

**Martina Kent**

**From:** Martina Kent  
**Sent:** 29 November 2013 11:22  
**To:** Stephen Harris; Nigel Knott; Landcharges  
**Cc:** Beverley Bayliss; Shona Turner; Amy Sedgwick; Victoria Savory; Katie Tucker; Pam Pritchard; Linda Grange; Sarah Peyman; Jane Hotchkiss  
**Subject:** Completion of the Section 106 Agreement - Land to the West of Crooked Lane, Birdham

Dear All,

**Re: Section 106 Agreement – Re: Land to the west of Crooked Lane, Birdham**  
**Our Ref: TCP/4/797**  
**Planning Application: BI/13/01391/FUL**

The Section 106 Agreement relating to the above land has now been completed and dated 29<sup>th</sup> November 2013.

#### **INFORMATION FOR THE PLANNING OFFICER**

Dear Steve,

I will shortly hand deliver a photocopy of the above agreement for your records. The planning permission may now be issued. Please ensure that your planning conditions do not conflict with the requirements of the Section 106 Agreement. Can you please ensure that signatures on the scanned document are hidden/blocked out.

#### **INFORMATION FOR LAND CHARGES**

Dear Nigel,

I will shortly hand deliver a photocopy of the above agreement and would be grateful if you could please enter details in the Register of Local Land Charges. Please kindly notify me in writing once this has been done.

#### **INFORMATION TO ALL OTHER PARTIES INVOLVED**

Please note that a copy was given to Steve Harris. The scanned document will be available on our web site shortly.

Link to locate all planning application on the Council's web site is as follows: -

<http://www.chichester.gov.uk/index.cfm?articleid=5427>

For all applications within the South Downs National Park (with the prefix SDNPA on the application number) please use the following link:

<http://planningpublicaccess.southdowns.gov.uk/online-applications/search.do?action=simple&searchType=Application>

*Please type in the planning number to access all documents and look for "Legal Agreement". If you use the IDOX system, again, please type in the planning application number – document will be available in "View Documents".*

Many thanks.

Kind Regards.

**Martina Kent**

Paralegal (Conveyancing)

Legal

Chichester District Council

Tel: 01243 53 4721 | Fax: 01243 776766 | [mkent@chichester.gov.uk](mailto:mkent@chichester.gov.uk) | <http://www.chichester.gov.uk>

THIS AGREEMENT is made on *29th November* 2013

BETWEEN

1. **CHICHESTER DISTRICT COUNCIL** of East Pallant House, East Pallant, Chichester, West Sussex, PO19 1TY (the "**Council**");
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ acting in its capacity as planning highway library and fire authority (the "**County Council**");
3. **NICHOLAS JOHN MITCHELL WAY** of 6 The Saltings, Birdham, Chichester, West Sussex PO20 7JA (the "**Owner**");
4. **MARTLET HOMES LIMITED** a company incorporated in England and Wales (company number 030648R ) whose registered office is at 30 Park Street London SE1 9EQ (the "**Developer**");

## 1. DEFINITIONS

In this Agreement, unless the context requires otherwise, the following definitions apply:

- |                                    |   |
|------------------------------------|---|
| <b>"The Act"</b>                   | the Town and Country Planning Act 1990 as amended;  |
| <b>"Affordable Dwelling Units"</b> | the Dwelling Units to be Provided as Affordable Housing in accordance with paragraph 1of the First Schedule of this Agreement and to be retained in perpetuity as Affordable Housing in accordance with the Council's housing policies and " <b>Affordable Dwelling Unit</b> " shall be construed accordingly;  |
| <b>"Affordable Rented Units"</b>   | a form of Affordable Housing, involving homes being made available at a rent level of up to 80% of market rent (inclusive of service charge) at the time of each letting which rent may be increased annually by no more than RPI +0.5% or such other amount as may be prescribed by the Homes and Communities Agency and Affordable Rented Unit' shall be construed accordingly.                                 |
| <b>"Affordable Housing"</b>        | affordable housing which includes Affordable Rented and Intermediate Housing, provided to eligible households whose needs are not met by the market. The Affordable housing should : <ul style="list-style-type: none"> <li>• meet the needs of eligible households including availability at a cost low enough for them to afford and determined with regard to local incomes and local house prices.</li> </ul> |

	<ul style="list-style-type: none"> <li>• Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.</li> </ul>
<b>“All Requisite Consents”</b>	all requisite consents, orders, agreements, authorisations, licences and permissions required to implement a Scheme;
<b>“All Items Index”</b>	the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics or any successor government office, ministry or department
<b>“All in Tender Index”</b>	the All In Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors or any successor or amending body
<b>“Application”</b>	an application in respect of the Affordable Dwelling Land for the Proposed Development and given Council reference 13/01391/FUL;
<b>“Approved Body”</b>	a Registered Provider being one of the Council's preferred partners or such other body , acceptable to the Council (acting reasonably) in accordance with the Council's Supplementary Planning Guidance;
<b>“Chargee”</b>	any mortgagee or chargee of the Approved Body or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925.
<b>“Chichester Harbour Special Protection Area”</b>	means the Special Protection Area designated pursuant to the Conservation (Natural Habitats) Regulations 1994 shown edged in orange and marked by orange triangles on Plan 4.
<b>“Commenced”</b>	the commencement of the Proposed Development by the carrying out of a material operation on the Land within the meaning of Section 56 of the Act;
<b>“Director”</b>	the Council's Director of Home and Community from time to time or his/her authorised representative;
<b>“Disposal”</b>	means a disposal of the Affordable Dwelling Units to an Approved Body whether by the transfer of the freehold or the grant of a long lease for a term of at least 125 years;
<b>“Dwelling Units”</b>	the dwelling units to be constructed on the Land pursuant to the Permission and <b>“Dwelling Unit”</b> means any one of them;
<b>“First Occupation”</b>	beneficial occupation for any use for which the Proposed Development was designed other than occupation for the

	purposes of construction or fitting out;
<b>“Gross Internal Floor Area”</b>	means measured on the basis of gross internal area defined in the Code of Measuring Practice of the Royal Institution of Chartered Surveyors
<b>“Interest Rate”</b>	the rate of 4% above the base rate from time to time of the Bank of England applicable at the date the relevant contribution under this Agreement is paid;
<b>“Land”</b>	that part of the freehold property known as land to the west of Crooked Lane, Birdham, Chichester, West Sussex being registered with absolute title at the Land Registry under title number WSX330917 and shown for the purpose of identification edged red on Plan 1;
<b>“Landscape Area”</b>	the land to be provided as landscape area distinct from Open Space Land and Landscape Buffer in accordance with paragraph 6 of the First Schedule of this Agreement and shown for the purpose of identification edged orange on Plan 2 and coloured orange on Plan 3
<b>“Landscape Buffer”</b>	landscaping/planting belt along the northern, southern and western boundaries of the Land and shown for identification only coloured blue on Plan 2;
<b>“Landscape Management Plan”</b>	the landscaping scheme and management plan prepared in accordance with the Permission in respect of the Open Space Land and Landscape Buffer;
<b>“Management Company”</b>	a company incorporated for the purpose of collecting an income and/or maintenance fees or similar from the Residents to be used for the long term maintenance of the parts of the Land of which the freehold or leasehold interests have not been transferred to Residents;
<b>“Nomination Agreement”</b>	a nomination agreement substantially in the form attached to this Agreement as Appendix 2;
<b>“Nomination Rights”</b>	the right to nominate occupiers to the Affordable Dwelling Units in accordance with paragraph 1.11 to 1.17 of the First Schedule and the provisions of the Nomination Agreement;
<b>“Open Space Land”</b>	the land to be provided as open space land in accordance with paragraph 6 of the First Schedule of this Agreement and identified with green colouring on Plan 2;
<b>“Operative Date”</b>	the date the Proposed Development is Commenced;

<b>“Owner”</b>	means the party named as such above and includes successors in title;
<b>“Permission”</b>	a planning permission for the Proposed Development granted pursuant to the Application in the form of the draft attached to this Agreement as Appendix 1;
<b>“Plan 1, 2, 3 and 4”</b>	the plans so numbered and attached to this Agreement;
<b>“Planning Authorities”</b>	the Council and the County Council;
<b>“Planning Obligations”</b>	the obligations, conditions and stipulations set out in the First Schedule to this Agreement;
<b>“Proposed Development”</b>	The residential development at land to the west of Crooked Lane, Birdham, Chichester, West Sussex comprising of 15 Affordable Dwelling Units pursuant to the Planning Permission;
<b>“Provide”</b>	in the case of the Affordable Dwelling Units to design and construct such units fit for habitation and in accordance with the Design and Quality Standards of the Homes and Communities Agency or Tenant Services Authority (as appropriate) or any replacement standards (or equivalent standards published by any replacement or successor body);
<b>“Recreation Disturbance Mitigation Contribution”</b>	the sum payable in accordance with paragraph 2 of the First Schedule of this Agreement being a financial contribution to mitigate the impact of the Proposed Development on the Chichester Harbour Special Protection Area;
<b>“Registered Provider”</b>	a registered provider of Affordable Housing pursuant to the Housing and Regeneration Act 2008;
<b>“Residents”</b>	the residents of the individual Dwelling Units constructed on the Land;
<b>“Scheme”</b>	a scheme or schemes identified in the document entitled “Highways and Transport Proposed Schemes to be Progressed if Developer Funding is Secured” approved by the County Council or any other scheme which will improve access between the Land and local amenities (to include housing, jobs, shops, schools, leisure and other services);
<b>“Section 106 Monitoring Fee”</b>	the Council’s administration costs in monitoring use of contributions received by the Council pursuant to Section 106 of the Act;

**"SPA Welcome Pack"**

means the welcome pack to be given to Residents of the Affordable Dwelling Units upon First Occupation that will include details of dog walking routes and places for leisure and recreation within the vicinity of the Development, the content of such SPA Welcome Pack to be agreed in writing by the Council prior to First Occupation;

**"Starter Tenancy"**

Means a periodic assured shorthold tenancy that may, in the event that the conditions set out in the Registered Provider or Approved Body's standard Starter Tenancy are fulfilled, become fixed term tenancy for a minimum of 5 years after 12 months and which shall be in a form which accords with the requirements of the Homes and Communities Agency or Tenant Services Authority (as appropriate) or replacement or successor body;

**Units for Rent**

Any Affordable Rented Unit and **"Unit for Rent"** shall be construed accordingly.

## **2. BACKGROUND**

- (A) The Council and the County Council are the local planning authorities, the Council is the Housing Authority and the County Council is the highway authority, education authority and the authority responsible for the provision of library and fire services for the area within which the Land is situated and are the authorities by whom the Planning Obligations contained in this Agreement are respectively enforceable.
- (B) The Owner is the freehold owner of the Land free from encumbrances save only as mentioned in the registered title to the Land.
- (C) The Developer has an interest in the Land by virtue of a contract for the purchase of the Land excluding that part shown hatched brown on Plan 2 dated 15 April 2013
- (D) The Developer have by the Application sought planning permission from the Council for the Proposed Development.
- (E) The Owner will retain the land hatched brown on Plan 2 being part of the Landscape Buffer subject to rights of entry for the Developer to maintain the Landscape Buffer and shall for the avoidance of doubt comply with paragraph 6 of Schedule 1 of this agreement in respect of the land in which it retains.
- (F) The Council is prepared to grant the Permission subject to the Owner and Developer entering into the Planning Obligations and the Owner and Developer have indicated willingness to enter into the Planning Obligations upon the terms set out in this Agreement.

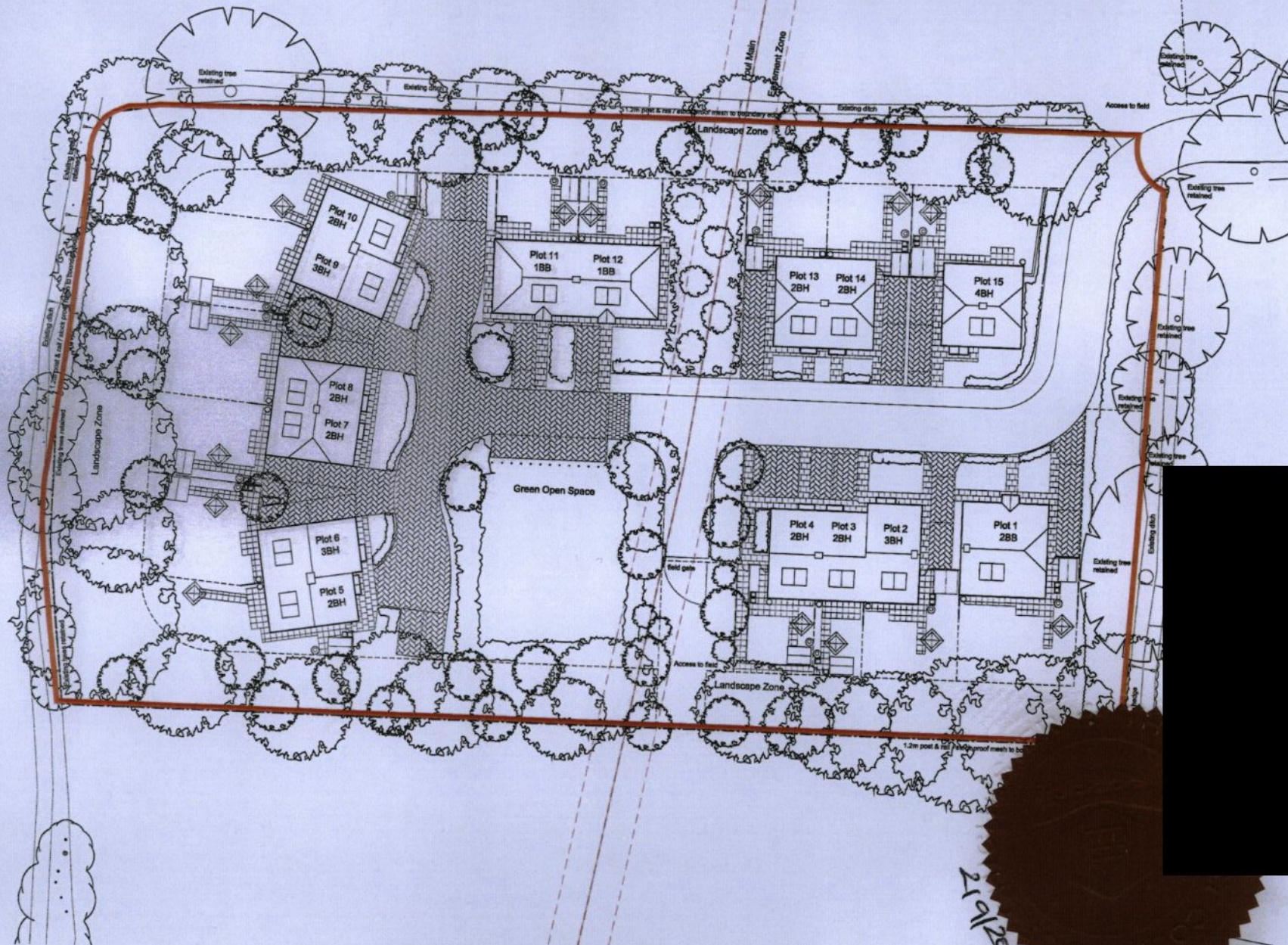
The parties agree as follows:

## **3. THE PLANNING OBLIGATIONS**

- 3.1 This Agreement is made pursuant to the provisions of section 106 of the Act, section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling and the Planning Obligations are planning obligations for the purposes of section 106 of the Act and are:
  - 3.1.1 binding on the Land and enforceable by the Planning Authorities;
  - 3.1.2 local land charges and shall be registered as such by the Council;
  - 3.1.3 subject to clause 4.1 to come into effect on the Operative Date.
- 3.2 Nothing in the Planning Obligations shall be construed as restricting the exercise by the Planning Authorities of any powers exercisable by or pursuant to the Act or any amendment or re-enactment of the Act.



# PLAN 1

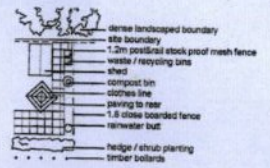


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Rev	Amendments	By	Check	Date

**Key:**  
 4BH = 4 Bedroom House  
 3BH = 3 Bedroom House  
 2BH = 2 Bedroom House  
 2BB = 2 Bedroom Bungalow  
 1BB = 1 Bedroom Bungalow

**Schedule:**  
 4BH = 1 No.  
 3BH = 3 No.  
 2BH = 8 No.  
 2BB = 1 No.  
 1BB = 2 No.  
**Total = 15 No. Units**



11 West Park, Chichester, West Sussex, PO19 1TB  
 Tel: 01243 832011 E-mail: hwb@hwb.co.uk www.hwb.co.uk

Housing  
 Lane  
 / Roof Plan as Proposed

Checked By	Date	Drawn By	Date
DS	Jan 2013	MC	Jan 2013

Project No. 10032 Drawing No. P109 Reason D

HWB Architects Ltd - Registered No 266904

21/9/2013

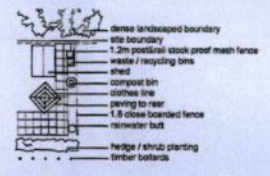
# PLAN 2

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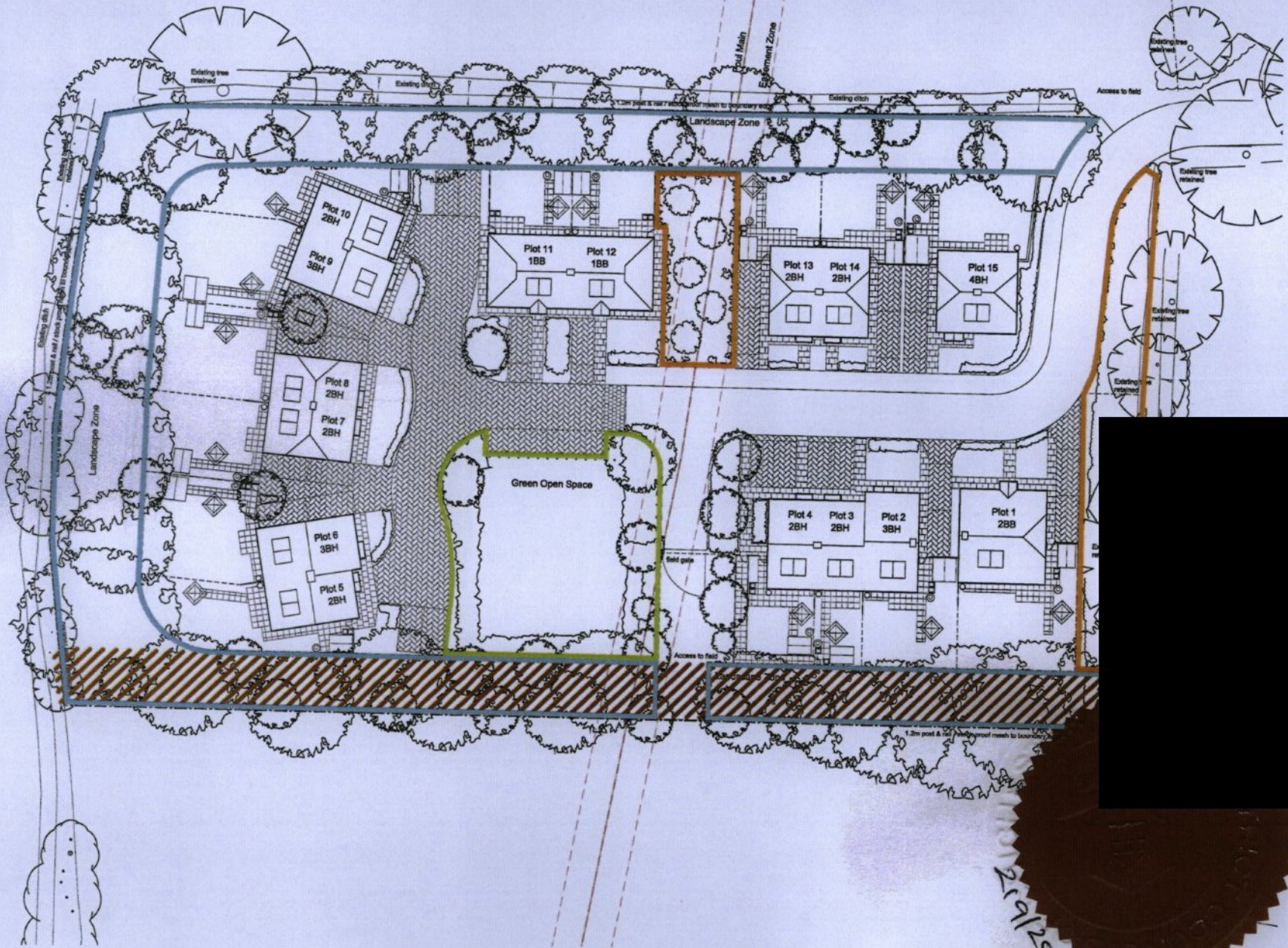
Rev	Amendments	By	Clad	Date

**Key:**  
 4BH = 4 Bedroom House  
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**Schedule:**  
 4BH = 1 No.  
 3BH = 3 No.  
 2BH = 8 No.  
 2BB = 1 No.  
 1BB = 2 No.  
**Total = 15 No. Units**



**Materials:**  
 private paths : paving  
 footpath : tarmac  
 access road : block paving  
 shared drive : blockpaving  
 vehicle parking : blockpaving



West Park, Clivedon, West Sussex, PO19 1TB  
 or 01243 522111 or west.nw@hyde.co.uk www.hyde.co.uk

housing  
 line

/ Roof Plan as Proposed

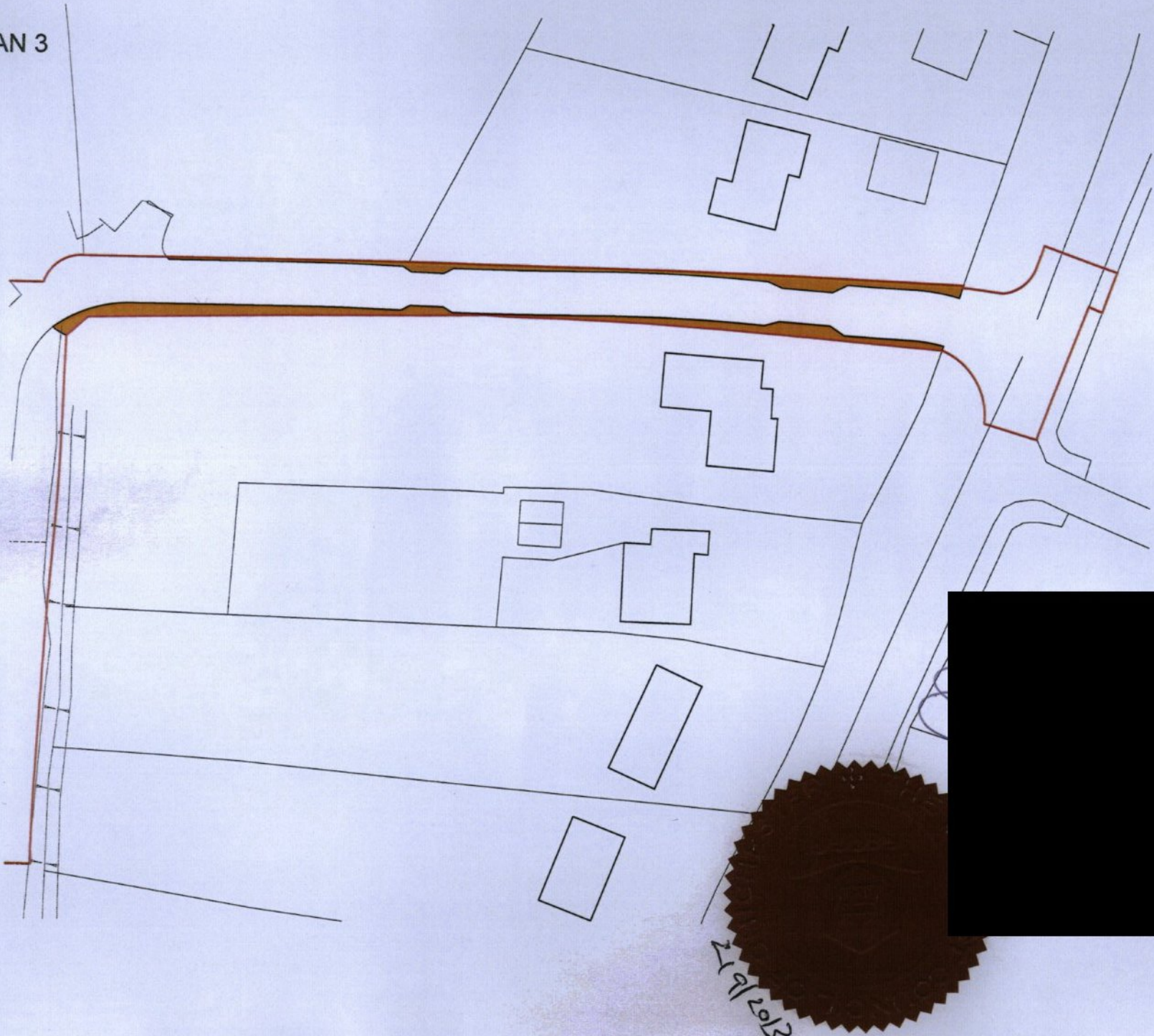
Drawing Status

Scale	Drawn By	Date
1:200 @A1	MC	Jan 2013
Checked By	Date	
DS	Jan 2013	
Project No.	Drawing No.	Revision
10032	P109	D

HWW Architects Ltd - Registered No. 228804

2/19/2013

PLAN 3

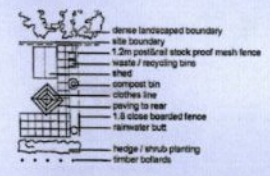


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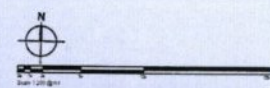
Rev	Annotations	By	Chk	Dev

**Key:**  
 4BH = 4 Bedroom House  
 3BH = 3 Bedroom House  
 2BH = 2 Bedroom House  
 2BB = 2 Bedroom Bungalow  
 1BB = 1 Bedroom Bungalow

**Schedule:**  
 4BH = 1 No.  
 3BH = 3 No.  
 2BH = 8 No.  
 2BB = 1 No.  
 1BB = 2 No.  
**Total = 15 No. Units**



**Materials:**  
 private path : paving  
 footpath : tarmac  
 access road : block paving  
 shared drive : block paving  
 vehicle parking : block paving



**The Hyde Group**  
 Making a lasting difference

**HNW ARCHITECTS**

HNW Architects, 11 Wood Palace, Cuckfield, West Sussex, PO19 1TB  
 Tel: 01343 932200 Fax: 01343 932211 E-mail: hnw@hnw.co.uk www.hnw.co.uk

Project  
**Proposed Housing**  
 Crooked Lane  
 Birdham

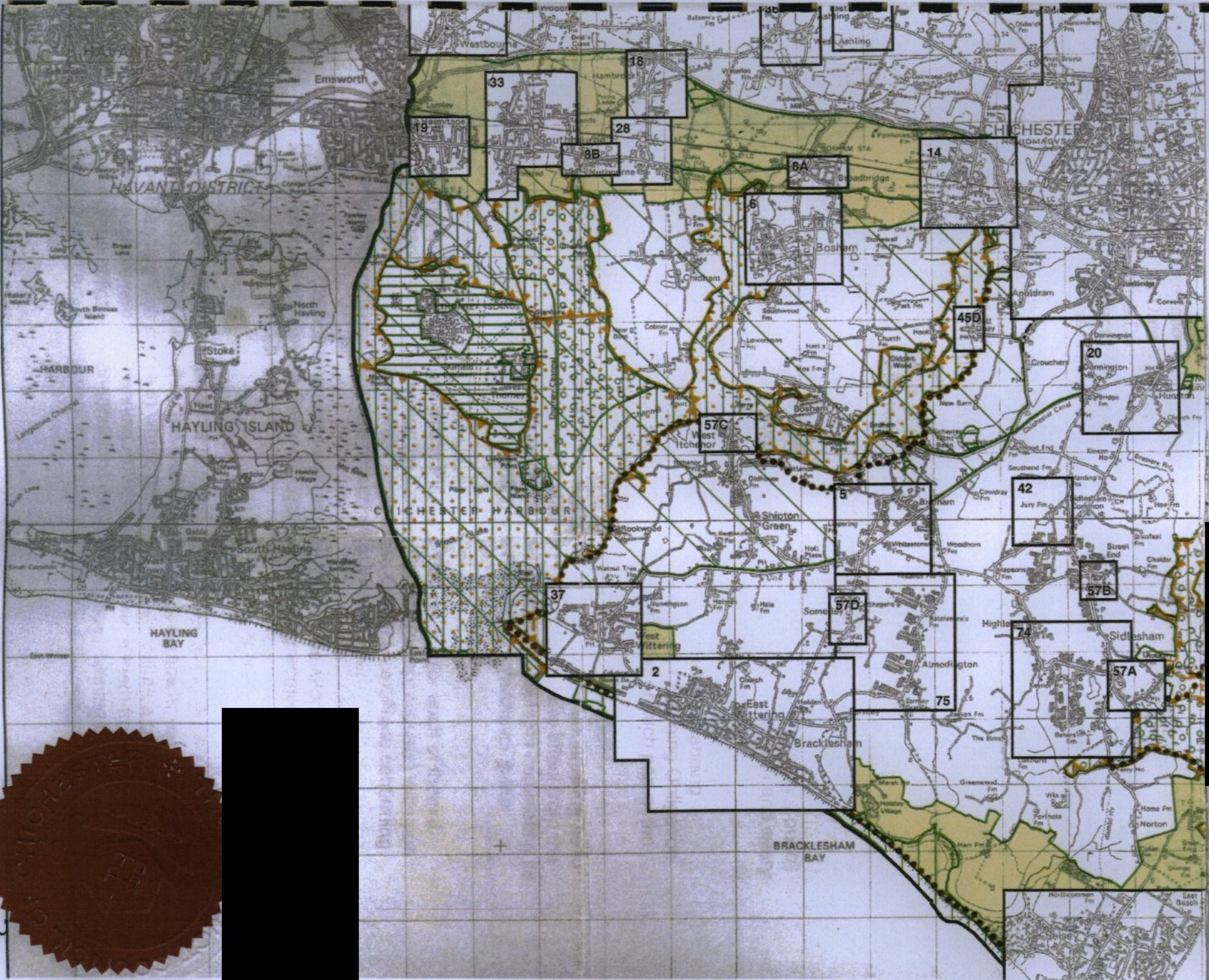
Drawing Title  
**Site Layout / Roof Plan as Proposed**

Drawing Status  
**PLANNING**

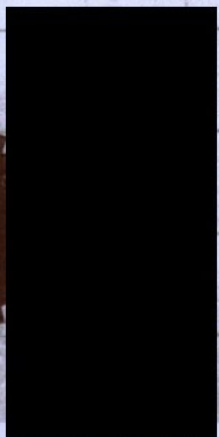
Drawn	Drawn By	Date
1:200 @A1	MC	Jan 2013
Checked By	Chk	Date
DS	Jan 2013	
Project No.	Drawing No.	Revision
10032	P109	D

HNW Architects Ltd - Registered No. 288924

21/01/2013



21/9/2013



PLAN 4

#### **4. COMMENCEMENT**

4.1 Subject to the following proviso the Planning Obligations shall take effect on the Operative Date but not otherwise and if the Permission shall expire prior to the Operative Date then the provisions of this Agreement shall cease to have further effect Provided That the following shall be effective on the date of completion of this Agreement:

4.1.1 the undertakings as to costs contained in clause 11

4.1.2 any provisions required to be performed prior to the Operative Date

4.2 The Council undertakes that on completion of this Agreement and payment of its reasonable legal costs and those of the County Council as provided for in clause 11 it will forthwith issue the Permission.

#### **5. COVENANTS**

5.1 The Owner and Developer covenant with the Council and the County Council (as the case may be) to perform the Planning Obligations and each and every term and condition of them.

5.2 Without prejudice to liability for any subsisting breach of the Planning Obligations the Owner shall not be liable for breach of a Planning Obligation after the Owner has parted with his interest in the Land or such part of the Land no longer in his ownership.

5.3 The Developer's covenants in this Agreement (save for the undertaking as to payment of legal fees contained in clause 11 which shall take effect from the date of this Agreement) shall be conditional upon the Developer completing its purchase of the Land or implementing the Permission whichever is the sooner.

5.4 At any time after fulfilment of the Planning Obligations (or each of them if more than one) the Council or the County Council (as appropriate) will upon the written request of the Owner issue to the Owner a certificate confirming compliance with and fulfilment of such obligation(s).

5.5 The County Council covenants with the Owner and Developer to perform the obligations set out in the Second Schedule to this Agreement.

#### **6. WAIVER**

No waiver (whether express or implied) by the Planning Authorities in respect of any breach or default by the Owner in the performance or observation of the Planning Obligations in whole or in part shall constitute a continuing waiver or prevent the Planning Authorities or either of them from enforcing any of the obligations or conditions contained in the Planning Obligations or acting upon any subsequent breach or default of the Planning Obligations by the Owner.

## **7. FUTURE PERMISSIONS**

Save as expressly provided (if at all) nothing in this Agreement shall be implied to prohibit or restrict the future development of the Land (or any part of it) in accordance with any planning permission granted after the date of the Permission.

## **8. ARBITRATION**

Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Agreement shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

## **9. INTERPRETATION**

9.1 Except where the context renders it absurd or impossible every reference to any party to this Agreement shall include the successors to the statutory functions of such party, its or their successors in title, assigns and personal representatives and any other party deriving title from the Owner by and against whom this Agreement shall be enforceable as if they had been originally named as parties.

9.2 In this Agreement:

9.2.1 words expressed in any gender shall, where the context so requires or permits, include any other gender;

9.2.2 words importing persons shall include bodies corporate and partnerships and other incorporated bodies and vice versa;

9.2.3 words expressed in the singular shall, where the context so requires or permits, include the plural and where any party is more than one person:

- a) that party's obligations shall take effect as joint and several obligations;
- b) anything in this Agreement which applies to that party shall apply to all of those persons collectively and each of them separately;
- c) the benefits contained in this Agreement in favour of that party shall take effect as conferred in favour of all of those persons collectively and each of them separately;

9.2.4 the headings to clauses are inserted for ease of reference only and shall not affect the construction of the Agreement;

9.2.5 references in this Agreement to anything which any party is required to do or not to do shall include its acts, defaults and omissions, whether direct or indirect on its own account, or for or through any other person, and those which he permits or suffers to be done or not done by any other person;

9.2.6 the effect of all obligations affecting the Owner under this Agreement is cumulative and no obligation shall be limited or modified by any other obligation unless there is in this Agreement an express limitation or modification.

## **10. THIRD PARTY RIGHTS**

This Agreement is not intended to (nor does it) enable any rights under the Contracts (Rights of Third Parties) Act 1999.

## **11. COSTS**

The Developer undertakes with the Council and the County Council to forthwith pay the Council's and the County Council's reasonable legal costs incurred in connection with the preparation and completion of this Agreement.

## **12. SEVERANCE**

If any provision in this Agreement shall in whole or in part be held to any extent to be illegal, ultra vires or unenforceable under any enactment or rule of law, such provisions shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement and in the event of any such deletion the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

## FIRST SCHEDULE

### The Planning Obligations

#### 1. AFFORDABLE HOUSING

1.1 No development shall be commenced until the Council has received written notification of the name of the Approved Body for its approval and thereafter approved in writing by the Council, save where that Approved Body is Martlet Homes Limited, in which case the Council's approval shall be deemed to have been given.

1.2 To Provide 15 Affordable Dwelling Units on the Land and not to allow First Occupation of any of the Affordable Dwelling Units until all of the said Affordable Dwelling Units have been provided in accordance with the following provisions and written notification of such has been received by the Council.

1.3 The Affordable Dwelling Units shall (unless otherwise agreed in writing by the Council) be of the following size mix and tenure and in a location approved by the Council acting reasonably in writing prior to First Occupation:

15 Affordable Rented Units of the following mix and sizes:

- 8 x 2 bedroom houses
- 3 x 3 bedroom houses
- 1 x 4 bedroom house
- 2 x 1 bedroom bungalows
- 1 x 2 bedroom bungalow

1.4 None of the Affordable Dwelling Units shall be occupied until all of the said Affordable Dwelling Units have been disposed of to the Approved Body and provided that:

1.4.1 The Disposal is on terms that accord with any relevant Homes and Communities Agency funding requirements current at the date of construction of the Affordable Dwelling Units; and

1.4.2 The Disposal is on terms which require the Approved Body to enter into the Nominations Agreement with the Council within 28 days of the date of the Disposal or such other period as may be agreed in writing with the Council; and

1.4.3 The Approved Body has entered into the nominations agreement within the time specified at 1.4.2 above; and

1.4.4 written notification of the Disposal has been received by the Council.



AND the Owner shall not dispose of the Affordable Dwelling Units other than to an Approved Body previously approved in writing by the Council and such disposal shall be together with all necessary rights and easements

- 1.4A Upon the Approved Body entering into the Nominations Agreement with the Council, the provisions of the Nominations Agreement shall apply to the Affordable Dwelling Units specified therein and such agreement shall take the place of the provisions of Paragraphs 1.10 to 1.22 below.
- 1.5 The Affordable Dwelling Units shall not be used other than for Affordable Housing.
- 1.6 If at any time the Council is reasonably satisfied that:
  - 1.6.1 the Chargee in the proper exercise of its powers intends to dispose of or to cause to be disposed all or any part of the Affordable Dwelling Land
  - 1.6.2 the disposal referred to at 1.6.1 would not comply with the provisions of clause 1.4no disposal shall take place other than in accordance with clauses 1.7 and 1.8.
- 1.7 The Chargee (or any receiver appointed by the Chargee) shall:
  - 1.7.1 Only exercise any power of sale arising under a mortgage or charge over any affordable housing unit in the event of default by the Registered Provider
  - 1.7.2 Notify the Council in writing of the aforementioned default as soon as reasonably practicable and in any event within 14 days of serving any notice on the Developer;
  - 1.7.3 Not exercise its power of sale for a period of 18 weeks following the provision of such evidence to enable the Council or a Registered Provider to attempt to complete a transfer of the Affordable Dwelling Units within the said period of 18 weeks provided that the consideration for any such transfer will discharge the debt owed to the Chargee or receiver;
  - 1.7.4 if the Affordable Dwelling Units are not disposed of within the 18 week period, the Chargee (or receiver) may thereafter sell or dispose of the Units as it shall think fit and this Agreement and the Nomination Agreement shall forthwith terminate in relation to such Units;
- 1.8 The Council's right of pre-emption shall be binding on and enforceable against any successor in title, mortgagee or chargee of all or part of the Affordable Dwelling Land or the income derived therefrom but for the avoidance of doubt shall not be binding upon nor enforceable against any Protected Occupier.

1.9 The parties agree that:

1.9.1 at the date of this Agreement the statutory purchase grant scheme contained in Part 1 of the Housing Act 1996 does not apply to the Property;

1.9.2 A disposal to a Protected Occupier shall not be in breach of this Agreement and, save where expressly indicated, upon completion of such disposal the Protected Occupier shall be exempt from the provisions of this Agreement as shall anyone deriving title from such person.

### **Letting the Affordable Dwelling Units**

1.10 Until such time as a Disposal has been completed and the Affordable Dwelling Units transferred to an Approved Body who has entered into a Nomination Agreement with the Council as required under paragraph 1.4 above, then the Affordable Dwelling Units shall not be occupied other than as Units for Rent and such units shall not be occupied or managed other than in accordance with the provisions set out in paragraphs 1.11 to 1.24 below, and the Owner shall appoint an Approved Body (as shall have been previously approved by the Council in writing) and ensure that such Approved Body manages and controls the letting of all the Units for Rent in accordance with the following paragraphs.

### **Council Nominations**

1.11 In respect of the following proportions of the Units for Rent not to cause or permit such units to be occupied other than by persons nominated by the Council and selected pursuant to the procedure set out in paragraphs 1.12 to 1.14 inclusive:

1.11.1 the first tenants to occupy the Units for Rent after practical completion - 100% of the total number of units;

1.11.2 vacancies arising thereafter in the Units for Rent - at least 75% of the total number of vacancies which arise during 1 April to 31 March each year in perpetuity calculated on the basis of the running total so that the first three vacancies arising in any given year shall be offered to the Council for nomination with the fourth vacancy being available for nomination by the Approved Body and so on throughout the year.

1.12 In respect of the Units for Rent to which the Council has Nomination Rights the Owner shall follow the procedures set out in the Service Level Agreement EXCEPT THAT if no Service Level Agreement is in existence at the relevant time the Owner shall:

1.12.1 notify the Council of any vacancy arising (a "**Vacancy Notice**");

1.12.2 allow the Council the following periods from receipt of a Vacancy Notice to supply written particulars (a “**Nomination Notice**”) of up to three (3) persons to be nominated as a tenant, that is:

twenty (20) working days in respect of initial lettings of the Unit for Rent; and

five (5) working days in respect of all subsequent lettings.

1.13 Unless otherwise agreed in writing with the Council to offer the following types of tenancies (or such equivalents if dictated by statute or the Homes and Communities Agency or the Tenant Services Authority or any replacement or successor body) to each Nominee mentioned in the Nomination Notice in turn and allow each Nominee five (5) working days from receipt of the offer within which to confirm rejection or acceptance of the offer and in the event that the Council nominates fewer than three (3) Nominees to offer a tenancy to a person on the Council’s housing register (who shall be classed as a Nominee for the purpose of this clause) so that an offer is made to up to three (3) Nominees or until a Nominee accepts the offer of a tenancy (whichever shall first occur)

1.13.1. For tenants of a Unit for Rent who have held an Assured or Secure housing association or local authority tenancy immediately prior to being made an offer – assured tenancy

1.13.2 For tenants of a Unit for Rent who have not held a housing association or local authority tenancy immediately prior to being made an offer – Starter Tenancy

1.13.3 For all other new tenancies of a Unit for Rent (save for any that are as a result of mutual exchange or transfer which shall be an assured tenancy) - a Starter Tenancy

1.14 In the event of the Council failing to serve a Nomination Notice or Nominees failing to accept the offer of a tenancy within eight (8) weeks of the Vacancy Notice not to cause or permit the Units for Rent to be occupied other than by a person who satisfies the criteria set out in paragraph 0 below

Provided always that all persons nominated by the Council shall be within the category of persons which the Approved Body’s rules permit it to accommodate.

### **No Council Nominations**

1.15 In respect of any vacancy of a Unit for Rent to which the Council does not enjoy Nomination Rights under paragraph 1.11 above, not to cause or permit the Unit for Rent to be occupied other than on an assured tenancy (or its equivalent if dictated by statute) or for new tenants a Starter Tenancy and by a person who satisfies the following criteria, that is a person who:

1.15.1 is considered by the Approved Body in accordance with its objects and rules to be in need of such accommodation; and

1.15.2 is not easily able to compete in the open market for housing accommodation in Chichester District; and

1.15.3 lives within the Parish of Birdham; or

used to live within the Parish of Birdham but was forced to move away because of the lack of affordable housing accommodation; or

is permanently employed within the Parish of Birdham; or

is the sibling, parent or adult child of a living and permanently resident of the Parish of Birdham as defined by the Housing Act 1986;

Provided that:

(i) if there is no such person who satisfies the above criteria then the Unit for Rent shall be allocated to a person who is considered by the Approved Body to be in need of such accommodation and who has immediately prior to such allocation, had a local connection, as defined by 1.16.3, with any of the Parishes of:

West Itchenor  
West Wittering  
Earnley  
Sidlesham  
Donnington  
Appledram

(ii) if any vacancy is unable to be filled in accordance with paragraph (i) then the vacant Unit for Rent may be allocated to any person who is considered by the Approved Body to be in need of such accommodation.

## **Premiums**

1.16 To ensure that no premium or deposit is charged to any tenant in respect of any letting of a Unit for Rent.

## **Rent levels**

1.17 To ensure that the rent of any Affordable Rented Unit shall be set at or above the target rents of the Homes and Communities Agency or Tenant Services Authority (as appropriate) but shall be no greater than 80% of the gross market rent (including service charges) which reflects the property size and

location and the rent shall at all times comply with the Affordable Homes Programme – Framework (or any successor or amending guidance) set by the Homes and Communities Agency (or any amending or successor body) and if rents cease to be regulated then the rent shall be agreed in writing with the Council

- 1.18 To ensure compliance at all times with the requirements for rents and service charges for Registered Providers published by the Homes and Communities Agency or the Tenants' Services Authority (or any replacement, amending or successor body) as statutory housing management guidance under the Housing and Regeneration Act 2008;
- 1.19 To ensure that the rent and/or service charge of any Unit for Rent shall not be increased more frequently than once in any period of twelve (12) months and only in accordance with the Approved Body's standard tenancy agreement (as regulated by the Homes and Communities Agency or Tenants Services Authority as appropriate);
- 1.20 To ensure that any water or other charges for supply services payable by any tenant to the Approved Body do not exceed the sums charged to the Approved Body by the relevant supplier.

### **Tenancy Agreements**

- 1.21 Any tenancy agreements shall be in the standard form of the Approved Body which shall accord with the requirements of the Homes and Communities Agency or Tenant Services Authority as appropriate (or any replacement or successor body).

### **Management and Maintenance**

- 1.22 Following completion of the Units for Rent in accordance with this Agreement to comply at all times with all statutory and contractual obligations to the occupiers and to ensure that the Units for Rent are at all times properly managed and maintained.

## **2. RECREATION DISTURBANCE MITIGATION CONTRIBUTION**

- 2.1 To pay to the Council on or before the First Occupation of any Affordable Dwelling Units the Recreation Disturbance Mitigation Contribution.
- 2.2 The Recreation Disturbance Mitigation Contribution shall be the sum of £430 per Dwelling Unit or such lesser sum as is formally adopted by the Council provided that where the Operative Date of the Proposed Development shall take place after the 31 March 2014 the Recreation Disturbance Mitigation Contribution shall be increased by an amount equal to the proportionate increase in the All Items Index between the quarter preceding the date of this Agreement and the quarter preceding the Operative Date.

- 2.3 Not to cause or allow the First Occupation of any Affordable Dwelling Units before the Recreation Disturbance Mitigation Contribution has been paid.

**3. SPA WELCOME PACK**

Upon the First Occupation of each Affordable Dwelling Unit to supply or procure the supply of to the Resident of that Affordable Dwelling Unit a SPA Welcome Pack.

**4. SECTION 106 MONITORING FEE**

It is acknowledged that the Council is authorised to apply 5% of all contributions paid to the Council pursuant to this Agreement towards its Section 106 Monitoring Fee

**5. INTEREST**

In respect of any sums due to the Council under this Agreement but not paid on the due date to pay interest on such sums at the Interest Rate from the due date for payment until actual payment and any such interest shall be treated as part of the relevant contribution.

**6. OPEN SPACE LAND, LANDSCAPE AREA AND LANDSCAPE BUFFER**

- 6.1 Prior to the Operative Date to submit to the Council and obtain the written approval of the Council (such approval not to be unreasonably withheld or delayed) to a Landscape Management Plan in respect of the Open Space Land, Landscape Area and Landscape Buffer to include long term design objectives management responsibilities and maintenance schedules for the Open Space Land, Landscape Area and Landscape Buffer and a timetable for implementation of the works required under the Landscape Management Plan.
- 6.2 To provide and lay out prior to First Occupation of any Dwelling Unit on the Land the Open Space Land, Landscape Area and Landscape Buffer including preparation, topsoil and planting of grass, shrubs and trees in accordance with the Landscape Management Plan and thereafter to carry out all ongoing works of maintenance improvement and repair of the Open Space Land, Landscape Area and Landscape Buffer strictly in accordance with the Landscape Management Plan and this paragraph 6.
- 6.3 To provide and maintain in accordance with the Landscape Management Plan and this paragraph 6 a fence consisting of a post and mesh fence (or a substantially similar form of fencing) to mark the boundary between residential curtilage and the Landscape Buffer.
- 6.4 Not to permit First Occupation of any Dwelling Units on the Land until the Open Space Land, Landscape Area and Landscape Buffer have been provided in accordance with this paragraph 6 and thereafter not to use the

Open Space Land than as open space land available to the Residents and the general public in perpetuity and not to use the Landscape Area and Landscape Buffer other than as a landscape area and landscaped buffer on the following terms:

- 6.4.1 to ensure the Open Space Land, Landscape Area and Landscape Buffer are kept clean and tidy and maintained in accordance with the Permission and the Landscape Management Plan including the replanting of plants which may have died or are otherwise removed;
- 6.4.2 to ensure that there is easy access to the Open Space Land by the Residents and the general public;
- 6.4.3 to ensure the future maintenance of the Open Space Land, Landscape Area and Landscape Buffer and to undertake such financial and practical measures as are necessary for the implementation of such future maintenance and not to allow First Occupation of any Dwelling Unit on the Land prior to providing to the reasonable written satisfaction of the Council evidence that the future maintenance of the Open Space Land, Landscape Area and Landscape Buffer is assured, which evidence may be the transfer of the freehold interest in such land to a Management Company approved by the Council (acting reasonably) being a company controlled by the Residents and which provides for an income to cover the cost of the long term maintenance of the Open Space Land, Landscape Area and Landscape Buffer in accordance with the Landscape Management Plan and the provisions contained in this paragraph 6;
- 6.4.4 save as may otherwise be provided in the Permission or in a separate grant of planning permission, not to erect or allow to be erected any structures or any means of enclosure on or around the Open Space Land provided that the erection of temporary fences during the construction of the Proposed Development shall not be a breach of this obligation;
- 6.4.5 not to sub-divide the Open Space Land, Landscape Area or Landscape Buffer ( other than as recited in this Agreement) or use or incorporate any part within the curtilage of any Dwelling Unit and the Owner shall ensure that on a disposal of each Dwelling Unit the proposed purchaser is made aware of the planning conditions of the Permission;
- 6.4.6 in the event of any change in the person or persons responsible for the maintenance of the Open Space Land, Landscape Area and/or Landscape Buffer to notify the Director in writing of the names and addresses of such person or persons who are to take over responsibility for such maintenance.

6.5 Subject to the Owner granting all necessary rights of entry to the Landscape Developer to carry out the obligations in clause 6.4 the Developer on the Buffer to the transfer of the Land to hereby indemnifies the Owner in respect of all losses costs claims or liabilities arising out of any breach by the Developer of the obligations contained at clause 6.4 insofar as they relate to that part of the Landscape Buffer within the ownership of the Owner and the landscaped Area.

6.6 The Owner hereby indemnifies the Developer in respect of all losses costs claims or liabilities arising out of any breach by the Owner of the obligation contained at clause 6.4 above in respect of the use of that part of the Landscape Buffer within the ownership of the Owner other than as a Landscape Buffer

SAVE THAT nothing contained within paragraphs 6.5 and 6.6 shall affect the obligations contained therein as between the Council and the Owner or the Developer (as the case may be)

## 7. NOTIFICATION

- 7.1 To give notice to both the Council and the County Council of the Operative Date not less than 14 days before such date (the "**Commencement Notice**")
- 7.2 If the Proposed Development is Commenced but a Commencement Notice has not been served as required under paragraph 7.1 above then the Council or the County Council (as the case may be) shall be entitled in its absolute discretion to determine the Operative Date and shall give notice to the Owner of its determination.

## 8. PRIVATE ESTATE ROADS

- 8.1 Prior to the Development being Commenced to submit to the County Council for approval a plan showing the intended status of the estate roads and associated footways, footpaths and cycleways (for the avoidance of doubt those roads, footways, footpaths and cycleways that will be offered for adoption under S.38 of the Highways Act 1980 and those to remain private)("the Estate Roads") any plan should also include details of surfacing, materials and construction of the Estate Roads
- 8.2 Prior to First Occupation of any Dwelling to submit to the County Council:
- 8.2.1 The name and contact details of the party whose purpose will be to repair maintain and renew the Estate Roads once constructed and
- 8.2.2 A schedule for the approval of the street furniture that the party will be responsible for maintaining and a regime of maintenance



## Amy Sedgwick

---

**From:** Christopher Neville <christopher.neville@westsussex.gov.uk>  
**Sent:** 29 November 2013 10:20  
**To:** Amy Sedgwick  
**Subject:** RE: Crooked Lane

Dear Amy,

Thank you for your e-mail, and following our telephone call, I am pleased to confirm on behalf of the County Council that the proposed manuscript amendments (as set out in the below e-mail) are approved; and this Council has no objection to their inclusion within the Crooked Lane, S106 Agreement to be completed today.

I look forward to receiving the County Council's part in due course.

Kind regards

Chris

Christopher Neville | Legal Officer, Legal Services, [West Sussex County Council](#) | Location: Room 201 2nd Floor County Hall, Chichester, PO19 1RQ  
Internal: 22692 | External: (03302) 222692 | E-mail: [Christopher.Neville@westsussex.gov.uk](mailto:Christopher.Neville@westsussex.gov.uk)

Think sustainably. Do you have to print? Can you double side? Do you need colour?

**From:** Amy Sedgwick [<mailto:asedgwick@chichester.gov.uk>]  
**Sent:** 29 November 2013 10:01  
**To:** Christopher Neville  
**Cc:** Martina Kent; Stephen Harris; Laura Floodgate  
**Subject:** Crooked Lane  
**Importance:** High

Dear Chris,

There will be a few minor manuscript amendments made to the final section 106 agreement, attached.

The proposed amendments are as follows in red:

[The First Schedule]

*6.5 Subject to the Owner granting all necessary rights of entry to the Landscape Buffer to the Developer to carry out the obligations in clause 6.4 the Developer on the transfer of the Land to it hereby indemnifies the Owner in respect of all losses costs claims or liabilities arising out of any breach by the Developer of the obligations contained at clause 6.4 insofar as they relate to that part of the Landscape Buffer within the ownership of the Owner and the Landscaped Area*

6.6 [...]

*SAVE THAT nothing contained within paragraphs 6.5 and 6.6 shall affect the obligations contained therein as between the Council and the Owner or the Developer (as the case may be).*

As this agreement must be completed by midday today I should be grateful if you could confirm by e-mail that you approve of the amendments and I will include a copy of your e-mail in the final agreement.

I look forward to hearing from you as a matter of urgency.

Kind regards,

Amy

<<Section 106 Agreement - Final Clean.DOC>>

**Amy Sedgwick**

Independent Barrister for legal Services

Legal Services

Chichester District Council

Tel: | Fax: | [asedgwick@chichester.gov.uk](mailto:asedgwick@chichester.gov.uk) |

[www.facebook.com/ChichesterDistrictCouncil](http://www.facebook.com/ChichesterDistrictCouncil) | [www.twitter.com/ChichesterDC](http://www.twitter.com/ChichesterDC)

Please note: The author is instructed on behalf of Chichester District Council as a self-employed practitioner.

The author is not an employee of the Council nor is connected in any way other than as an independent

Barrister instructed on the Council's behalf to conduct correspondence and provide legal advice. Regulated by the Bar Standards Board and the Bar Code of Conduct:

<http://www.barstandardsboard.org.uk/regulatory-requirements/the-code-of-conduct/>

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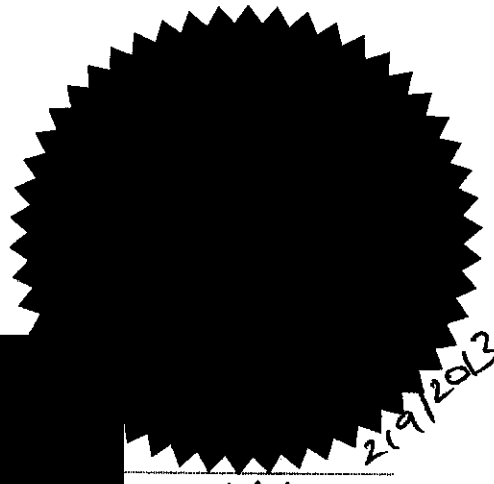
## **SECOND SCHEDULE**

### **The Council's obligations**

1. The Council covenants that upon receipt of the contribution referred to in paragraph 2 of the First Schedule as paid to the Council under the First Schedule it will keep a separate account of the said contribution and apply the same for the purposes for which the said contribution was paid.
2. In respect of the contribution at paragraph 1 above and within ten years of the date of receipt by the Council of the contribution, the Council shall on written request issue to the party that paid the said contribution or its nominee an account certified by the Council detailing how the contribution has been expended.
3. To the extent that any contribution under paragraph 1 of this Schedule has not been spent by the Council at the end of the period referred to in paragraph 2 of this Schedule the Council shall on that date refund to the party that paid the contribution or its nominee any unexpended amount of that particular contribution together with any interest that has accrued thereon.
4. If at the end of the period referred to in paragraph 2 of this Schedule the Council shall have entered into a contract or other legally binding obligation to expend a contribution or part thereof for the purposes specified in this Agreement then the Council shall not be required to refund any part of the contribution required for that purpose but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the contribution or its nominee in the manner set out in paragraph 2 of this Schedule and refund any unexpended part of the contribution in the manner set out in paragraph 3 of this Schedule.
5. Any reference to a contribution under this schedule includes a part of that contribution.

- 8.3 It is agreed with the County Council that all Estate Roads that are stated to be privately maintained by the Owner shall be:
- 8.3.1 Constructed to a standard that is suitable for its intended use;
  - 8.3.2 Maintained by the Owner at their own expense in good and substantial repair and condition; and
  - 8.3.3 Shall not be dedicated by the Owner as a public highway or become a private street as defined in the New Roads and Street Works Act 1991
- 8.4 Upon completion of the construction of the Estate Roads not being adopted under a Section 38 Agreement the developer will provide a report to be prepared and signed by a Chartered Engineer at their own expense to confirm that the construction of the privately maintained Estate Roads have been designed and built to a standard suitable for their intended use
- 8.5 The Owner covenants with the County Council:
- 8.5.1 That the privately maintained Estate Roads shall remain open and unobstructed at all times and available for use by both residents of the Development and members of the public in the latter case without charge; and
  - 8.5.2 To erect and maintain signs in positions agreed with the County Council advising the public that they are permitted to use the privately maintained Estate Roads on foot and by bicycle but that it is not a public highway so as to prevent the dedication of the privately maintained Estate Roads and to prevent any presumption of dedication (whether arising under Section 31 of the Highways Act 1980 or otherwise)

THE COMMON SEAL of CHICHESTER DISTRICT COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

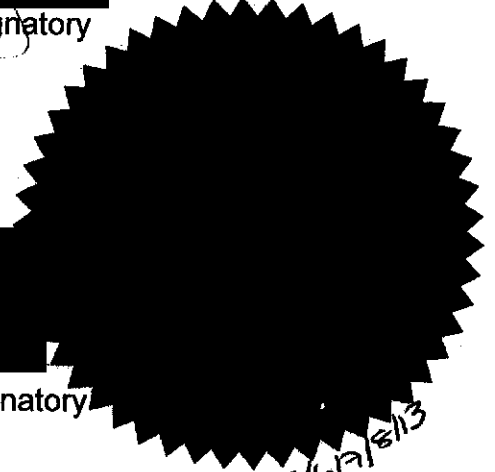


[Redacted signature]

Authorised Signatory

21/9/2013

THE COMMON SEAL of WEST SUSSEX COUNTY COUNCIL was hereunto affixed in the presence of:



[Redacted signature]

Authorised Signatory

12/15/6/2/8/13

Signed as a deed by NICHOLAS JOHN MITCHELL WAY In the presence of:

Witness Name

Witness Address

Witness Occupation

Signed as a deed by MARTLET HOMES LIMITED acting by a director and its secretary/two directors

Director

Director/Secretary

THE COMMON SEAL of CHICHESTER  
DISTRICT COUNCIL WAS HEREUNTO  
AFFIXED IN THE PRESENCE OF:

Authorized Signatory

THE COMMON SEAL of WEST SUSSEX  
COUNTY COUNCIL was hereunto affixed  
in the presence of:

Authorized Signatory

Signed as a deed by  
**NICHOLAS JOHN MITCHELL WAY**  
In the presence of:

[Redacted]

Witness Name

*Richard [unclear]*

Witness Address

Witness Occupation

[Redacted]

[Redacted]

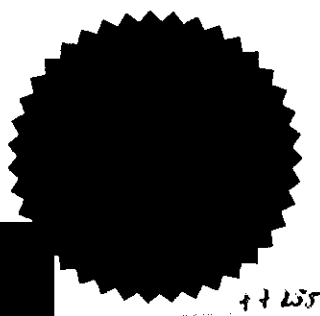
Signed as a deed by  
**MARTLET HOMES LIMITED**  
acting by a director  
and its secretary/two directors

[Redacted]

Director

[Redacted]

Director/Secretary



**APPENDIX 1**  
**Draft Permission**



## Recommendation Preview

6/8/13 Week Target:  
Date Publicity Expires:

**Application:** BI/13/01391/FUL

**Recommendation:** DEFER FOR SECTION 106 THEN PERMIT

**Decision Type:** Committee Decision

1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

2) The development hereby permitted shall be carried out in accordance with the approved plans: 136.0099-2100 REV P1, 136.0099-2101 REV P1, 136.0099-SK3001 REV P3, 136.0099-SK3002 REV P4, P001 REV A, P109 REV D, P221 REV A, P222 REV A, P223 REV A, P224 REV A, P225 REV A, P226 REV A, P227 REV A, P228, P229, P230 and TPP REV D

Reason: For the avoidance of doubt and in the interests of proper planning.

3) No development shall be carried out unless and until a schedule of materials and finishes and, where so required by the Local Planning Authority, samples of such materials and finishes to be used for external walls, roofs, windows and doors of the proposed buildings and surfacing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity and to ensure a building of visual quality.

4) Any flint walling shall conform with a sample panel of flintwork and mortar treatment which shall be erected on site and approved in writing by the Local Planning Authority before work to walling is commenced and shall be maintained as approved unless any variation has been agreed in writing by the Local Planning Authority.

Reason: To preserve the special character of the building for the future.

5) No development shall be carried out unless and until details of a scheme setting out the method of lighting the roads serving the development have been submitted to and approved in writing by the Local Planning Authority. The approved lighting scheme shall be carried out prior to first occupation of any dwelling unit and shall thereafter be maintained in perpetuity.

Reason: In the interests of maintaining biodiversity, residential amenity and the appearance of the locality given the site's edge-of-settlement location with an AONB.

6) Before the development hereby permitted is begun, a scheme showing the proposed method of surface water disposal from roads, paved areas and roofs, including all necessary on-site and off-site works, shall be submitted to and approved in writing by

the Local Planning Authority. The scheme shall be based on Sustainable Urban Drainage principles and, unless otherwise agreed by the Local Planning Authority, shall be informed by winter groundwater monitoring of the site. In the event that the scheme involves discharge to the local ditch network, it shall be demonstrated to the Local Planning Authority's satisfaction that the rate of that discharge does not exceed pre-development values and that the ditches are in an acceptable condition to accept such discharge. Before the development hereby permitted is occupied the approved scheme shall be carried out and completed in full accordance with the details shown in the scheme. The responsibility for securing all necessary agreements and permits from the landowner or other party shall rest with the developer.

Reason: To ensure that the proposed development is satisfactorily drained.

7) None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted in accordance with details to be submitted to and approved by the Local Planning Authority.

Reason: To ensure that the development is satisfactorily drained.

8) No development shall take place unless and until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, which shall include a planting plan and schedule of plants noting species, plant sizes and proposed numbers/densities. In addition, all existing trees and hedgerows on the land shall be indicated including details of any to be retained, together with measures for their protection in the course of development. The scheme shall include seeding with a Native British Wildflower Flora mix appropriate to the soil and climate of the site and shall make particular provision for the conservation and enhancement of biodiversity on the application site including the provision of bat and bird boxes and log piles on the site. The scheme shall be designed to achieve levels of shelter/windbreak, shade and drought resistance to accord with the expected climate changes during the design life of the development.

Reason: In the interests of amenity and of the environment of the development and to comply with the Natural Environment and Rural Communities Act 2006 and to accord with the Council's Interim Statement on Climate Change.

9) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants, including any existing trees or hedgerows indicated as being retained in the approved scheme, which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of amenity and of the environment of the development.

10) No development, including site works of any description or the bringing onto the site of any equipment, machinery or materials, shall take place unless and until details of a scheme to ensure the protection of all existing trees and hedges to be retained on the site (in accordance with condition 8) have been submitted to and approved in writing by the Local Planning Authority. The details shall be based on the submitted Arboricultural Impact Appraisal and Method Statement (Revision D) and BS5837:2012 and, for the avoidance of doubt, the scheme shall, amongst other things, include details of:

- the method of protecting trees (and their root systems) located adjacent to the existing access track during the construction phase of the development
- the method of constructing, draining and retaining the access roads comprising part of the development and the supervision of those works
- the method of installing and routing services to the site in areas where such services are to be located within Tree Protection Areas as defined on application drawing TPP REVD

and the supervision of those works

- the location and nature of any protective fencing to be positioned on or adjacent to the site for the duration of construction works. This fencing shall be maintained until all equipment, machinery, surplus materials and soil has been removed from the site. Within the areas so fenced off the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon without the prior written approval of the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

Reason: To ensure the retention and maintenance of trees and vegetation which is an important feature of the area.

11) No development shall commence unless and until details of a scheme designed to mitigate the impact of the development on the reptile population of the locality of the site have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the contents of the Ecosa letter of 22 October 2013 and shall be carried out in accordance with the approved details prior to any development commencing.

Reason: In the interests of biodiversity.

12) Before work begins on the development hereby permitted details of site levels and longitudinal and latitudinal sections through the site of the dwellings shall be submitted for the approval of the Local Planning Authority to show how the buildings shall be set into the ground.

Reason: To secure satisfactory development.

13) No development shall take place unless and until details of screen walls and/or fences have been submitted to and approved by the Local Planning Authority and no dwellings shall be occupied until such screen walls and/or fences associated with them have been erected. Once erected they should be maintained in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of amenity.

14) An archaeological investigation of the site shall be carried out in accordance with a specification to be submitted to and agreed by the Local Planning Authority in writing following the demolition of any existing buildings and before the commencement of any building works. The investigation shall be undertaken by an appropriately qualified archaeologist, and shall include the recording of findings and subsequent publication of results.

Reason: This site is potentially of archaeological significance and it is important that it is recorded by excavation before it is destroyed by development.

15) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- (i) the parking of vehicles of site operatives and visitors;
- (ii) loading and unloading of plant and materials;
- (iii) storage of plant and materials used in constructing the development;
- (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- (v) wheel washing facilities;
- (vi) measures to control the emission of dust and dirt during construction;
- (vii) turning on site of vehicles;
- (viii) the location of any site huts/cabins/offices.

Reason: To ensure safe and neighbourly construction.

16) The construction of the development and associated works shall not take place on Sundays or Public Holidays or any time otherwise than between the hours of 0700 hours and 1800 hours Mondays to Fridays and 0800 hours and 1300 hours on Saturdays.

Reason: In the interests of residential amenity.

17) The development shall not be occupied until the access and access road serving the development hereby permitted has been constructed, surfaced and drained in accordance with plans and details to be submitted to and approved in writing by the Local Planning Authority.

Reason: To secure satisfactory standards of access for the proposed development.

18) The development shall not be occupied until visibility spays of 2.4m by 43m have been provided at the proposed site vehicular onto Crooked Lane in accordance with plans and details to be submitted to and approved in writing by the Local Planning Authority. Once approved the splays shall thereafter be maintained and kept free from all obstructions over a height of 0.6m above adjoining carriageway level or as otherwise agreed.

Reason: To secure satisfactory standards of access for the proposed development.

19) The development hereby permitted shall not be occupied unless and until the parking and turning areas have been completed in accordance with the approved plans and shall thereafter be maintained for these purposes in perpetuity.

Reason: In the interests of highway safety.

20) The development hereby permitted shall, in accordance with the Interim Statement on Planning and Climate Change, be designed and constructed in accordance with the water efficiency and sustainable construction criteria (Code for Sustainable Homes level 4) and standards set out in the application Design and Access Statement, for which the necessary Certificate shall be submitted to the Local Planning Authority prior to first occupation.

Reason: To accord with the Council's Interim Statement on Climate Change.

21) The development hereby permitted shall be constructed so as to achieve 10% of the DER/BER from on-site renewable energy. No development shall take place until the Local Planning Authority has approved a report provided by the applicant identifying how this will be achieved. The carbon savings which will result from this will be above and beyond what is required to comply with Part L of the Building Regulations.

Reason: To accord with the Council's Interim Statement on Climate Change.

22) INFORMATIVE

With regard to condition 10 it is recommended that the submitted details include, amongst other things, provision for the hand digging of any excavations within trees' root protection areas, the supervision of works at critical phases of the development by a qualified arborist, the methodology for siting the H posts comprising part of the track's retaining wall and the approach to be taken when encountering tree roots exceeding 40mm in diameter. Please contact the Council's Tree Officer if you require further information in this regard.

23) INFORMATIVE

Your attention is drawn to the informatives appended to the Highway Authority's consultation response of 10 June 2013.

24) INFORMATIVE

You are advised to contact Southern Water with regard to the foul sewer that crosses the site.

25) INFORMATIVE

You are advised that should it be necessary to culvert or discharge to any water course it will be necessary to first gain the separate consent of the Lead Local Flooding Authority.

26) INFORMATIVE

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

27) INFORMATIVE

Your attention is drawn to the provisions of the Countryside and Rights of Way Act 2000 and Wildlife and Countryside Act 1981 (as amended) and in particular to Sections 1 and 9. These make it an offence to:

- kill or injure any wild bird;
- damage or destroy the nest of any wild bird (when the nest is being built or is in use);
- damage or destroy any place which certain wild animals use for shelter (including all bats and certain moths);
- disturb certain wild animals occupying a place for shelter (again, all bats and certain moths).

The onus is therefore on you to ascertain whether such birds, animals or insects may be nesting or using the tree(s), the subject of this consent, and to ensure you do not contravene the legislation. This may, for example, require delaying works until after the nesting season for birds. The nesting season for birds can be considered to be March to September. You are advised to contact the local office of Natural England at Lewes for further information (tel: 01273 476595).

28) INFORMATIVE

This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act 1990.

## **APPENDIX 2**

### **Draft Nomination Agreement**

DATED

2013

**(1) MARTLET HOMES LIMITED**  
**and**  
**(2) CHICHESTER DISTRICT COUNCIL**

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**NOMINATION AGREEMENT**

relating to land at

Land to the west of Crooked Lane, Birdham

Chichester, West Sussex

Re Planning Application 13/01391/FUL

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Chichester District Council  
East Pallant House  
East Pallant  
Chichester  
West Sussex  
PO19 1TY

**TABLE OF CONTENTS**

**1**    **DEFINITIONS .....1**

**2**    **BACKGROUND.....2**

**3**    **OCCUPATION OF UNITS FOR RENT .....3**

**4**    **UNIT FOR RENT PROVISION .....5**

**5**    **MANAGEMENT AND MAINTENANCE .....5**

**6**    **SUPPLY INFORMATION TO THE COUNCIL .....5**

**7**    **NOTICES TO EITHER PARTY .....5**

**8**    **COUNCIL’S POWERS AS LOCAL AUTHORITY .....6**

**9**    **DISPOSAL RESTRICTIONS.....6**

**10**    **EXCLUSION CLAUSE .....6**



**BETWEEN**

1. **MARTLET HOMES LIMITED** a company incorporated in England and Wales (Company Number 03896674 whose registered office is at Martlet House, Southern Gate, Chichester West Sussex PO19 8SG (the "**Association**"); and
2. **CHICHESTER DISTRICT COUNCIL** of East Pallant House, East Pallant, Chichester, West Sussex, PO19 1TY (the "**Council**").

**1 DEFINITIONS**

In this Agreement, unless the context requires otherwise, the following definitions apply:

- "Affordable Dwelling Land"** the part of the Site on which the Affordable Dwelling Units are to be constructed and which is shown for the purpose of identification edged blue on the attached plan;
- "Affordable Dwelling Units"** the 15 units to be constructed as part of the Proposed Development and provided as Affordable Housing in accordance with the First Schedule of this agreement to be retained in perpetuity as Affordable Housing and "Affordable Dwelling Unit" shall be construed accordingly.
- "Affordable Housing"** affordable housing which comprises of Affordable Rented Units provided to eligible households whose needs are not met by the market. The Affordable housing should :
- meet the needs of eligible households including availability at a cost low enough for them to afford and determined with regard to local incomes and local house prices.
  - Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.
- "Affordable Rented Units"** a form of Affordable Housing, involving homes being made available at a rent level of up to 80% of market rent (inclusive of service charge) at the time of each letting which rent may be increased annually by no more than RPI +0.5% or such other amount as may be prescribed by the HCA. And 'Affordable Rented Unit' shall be construed accordingly.
- "Allocations Policy"** The allocations policy of the Association from time to time in force
- "Director"** the Council's Director of Home and Community from time to time or his/her authorised representative;
- "Planning Agreement"** An agreement of even date entered into under s.106 of the Act between the Association, the Council and West Sussex County

	Council;
<b>“Planning Permission”</b>	a planning permission for the Development of the Site under reference 13/01391/FUL;
<b>“Registered Provider”</b>	a registered provider of Affordable Housing pursuant to the Housing and Regeneration Act 2008
<b>“Service Level Agreement”</b>	means the agreement in existence at the date of this Agreement and made between the Association and the Council as varied from time to time
<b>“Site”</b>	means the freehold property known as land to the west of Crooked Lane, Birdham, Chichester and shown for the purpose of identification edged red on the plan annexed to the Planning Agreement;
<b>“Starter Tenancy”</b>	means a periodic assured shorthold tenancy that may, in the event that the conditions set out in the Registered Provider standard Starter Tenancy are fulfilled, become fixed term tenancy for a minimum of 5 years after 12 months and which shall be in a form which accords with the requirements of the Homes and Communities Agency or Tenant Services Authority (as appropriate) or replacement or successor body and section 154 Localism Act 2011
<b>“Units for Rent”</b>	any Affordable Rented Unit and <b>“Unit for Rent”</b> shall be construed accordingly.

References to the **“Homes and Communities Agency”** shall include any replacement, amending or successor body to such agency or authority

## **2 BACKGROUND**

- (A) This Agreement is supplemental to the Section 106 Agreement and forms a part of such agreement in respect of the land to which it is applicable.
- (B) This Agreement is entered into by the Council in the exercise of its statutory powers including, inter alia, s.106 of the Town and Country Planning Act 1990 and s. 111 of the Local Government Act 1972 and all other powers it enabling.

The parties agree as follows:

### 3 OCCUPATION OF UNITS FOR RENT

- 3.1 The Association covenants not to cause or permit the disposal or occupation of any of the Units for Rent at any time otherwise than strictly in accordance with the procedures set out in this Agreement.

#### **Council nominations for the Units for Rent**

- 3.2 In respect of the following proportions of the Units for Rent the Association covenants not to cause or permit the units to be occupied other than by persons nominated by the Council and selected pursuant to the following procedure Provided always that all persons nominated by the Council shall be nominated in accordance with the Association's Allocations Policy :
- 3.2.1 the first tenants to occupy the Units for Rent after practical completion, 100% of the total number of Units for Rent;
- 3.2.2 vacancies arising thereafter in the Units for Rent, at least 75% of the total number of vacancies which arise during 1 April to 31 March each year in perpetuity calculated on the basis of the running total so that the first three vacancies arising in any given year shall be offered to the Council for nomination with the fourth vacancy being available for nomination by the Association and so on throughout the year.
- 3.3 In respect of the Units for Rent to which the Council has nomination rights the Association shall follow the procedures set out in the Service Level Agreement EXCEPT THAT if no Service Level Agreement is in existence at the relevant time the Association shall:
- 3.3.1 serve notice on the Council of any vacancy arising (a **"Vacancy Notice"**);
- 3.3.2 allow the Council the following periods from receipt of a Vacancy Notice to supply written particulars (a **"Nomination Notice"**) of up to three (3) persons (**"Nominees"**) to be nominated as a tenant, that is;
- a) twenty (20) working days in respect of initial lettings of the Units for Rent; and
- b) five (5) working days in respect of all subsequent lettings;
- SAVE THAT the Council shall not be bound to put forward persons within the category set out in paragraphs 3.5.1 to 3.5.3 but shall have the ability to nominate persons with a priority housing need who do not have a local connection to any of the Parishes referred to in the said paragraphs but who satisfy the criteria set out in paragraph 3.5.3 in respect of the Chichester District;
- 3.3.3 Unless otherwise agreed in writing with the Council to offer the following types of tenancies (or such equivalents if dictated by statute or the Homes and Communities Agency or the Tenant Services Authority) to each Nominee mentioned in the Nomination Notice in turn and allow each Nominee five (5) working days from receipt of the offer within which to confirm rejection or acceptance of the offer and in the event that the Council nominates less than three (3) Nominees to offer a tenancy to a person on the Council's housing register (who shall be classed as a Nominee for the purpose of this clause) so that an offer is made to up to three (3) Nominees or until a Nominee accepts the offer of a tenancy (whichever shall first occur):

- a) For tenants of a Unit for Rent who have held an assured or secure housing association or local authority tenancy immediately prior to being made an offer – assured tenancy
- b) For tenants of a Unit for Rent who have not held an assured or secure housing association or local authority tenancy immediately prior to being made an offer – Starter Tenancy
- c) For all other new tenancies of a Unit for Rent (save for any that are as a result of mutual exchange or transfer which shall be an assured tenancy) - a Starter Tenancy

3.4 In the event of the Council failing to serve a Nomination Notice within the required time period under clause 3.3.2 above or Nominees failing to accept the offer of a tenancy within 5 working days of receipt by them of the offer, then not to cause or permit the Unit for Rent to be occupied other than by a person who satisfies the criteria set out in clause 3.5.1 to 3.5.3 below

**No council nominations for Units for Rent**

3.5 In respect of any vacancy of a Unit for Rent to which the Council does not enjoy nomination rights under clause 3.2 (unless otherwise agreed by the Council in writing) not to cause or permit the Unit for Rent to be occupied other than by a person who satisfies the following criteria, that is a person who:

3.5.1 is considered by the Association in accordance with its objects and rules to be in need of such accommodation; and

3.5.2 is not easily able to compete in the open market for housing accommodation in Chichester District; and

3.5.3 lives within the Parish of Birdham; or

- a) used to live within the Parish of Birdham but was forced to move away because of the lack of affordable housing accommodation; or

- b) is permanently employed within the Parish of Birdham; or

is a parent, sibling or child of a living and permanently resident of the Parish of Birdham, as defined in the Housing Act 1996 Provided that:

- (i) if there is no such person who satisfies the above criteria then the Unit for Rent shall be allocated to a person who is considered by the Association to be in need of such accommodation and who has immediately prior to such allocation, had a local connection, as defined by 3.5.1 to 3.5.3, with any of the Parishes of East Wittering, West Wittering, Earnley, Sidlesham, West Itchenor, Appledram or Donnington; but

- (ii) if there is no such person in (i) above then the Unit for Rent may be let to any person on the Council's housing register in need of such accommodation within its administrative area that has a local connection, as defined by 3.5.1 to 3.5.3, within the Chichester District;

## **4 UNIT FOR RENT PROVISION**

4.1 The Association shall ensure:

- 4.1.1 that unless otherwise agreed in writing by the Council no premium, deposit, administration or other sum not consisting of rent is charged to any tenant of a Unit for Rent;
- 4.1.2 that the rent of any Affordable Rented Unit shall be set at or above the target rents of the Homes and Communities Agency or Tenant Services Authority (as appropriate) but shall be no greater than 80% of the gross market rent (including service charges) which reflects the property size and location and the rent shall at all times comply with the Affordable Homes Programme – Framework (or any successor or amending guidance) set by the Homes and Communities Agency (or any amending or successor body) and if rents cease to be regulated then the rent shall be agreed in writing with the Council
- 4.1.3 compliance at all times with the requirements for rents and service charges for Registered Providers as published by the Homes and Communities Agency or Tenant Services Authority (as appropriate) as statutory housing management guidance under the Housing and Regeneration Act 2008;
- 4.1.4 that the rent and/or service charge of any Unit for Rent shall not be increased more frequently than once in any period of twelve (12) months and only in accordance with the Association's standard tenancy agreement (as regulated by the Homes and Communities Agency or Tenants Services Authority as appropriate);
- 4.1.5 that any water or other charges for supply services payable by any tenant to the Association do not exceed the sums charged to the Association by the relevant supplier.

4.2 The Association shall offer to each tenant of a Unit for Rent a tenancy in accordance with clause 3.3.3 above and such tenancy agreement shall be in the form of the Association's standard tenancy agreement (as regulated by the Homes and Communities Agency).

## **5 MANAGEMENT AND MAINTENANCE**

The Association shall ensure that following practical completion of the Affordable Dwelling Units they are at all times properly managed and maintained insofar as this is the obligation of the Association and that the Association, in its capacity as landlord, complies at all times with all of its statutory and contractual obligations to its tenants.

## **6 SUPPLY INFORMATION TO THE COUNCIL**

The Association shall provide to the Council upon request at any time any information relating to the waiting list, allocation criteria, vacancies, allocations and (where applicable) rent levels relating to any Affording Dwelling Unit and any sale pursuant to the statutory purchase grant scheme in Part 1 of the Housing Act 1996 (if applicable) or such other information that it may reasonably require to enable it to ensure that the Association is at all times complying with the provisions of this Agreement.

**7 NOTICES TO EITHER PARTY**

Unless otherwise agreed any notice, certificate or consent to be given under the terms of this Agreement to the Association shall be served by sending the same by post to or leaving the same at the registered office of the Association as appropriate and any notice to be given to the Director shall be served by sending the same by post to or leaving the same at the office of the Council at East Pallant House, East Pallant, Chichester, West Sussex, PO19 1TY.

**8 COUNCIL'S POWERS AS LOCAL AUTHORITY**

Nothing contained in or implied by this Agreement shall prejudice or affect the Council's rights, powers, duties or obligations relating to the exercise of the Council's functions as a statutory body whether as a District Council or local planning authority or otherwise nor shall any consent express or implied in this Agreement be binding upon the Council in any capacity other than as the beneficiary of the covenants contained in this Agreement.

**9 DISPOSAL RESTRICTIONS**

- 9.1 The parties to this Agreement reaffirm the covenants and conditions contained in the Section 106 Agreement.
- 9.2 The Association covenants not to dispose of or part with possession of the whole or part of the Affordable Dwelling Land prior to ensuring that any disponee shall have first entered into a direct covenant with the Council to perform and observe the covenants contained in this Agreement.

**10 EXCLUSION CLAUSE**

- 10.1 It is hereby agreed that the provisions of this Agreement shall not be binding upon nor enforceable against:
  - 10.1.1 A mortgagee in possession of the Affordable Dwelling Land or any part thereof exercising its power of sale who has first followed the pre-emption procedures set out in clauses 6 and 7 of the Planning Agreement
  - 10.1.2 Any person deriving title from any of the persons specified in clause 10.1.1 (inclusive) above.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

Signed as a deed by affixing the )  
common seal of **MARTLET HOMES** )  
**LIMITED** in the presence of: )

Committee Member

Committee Member

Secretary

Signed as a deed by affixing the seal of )  
**CHICHESTER DISTRICT COUNCIL** in )  
the presence of: )

Authorised Signatory