# TOWN AND COUNTRY PLANNING ACT 1990 AND

**ACQUISITION OF LAND ACT 1981**

# CHICHESTER DISTRICT COUNCIL (ACCESS TRACK OFF CROOKED LANE, BIRDHAM) COMPULSORY PURCHASE ORDER 2023

**PROOF OF EVIDENCE**

# of

**MARK BRISTOW**

# on behalf of Chichester District Council

**Planning Inspectorate Reference: APP/PCU/CPOPF5540/3326950**

1. **NAME, QUALIFICATIONS AND EXPERIENCE**
   1. My name is Mark Bristow, and I am the Principal Affordable Housing Delivery Officer for Chichester District Council.
   2. I hold the degree of MPlan (in Spatial Planning) from the University of the West of England and Radboud Universteit Nijmegen, Netherlands.
   3. I have over ten years’ experience in the public sector, predominantly within planning policy and development. I have also been the lead officer for infrastructure funding, the administration of the Community Infrastructure Levy, as well as securing successful bids for CIL and Local Enterprise Partnership funding. Furthermore, I was the lead contact for a Housing Infrastructure Fund bid for £62 million of infrastructure.
   4. The Community Infrastructure Levy is a tariff set by individual local planning authorities, and is intended to fund infrastructure required as result of cumulative impacts from new development, including that of housing. The Housing Infrastructure Fund was a Central Government funding stream for significant infrastructure provision,which was required upfront to unlock additional housing.
   5. My current role as Principal Affordable Housing Delivery Officer for Chichester District Council commenced in September 2022. I am the Lead Officer for Custom and Self Build, Community Land Trusts and tasked with delivering affordable housing for the District including the monitoring of the Affordable Homes Programme. This involves working with a range of stakeholders including developers, Registered Providers and Homes England, as well as Council Members and the National Park Authority.
   6. The Council’s Affordable Homes Programme is a key part of delivering against the Councils Corporate Priority: Homes for all and the Council’s 2019-2025 Housing Strategy, which seeks to deliver 1000 new affordable homes over the same period, equating to 167 per annum.
   7. The Council, itself, is not a stockholding authority, and I work alongside Registered Providers such the Hyde Group, Vivid and Clarion, in order to deliver affordable homes of all tenures across the District, including on Rural Exception Sites.
   8. As part of this work the Council seeks to secure a range of tenure types with a typical site mix consisting of 25 % First Homes, 35% Social Rent, 22% Affordable Rent and 18% Shared Ownership.

# INTRODUCTION

* 1. The Council is seeking to acquire the Order Land in order to provide a means of access to a Housing Site, upon which there is to be constructed 15 affordable dwellings, each to be let at a social rent.
  2. Martlet Homes Limited (“Martlet Homes”) is the freehold owner of the Housing Site and, if the Order is confirmed, it will construct the proposed access road and the 15 dwellings for social rent on the Order Land and the Housing Site, at its own cost and expense.
  3. In this Proof of Evidence I address the following matters:
     + Provide a description of the Order Land and the Housing Site;
     + Provide a description of the Scheme;
     + Set out the background to the making of the compulsory purchase order;
     + Identify the statutory enabling power;
     + Outline the economic, social and environmental well-being benefits of the Scheme;
     + Set out the Planning policy framework;
     + Identify the need for affordable housing, including social rented housing;
     + Deal with the grant of planning permission;
     + Discuss possible alternative accesses to the Housing Site;
     + Confirm the deliverability of the Scheme (in part by reference to the evidence of Sarah Poulter);
     + Deal with negotiations to acquire the Order Land (by reference to the evidence of Virginia Blackman);’
     + Confirm compliance with the Council’s Public Sector Equality Duty;
     + Confirm that Human Rights are not infringed;
     + Address the Qualifying Objections (and all other objections); and
     + Summarise my evidence in my Conclusions.

# DESCRIPTION OF THE ORDER LAND AND THE HOUSING SITE The Order Land - description

* 1. The Order Land is shown edged red and coloured pink on the Order Map.
  2. It comprises an access track which runs between the site boundaries of two properties fronting Crooked Lane, Birdham. The two properties are Copperfields to the north of the access track, and Hedgecox to the south.
  3. The Order Land extends from a point on the north-eastern boundary of the Housing Site, eastwards for a distance of approximately 100 metres to its junction with Crooked Lane.
  4. Crooked Lane is a highway maintainable at the public expense. West Sussex County Council (“WSCC”) is the local highway authority for Crooked Lane.
  5. In the past, the Order Land has been used as a vehicular access track from Crooked Lane to adjacent farmland.
  6. The access track sits at a lower level than the adjacent properties and is currently overgrown. It is gated at the Crooked Lane junction, with a padlock securing the gate.
  7. Part of the Order Land nearest Crooked Lane is used as a means of access by the owners of Copperfields, to gain access to and from their property, from and to Crooked Lane.
  8. The Order Land lies within the Chichester Harbour Area of Outstanding Natural Beauty (since November 2023 referred to as a National Landscape). Otherwise, no part of the Order Land lies within any areas designated for nature conservation (including as a Site of Special Scientific Interest, a Special Area of Conservation or a Special Protection Area). In addition, no part of the Order Land is within any Local Landscape Area, and no part of the Order Land is included within any World Heritage Site, Registered Battlefield, Listed Building, Registered Park or Garden, Common, Village Green or Public Open Space.

# The Order Land - ownership

* 1. The Order Land comprises five plots. These are described in more detail in the Schedule to the Order and are shown on the Order Map.
  2. The Proof of Evidence of Virginia Blackman of Avison Young, who is advising and acting on behalf of the Council in relation to the proposed acquisition of the Order Land, contains a description of the ownership position in relation to the Order Land.

# The Housing Site – description

* 1. The general location of the Housing Site is shown on the Plan attached at Appendix 1 to my Proof.
  2. The Housing Site comprises a roughly rectangular area of approximately 0.7 hectares on the west side of Crooked Lane. The north-eastern corner of the Crooked Lane Site abuts the Order Land.
  3. The eastern boundary of the Housing Site contains a mature belt of trees and low vegetation, and abuts the rear gardens of a number of dwellings fronting Crooked Lane including Hedgecox, Oakhurst, and Swallow Cottage.
  4. The site’s southern boundary is not physically defined; and forms part of a larger field.
  5. The western boundary of the site is defined by the line of a field ditch which abuts neighbouring agricultural land, with occasional deciduous trees along its length.
  6. The northern boundary of the site is marked by a shallow open ditch which also abuts neighbouring agricultural land.
  7. The site comprises an arable field which is now left to grass.

# The Housing Site – ownership

* 1. Martlet Homes is the registered proprietor of the freehold interest in the Housing Site, which is registered at the Land Registry under title number WSX362152. Martlet Homes is a Registered Provider of affordable housing, and is a wholly owned subsidiary, within the Hyde Group of companies.
  2. The circumstances in which Martlet Homes acquired the Housing Site are set out in the Proof of Evidence of Sarah Poulter on behalf of Martlet Homes and the Hyde Group.

# THE SCHEME

* 1. The Scheme is proposed to be constructed on the Housing Site and the Order Land.

# In respect of the Housing Site

* 1. On the Housing Site there is proposed to be constructed 15 affordable dwellings. The size and mix of the dwellings is as follows:
* 1 x 4 bedroom house
* 3 x 3 bedroom houses
* 8 x 2 bedroom houses
* 1 x 2 bedroom bungalow
* 2 x 1 bedroom bungalows
  1. Each of the dwellings in the Scheme will be let by Martlet Homes (a Registered Provider) at a Social Rent i.e. a ‘target rent’ determined through the national rent regime. This typically produces a rent of about 50% of market rent. This is distinct from other forms of affordable housing such as affordable rent (let at rents of about 80% of market rent), intermediate (shared ownership) housing, starter homes and discount market sales. Accordingly, the affordable housing provided under the Scheme, will be available to the most disadvantaged members of the community.
  2. The new homes will be allocated by the Council (through a nomination agreement with Martlet Homes) with priority being given to those on the Council’s housing register with a local connection to Birdham Parish. Where no household from Birdham bids for a property, then the ‘cascade’ provisions of the Council’s Allocations Scheme will make these homes available to households on the Council’s housing register in adjacent parishes within the Council’s area.
  3. The design of the dwellings shows a variety of facing materials including flint and brickwork, tile hanging and render with roofs formed primarily in plain clay tiles. Various architectural features including chimneys, porches, hips and gables have been included in the design to provide greater visual interest.
  4. Included in the Scheme is an area of open amenity space, adjacent to the site’s southern boundary.
  5. The boundaries of the Housing Site will be defined by a peripheral landscaping belt between 6m and 8m in width.
  6. A plan showing the layout of the Scheme on the Housing Site, together with two images of the completed housing, are contained in Appendix 2 to my Proof.

# In respect of the Order Land

* 1. Paragraph 13 of the Government Guidance entitled “Compulsory purchase process and the Crichel Down Rules (the “Guidance”) makes it clear that an acquiring authority should:

*“have a clear idea of how it intends to use the land which it is proposing to acquire”*

* 1. The existing overgrown farm track on the Order Land will be upgraded to form a

4.8 metres wide shared surface lit by low level lighting bollards. The track will be formed in permeable paving. Certain trees will need to be removed, including one mature elm tree located on the southern side of the track close to its junction with Crooked Lane. Otherwise, a ‘no-dig’ construction method will be used in areas close to trees which are located along the track’s edges.

* 1. The track’s existing bellmouth, where it joins Crooked Lane, will be widened. The works will also include the provision of a new section of footway linking the northern side of the access to a new dropped kerb on both sides of Crooked Lane, which will facilitate the pedestrian crossing of Crooked Lane at this point.
  2. A plan showing the layout of the access road is contained in Appendix 3 to my Proof.
  3. As required by paragraph 13 of the Guidance, the Council have a clear idea as to how the Order Land is to be used.

# BACKGROUND TO COMPULSORY ACQUISITION

**Uncertain ownership/rights of way and offers to purchase made**

* 1. Martlet Homes purchased the Housing Site on 13 January 2014. The purchase included a right of way over the Order Land, but only so far as the seller was able to grant or transfer such a right.
  2. Title to the Order Land is not registered at the Land Registry. The majority of the Order Land is in unknown ownership and comprises land over which there are a number of conflicting claims of title to parts of the land, and rights of way over the whole land. There is limited documentary evidence to support the majority of these claims.
  3. After acquiring the Housing Site, Martlet Homes sought to negotiate with the neighbours on either side of the access track (and other claimants) to acquire the necessary title and rights over the Order Land, but without any success. Details of the attempts which were made by Martlet Homes to acquire such title to, and rights over, the Order Land are set out in the Proof of Virginia Blackman.
  4. Faced with an inability to acquire the necessary freehold interest in, or the necessary rights over, the access track Martlet Homes were unable to develop the Housing Site (in respect of which planning permission had first been granted on 29 November 2013).
  5. In January 2016 Martlet Homes, through its solicitors, wrote to the Council’s solicitors with a formal request that the Council assess whether the acquisition of the access track by the Council would meet the statutory requirements for making a compulsory purchase order.

# Cabinet decision 2018

* 1. On 10 April 2018 officers of the Council submitted a Report to Cabinet, seeking approval to explore the proposal for a compulsory purchase order in respect of the access track, to assist Martlet Homes in bringing forward the affordable housing development on the Housing Site. A copy of the Report to Cabinet is contained in Appendix 4 to my Proof (and the Minutes of the Cabinet Meeting are contained in Appendix 5).
  2. The Report noted that offers had been made by Hyde but had not been accepted by any of the persons having purported interests or rights over the access track.
  3. The Report also noted that the Council had given pre-application planning advice to Hyde on the viability of an alternative access route into the Housing Site and concluded that there were fundamental concerns with the proposed alternative access and it would be unlikely to receive officer support.
  4. Having considered this Report, Cabinet approved:

*“The carrying out of a land referencing exercise in respect of [the Order Land]… to be funded by the Hyde Group;*

*That on completion of the land referencing exercise a further report to the Council be prepared by officers to see whether the acquisition of the land and interests or*

*rights in respect of that land is justified on the grounds that it is in the public interest and considering the relevant statutory compulsory purchase powers*

*That officers are authorised to spend up to £27,000 on the basis that this will be reimbursed by Hyde pursuant to a deed of indemnity as to costs in respect of the legal, land referencing and other costs …”*

* 1. In May 2018 Martlet Homes re-issued offers to those owners who were claiming interests and rights in the access track. These offers were re-issued again in January 2020. None of these offers were accepted by any of the landowners. Further details of these offers are set out in the Proof of Virginia Blackman.
  2. Following the Cabinet decision, officers of the Council were engaged in instructing external advisers to progress the land referencing exercise authorised by the Cabinet, and negotiating the Indemnity Agreement with Hyde. In addition, further work was undertaken in relation to assessing housing need. This work continued up to spring 2020, when it was interrupted by the covid epidemic.

# Cabinet decision 2021

* 1. On 6 July 2021 officers of the Council submitted a further Report to Cabinet, seeking approval to carry out all necessary preparatory work in advance of using its compulsory purchase powers under section 226(1)(a) of the Town and Country Planning Act 1990 to acquire the unregistered access track, along with all other necessary rights and interests to enable the delivery of the affordable housing development on the Housing Site. A copy of the Report to Cabinet is contained in Appendix 6 to my Proof (and the Minutes of the Cabinet Meeting are contained in Appendix 7).
  2. The Report noted the previous formal offers which had been made by Martlet Homes to acquire the necessary interests and rights in the access track, which had not been accepted by any of the relevant owners.
  3. The Report also noted again that the Council had given pre-application planning advice to Hyde on the viability of an alternative access route into the Housing Site, and there were fundamental concerns with that proposed alternative access, which would be unlikely to receive officer support.
  4. Having considered this Report, Cabinet approved:

*“That officers be authorised to carry out all necessary preparatory work for the making of a compulsory purchase order (CPO) along with all supporting documentation for submission, on the basis that a decision to make the CPO be deferred to a later Cabinet.*

*That officers are authorised to have the draft CPO documentation reviewed by an independent legal adviser prior to submitting for a preliminary review by the Secretary of State ready for final submission, on the basis that this will be reimbursed by Hyde pursuant to an indemnity agreement.*

*That officers are authorised to enter into such legal agreements with affected third parties and other relevant stakeholders as deemed appropriate, in preparing for a CPO, and prior to the actual making of a CPO.*

*That officers are authorised to extend the indemnity agreement with Hyde to cover all costs incurred by CDC in relation to the preparatory work and making of the CPO including, for the avoidance of doubt, the appointment of a CPO surveyor.”*

* 1. In addition to the offers already referred to, Avison Young, acting on behalf of the Council, wrote to each of the relevant landowners making further offers to purchase their respective claimed interests and rights in February 2022. Further details of these offers are set out in the Proof of Virginia Blackman.
  2. Following the Cabinet decision, officers of the Council were engaged in undertaking preparatory work in connection with the making of the compulsory purchase order including updating land referencing and the drafting of the order and associated documents, including the Statement of Reasons. In addition, work continued in preparing other necessary documents including updating the housing needs assessment, assessing the well-being tests and undertaking an equalities impact assessment.

# Full Council decision 2023

* 1. On 7 March 2023 officers of the Council submitted a final Report to Full Council. A copy of the Report to Full Council is contained in Appendix 8 to my Proof (and the Minutes of the Full Council are contained in Appendix 9).
  2. The Report reiterated that in April 2018 Cabinet agreed to investigate Hyde’s formal request to the Council to use its compulsory purchase powers to purchase the access track to the Housing Site, to enable the delivery of 15 affordable homes. It also noted the further Report to Cabinet in July 2021.
  3. The Report recorded that:
     + The ownership of (and rights over) the access to the Housing Site were unknown, with a number of parties claiming ownership and/or rights of access;
     + Formal offers to acquire such interests and rights had been made (these are set out in more detail in the Proof of Virginia Blackman);
     + To enable Martlet Homes/Hyde to complete the Scheme, a legal right of access was required;
     + The most appropriate compulsory purchase power was that contained in section 226(1)(a) of the Town and Country Planning Act 1990, which is available where the Council considers that acquiring the land will facilitate the carrying out of development, redevelopment, or improvement on, or in relation to the land being acquired; and the Council also considers that the proposed development, redevelopment, or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of its area;
     + A detailed Housing Needs Assessment had been undertaken, which demonstrated a need for affordable rented housing to come forward; both locally on the Manhood Peninsula, and at the district level;
     + Planning permission had been granted for the Scheme;
     + The Council had undertaken an Equality Impact Analysis ensure that it complies with its Public Sector Equality Duty under section 149 of the Equality Act 2010;
     + The making of a compulsory purchase order would be consistent with the Human Rights Act 1998. All those who may be affected would be informed

and advised of a right to make representations to the Secretary of State, to be heard at a public local inquiry, and have a fair entitlement to compensation, within the statutory provisions;

* + - There was a compelling case in the public interest for the access track to be acquired;
    - A CPO was necessary to acquire the interests and rights; and
    - Sufficient resources were likely to be available to implement the CPO within a reasonable time frame.
  1. For all these reasons, the Full Council agreed that:

*“Council authorises the use of Compulsory Purchase powers as set out in Section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 to compulsorily acquire the Order Land … and in particular that the Council makes the Order.*

*The Director of Housing and Communities is authorised, following consultation with the Cabinet Member for Housing, Communications, Licensing and Events, to:*

1. *settle the final form and content of the Order and all associated documentation and take all action needed to pursue the Order and secure its confirmation.*
2. *negotiate, agree terms and enter into agreements with interested parties including agreements for the withdrawal of objections or undertakings not to enforce the Order on specific terms including where appropriate removing land or rights from the Order or to request the modification of the Order by the Secretary of State;*
3. *implement the Order powers following confirmation of the Order and so acquire title to and/or take possession of the Order Land.”*

# STATUTORY ENABLING POWER

* 1. The Guidance states at Paragraph 11:

*“Acquiring authorities should look to use the most specific power available for the purpose in mind, and only use a general power where a specific power is not available”*

* 1. The works which are proposed on the Order Land comprise the construction of a road which will provide the means of access to an affordable housing development.
  2. Having regard to the nature of the Scheme and having considered all powers available to it for this purpose, and the advice set out in the Guidance, the Council is satisfied that the most appropriate power available to secure the necessary land for the Scheme is to make an Order pursuant to section 226(1)(a) of the 1990 Act, to facilitate the implementation of that part of the Scheme located on the Order Land.
  3. Under Section 226(1)(a) of the 1990 Act a local authority may be authorised to acquire compulsorily any land within its area:

1. *if it thinks that the acquisition will facilitate the carrying out of development, re- development or improvement on or in relation to the land; and*
2. *the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being or their area*
   1. Paragraph 95 of the Guidance states that:

*“This power [under section 226(1)(a)] is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals within their Local Plan or where strong planning justifications for the use of the power exist ...”*

* 1. The existing grant of a planning permission for the Scheme constitutes a strong planning justification for the use of the power.
  2. A local authority must not exercise the power under section 226(1)(a) of the 1990 Act unless it considers that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objectives:

1. The promotion or improvement of the economic well-being of its area;
2. The promotion or improvement of the social well-being of its area; and
3. The promotion or improvement of the environmental well-being of its area.
   1. Section 7 of my Proof addresses these three objectives and concludes that the Scheme will contribute to the well-being of its area, in each of the three categories mentioned.
   2. The Guidance states at paragraph 2 that:

*“Compulsory purchase is intended as a last resort to secure the assembly of land needed to implement projects ..*.”

* 1. The same paragraph in the Guidance also states:

*“The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement ...”*

* 1. Attempts to reach agreement with those persons who claim an interest or right over the Order land are set out in the Proof of Virginia Blackman. The Council is satisfied that first, Martlet Homes, and subsequently the Council, have made more than reasonable attempts over a very long period (without success) to acquire all necessary interests and rights by agreement.
  2. Accordingly, the Council is exercising its powers under section 226(1)(a) because it has not been possible to acquire by agreement all of the interests and rights which are required for the implementation of the Scheme; and it is not certain that it will be able to acquire all such interests and rights by agreement (or even be possible to do so) given that ownership is uncertain.
  3. The Guidance at paragraph 2 sets out the overarching consideration that:

*“… a compulsory purchase order should only be made where there is a compelling case in the public interest.”*

* 1. Further consideration of the compelling case for making the Order is set out elsewhere in this Proof, in particular, in Section 9, which addresses the need for the delivery of affordable housing.
  2. In summary, in exercising its powers of compulsory purchase, the Council is satisfied that it may lawfully do so under the powers set out above; that there is a compelling case in the public interest for making the Order; and that the public interest is sufficiently important to justify the interference with private rights.

# ECONOMIC, SOCIAL OR ENVIRONMENTAL WELL-BEING

* 1. It is a requirement of section 226(1)(a) that the Council considers that the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of their area.
  2. This is restated in paragraph 106 of the Guidance which states that:

*“Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:*

*… the extent to which the proposed purpose will contribute to the achievement of of the promotion or improvement of the economic, social or environmental well- being of the area …”*

* 1. The Council has undertaken an assessment of these factors and concluded as follows:

# Promotion or improvement of the economic well-being of the area

* 1. The Scheme will contribute to the economic well-being of the area in the following respects:
     + The provision of new affordable housing will not only create and support jobs in the construction sector but will also result in an increase in population, bringing with it enterprise, labour, wealth and income, all of which are necessary for economic prosperity;
     + Once completed and occupied, the Scheme will deliver an additional 15 households with associated spending power to support village retailers and businesses in Birdham including the Spar Store, an ATM, the Post Office, the Shell Garage, a vet, plant nursery and garden centre, several pubs and a tearoom. All of these stand to benefit from increased local customers and a potentially increased employee pool;
     + The primary school is easily accessible by foot or by bike, and will benefit from increased demand generated by the development;
     + The village hall and its facilities (playing fields and a childrens play area) are in close proximity to the Scheme and the Scheme will potentially increase local demand and use of these facilities;
     + St. James’ Church is also close to the Scheme. Planning permission was granted some years ago for the construction of a large multi-purpose series of rooms to extend the church use into the community. Such use would be bolstered by the occupiers of the Scheme;
     + Finally, Stirlands Cricket Club along Church Lane welcomes new members of all ages and abilities and may well benefit through additional membership generated from occupiers of the Scheme.

# Promotion or improvement of the social well-being of the area

* 1. The Scheme will contribute to the social well-being of the area in the following ways:
     + There is a significant need for affordable social rented housing to come forward at all levels: at a District level; more locally in the Manhood Peninsula; and at a local Parish level in Birdham, in order to meet an existing need for affordable housing;
     + Providing such additional affordable social rented housing will help create mixed, balanced and sustainable communities for local people;
     + The acquisition of the Order Land will enable the Housing Site to be developed to provide 15 (100%) affordable social rented homes for local people, in conformity with national policy, the Local Plan and the Birdham Neighbourhood Local Plan. Therefore, the development of the Scheme has clear social benefits;
     + The Scheme includes three bungalows, as well as a variety of house sizes. The provision of bungalows will widen the opportunities for elderly or disabled residents to remain within the area;
     + The delivery of the Scheme will support increasing diversity within Birdham, by ensuring much needed affordable housing provision for those who struggle to access this on the open market;
     + Increased support for local business improves the chances of those businesses remaining viable in the locality. Their continued presence increases the probability of social interactions, retains the quality and diversity of local services and ensures those less mobile have access to local resources which they can use. Cumulatively these factors improve the social capital of the residents of Birdham and its surrounding area.

# Promotion or improvement of the environmental well-being of the area

* 1. The Scheme will contribute to the environmental well-being of the area in the following ways:
     + The approved masterplan for the Scheme comprises a sensitively designed small development, interacting sympathetically with its surroundings. Natural site boundaries are respected and enhanced with a strong landscape buffer. The proposed properties are well spaced and provide generous private garden space for the residents, supplemented by new public green open space
     + The Scheme offers a number of benefits which Martlet Homes intends to employ including, the use of air source heat pumps and photovoltaic panels, together with improvements to the building fabric to enable the homes to achieve an Energy Performance Certificate A rating; making the running costs of the homes more affordable and contributing to reducing the carbon impact of new housing on the Manhood Peninsula and the wider area.
     + The Scheme utilises Sustainable Urban Drainage Systems which will reduce runoff rates and the risk of flooding, encourage natural groundwater recharge, reduce pollutants entering watercourses, provide natural habitats and promote biodiversity;
     + Finally, the environmental well-being of the area is further aided by the fact that the development site's location is a short distance from a number of local facilities, so that the development provides the ability to walk or ride to school, access play areas, playing fields and a cricket club, without reliance on vehicular transport.

# Conclusions on well-being

* 1. In summary, the Council is satisfied that the Scheme will contribute to the promotion or improvement of the economic, social, or environmental well-being of the Council's area.

# PLANNING POLICY FRAMEWORK

* 1. The Guidance at paragraph 106 states;

*“Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:*

*whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date plan exists, with the draft Local Plan and the National Planning Policy Framework”*

* 1. This section of my evidence seeks to demonstrate that the Scheme is in conformity with these plans.

# National Planning Policy Framework

Affordable Housing

* 1. The National Planning Policy Framework (“NPPF”) was updated in December 2023 and provides a framework within which locally prepared plans can provide for sufficient housing and other development in a sustainable manner. It sets out a presumption in favour of sustainable development and promotes the creation of sustainable inclusive and mixed communities.
  2. It declares that planning policies should make sufficient provision for housing (including affordable housing). Set out below is a summary of the principal paragraphs of the NPPF relating to the provision of affordable housing.
  3. Paragraph 60 of the NPPF states that to support the Government’s objective of significantly boosting the supply of homes it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed, and that land with permission is developed without unnecessary delay.
  4. Paragraph 64 provides that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required.
  5. Paragraph 67 provides that strategic policy making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need can be met over the plan period.
  6. Paragraph 69 states that strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites taking into account their availability, suitability and likely economic viability.
  7. Paragraph 70 provides that small and medium sized sites can make an important contribution to meeting the housing requirement of an area.
  8. Paragraph 82 provides that provides that in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs, including proposals for community-led development for housing. Further, local planning authorities should support

opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.

* 1. Finally, paragraph 83 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services
  2. The Scheme is in conformity with the housing policies identified in the NPPF. National Landscape
  3. Paragraph 182 provides that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty. In addition, the paragraph provides that the scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated area
  4. Paragraph 183 provides that when considering applications for development within Areas of Outstanding Natural Beauty, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. In considering such applications local planning authorities should include an assessment of the need for the development
  5. The Scheme is consistent with these policies, which were taken into account by the Council, during the consideration and determination of the planning applications on the Housing Site.

# Chichester Local Plan: Key Policies 2014-2029

Affordable Housing

* 1. The local plan covering the Scheme is the Chichester Local Plan: Key Policies 2014-2029” (the “Local Plan”) adopted by the Council on 14 July 2015.
  2. Policy 4 of the Local Plan makes provision for the Council to deliver 7,388 homes over the period 2012–2029. Strategic development locations are allocated in the Plan to accommodate 3,250 homes. The remaining requirement was to be allocated in subsequent Development Plan Documents and Neighbourhood Plans.
  3. Policy 5 of the Local Plan requires small scale housing sites to be identified within Parishes. In the case of Birdham, a requirement for 50 homes has been identified. The Scheme satisfies part of this allocation.
  4. Policy 35 of the Local Plan deals with Affordable Housing Exception Sites. This provides that where there are no available and deliverable sites within a settlement, affordable housing may be permitted on exception sites outside of settlement boundaries, providing certain criteria are met. In cases where a settlement has a defined boundary (as is the case in Birdham) these criteria include: that the scheme provides 100% affordable housing; meets an identified local need by households and with a ‘local connection’ to the parish; there are insufficient sites available and deliverable within the settlement boundary; and the proposed scheme is deliverable and will be properly managed by a Registered Provider. The Housing Site meets these criteria, and has been accepted as a Rural Exception Site.
  5. Copies of policies 4, 5 and 35 of the Local Plan are contained in Appendix 10 of my Proof.
  6. The Scheme is in conformity with the relevant housing policies contained in the Local Plan.

National Landscape

* 1. Policy 43 of the Local Plan provides that the impact of individual proposals and their cumulative effect on Chichester Harbour AONB and its setting will be carefu**l**y assessed. Planning permission will be granted where certain criteria have been met including: the natural beauty and locally distinctive features of the AONB are conserved and enhanced; proposals reinforce rather than detract from, the distinctive character and special qualities of the AONB; and development does not lead to the coalescence of settlements or undermine the integrity or predominantly open and undeveloped, rural character of the AONB and its setting; and the scheme is appropriate to the economic, social and environmental well-being of the area
  2. The Scheme is consistent with these policies, which were considered and taken into account by the Council, during the consideration and determination of the planning applications on the Housing Site. .

# Emerging Local Plan 2021 - 2039

* 1. The Local Plan is currently under review. The Council consulted on the Chichester Local Plan Review 2016 – 2035 Preferred Approach between December 2018 and February 2019. A Regulation 19 consultation on the Proposed Submission Local Plan 2021 – 2039 took place between 3 February and 17 March 2023. Following this consultation, the Plan was submitted to the Planning Inspectorate for examination in May 2024.
  2. This review increases the overall level of housing (and affordable housing) allocations across the Plan area. It also continues the existing Rural Exception Sites policy. However, it does not propose any further development in Birdham.

# Birdham Parish Neighbourhood Plan

* 1. On 7 June 2016 the Council resolved to make the Birdham Parish Neighbourhood Plan.
  2. This Neighbourhood Plan identifies the Housing Site as an allocated site which is included in meeting its 50 housing unit allocation, under policy 5 of the Local Plan.
  3. Paragraph 3.5 and Policy 12 of the Neighbourhood Plan, identify the Scheme as one providing 15 affordable homes; which will contribute to the requirement for 50 homes in Birdham Parish, as required in the Local Plan.
  4. Policy 17 of the Neighbourhood Plan sets out the requirement for development to contain a mix of housing sizes and types to suit the demographic characteristics and needs of the Parish, with affordable housing to be allocated in accordance with the Council’s Allocations Scheme.
  5. Copies of paragraph 3.5, and policies 12 and 17 of the Birdham Parish Neighbourhood Plan are contained in Appendix 11 to my Proof.
  6. The Scheme is in conformity with the Birdham Parish Neighbourhood Plan.

# NEED FOR AFFORDABLE HOUSING Overall delivery of housing in the District

* 1. As stated earlier, Policy 4 of the Local Plan makes provision for the Council to

deliver 7,388 homes over the period 2012–2029. This equates to an average housing delivery of approximately 435 homes per year.

* 1. As part of its Local Plan review the Council undertook a Housing and Economic Development Needs Assessment (“HEDNA”).
  2. The HEDNA (2022) provides analysis to estimate the need for affordable housing in the 2021-39 period. The analysis is split between a need for social/affordable rented accommodation (based on households unable to buy or rent in the market) and the need for affordable home ownership. The HEDNA suggests a need for 278 social rented homes per annum across the whole study area, with a need shown for all individual sub-areas. In addition the HEDNA shows a need for around 301 dwellings per annum for affordable home ownership

# Sub-market area and local housing need

* 1. The Manhood Peninsula is one of five sub-market areas identified in the HEDNA. The Manhood Peninsula covers the southernmost part of the Chichester Local Plan area, extending from just south of Chichester City to the coast and includes Birdham. In June 2022, the Council reviewed the need for affordable housing within the Manhood Peninsula including the need for affordable rented housing.
  2. The HEDNA identified:
* A total net need of 76 social/affordable rent homes and 60 affordable home ownership dwellings per annum in the Manhood Peninsula.
* An average lower quartile dwelling price of £296,000.
* The Manhood Peninsula is also recognised as having the lowest median household income of the 5 sub-areas at £32,400, contributing to the need for more affordable housing options such as affordable or social rented homes to come forward.
  1. Analysis of allocated sites and progress to date shows that for the remainder of the plan period, up to 2029, a maximum of 41 affordable rental units will be delivered. When compared to the demand for 76 affordable homes per annum for the next five years (370 in total) it illustrates a significant short fall in affordable housing delivery.
  2. In addition, the Council’s work on reviewing the Local Plan is well underway to consider the development of the plan area through to 2039. Consultation on a Preferred Approach Local Plan (Regulation 18) took place between December 2018 and February 2019. The Regulation 19 (Proposed Submission) consultation took place between 3 February and 17 March 2023. The Plan was submitted for Examination on 3 May 2024.
  3. The proposed Submission version of the emerging Local Plan 2021 – 2039 does not propose any further development for Birdham above that which is already committed.
  4. At the time of writing this Proof, the Council’s Housing Register indicates a need for rented accommodation in Birdham as follows:

**Bedrooms**

# All Applicants

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Parish Birdham** | **1** | **2** | **3** | **4** | **5** | **7** | **0 Total** |
| **Total** | 7 | 8 | 3 | 1 |  |  | 19 |

and for the wider District it is as follows:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Bedrooms** | | | | | | |  |
| **All Applicants District** | **1** | **2** | **3** | **4** | **5** | **7** | **0** | **Total** |
| **Total** | **1281** | **509** | **308** | **95** | **8** | **1** | **4** | **2206** |

* 1. If the Order is confirmed, the Scheme will make a valuable contribution of Social Rent homes towards meeting some of the need identified above. Specifically, it will assist in meeting a proportion of the need for affordable homes identified in Birdham Parish.

# GRANT OF PLANNING PERMISSION

* 1. Paragraph 15 of the Guidance provides that the acquiring authority will need to show that the Scheme is unlikely to be blocked by any physical impediments to implementation. These include any need for planning permission.
  2. This section of my evidence addresses this matter. Original planning permission and section 106 Agreement
  3. On 29 November 2013 the Council granted full planning permission for the development of 15 new affordable dwellings and associated works on the Housing Site, with access across the Order Land. A copy of this planning permission is contained in Appendix 12 to my Proof.
  4. On the same date the Council and Martlet Homes entered into a Section 106 Agreement in respect of the Housing Site. This contained planning obligations including:
     + Securing the land for the provision of affordable rented housing;
     + for Martlet Homes to enter into a Nominations Agreement with the Council providing for the Council to have 100% nomination rights in relation to the first tenants; and 75% nomination rights in relation to subsequent vacancies;
     + the payment of a contribution to mitigate any impact of the development on the Chichester Harbour Special Protection Area;
     + the laying out of open space within the Housing Site; and
     + the provision of a landscaping planting buffer on the northern, southern and western boundaries of the Housing Site.

A copy of this section 106 Agreement is contained in Appendix 13 to my Proof. Section 73 Permission and Deed of Variation

* 1. On 14 October 2016 the Council granted a further full planning permission under section 73 of the Town and Country Planning Act 1990 (the “1990 Act”), for the same development, on the Housing Site, with access across the Order Land, but with the variation of certain of the conditions on the earlier planning permission. A copy of this section 73 planning permission is contained in Appendix 14 to my Proof.
  2. On the same date a Deed of Variation was entered into. This varied the Section 106 Agreement to introduce a further planning obligation namely, a requirement for the approval and implementation of a surface water disposal scheme. Otherwise, it provided that the terms of the original section 106 Agreement (as varied by the Deed of Variation) shall have effect, in circumstances where the section 73 was implemented. A copy of this Deed of Variation is contained in Appendix 15 to my Proof.

Commencement of building works in respect of the Scheme and the grant of a Certificate of Lawful Development

* 1. On or before 29 November 2016 ‘material operations’ (as defined in the 1990 Act) were carried out on the Housing Site, in order to lawfully commence the development permitted by the section 73 planning permission.
  2. On 25 July 2017 the Council granted a certificate of lawful development in respect of such material operations, confirming that the development permitted by the section 73 planning permission had lawfully been commenced. A copy of this certificate of lawful development is contained in Appendix 16 to my Proof.
  3. Accordingly, the section 73 planning permission dated 14 October 2016 has been lawfully implemented and remains extant.

# POTENTIAL ALTERNATIVE ACCESS TO THE HOUSING SITE

* 1. Paragraph 106 of the Guidance states that when considering whether to confirm an Order, the factors which the Secretary of State can be expected to consider will include:

*“whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, and any other persons for its reuse …”*

* 1. This Section of my evidence addresses this issue.
  2. The Housing Site sits on the western boundary of the village of Birdham. This means that (other than Crooked Lane) the nearest existing roads to the Housing Site (from which an alternative means of access might be taken) are located either to the south (Chaffer Lane/Florence Close or the Saltings) or to the north-east (Westlands Lane). A plan illustrating these routes is attached to the Proof of Sarah Poulter.

Possible Access from Chaffer Lane

* 1. Martlet Homes made a formal pre-application enquiry to the Council in respect of a possible access to the Housing Site from Chaffer Lane. This access would largely run along field boundaries to the north-west of Chaffer Lane towards the Housing Site.
  2. This possible access route was outside the Settlement Boundary and encroached into the rural landscape, including being within the Chichester Harbour AONB.
  3. In its comments on the proposal, the Chichester Harbour Conservancy Council stated as follows:

"*The proposed alternative access would be harmful to the rural landscape and natural beauty of the AONB through an unjustified and excessive length of hard surfacing along what are currently agricultural field margins. There are long distance views back towards the village from the public footpath to the west, whereby the proposed access road would be visible and would harm the existing rural setting and soft, planted edge to the village that exists currently, and would create a visible urban intrusion in the landscape. The proposed access road would also disrupt species networks, following existing field drainage ditches, as identified in the map on page 20 of the Birdham Neighbourhood Plan*".

* 1. The Council was concerned by all of these considerations namely, that the proposed access road would be outside of the defined settlement boundary, would run along field boundaries and would encroach into the rural landscape within the Chichester Harbour AONB.
  2. The Council’s advice to Martlet Homes was contained in a letter dated 11 January 2018 as follows:

"*there are fundamental concerns with the principle of an access road as proposed, and such a scheme would be unlikely to receive officer support. Therefore an application would not be encouraged*".

* 1. A copy of the Council’s pre-application advice to Martlet Homes is contained in Appendix 17 to my Proof.

Possible access from The Saltings

* 1. Martlet Homes also considered a possible access from 6 The Saltings.
  2. The Saltings is a small estate of ten houses built in the early 1990s. 6 The Saltings benefits from a right to pass and repass (for all purposes) over the private estate road of the development, to and from the property. However, this right of way was for the benefit of number 6 alone and did not allow the estate road to be used as part of an extended access road to the Housing Site. In addition, the properties at The Saltings were subject to individual estate covenants preventing the individual properties being used for a use other than private residential use. Finally, this proposal would have involved the demolition of a modern dwelling.
  3. In the light of these obstacles, Martlet Homes formed the view that this possible means of access suffered from the same ‘fundamental concerns’ which the Council had identified in relation to the Chaffer Lane access proposal; and additionally, was encumbered by various legal restrictions, in terms of existing restrictive covenants and limited rights of way. For these reasons, Martlet Homes did not consider this possible alternative means of access to be feasible.
  4. My understanding is that Martlet Homes shared the route of this possible alternative means of access with Council officers (including its concerns as outlined above) and Council Officers informally indicated that they did not disagree with Martlet Homes assessment.

Possible access from Westlands Lane

* 1. Martlet Homes also considered the possibility of access from St. James’s Close or Westlands Lane, which lie to the north of the Housing Site.
  2. Given the Council’s conclusions in relation to a possible means of access from Chaffer Lane to the south (which was significantly nearer to the Housing Site) Martlet considered that options from St. James’s Close or Westlands Lane were even less likely to be acceptable because:
     + They involved an even longer length of access road;
     + The proposed access road was also located in the Chichester Harbour AONB; and
     + Such an access road would be even further outside the Settlement Boundary of Birdham, than the two previous alternatives; and encroached further into the rural landscape, crossing more agricultural fields and a greater area of open countryside.
  3. As before, my understanding is that Martlet Homes shared the route of this additional possible alternative means of access with Council officers (including its concerns as outlined above) and, once again, Council Officers informally indicated that they did not disagree with Martlet Homes assessment. .
  4. Summary
  5. All potential alternative means of access have significant negative impacts on individuals, the parish of Birdham and the wider District, including:
     + a significant impact on the Chichester Harbour AONB;
     + lengthy access roads, a greater impact on the rural landscape and an impact on an increased number of residential properties; and
     + in at least one case, the demolition of a modern dwelling.
  6. Taking all these considerations into account the Council considers that there are no realistic alternative access routes available for the Housing Site. Accordingly, the making of the Order is a proportionate and reasonable step; taken in order to provide access to secure the delivery of a much needed affordable housing Scheme.

# DELIVERABILITY OF THE SCHEME

* 1. Paragraph 14 of the Guidance provides that the acquiring authority should address sources of funding for acquiring the land and implementing the Scheme: and the timing of that funding.
  2. In addition, paragraph 15 of the Guidance provides that:

*“The acquiring authority will need to show that the Scheme is unlikely to be blocked by any physical impediments to implementation. These include:*

* + - *the programming of any infrastructure accommodation works or remedial work which will be required; and*
    - *any need for planning permission or any other consent or licence.”*
  1. This section of my evidence addresses these issues.

# Sources and timing of funding

* 1. Martlet Homes, a fully owned subsidiary of The Hyde Group, is the freehold owner of the Housing Site. The Council are intending to transfer the Order Land to Martlet Homes, which will be undertaking the development authorised by the planning permission, including the construction (at its own cost and expense) of the access road.
  2. Hyde Housing Association Limited, the parent company of Martlet Homes is a Registered Provider, with extensive experience in developing and managing affordable housing.
  3. Further details of Martlet Homes and the Hyde Group are set out in the evidence of Sarah Poulter. This includes Marlet Homes ability to fund the construction costs of the Scheme (Martlet Homes have already funded the cost of acquiring the Housing Site).
  4. Martlet Homes Limited have indicated to the Council that upon the confirmation of the Order (and following the acquisition of the Order land by the Council, and the transfer of this to Martlet Homes) it intends immediately to commence the development permitted by the planning permission in accordance with a delivery programme determined by the requirements of Homes England – the scheme benefits from Homes England’s Strategic Partnership Funding.
  5. Having discussed the sources of funding, and the timing of that funding with Martlet Homes; and considered the evidence of Martlet Homes to this inquiry; the Council is satisfied that there is sufficient funding available to deliver the Scheme, and such funding will be available immediately the Order is confirmed, and the Order Land is made available to Martlet.

# Infrastructure accommodation works or remedial work

* 1. There are no infrastructure accommodation works or remedial works which are required other than usual utility connections to services in Crooked Lane, and a likely highways agreement with WSCC which is dealt with in paragraphs 12.11-

12.13 below.

# Planning Permission

* 1. This has been addressed in Section 10 above.

# Other Consents or Licences

Section 38/278 Agreement

* 1. Works to create a ‘bellmouth’ at the junction between the proposed access road and Crooked Lane, in order to connect the access road to Crooked Lane, will require a section 38/278 agreement to be entered into between Martlet and WSCC, as county highway authority.
  2. This agreement will require Martlet to carry out the bellmouth works at its own cost and expense and within a set timeframe, and (where required) dedicate any part of the ‘bellmouth’ land to WSCC as public highway.
  3. Such agreements are generally in a standard form which Martlet Homes will be familiar with.

Temporary Road Traffic Orders

* 1. Applications will be made, at the appropriate time, to WSCC for any necessary temporary Road Traffic Orders required, in order to construct the Scheme.

# Summary

* 1. For the reasons set out above, the Council is satisfied that there is sufficient funding available for the Scheme, and that this will be available immediately the Order Land is made available to Martlet Homes.
  2. In summary, the Council considers that there are no financial, physical or legal impediments to the implementation of the Scheme.

# NEGOTIATIONS TO ACQUIRE THE ORDER LAND

* 1. Paragraph 17 of the Guidance states that:

*"Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question".*

* 1. Martlet Homes purchased the freehold interest in the Housing Site on 13 January 2014.

13.4 In accordance with a strategy agreed with the Council, Martlet Homes has sought to acquire the various interests in, and rights over, the Order Land by agreement, but without success.

13.4 More recently, the Council has appointed Avison Young to negotiate the acquisition of the same rights by agreement, but also without success. The Council will continue to seek to acquire the necessary interests and rights in the Order Land, in parallel with the making and prosecution of the Order.

* 1. The detailed steps which have been taken by Martlet Homes and the Council to acquire all necessary interests and rights over the Order Land are set out in the Proof of Victoria Blackman.
  2. The Council is satisfied that the steps taken first, by Martlet, and subsequently by Avison Young acting on behalf of the Council, over a long period of time, have constituted meaningful and genuine attempts to acquire the Order Land, but that it has not been possible to acquire any of the necessary interests and rights over the Order Land by agreement.

# PUBLIC SECTOR EQUALITY DUTY

* 1. In discharging its functions, the Council has a statutory duty under section 149 of the Equality Act 2010 (the "2010 Act"), to have due regard to the need to:
* eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
* advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
* foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(“the public sector equality duty”)

* 1. Section 149 of the 2010 Act provides further detail on each of the above matters, which the Council has taken into account. The "relevant protected characteristics" are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
  2. Paragraph 6 of the Guidance re-states the Council’s obligation to comply with the public sector equality duty.
  3. An Equality Impact Assessment ("EqIA") has been carried out as part of the decision making and approval process to move ahead with securing authority for the making of the Order. The EqIA was included within the Report to the Full Council meeting held on 21 March 2023.
  4. The land being acquired is an access track serving agricultural land and does not require relocation of any protected groups.
  5. The EqIA has shown that the proposals have the potential to deliver multiple beneficial impacts for the local community, including those with protected characteristics in the local area. Details of these beneficial impacts are as follows:
     + The delivery of a range of affordable housing dwellings within the Scheme to address local need. The quality of the new homes provided and specifically the provision of bungalows, will have a range of positive impacts on equality, including accessibility and adaptability, which will be of significant benefit particularly to those with disabilities, and the elderly;
     + Birdham’s existing stock is weighted in favour of larger detached properties with high sales values. The development of the Crooked Lane Site will provide 15 affordable social rented homes of various bedroom sizes to meet the needs of local people identified on the Council’s housing register;
     + The new homes will be allocated by the Council (through nomination rights) with priority being given to those on the Council’s housing register with a local connection to Birdham Parish. Where no household from Birdham bids for a property, then the cascade provisions of the Section 106 Agreement (which applies the Council’s Allocations Policy) will make these homes available to households on the Council’s housing register in adjacent parishes within the Council’s area;
     + The development will seek to integrate with the existing village of Birdham , and balance the existing stock to create a mixed balanced and sustainable community. This will benefit new and future residents of affordable housing in Birdham;
     + The new homes will utilise sustainable design and construction techniques and be more energy efficient, which will benefit residents by reducing their energy usage; and
     + Providing enhanced open space within the Scheme will allow residents easy access to open space for health and well-being benefits.
  6. The EqIA will be monitored and reviewed throughout the progress of the Scheme, in order to ensure that any future impact can be measured and mitigated against as necessary.
  7. Steps will be taken to ensure that the acquisition of the Order Land will be undertaken in a fair and non-discriminatory manner. Steps will also be taken to minimise the adverse effects on protected groups during construction.
  8. In summary, the Council believe that it has complied with its public sector equality duty.

# HUMAN RIGHTS

**Protocol and Convention rights**

* 1. Paragraph 12 of the Guidance provides that:

*“an acquiring authority should be sure that the the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.”*

* 1. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights. The parts of the Convention rights which should be considered in the course of the making of an Order, and leading up to its confirmation, are contained in Article 1 of the First Protocol and Articles 6 and 8 of the Convention.
  2. Relevant parts of Article 1 of the First Protocol of the Convention provide that:

*"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”*

*"The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest "*

* 1. If confirmed by the Secretary of State, the Order will affect the Article 1 rights of the present freeholders and those with interests in the Order Land (including those having a claim to such freeholds and rights). However, there will be no violation of those rights where the steps taken are in the public interest and are lawful, as is required by Article 1 of the First Protocol (above) and Article 8 of the Convention (below).
  2. Relevant parts of Article 6 of the Convention provide that:-

*"In the determination of his civil rights and obligations......everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".*

* 1. The Order proposals have been extensively publicised and negotiations have been undertaken with the persons who will be affected by the Order.
  2. All those affected by the Order have been notified of its making; have had the opportunity to make objections to the Order; and will have the opportunity to be heard at a public inquiry, before a decision is made on whether the Order should be confirmed. Those persons directly affected by the Order will also be entitled to compensation proportionate to any losses that they may incur, as a result of any compulsory acquisition made pursuant to the Order.
  3. Relevant parts of Article 8 of the Convention provide that:

*"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.”*

*"(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of heath or morals, or for the protection of the rights and freedom of others".*

* 1. Article 8(1) is a qualified right and interference with it may be justified in appropriate cases by reference to Article 8(2).
  2. The Order has been made pursuant to section 226(1)(a) of the 1990 Act. These provisions authorise the Council to acquire land compulsorily, subject to following the procedures laid down in the Acquisition of Land Act 1981.
  3. The Council considers that there is a compelling case in the public interest such that, if the Order Land is acquired, and the works described in the Scheme are implemented, the public benefit will outweigh the private loss arising from that acquisition, and the carrying out of those works. In the circumstances, the compulsory acquisition of the Order Land will not conflict with the rights provided by Article 8(1) of the Convention, as the qualifications in Article 8(2) apply.

# Application of the principle that interference with Convention rights must be proportionate and justified in the public interest.

* 1. In promoting the Order, the Council has carefully considered the balance to be struck between individual rights and the wider public interest.
  2. To the extent that the Order would affect individual rights, the Council considers that the proposed interference with them would be in accordance with the law, necessary in the public interest, and proportionate.
  3. All of those persons whose rights under Article 8 of the Convention and under Article 1 of the First Protocol of the Convention would be affected by the Order, have had an opportunity to object to the Order, and will have the right to have their objection considered at a fair and public hearing, in accordance with their rights under Article 6 of the Convention.
  4. Appropriate compensation will be made available to those entitled to claim it under the relevant provisions of the statutory compensation code.
  5. In summary, the Scheme and the Order will not unduly infringe the rights of individuals which are provided by the European Convention on Human Rights.

# OBJECTIONS

* 1. Following the making of the Order, 26 objections were received. A Schedule of Objectors, including a summary of their objections and the objection themes, is contained in Appendix 18 to my Proof.
  2. Of these 26 objections, five (Objectors 1, 20, 21, 24 and 26) were from ‘relevant objectors’ being those who have a landownership or right or claimed ownership or right, which is included within the Order Land.
  3. As can be seen from the Objection Schedule, there were a number of consistent themes set out in the objections and, for simplicity, the Council’s response to each of these themes is set out below. Where an objector has also identified other matters not covered by one or more of the objection themes, these have been dealt with separately, and follow the objection theme responses.

# Theme 1 - Inappropriate Access (Objectors 1, 2, 3, 5, 6, 8, 9, 11, 12, 16, 18, 19,

**20, 21, 23, 24, 25 and 26)**

* 1. A number of objections raise concerns about the appropriateness of the proposed access. Within the November 2013 Planning Committee report to the Council on the initial planning application on the Housing Site (a copy of which is annexed to Sarah Poulter’s Proof), the Council as local planning authority, considered the means of access provided to the site.
  2. In particular, the Council reported the response of WSCC as the highway authority. At paragraph 6.7 of the Planning Committee report, WSCC consider the range of considerations necessary to assess the proposed means of access from a highway perspective, and conclude that the proposed access road is sufficiently wide to allow two vehicles to pass; includes speed reducing features; complies with the Manual for Streets guidance; raises no safety concerns in respect of the proposed pedestrian crossing point; and notes the low volume of vehicular traffic. For all these reasons WSCC raises no objections to the proposed access road.
  3. In section 11 of my evidence, I describe how Martlet and the Council have considered possible alternative routes to provide access to the Housing Site and have concluded that the potential alternatives are less suitable than the access route identified.
  4. Given the time which has passed since the original planning application, Martlet Homes has instructed their highways consultant to update their original highway assessment, which was submitted with their planning application. This updated report is appended to the Proof of Sarah Poulter and is dealt with in further detail in her Proof. In summary, this updated assessment confirms that no new or additional highway issues have been identified which would mean the access is no longer suitable.
  5. The Council is satisfied that the access to the site is suitable and appropriate in planning and highway terms.

# Theme 2 – Highway Safety (Objectors 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16,

**17, 18, 19, 20, 21, 23, 24, 25 and 26)**

* 1. A number of objections raise concerns regarding the highway safety of the proposed access. Highway safety was also carefully considered within the original planning application was considered and, was also addressed by WSCC in paragraph 6.7 of the Officers Report previously referred to. Once again WSCC as

highway authority confirmed that it has no concerns with the access proposed to the site on safety grounds.

* 1. As previously mentioned, Martlet Homes instructed their highways consultant to update the highway safety assessment which was submitted with the planning application, and their highways consultant has confirmed that no new or additional safety issues were identified. This is also dealt with in further detail in the Proof of Sarah Poulter.
  2. The Council is satisfied that the proposed access does not raise highway safety issues.

# Theme 3 – Unsuitable use of Council powers (Objectors 3, 4, 5, 7, 8, 10, 12,

**15, 18, 22, 23, 25 and 26)**

* 1. A number of objections raise concerns about the suitability of the Council utilising their compulsory purchase powers in respect of the Scheme.
  2. The Council have considered the matter of compulsory purchase on three separate occasions, and over a long period, and have only acted and used their powers as a last resort after first, Martlet Homes, and secondly the Council, have made repeated efforts to acquire the necessary land and rights by agreement and have been unable to do so. When it was clear that this was the case, the Council resolved to make a compulsory purchase order to facilitate delivery of the Scheme at a full Council meeting on 21 March 2023. This decision followed consideration of a report from officers setting out all relevant matters, including the statutory requirements for the Council to make a compulsory purchase order.
  3. My evidence sets out the requirements of the legislation and the Guidance, and how this Order meets all of these requirements.
  4. The Council is satisfied that this Order is a suitable and appropriate use of its compulsory purchase powers.

# Theme 4 Lack of infrastructure, flooding risk and damage to nature (Objectors 1, 2, 3, 4, 7, 9, 13, 14, 15, 18, 22, 23, 24 and 26)

* 1. A number of objections raise concerns regarding the lack of infrastructure, flooding risk and damage to nature from the Scheme overall, as opposed to solely the Order Land.
  2. In the Officers Report to the Planning Committee (previously mentioned) the Council’s Drainage Officer (at paragraph 6.10) raised no objection on drainage grounds.
  3. In the same Report (at paragraphs 6.3 and 6.4) it is noted that Southern Water confirmed that there was sufficient foul water drainage capacity in the local network and did not raise any objection. The Environment Agency did not raise any comment.
  4. Also, in the same Officers Report (at paragraph 6.5) Natural England confirmed that it had no objection to the Scheme
  5. All of the above issues (lack of infrastructure, flooding risk and damage to nature) are also addressed in further detail in the Proof of Sarah Poulter.
  6. As indicated earlier in my evidence, the Scheme will utilise Sustainable Urban Drainage Systems, which should reduce runoff rates and risks of flooding, encourage natural groundwater recharge, reduce pollutants entering watercourses, provide natural habitats and promote biodiversity.
  7. The Council is satisfied that there is no lack of infrastructure, risk of flooding or damage to nature caused by the Scheme which would prevent the Order from being confirmed.

# Theme 5 Unsuitable location and/or no need for affordable housing (Objectors 1, 3, 8, 9, 11, 12, 13, 14, 15, 18, 20, 22, 23, 24, 25 and 26)

* 1. A number of objections raise concerns regarding the suitability of the location for affordable housing and/or the absence of need for affordable housing.
  2. The suitability of the location for affordable housing and the need for affordable housing were considered at the time of the planning application in 2013. At paragraph 6.9 of the Officer’s Report to the Council, the Housing Enabling Manager’s consultation response is reported, which confirms the need for affordable housing and explains the choice of this location. When granting planning permission, the Council as local planning authority was satisfied that there was a need for affordable housing, and the site was a suitable location.
  3. When considering making the Order at Full Council in March 2023 the Council considered the need for affordable housing in this location, and was satisfied that there continued to be a need for affordable housing.
  4. In Section 9 of my evidence I set out an updated summary of the need for affordable housing.
  5. The Housing Site is recognised in the Birdham Parish Neighbourhood Plan as an allocated housing site which goes towards meeting the requirement for 50 dwellings which is set out in the Chichester Local Plan.
  6. In addition, the Scheme already benefits from the grant of planning permission. The Housing Site is in the ownership of Martlet Homes, one of the Council’s principal partner Registered Providers. The acquisition of the Order Land will enable the Housing Site to be developed to provide 100% affordable social rented housing for local people, in conformity with national, local and neighbourhood planning policy.
  7. The Council considers that the need for affordable housing and the suitability of the location has been demonstrated, and it is satisfied that the affordable housing is required, and that this site is suitable to deliver such much needed affordable housing.

# Theme 6 Affordable Housing not financially viable (Objectors 23 and 24)

* 1. A number of objections raise concerns in relation to the viability and deliverability of the affordable housing.
  2. Martlet Homes, which is part of the Hyde Group, will be responsible for carrying out the Scheme. Details of the funding (and timing of the funding) for the implementation of the Scheme are set out in the Proof of Sarah Poulter. The Council has considered and discussed with Martlet Homes the funding of the Scheme, and is satisfied that Martlet Homes has sufficient funds to deliver the Scheme. Accordingly, funding is not an impediment to the delivery of the Scheme.
  3. Subject to the confirmation of the Order, the Council considers that there are no financial impediments to the delivery of the Scheme.

# Theme 7 – Human Rights (Objectors 23 and 24)

* 1. A number of objections raise concerns over the impact of the Order on Human Rights; in particular negotiations being undertaken in advance of the Order being made.
  2. My evidence and, more particularly, the evidence of Virginia Blackman, sets out how negotiations were undertaken. It confirms that the offers made were based on the compensation to which owners would be entitled, were the Council to progress to a purchase under a compulsory purchase order; and included market value, severance and injurious affection (where appropriate) and a contribution towards professional adviser fees. A specialist team from Avison Young was instructed to undertake negotiations and these negotiations were undertaken within the best practice requirements of the Guidance. This was all in an effort to reach agreement in advance of the use of compulsory purchase powers, as is required by the Guidance.
  3. In Section 15 of my evidence I describe how the all those persons whose rights under Article 8 of the Convention and under Article 1 of the First Protocol of the Convention would be affected by the Order have had the opportunity to object to the Order and further, will have an opportunity to have their objection considered at a fair and public hearing.
  4. The Council is therefore satisfied that consideration has been given to the Human Rights of affected parties when undertaking negotiations with affected parties, and when making the Order.

# Theme 8 – Error in Planning Permission (Objectors 2, 5, 8, 16, 18, 19, 23, 25

**and 26)**

* 1. A number of objections raise concerns about the planning process in respect of the 2013 planning permission, and whether the planning permission has been implemented.
  2. Planning permission was granted for the Scheme in 2013 and a revised section 73 planning permission was granted in 2016. During the Planning Committee meeting in November 2013 a member proposed deferring a decision to allow for a site visit by Members, but this was not approved. No challenge was made to either planning permission in the courts.
  3. As set out in Section 10 of my evidence, the section 73 planning permission was implemented in November 2016, and the Council confirmed this in July 2017 when it granted a certificate of lawful development, confirming that the section 73 planning permission has been lawfully implemented and remains extant. No challenge was made to this decision in the courts.
  4. The Council is satisfied that the proper process was followed in respect of the grant of the original planning permission, the section 73 planning permission and the certificate of lawfulness.

# Theme 9 – No wellbeing benefits (Objectors 6, 7, 8, 11, 13, 18, 22, 23, 25)

* 1. A number of objections raise concerns in respect of the well-being benefits delivered by the Scheme.
  2. In Section 7 of my evidence I set out the economic social and environmental well- being benefits delivered by the Scheme. This identifies benefits to economic wellbeing, including new jobs during the construction phase, 15 new households to support the existing village retailers including the Post Office, Spar Store, the Shell Garage and the plant nursery and garden centre. In addition, the new homes, with rents on average equal to 50% of market rents in the area, will ensure local workers are able to live close to their work.
  3. Section 7 also outlines benefits to the social well-being of the area, including increasing the supply of much needed affordable housing, ensuring a mixed, balanced and sustainable community for local people, provision of bungalows for elderly or disabled residents and the contribution towards retaining local businesses and services.
  4. Finally, Section 7 of my evidence identifies benefits to the environmental well-being of the area including delivery of modern energy efficient homes (reducing energy and fuel use and costs) and sustainable drainage solutions. The Scheme will provide housing for residents close to their work, and is within walking distance from a number of local facilities such as schools and play areas.
  5. The Council is satisfied that these wellbeing benefits will be delivered by the confirmation of the Order and the delivery of the Scheme.

# Theme 10 – Error in CPO process (Objectors 10, 15, 16, 18, 23, 24, 25 and 26)

* 1. A number of objections raise concerns in respect of the compulsory purchase process. The Council is satisfied that the process set out in legislation was followed and that all necessary notices and advertisements were placed.
  2. Following the service of notices, an affected party informed the Council that an incorrect email address had been provided on the notices for the submission of objections. The Council emailed all affected parties to inform them and provided a correct email address. Further site notices were placed around the area, and the objection period was extended to 30 June 2023. Copies of the documents were available within the Council's offices and, in addition, documents were placed online.
  3. The Council is satisfied that the compulsory purchase process has been carried out properly and effectively, and that all affected parties have had a reasonable time to consider the impact on them or their property, and to make an objection if they chose to do so.

# Individual concerns raised.

**Objector 1 and 26 – Mr. and Mrs Corkett**

* 1. Mr and Mrs. Corkett raise a concern that access to their driveway (Copperfields) will be impeded by the proposed works. The Council can confirm that the proposed works will not impede access to their driveway and access to Copperfields will be maintained both during the construction works and once the work is completed. The Council will ensure that Mr. and Mrs. Corkett enjoy the same rights of access over the equivalent part of the new access road as they currently enjoy over the existing small area of the track.

# Objectors 20 & 21 Mrs Humphries et al and Mr Pick

* 1. The agent acting on behalf of the objectors referred to above, raises concerns over retained rights to the objectors’ adjacent land following implementation of the Order. The Council has reached agreement with the objectors to acquire their interest or rights, or claimed interests or rights, and this agreement includes provision of new rights of access over the Order land.
  2. The Council is content to offer new rights of access over the Order Land to any landowner who has existing rights, or claimed rights, to access land adjacent to the Order Land.

# Objector 24 – Mrs M Evans

* 1. The objection submitted on behalf of Mrs Evans by Blandy & Blandy states that no meaningful negotiations have been undertaken. The Council has set out the history of negotiations with all third parties in the evidence of Victoria Blackman, including the attempts made to negotiate with Mrs Evans. An offer to purchase, based on compulsory purchase compensation principles, was made on behalf of the Council in February 2022. Mrs Evans stated to both Avison Young and Council Members that she did not wish to discuss an offer of purchase by agreement. The Council is happy to resume negotiations to acquire by agreement, and Avison Young have made further attempts to negotiate with Mrs Evans.

# Summary – individual concerns raised

* 1. The Council does not consider any of these objections constitute a reason why the Order should not be confirmed.

1. **CONCLUSION**
   1. My evidence has sought to demonstrate that there is a compelling case in the public interest for the confirmation of this Order. I say this for the following reasons.

# Need for affordable housing

* 1. The HEDNA suggests a need for 278 social rented homes per annum across the whole study area, with a need shown in all sub-areas.
  2. In the Manhood Peninsula the HEDNA identifies a total need for 76 social/affordable homes for rent, per annum. This area has the lowest median household income of the five sub-areas in the study.
  3. Analysis of allocated sites and progress to date shows that for the remainder of the plan period (up to 2029) a maximum of 41 affordable rental units will be delivered. However, this compares to a demand for 76 affordable homes per annum for the next five years, illustrating a significant shortfall in affordable housing delivery.
  4. The Scheme provides 15 (100%) affordable housing dwellings on the Housing Site. The form of the affordable housing will be housing for Social Rent.
  5. The Scheme will make a valuable contribution of Social Rented Homes towards meeting the identified need; and specifically, it will assist in meeting a proportion of the need for affordable homes identified in Birdham Parish.
  6. Martlet Homes (a Registered Provider) owns the Housing Site. Each of the dwellings in the Scheme will be let by Martlet Homes at a Social Rent i.e. a ‘target rent’ determined through the national rent regime. This typically produces a rent of about 50% of market rent.
  7. The new homes will be allocated by the Council (through a nomination agreement with Martlet Homes) with priority being given to those on the Council’s housing register with a local connection to Birdham Parish. Where no household from Birdham bids for a property, then the ‘cascade’ provisions of the Council’s Allocations Scheme will make these homes available to households on the Council’s housing register in adjacent parishes within the Council’s area.

# Access road

* 1. The proposed access road has already been fully considered and approved as part of the planning process.
  2. WSCC as the local highway authority has confirmed that the proposed access road: is sufficiently wide to allow two vehicles to pass; includes speed reducing features; complies with the Manual for Streets guidance; raises no safety concerns in respect of the proposed pedestrian crossing point; and finally, will generate a low volume of vehicular traffic. For all these reasons WSCC raised no objections to grant of planning permission for the proposed access road.
  3. Martlet Homes highways consultants have since produced an updated Transport Technical Report which includes an updated Stage 1 Road Safety Audit. This Report concludes that the proposed access design is safe and complies with national and local design guidance.
  4. As explained in further detail in Section 11 of my evidence, there is no satisfactory alternative means of access to the Housing Site.

# Drainage and flooding

* 1. The issues of the drainage of the Scheme, and the risk of flooding, have also already been considered and approved as part of the planning process.
  2. As part of this process, the relevant consultees; the Council’s Drainage Engineer, and Southern Water, have confirmed that there are no concerns about the drainage of the Scheme or around risks from flooding.
  3. As part of the planning process a condition requiring Sustainable Urban Drainage Systems has been imposed, which will reduce runoff rates and the risk of flooding, encourage natural groundwater recharge, reduce pollutants entering watercourses, provide natural habitats and promote biodiversity.

# Planning Policy and Planning Permission

* 1. The development of the Housing Site is in conformity with the Local Plan, and the Housing Site is specifically allocated for development in the Birdham Parish Neighbourhood Plan.
  2. Planning Permission has been granted for the Scheme. In addition, development has been lawfully commenced, as evidenced by the grant of a Certificate of Lawful Development in respect of the implemented commencement works.

# Funding

* 1. Martlet Homes will carry out the development. It is a Registered Provider and experienced in developing affordable housing. It possesses the necessary funding to implement the Scheme.

# Attempts to acquire interests and rights

* 1. First Martlet Homes, and subsequently the Council, have made more than reasonable attempts over a long period to reach agreement with those persons who claim an interest or right over the Order Land. Despite this, it has not been possible to reach agreement with such persons.
  2. Even if agreement could be reached with all reputed owners (and those claiming rights) the Council would still be uncertain that it had acquired all interests and rights in the land, because of the uncertainty of the title of those owners (and others claiming rights).
  3. For this reason, the Council has concluded that it will not be possible to acquire all land interests and rights necessary to deliver the Scheme by agreement, and therefore the Scheme will not be capable of being delivered without the use of compulsory purchase powers.

# Well-being benefits

* 1. The Order will achieve the promotion and improvement of the economic, social and environmental well-being of the Council’s area.
  2. The economic well-being benefits include 15 new households to support the existing village retailers including the Post Office, Spar Store, the Shell Garage and the plant nursery and garden centre.
  3. The social well-being benefits include increasing the supply of much needed affordable housing, ensuring a mixed, balanced and sustainable community for local people and the provision of bungalows for elderly or disabled residents.
  4. The environmental well-being benefits include the delivery of modern energy efficient homes (reducing energy and fuel use and costs) and sustainable drainage solutions.

# Physical Impediments

* 1. There are no physical impediments to the implementation of the Scheme.

# Public Sector Equality Duty and Human Rights

* 1. In order to discharge its public sector equality duty the Council has carried out an Equalities Impact Assessment, and concluded that the Scheme will have an overall positive effect and deliver benefits for the local community, including those persons with protected characteristics.
  2. The Council is satisfied that the Scheme, and the Order will not infringe the rights of persons which are provided under the Human Rights Act and the European Convention on Human Rights.

# Objections

* 1. The Council has addressed each of the qualifying objections (and all other objections) and does not consider that any of these objections constitute a reason why the Order should not be confirmed.

# Conclusions

* 1. The acquisition of the Order Land is the sole impediment preventing the carrying out of the Scheme.
  2. Having regard to the matters set out in my evidence, the Council believes there is a compelling case in the public interest that justifies the proposed compulsory acquisition of the Order Land, and that the public interest in satisfying a need for Social Rented housing, is sufficiently important to justify the interference with private rights. Accordingly, the Council respectfully requests that the Order is confirmed.