up risk (i.e. the rate at which first lettings are achieved) based on up to 200 units p.a. on each site.

24.1.2 Head rent escalation – the rent that the Council will be contracted to pay out will be linked to the Retail Prices Index (RPI), subject to a cap. The rents that the Council will receive will be market rents which may not necessarily keep up with RPI leaving a risk of earlier than expected deficit position. This is mitigated again via the gross to net ratio and the cap on RPI increases. Gross rents have been independently assessed and those figures used for the purposes of the appraisal.

24.1.3 Relatively complex development funding structure – this means that there is a limited market for potential funders. This is mitigated by increasing activity in the sector and several funding institutions actively seeking long term annuity and income-strip deals because they perform well with low risk as part of a blended portfolio.

24.1.4 Construction cost over-runs – this risk is mitigated as it will sit with the developer and the Council will therefore not be exposed to any cost overruns. Note, there is also an appropriate contingency level which, if not required will convert to profit meaning the profit share hurdle rate is reached more quickly releasing additional profit share for the Council (potentially)

24.1.5 Scheme delivery and contractor default – mitigated through step in rights and the retention by the fund of the development profit until practical completion. Bonds may also be required, and the funder will undertake significant due diligence on all parties.

24.1.6 Importance of controlling quality and specification whilst managing cost – mitigated through good advice and joint monitoring surveyor appointment with the fund and the requirement for market standard warranties and quality control procedures for development manager.

24.1.7 Let-up rates – the speed at which the properties are let and income begins to flow. This risk is limited in relation to the affordable housing which will be filled from the housing list. In relation to the private housing, the developments will be phased and released in batches to match the market absorption rate. The expectation is that once development commences, the delivery rate at each site will be c.200 units p.a. of combined tenure. The capital contributions help mitigate this risk.

24.1.8 Financing rates/capital markets – Whilst rates are expected to stay low, they are liable to change and if rates rise significantly this could impact on viability.

24.1.9 Downstream income – the Council has the flexibility to manage all elements itself, via a procured contract, or through one of its companies (e.g. South Essex Homes, South Essex Property Services, PSP Southend LLP, Housing Investment Company or a mixture). The Council would also have the option to sublet the whole – or the affordable housing to a Registered Provider and the private to a private buy to rent investor/manager should it wish to (note this is not the current intention).

24.1.10 Due diligence on all parties and all elements of transaction – this will be essential as negotiations progress and in particular around the fund and contractor(s) in due course.

- 24.2 Procurement / State Aid – the Council will need to be satisfied that it is not contravening the Public Contract Regulations 2015 (or SBC procurement procedures) or relevant State Aid provisions and Gowling WLG and C&W are advising in this respect and the legal work is advanced.
- 24.3 The Council will not be specifying the work or services to be carried out, defining the characteristics of the work or services or making positive obligations for the delivery of the work or services. The development would therefore not be a public works contract and the Council's lease would take the form of a property transaction. Such transactions are generally outside the scope of the Public Contracts Regulations 2015⁶. Ensuring that market rates are applied through the transaction will assist in reducing risks relating to State Aid.
- 24.4 Furthermore, the requirement for Citizen to seek a funding partner in the market and in structuring the transaction on market terms, with the Council represented by C&W in this process helps to demonstrate the arm's length nature of the transaction and that best consideration and value for money criteria have been met.

25. Value for Money

- 25.1 The Council has commissioned C&W to represent its best interests commercially and to ensure that the transactions are arms-length, market-based transactions and the Council's interests are fully considered and properly represented throughout.
- 25.2 Gowlings WLG, the Council's lawyers for this transaction have specific experience in acting for local authorities in comparable scenarios.
- 25.3 The transaction will be subject to independent financial review as referred to above and all land disposals will need to satisfy the relevant statutory requirements.
- 25.4 The District Valuer has been engaged in relation to the valuation of the trust land elements.

26. Community Safety Implications

- 26.1 The proposed developments will both be designed to create good living environments to create safe, well considered environments which are designed with 'secure by design' principles in mind.

⁶ Under Regulation 10(11) of the Public Contract Regulations 2015 - land transactions meaning contracts for "the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or which concern interests in or rights over any of them" are exempt from the Regulations. . In the alternative, the Council could rely on Regulation 32(2), which provides an exemption from the Regulations that applies where a landowner can, through its control (or anticipated control) of substantial parts of a site, be regarded as having the exclusive right to carry out the project.

27. Environmental Impact

- 27.1 All construction will be of new, modern buildings built to good quality, sustainable and compliant standards. It is anticipated (but not contractually required) that most if not all of the development will be delivered using precision-built housing constructed off-site.
- 27.2 The developers have agreed to use the Council's Building Control Services to provide the Council with additional comfort over the construction quality and building compliance.
- 27.3 The Development at Fossetts Farm in particular is being designed to increase access to open space and careful consideration is given to its relationship to both Jones Memorial Ground and the Scheduled Monument to the East of the site to ensure that good quality public realm, walking and cycling routes are fully accessible and available to all.

28. Background Papers

[Cabinet Report 17 September 2019](#)

[SO.46 Report](#)

[Roots Hall Planning Application](#) (19/01985/FULM)

29. Appendices

Appendix 1 – Assurance letter from Cushman & Wakefield (The Council's Property adviser)

Appendix 2 – Assurance Letter from Gowling WLG (The Council's Legal adviser)

Part 2 - Confidential Appendix – Commercial and Financial information