

**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**

**APPENDICES**

**to the**

**PROOF OF EVIDENCE**

**of**

**MARK BRISTOW**

**on behalf of Chichester District Council**

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

## APPENDICES

Appendix 1	Plan showing the Housing Site
Appendix 2	Plan showing the layout and boundary treatment of the housing scheme and two images of the completed housing
Appendix 3	Plan showing the layout of the Access Road
Appendix 4	Officers Report to Cabinet dated 10 April 2018
Appendix 5	Extract from minutes of Cabinet meeting dated 10 April 2018
Appendix 6	Officers Report to Cabinet dated 6 July 2021
Appendix 7	Extract from minutes of Cabinet meeting dated 6 July 2021
Appendix 8	Officers Report to Full Council dated 21 March 2023 (CDA.7)
Appendix 9	Extract from minutes of Full Council dated 21 March 2023 (CDA.7)
Appendix 10	Material housing policies in the Chichester Local Plan: Key Policies 2014-2029 (CDC.2)
Appendix 11	Material housing policies in the Birdham Parish Neighbourhood Plan (CDC.4)
Appendix 12	Planning permission dated 29 November 2013 (Ref: BI/13/01391/FUL) (CDB.1)
Appendix 13	Section 106 Agreement dated 29 November 2013 between Chichester District Council, Martlet Homes Limited and others (CDB.2)
Appendix 14	Section 73 Planning Permission dated 14 October 2016 (Ref: BI/16/01809/FUL) (CDB.3)
Appendix 15	Section 106 Deed of Variation dated 14 October 2016 between Chichester District Council, Martlet Homes Limited and others (CDB.4)
Appendix 16	Certificate of Lawful Development dated 25 July 2017 (Ref: BI/17/01163/PLD) (CDB.5)
Appendix 17	Pre-application advice letter dated 11 January 2018 from Chichester District Council to Martlet Homes Limited
Appendix 18	Schedule of Objectors and Objection Themes (CDA.10)

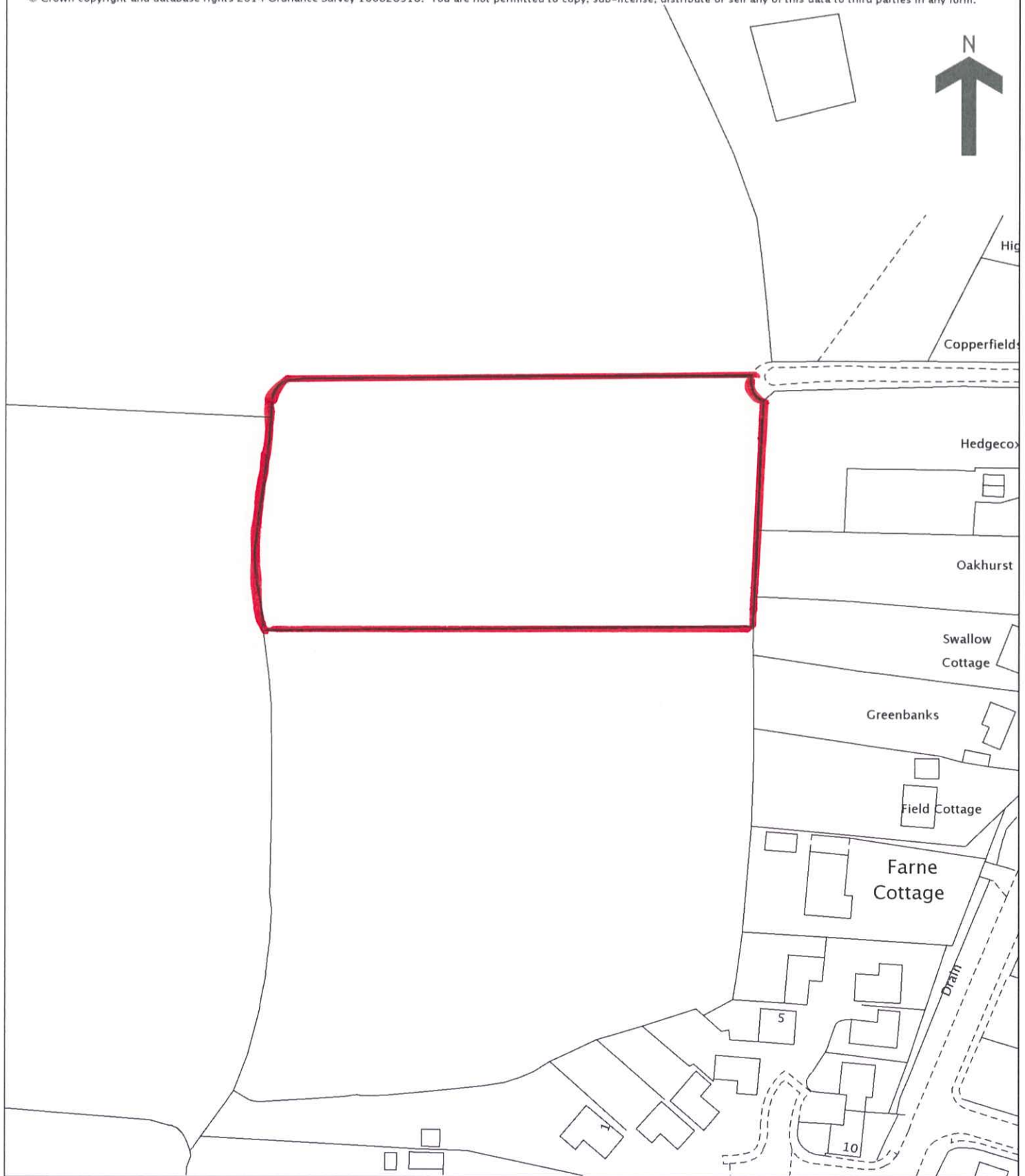
## **APPENDIX 1**

HM Land Registry  
Official copy of  
title plan

Title number **WSX362152**  
Ordnance Survey map reference **SU8200SW**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **West Sussex : Chichester**



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## **APPENDIX 2**

### Proposed Boundary Treatments

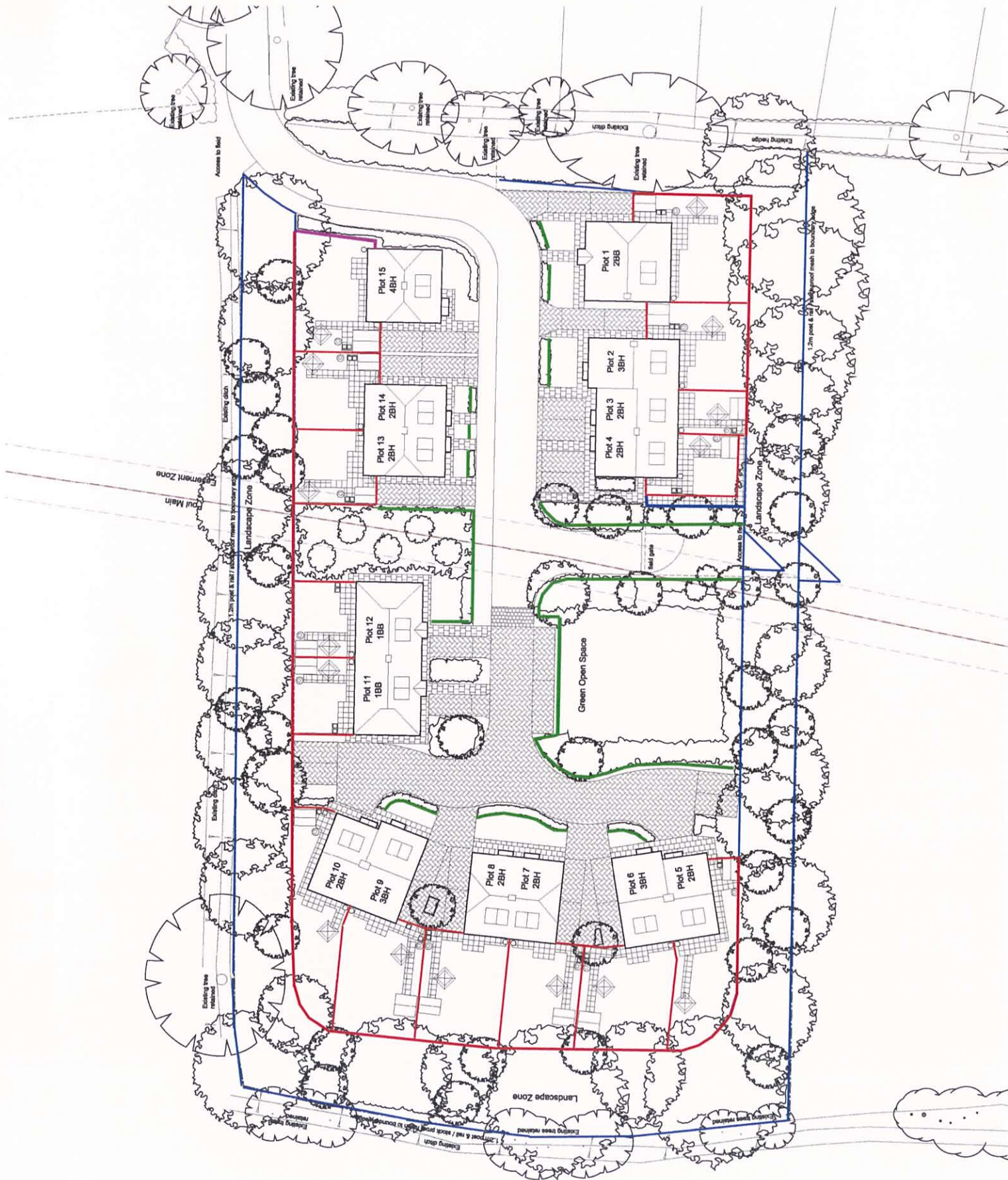
27.10.16

To be read in conjunction with HWW Site Layout drawing 100332 P109 D

- 1.2m post and rail fence with stock-proof mesh applied to the outer face
- 1.8m closeboard fencing
- 'Dragons teeth' - low level timber bollards at circa 1m spacing
- 1.8m brick wall with inset flint panels



**The Hyde Group**  
 Making a lasting difference



## Proposed Scheme



Street View Looking West



**Affordable Housing, Birdham**  
Land West of Crooked Lane

# Proposed Scheme



View From Green Open Space



## **APPENDIX 3**



## **APPENDIX 4**

# Chichester District Council

THE CABINET

10 April 2018

## Enabling the Delivery of Affordable Housing on the Crooked Lane, Birdham Exception Site

### 1. Contacts

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### 2. Executive Summary

Approval is sought to explore the proposal for a Compulsory Purchase Order (CPO), in respect of a small area of land (identified in appendix 3), in order to assist a housing association to bring forward an affordable housing development on the field North West of The Saltings, Crooked Lane, Birdham and to set out a preliminary timetable for 'making' any CPO. It recommends the principle of CPO land acquisition using a back to back agreement with the adjacent land owner Hyde housing association.

### 3. Recommendation

#### 3.1 That the Cabinet approves:

- 1) The carrying out of a land referencing exercise in respect of the small area of land (identified in appendix 3) to be funded by Hyde group.
- 2) That on completion of the land referencing exercise a further report to the Council be prepared by officers as to 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.
- 3) The authorisation of officers to undertake the next steps as set out in section 6 of the report in order that any decision by the Council can be carried through promptly.
- 4) 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 related to the steps set out in section 6 of the report.**

**4. Background**

- 4.1 The purpose of this report is to help facilitate the delivery of an affordable housing scheme on the field North West of the Saltings, Crooked Lane, Birdham through compulsory purchase of the access to the site.
- 4.2 **Scheme Planning History:** The site benefits from planning permission granted on 29 November 2013 (ref BI/13/01391/FUL) for the “development of 15 new affordable dwellings and associated external works”. The approved site plan is include in appendix 1. The permission secured the following mix of affordable rented units, in perpetuity for households with a local connection to Birdham, through the section 106 agreement:
- 2 x 1 bedroom bungalows
  - 1 x 2 bedroom bungalow
  - 8 x 2 bedroom houses
  - 3 x 3 bedroom houses
  - 1 x 4 bedroom house
- 4.3 On 14 October 2016 variations to the wording of conditions 3, 5, 6, 8, 13, 20 and 21(ref BI/16/01809/FUL) of the above planning permission was granted. Hyde sought the variations in order to allow development to commence.
- 4.4 A certificate of lawful development was granted on 25 July 2017 (ref BI/17/01163/PLD). This confirmed the development permitted by the planning permission could be lawfully carried out.
- 4.5 The Birdham Neighbourhood Plan was made on 7 June 2016. Policy 12 identifies this site as a scheme with planning permission for 15 new social/affordable homes for letting to local people in perpetuity.
- 4.6 **Land Ownership** Hyde purchased the field North West of the Salting’s, Crooked Lane, Birdham shown on the plan at appendix 2 on 13 January 2014.
- 4.7 Access to the site is over a track which is unregistered as to ownership and lies north east of the site leading from Crooked Lane. This is shown edged red on the plan attached at appendix 3. The legal transfer of the development site, at the time of purchase by Hyde, granted rights of entry and a right of way over the access only so far as the vendor was able to do so.
- 4.8 The access is contentious with the neighbouring landowners to the north and south of it and there are other local objectors. In June 2012 the owner of ‘Hedgecox’, a property situated immediately to the south of the access, registered a caution against first registration of the access asserting to have a right of way over the access.
- 4.9 In July 2014 Hyde sought advice from Alan Johns at Maitland Chambers on the likelihood for establishing ownership rights over the access suitable to serve the development. A summary of Mr Johns’ advice is set out in appendix 4 (Part II exempt).

4.10 Negotiations are ongoing and significant offers to settle have been made by Hyde but not accepted by persons having purported interests or rights over the land.

4.11 **Evaluation of the Council's Position and the Delivery of the Site** This scheme was brought forward through the Chichester Rural Partnership and £305,840 of the partnership money has been allocated to help deliver the scheme. The Chichester Rural Partnership Agreement states:

'Where such sites have been identified and agreed with Martlet (who are now referred to as 'Hyde') but are prevented from development by lack of consent from a third party landowner it (the Council) shall seek approval from its Executive Board for the use of compulsory purchase order powers to assemble the sites.'

4.12 Hyde has now made a formal request to the Council to assess whether the access site would meet the statutory requirements for a Compulsory Purchase Order (CPO).

4.13 On 28 June 2016 the Council jointly sought legal advice with Hyde from Jonathan Darby of Essex Chambers (legal counsel). The advice is set out in appendix 4 (Part II exempt).

## 5. Outcomes to be Achieved

5.1 The recommendations if approved will enable officers to carry out further investigation to enable an informed decision to be made by the Council meeting as to the potential use of compulsory purchase powers and to assess the relevant statutory tests.

## 6. Proposal

6.1 That officers undertake the relevant preparatory work with a view to the Council considering whether to pursue a CPO.

6.2 The Council would require Hyde to underwrite the costs of any CPO and to cover the costs of the initial land referencing work.

6.3 That:

- I. Cabinet noted that Hyde group will continue to seek to acquire the land by private treaty, but, failing that the Council will need to exercise its compulsory purchase powers if the relevant tests are met; and
- II. If using compulsory purchase powers, the CPO would be used to acquire the land and/or necessary interests.
- III. If the Council has to exercise its compulsory purchase powers, it and Hyde will enter into a disposal agreement
- IV. Specialist external Legal advice on all of the actions within this section will be required.

6.4 Cabinet and Council approval will be sought for making a CPO at the appropriate time.

### **Progression of CPO**

- 6.5 **Extent of the Land subject to the CPO** The boundary of the land which will be subject to any CPO will continue to be refined as detailed plans are drawn and land is acquired by agreement. At this stage, the extent of the land is that marked as unregistered on the plan in appendix 3. This may be amended by the Land Referencing exercise.
- 6.6 **Justification for the CPO** The Council has a range of compulsory purchase powers at its disposal. The exact power that may be relied upon will be confirmed prior to making any CPO. However, at the present time it is envisaged that powers under section 17 of the Housing Act 1985 and section 13 of the Local Government Act 1976 are to be the most appropriate means of promoting the CPO in order to ensure that the requisite rights for delivering and occupying the Development are acquired, whether they are existing or "new rights" which are not in existence when the order specifying them is made.
- 6.7 Recent government guidance (October 2015) updates and replaces previous guidance from 2004 and sets out the stages and process for making a CPO. The guidance sets out that a CPO should only be made where there is a compelling case in the public interest and the purpose for which the CPO is made is justifiable in the context of interference with the human rights of those affected.
- 6.8 In the circumstances and for the reasons set out above (subject to confirmation of the proposed CPO power and the case behind it) it is considered that the Council will be able to demonstrate a compelling case that the acquisition of the field North West of The Saltings, Crooked Lane will be in the public interest, though subject to the completion of the land referencing exercise to confirm the extent, type and detail of any relevant rights which can be demonstrated.
- 6.9 **Timescale to Delivery** The Council will be working to ensure that if on full assessment a CPO was to be sought and that no alternative means about bringing about the objective can be identified, the Council can demonstrate to the Secretary of State that:
- A proper statutory basis of potential CPO applies;
  - That the CPO is necessary to achieve that purpose;
  - There is a compelling interest in the land affected;
  - That sufficient resources are likely to be available to implement the CPO within a reasonable time frame; and
  - That Article 1 Protection of Property Rights from the First Protocol of the European Convention of Human Rights 1950 are properly taken into account.
- 6.10 The CPO process from the point at which the Council makes the Order to the Secretary of State confirming the Order is likely to take between 12 to 18 months to conclude. An approximate indicative timescale is outlined below, which is a cautious programme that does not allow for significant time savings if elements become settled by negotiation or similar scenarios:

Q2 2018	Commence CPO work
Q4 2018	Make CPO
Q3 2019	CPO Inquiry (if required)

Q4 2019	Inspector decision on CPO
Q1 2020	Target start on site

## 7. Alternatives Considered

- 7.1 On 11 January 2018 CDC planning officers gave pre application advice to Hyde on the viability of an alternative access route into the site. It was concluded that there are fundamental concerns with the proposed alternative access and it would be unlikely to receive officer support.
- 7.2 Officers have considered what alternative options are available to the Council in order to achieve the development on the site. The options are:
- 7.2.1 To continue to work with Hyde to identify the landowner of the access site and continue dialogue with all relevant landowners who are claiming rights over the land. If this does not prove possible a CPO will be pursued.
- 7.2.2 There is potential for the Council to pursue a CPO and to finance the process. However, underwriting a CPO is costly. This option is the most risky to the Council and a potential risk to public funds.
- 7.2.3 The Council could cease consideration of the CPO at any point including if evidence that the tests are not capable of being met arise from the land referencing process. However the impact upon delivery of the housing outcomes anticipated from the adjacent site are considered to support proceeding by officers at this time.

## 8. Resource and Legal Implications

- 8.1 The Council has broad powers, (subject to any restriction or condition contained in any other enactment) to promote and secure the development on the field North West of The Saltings in accordance with section 226 of the Town and Country Planning Act 1990, section 17 of the Housing Act 1985, section 13 (1) of the Local Government (Miscellaneous Provisions) Act 1976 and a variety of ancillary and subordinate legislation relating to the functions of the Council.
- 8.2 More detailed implications of a CPO on human rights, equalities and making a CPO are included in appendix 5.
- 8.3 **Financial Implications** There are significant up front financial and resourcing implications arising from the proposals in this report, and it will be necessary to prepare a detailed programme of work and resourcing plan to take this process forward.
- 8.4 It is estimated that a maximum cost of £27,000 will be incurred for land referencing costs, legal advice and valuation fees to assess whether the site would meet the statutory requirements for a CPO. This would then be reimbursed by Hyde, subject to the Council being satisfied that the acquisition of each interest or right to be acquired is justifiable in the public interest.

## 9. Consultation



- 9.1 The Council's Legal Services and external advisors, including solicitors with a specialisation in CPO procedures, have been consulted about this unusual and complex matter.
- 9.2 The local members have been made aware of the work being undertaken in relation to the use of CPO powers.

## 10. Community Impact and Corporate Risks

- 10.1 There are potential risks arising from the CPO process to deliver the field North West of The Saltings, such as negative publicity. However, these have been weighted against the reputational risks to the Council of being perceived as not supporting an affordable housing scheme for local people.

## 11. Other Implications

Are there any implications for the following?		
	Yes	No
<b>Crime and Disorder</b> The proposals in the planning applications should ensure that at the very least there is no negative impact on the potential for crime and disorder and that there should be a positive impact in reducing the potential for crime and disorder.	X	
<b>Climate Change</b> The planning permission should ensure that at the very least there should be no negative impact for climate change and that there should be a positive impact by including mitigation or adaption measures.	X	
<b>Human Rights and Equality Impact</b> An equalities impact assessment will need to be undertaken on the proposals in any CPO process in particular after the land referencing exercise.	X	
<b>Safeguarding and Early Help</b>		X
<b>Other</b>		X

## 12. Appendices

- 12.1 Appendix 1: Approved development site plan
- 12.2 Appendix 2: Plan of the land purchased by Hyde
- 12.3 Appendix 3: Plan of the access land
- 12.4 Appendix 4: Legal advice [Note Part II exempt restricted material printed on salmon paper for the information of members and relevant officers only: Paragraph 5 (information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) of Part I of Schedule 12A to the Local Government Act 1972]
- 12.5 Appendix 5: Further information as part of section 8 resource and legal implications

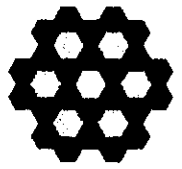
## 13. Background Papers

- 13.1 None

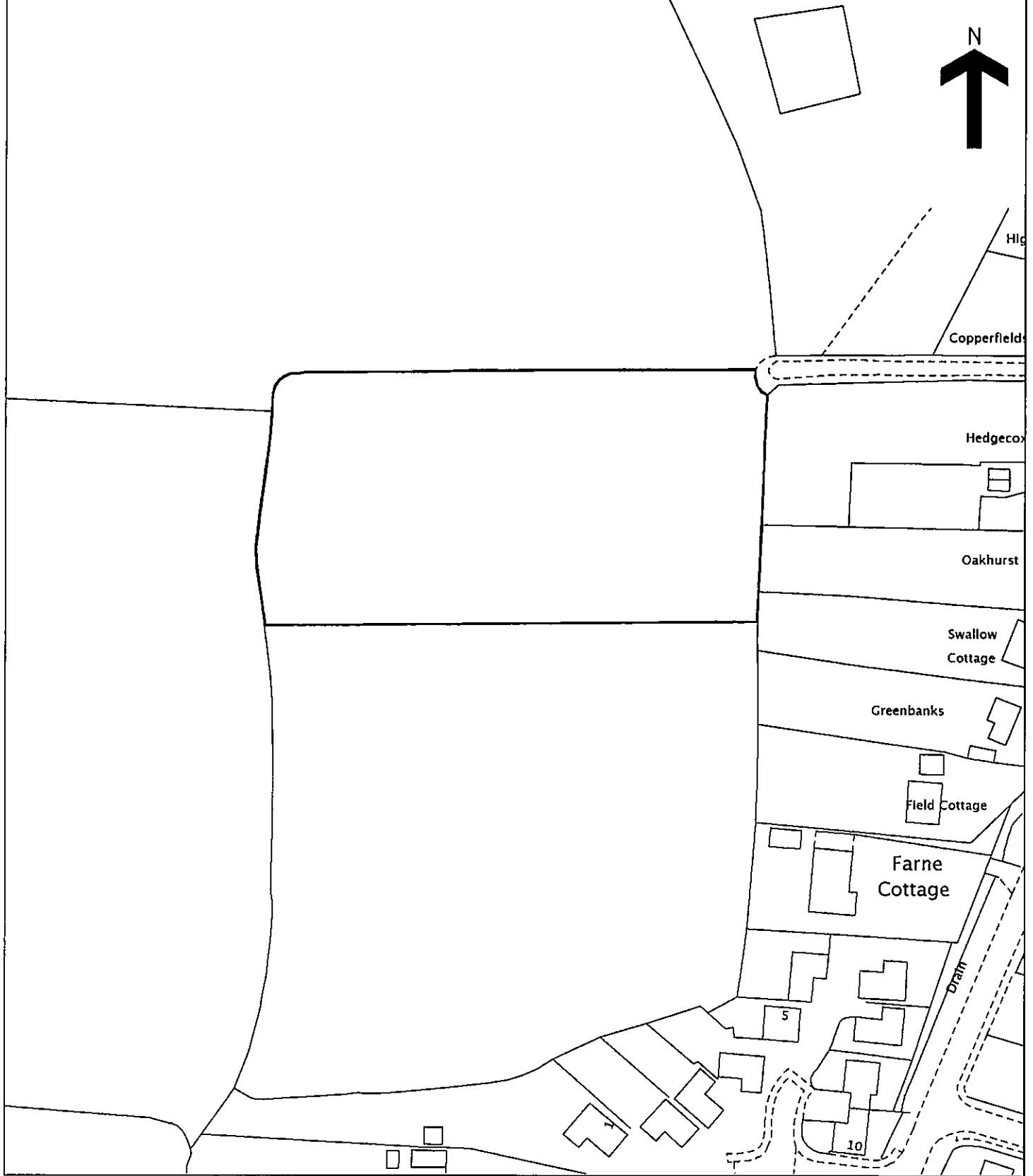


HM Land Registry  
Official copy of  
title plan

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Ordnance Survey map reference **SU8200SW**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **West Sussex : Chichester**



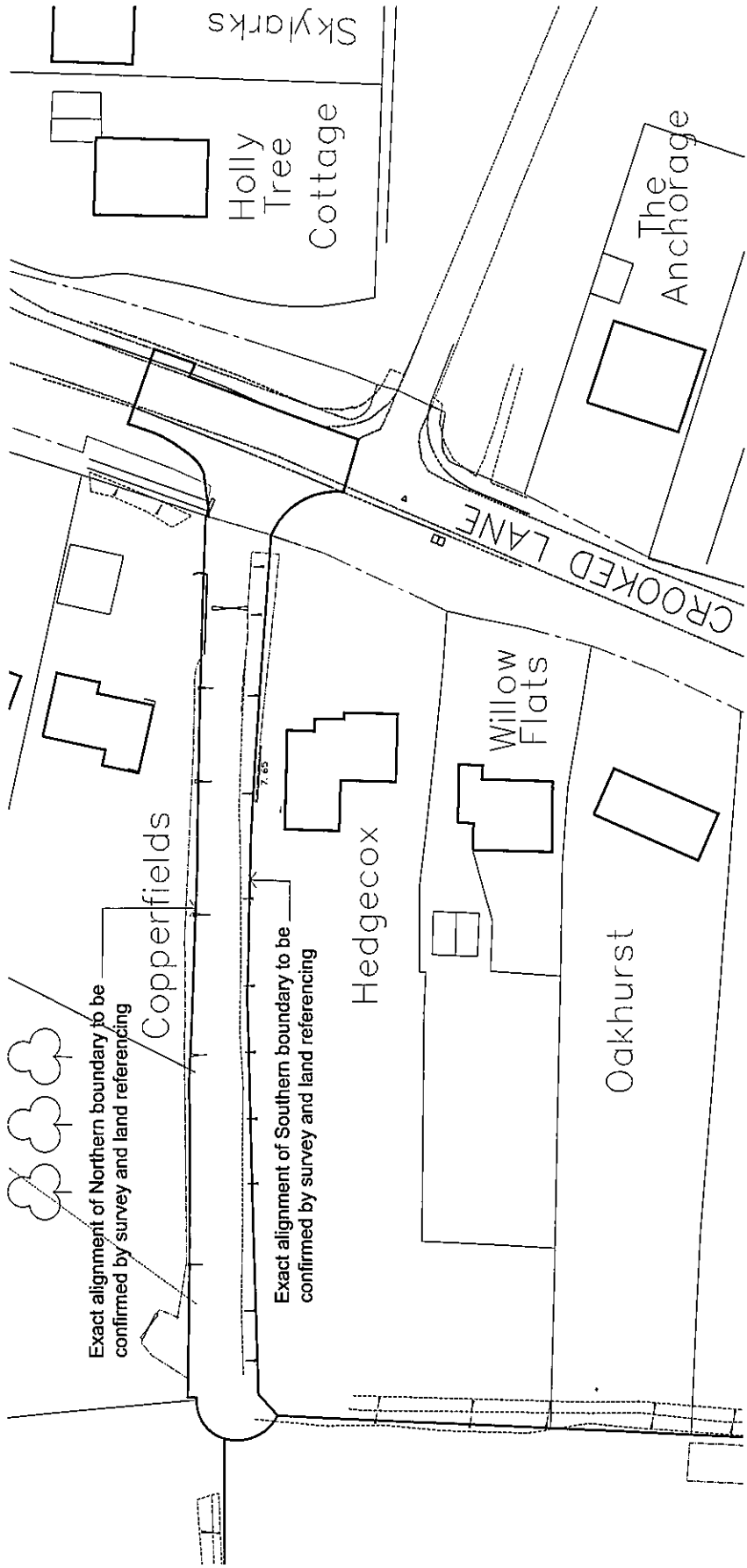
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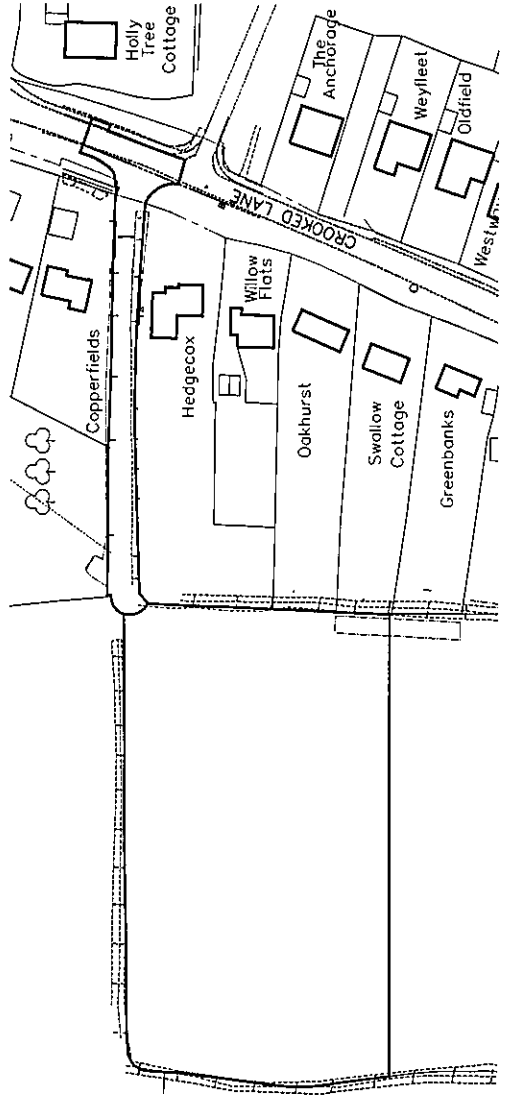
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No.	Description	By	Checked	Date

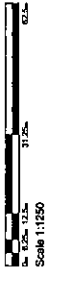
Adopted Highway



Site Plan 1:500



Location Plan 1:1250



**hnw** architects

HNW Architects, 81 North Street, Chichester, West Sussex, PO18 1JH  
 Telephone: 01243 533000 Email: info@hnw.co.uk www.hnw.co.uk

Project: Proposed Housing  
 Crooked Lane  
 Bitcham

Drawing Title: Access Track  
 Site Plan and Location Plan

Drawing Status: PLANNING  
 Project No: 10032

Scale: A3 - 1:500 / 1:250  
 Drawing No: 03

Created By: DS  
 Date: JUN 2018

Drawing Name: P903  
 hnw architects Ltd. Registration No. 258666  
 13/2017

## **APPENDIX 5**



Minutes of the meeting of the **Cabinet** held in Committee Room 2 at East Pallant House Chichester West Sussex on Tuesday 10 April 2018 at 09:30

**Members Present** Mr A Dignum (Chairman), Mrs E Lintill (Vice-Chairman), Mr R Barrow, Mr J Connor, Mrs S Taylor and Mr P Wilding

**Members Absent** Mrs J Kilby

**Officers Present** Mr N Bennett (Divisional Manager for Democratic Services), Ms P Bushby (Divisional Manager for Communities), Mrs L Grange (Divisional Manager for Housing), Mr D Hyland (Community and Partnerships Support Manager), Ms H Nicol (Rural Enabling Officer), Mr P E Over (Executive Director), Mr B Riley (Divisional Manager for Chichester Contract Services), Mrs D Shepherd (Chief Executive), Mr G Thrussell (Senior Member Services Officer) and Mr J Ward (Director of Corporate Services)

### 503 **Chairman's Announcements**

Mr Dignum welcomed the members of the public, the press representatives and Chichester District Council (CDC) members and officers who were present for this meeting. He summarised the emergency evacuation procedure.

Mrs Kilby had submitted her apologies for absence.

All other members of the Cabinet were present.

Mr Dignum drew members' attention to the fact that there were several confidential exempt Part II appendices to Part I reports (agenda items 5, 6, 7 and 8) and emphasised that their contents must not be discussed in the public domain.

There were no late items for consideration.

[**Note** Hereinafter in these minutes CDC denotes Chichester District Council]

[**Note** Minute paras 504 to 515 below summarise the Cabinet's discussion of and decision on agenda items 2 to 13 inclusive but for full details of the items considered in the public session please refer to the audio recording facility via this link:

**RESOLVED BY THE CABINET**

- (1) That the current strategic risk register and the internal controls in place, plus any associated action plans to manage those risks be noted, including the amendments made by the Corporate Governance and Audit Committee.
- (2) Both the current high scoring programme board and organisational risks and the associated mitigation actions in place be noted, including the amendments made by the Corporate Governance and Audit Committee.

**509 Enabling the Delivery of Affordable Housing on the Crooked Lane Birdham Exception Site**

The Cabinet received and considered the agenda report and its five appendices, the fourth of which was confidential exempt Part II information and was circulated to members and relevant officers only.

This item was introduced by Mrs Taylor in the absence of Mrs Kilby.

Miss Nicol, Mrs Grange and Mr Bennett were in attendance for this matter.

Mrs Taylor said that the recommendations in section 2 of the report were intended to facilitate the delivery of the affordable housing scheme for 15 new affordable dwellings (the mix was listed in para 4.2 of the report) on the subject site (brought forward through the Chichester Rural Partnership) via compulsory purchase of the site access, the issues in respect of which were explained in section 4 of the report. In view of the uncertainty over legal ownership of the access, Hyde had formally requested that CDC deploy its compulsory purchase (CP) powers. The intention was that, if approved by the Cabinet, officers would investigate the merits of pursuing CP in this case.

Mrs Grange summarised the current local housing need position, which the delivery of this scheme would help to address.

Miss Nicol advised that there was a correction to the indicative timetable in para 6.10 of the report: for Q1 2020 (last entry) the words 'Target start on site' should be replaced with 'Recommencement of development work'. The Cabinet noted this textual amendment.

Mr Connor queried the correct construction to be placed upon the second sentence in para 8.4 of the report as he wished to be reassured that the cost of the CP process would not be borne by CDC.

In reply, Mr Bennett confirmed that Hyde would be responsible for underwriting the costs of pursuing a CP order (para 6.2 of the report) in order to achieve the very important social purpose of providing affordable housing within the local community. He conceded that the second sentence in para 8.4 required clarification. He said that the concluding words ' , subject to the Council being satisfied that the acquisition of each interest or right to be acquired is justifiable in the public interest' ought to form part of the preceding sentence. The opening words 'This [ie the costs incurred]

would then be reimbursed by Hyde' should constitute a separate and final sentence in their own right.

In response to a question by Mr Barrow, Mrs Taylor said that the opportunity for local residents to make representations about the development of this site for housing was not now but had been prior to the grant of planning permission in 2013 (para 4.2 of the report). She summarised the relevant planning history as set out in section 4 of the report.

### *Decision*

The Cabinet voted unanimously on a show of hands to make the resolutions set out below.

#### **RESOLVED BY THE CABINET**

- (1) That the carrying out of a land referencing exercise in respect of the small area of land (identified in appendix 3) to be funded by Hyde group be approved.
- (2) That on completion of the land referencing exercise a further report to the Council be prepared by officers as to 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.
- (3) That officers be authorised to undertake the next steps as set out in section 6 of the agenda report in order that any decision by the Council can be carried through promptly.
- (4) That officers be 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 related to the steps set out in section 6 of the agenda report.

#### **510 CCTV**

The Cabinet received and considered the agenda report and its confidential exempt Part II appendix which had been circulated to members and relevant officers only.

This item was introduced by Mrs Lintill.

Mrs Bushby was in attendance for this matter.

Mrs Lintill summarised sections 3, 5 and 7 of the report with reference to the benefits secured by, the community's high regard for and appreciation of the CCTV service, and the justification for continuing the service beyond the expiry of the contract period and in favour of the stated contractor.

Mrs Bushby did not add to Mrs Lintill's introduction.



## **APPENDIX 6**

# Chichester District Council

THE CABINET

6 July 2021

## Enabling the Delivery of Affordable Housing on the Crooked Lane, Birdham Exception Site

### 1. Contacts

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#### Cabinet Member:

Alan Sutton - Cabinet Member for Housing Services

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### 2. Executive Summary

Approval is sought from the Cabinet to carry out all necessary preparatory work in advance of using its Compulsory Purchase Order powers under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire the unregistered access track (identified in appendix 1) along with all other necessary rights and interests to enable the delivery of an affordable housing development at the Field North West of the Saltings, Crooked Lane, Birdham.

### 3. Recommendation

3.1 That the Cabinet notes the progress made to date at section 4 of this report and approves:

- 1) 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.
- 2) That officers are authorised to have the draft CPO documentation reviewed by an independent legal advisor 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.
- 3) 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.

- 4) 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.**

#### **4. Background**

- 4.1 In April 2018 Cabinet agreed to investigate Hyde's formal request to the Council to use its Compulsory Purchase Order powers to purchase the access track (Appendix 1) to the development site on the field North West of the Salting's, Crooked Lane, Birdham to enable the delivery of 15 affordable rented homes.
- 4.2 Given the length of time since the previous Cabinet report, it was deemed prudent to update members on the progress made to date on the preparation of the CPO as well as obtain a resolution to proceed with the next steps to move the CPO and permitted affordable dwellings onto completion.
- 4.3 Since the approval:
- A land referencing exercise has been undertaken which has identified those with a statutory or reputed interest in the access land to the Field North West of the Salting's. The interests identified cover 5 plots of land leading from Crooked Lane to the development site, of which 4 are within the limits of the CPO. The remaining plot is located outside of the access track and can be dealt with through agreement with the local highways authority. The purported interests in the 4 plots of land would need to be acquired and extinguished or renegotiated to enable consistent access to the permitted development. A CPO map and schedule detailing the interests are shown in appendix 2 (part II exempt).
  - A detailed housing needs assessment has been undertaken by the council's Housing Delivery Team, illustrating a significant need for affordable rented housing to come forward at the larger district level and more locally at the Manhood Peninsula and Parish level.
  - A valuation of the access land has been undertaken.
  - Hyde and the Council's appointed CPO valuer have been in dialogue with relevant landowners who are claiming rights and or interests in the land. Formal offers to acquire such interests were originally made in October 2014. The offers were re-issued in May 2018 following the grant of the certificate of lawful development and again in January 2020. Discussions with the parties are ongoing but the offers have not yet been accepted by any of the relevant landowners. A review of the offers and negotiations will be carried out along with further negotiations with the relevant parties and other stakeholders.
  - Further external specialist CPO legal advice has been sought, which confirms the most appropriate compulsory purchase power is Section 226(1)(a) of the Town and Country Planning Act 1990, and that there is a compelling case in the public interest for the Council to implement its CPO

powers, meeting all the statutory tests. A summary of the legal advice received can be found in appendix 3 (part II exempt).

- A CPO specialist surveyor will be appointed to act on behalf of the Council to conduct further negotiations with landowners and carry out the work.
- 4.4 The site benefits from planning permission granted on 29 November 2013 (ref BI/13/01391/FUL) for the “development of 15 new affordable dwellings and associated external works”. The approved site plan is included in appendix 5. A certificate of lawful development was granted on 25 July 2017 (ref BI/17/01163/PLD). This confirmed the development permitted by the planning permission could be lawfully carried out.
- 4.5 This scheme was brought forward through the Chichester Rural Partnership and £305,840 of the partnership money has been allocated towards the delivery of the scheme. Grant funding has also been secured through Hyde’s Homes England Strategic Partnership.

## **5. Outcomes to be Achieved**

- 5.1 Development of 15 social rented homes on the Field North West of the Saltings in accordance with implemented permission, to meet the identified local need.

## **6. Proposal**

- 6.1 This report proposes that the Cabinet authorises officers to continue with the preparation of the documentation necessary to allow the use of its powers of compulsory purchase under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire the land for the purpose of providing an access to the development as shown in appendix 1 to facilitate the delivery of affordable housing at the permitted site.
- 6.2 The making of a CPO under the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 (along with other powers) is a function, which can be undertaken on behalf of the Council. The power must be exercised in line with the statutory requirements and the national policy and guidance.
- 6.2.1 Section 226 of the Town and Country Planning Act 1990 enables a local authority to exercise its compulsory purchase powers:
- if it considers that acquiring the land in question will facilitate the carrying out of development, redevelopment, or improvement on, or in relation to the land being acquired; and
  - provided that it 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 (S226 (1A)).
- 6.2.2 Any CPO made by the Council will require confirmation by the Secretary of State in accordance with the statutory requirements.
- 6.2.3 The Council is entitled to acquire relevant sites through negotiation with third parties before or after the making of the CPO as well as its confirmation by the Secretary of State.

6.3 A draft Statement of Reasons will be prepared which shall set out the full justification for the use of CPO powers. This will demonstrate to the Secretary of State that CDC has:

- A proper statutory and policy basis for making the CPO;
- There is a compelling case in the public interest for the land affected by the proposed CPO to be acquired;
- That the CPO is necessary to achieve that purpose;
- That sufficient resources are likely to be available to implement the CPO within a reasonable time frame;

The CPO, which will be subject to a further resolution, will be consistent with Article 6 of the Human Rights Act 1998. All those who may be affected will be informed and advised of a right to make representations to the Secretary of State, to be heard at a public inquiry and have a fair entitlement to compensation within the statutory provisions; and officers will ensure that the CPO complies with the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups has been and will be complied with as part of the CPO process.

6.4 The Council shall enter into a further indemnity and disposal agreement with Hyde to underwrite the costs of making the CPO.

6.5 **Extent of the Land subject to the CPO** The boundary of the land which will be subject to any CPO has been refined in accordance with the land referencing exercise completed by Dalcour Maclaren on behalf of the Council in June 2019. The subsequent extent of the land to be compulsory purchased is shown at appendix 1. A further review of this land and the need for additional land and or rights in land will be carried out as part of the preparatory work for the CPO.

6.6 **Justification for the CPO** The above points and justification for the making of a CPO will be set out in the draft Statement of Reasons. The Council will need to demonstrate that there is a compelling case in the public interest for the acquisition of the land and interests in land to enable the access to the field North West of The Saltings, Crooked Lane along with any other rights necessary for the development is in the public interest.

6.7 **Timescale to Delivery** The CPO process from the point at which the Council makes the Order to the Secretary of State confirming the Order is likely to take between 6 to 18 months to conclude. An approximate indicative timescale is set out in appendix 4. This is a cautious programme that does not allow for significant time savings if elements become settled by negotiation or similar scenarios.

## 7. Alternatives Considered

7.1 On 11 January 2018 CDC planning officers gave pre application advice to Hyde on the viability of an alternative access route into the site. It was concluded that

there are fundamental concerns with the proposed alternative access and it would be unlikely to receive officer support.

- 7.2 The Council could cease consideration of making a CPO. However, this option would prevent the delivery of 15 much needed social rented homes for local people.
- 7.3 In addition, negotiations to acquire the land and interests will continue as an alternative to the use of powers of compulsory acquisition. However, the nature and extent of the negotiations will be governed by the need to deliver the much needed social rented homes for local people.

## 8. Resource and Legal Implications

- 8.1 **Financial Implications** There are significant up front financial and resourcing implications arising from the proposals in this report, and it will be necessary to prepare a detailed programme of work and resourcing plan to take this process forward. Hyde has and will continue to be underwriting all costs of the compulsory purchase process. As with any land transaction, there are potential implications for the Council's VAT position and the Council must therefore protect its ability to opt to tax any or all of this land at any stage during the process. This potential impact of this contingency for Hyde will be the subject of ongoing discussions with them. The detailed financial implications of making a CPO will be the subject of a further report and resolution to Members at a later date.
- 8.2 **Resource implications** The CPO process will continue to be managed internally, requiring use of existing staff resources within the Housing Delivery and Legal Teams.
- 8.3 **Legal implications** There is a significant risk that affected landowners will challenge the decision of the Council to 'make' the CPO. If the Council decides to make the CPO, parties will have 21 days to provide a formal objection. If objections are received, the Secretary of State may deem it necessary to hold a public inquiry into the CPO, conducted by an independent government-appointed inspector.
- 8.4 It is anticipated that objections to the CPO will be received, however officers, along with the Council's external legal advisors consider that the Council are in a robust position to defend such challenge through an inquiry.
- 8.5 Following a potential inquiry and a decision on the CPO by Secretary of State, the Council is required to publicise the decision in local newspapers as soon as possible. The validity of the CPO can be challenged through a judicial review within 6 weeks of the first newspaper notice.

## 9. Consultation

- 9.1 The Council's Legal Services and external advisors, including solicitors with a specialisation in CPO procedures, have been consulted about this complex matter.

9.2 The local members have been made aware of the work being undertaken in relation to the use of CPO powers.

## 10. Community Impact and Corporate Risks

10.1 There are potential risks arising from the CPO process to deliver the field North West of The Saltings, such as negative publicity. However, these have been weighted against the reputational risks to the Council of being perceived as not supporting an affordable housing scheme for local people.

## 11. Other Implications

Are there any implications for the following?		
	Yes	No
<p><b>Crime and Disorder</b></p> <p>The proposals in the planning applications should ensure that at the very least there is no negative impact on the potential for crime and disorder and that there should be a positive impact in reducing the potential for crime and disorder.</p>		X
<p><b>Climate Change</b></p> <p>The planning permission should ensure that at the very least there should be no negative impact for climate change and that there should be a positive impact by including mitigation or adaption measures.</p>	X	
<p><b>Human Rights and Equality Impact</b></p> <p>An equalities impact assessment (EqIA) has been undertaken to assess the potential impacts of the CPO and the proposed development of the Field to the North West of the Saltings, Crooked Lane, Birdham. The land being acquired is agricultural and does not require the relocation of, or affect any protected groups. The considerable public benefits to be derived from the implementation of the scheme outweigh the harm caused by interference with the human rights of those likely to be affected by Compulsory Purchase.</p>	X	
<b>Safeguarding and Early Help</b>		X
<b>Other</b>		X

## 12. Appendices

12.1 Appendix 1: Plan of access land subject to CPO

12.2 Appendix 2: CPO schedule & map (part II exempt)

12.3 Appendix 3: Summary of legal advice inclusive of enabling powers (part II exempt)

12.4 Appendix 4: Timescale to delivery

### **13. Background Papers**

Cabinet Paper – Enabling the Delivery of Affordable Housing on the Crooked Lane,  
Birdham Exception Site – 10 April 2018

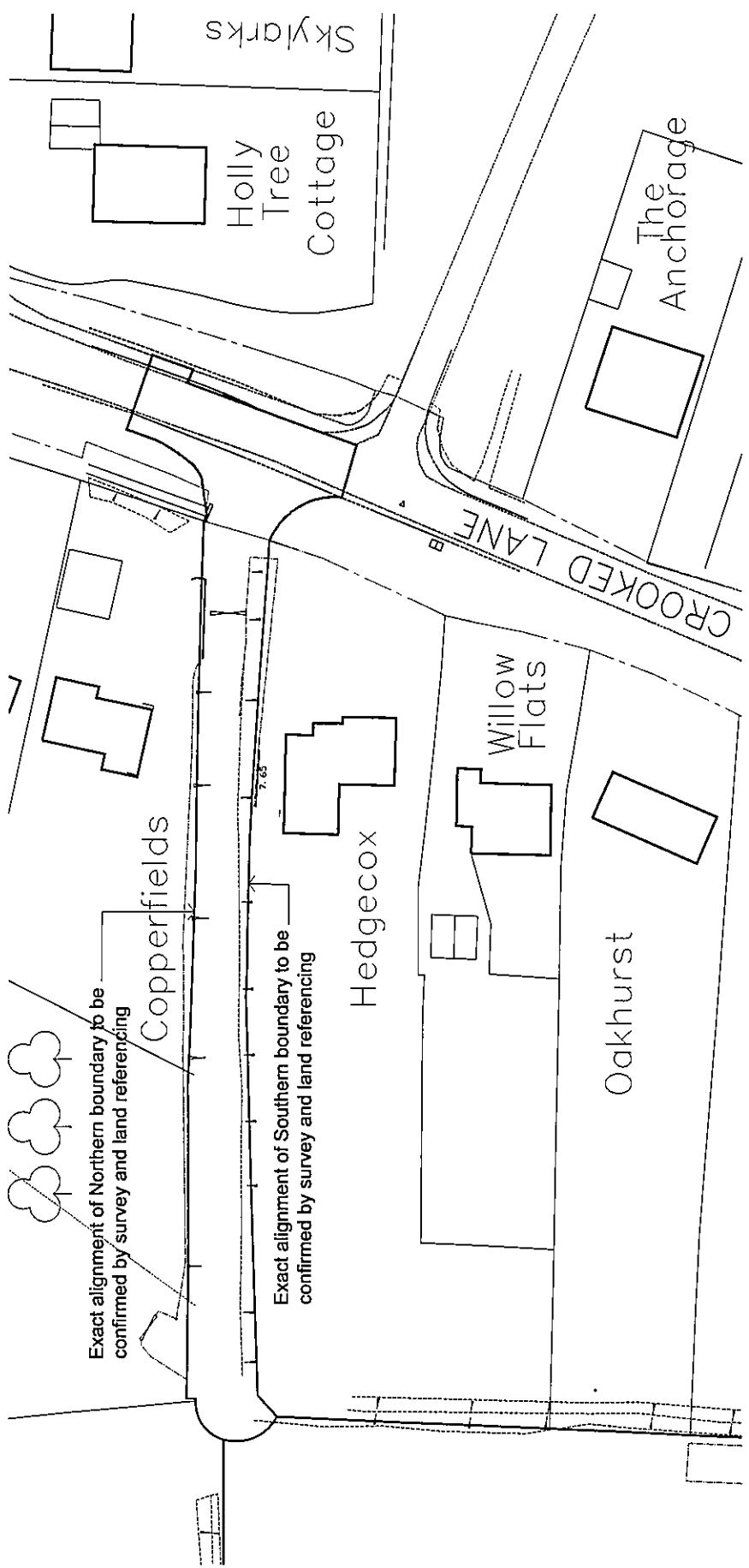


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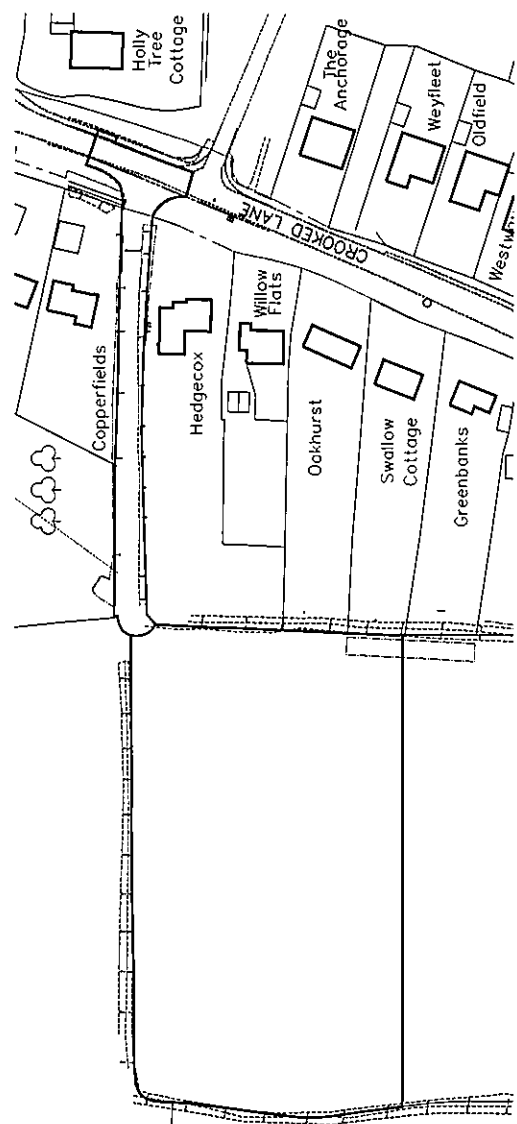
Drawing No: 10002002

No	Desc	Date

Adopted Highway



Site Plan 1:500



Location Plan 1:1250



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 architects

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 Telephone: 01243 835222 Email: enquiries@hnwarchitects.com

Project:  
 Proposed Housing  
 Crooked Lane  
 Birkham

Drawing Title:  
 Access Track  
 Site Plan and Location Plan

Drawing No:  
 PLANNING  
 100032



Drawn By:  
 AS - 15/09/11/250  
 Checked By:  
 DS  
 Date:  
 JAN 2016

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## **APPENDIX 7**



Minutes of the meeting of the **Cabinet** held in the Committee Rooms, East Pallant House on Tuesday 6 July 2021 at 9.30 am

**Members Present** Mrs E Lintill (Chairman), Mrs S Taylor (Vice-Chairman), Mr R Briscoe, Mr A Dignum, Mrs P Plant, Mr A Sutton and Mr P Wilding

**Members Absent**

**In attendance by invitation**

**Officers Present** Mr T Ayling (Divisional Manager for Planning Policy), Mr A Buckley (Corporate Improvement and Facilities Manager), Mr A Frost (Director of Planning and Environment), Mr D Henly (Senior Engineer (Coast and Water Management)), Miss L Higenbottam (Democratic Services Manager), Mrs J Hotchkiss (Director of Growth and Place), Mr B Jones (Housing Enabling Officer), Mr D Knowles-Ley (Licensing Manager), Mrs T Murphy (Divisional Manager for Place), Mrs S Peyman (Divisional Manager for Culture), Mrs L Rudziak (Director of Housing and Communities), Mrs D Shepherd (Chief Executive) and Mr J Ward (Director of Corporate Services)

## 23 **Chair's Announcements**

Cllr Lintill welcomed everyone to the meeting.

The emergency evacuation information was then read out.

There were no apologies for absence.

Cllr Lintill confirmed that she had accepted one late item relating to the Selsey Flood and Coastal Scheme Feasibility.

## 24 **Approval of Minutes**

### **RESOLVED**

That the minutes of the Cabinet meeting held on 1 June 2021 be approved as a correct record.

3. For the Infrastructure Business Plan consultation to continue through Development Plan and Infrastructure Panel (DPIP) and for two members from West Sussex County Council to attend for Infrastructure Business Plan items only at DPIP.

### **35 Project Initiation Document Season of Culture 2022**

Cllr Briscoe introduced the item.

Cllr Sutton commented on the importance of ensuring the season runs long enough to include collaboration with the University and the College. He suggested it last a year. Cllr Briscoe confirmed that the length of the season was being considered. Cllr Sutton responded by explaining how involving the students would encourage ownership of culture. Mrs Peyman added that the College was already planning a photography/film project from January to capture the work of the volunteers involved with the project.

Cllr Plant requested clarification on whether the project relies upon funding from external organisations. Mrs Peyman confirmed that is the case.

Members of the Cabinet gave their individual support to the project and were pleased that there would be an event in every ward.

In a vote the following recommendation was agreed:

#### **RESOLVED**

That Cabinet reviews the Project Initiation Document as set out in Appendix 1 and agree the release of £50,000 from the approved capital programme to support the Season of Culture 2022 project.

### **36 Enabling the Delivery of Affordable Housing in the Crooked Lane, Birdham Exception Site**

Cllr Sutton introduced the item.

Cllr Taylor reminded the Cabinet that although a lot of correspondence had been recently received from residents many of the issues raised related to planning and the recommendations in the report relate to the powers of the Cabinet not those of the Planning Committee.

Cllr Taylor requested clarification on the nomination right percentage of re-lets. Mr Jones confirmed 100% on nomination agreements for first lets and 75% on re-lets.

Cllr Dignum explained he was not happy with the proposal as he wanted the reservations of residents to be reconsidered. He confirmed that he would be abstaining from the vote.

## **APPENDIX 8**

**Chichester District Council**

**FULL COUNCIL**

**21 March 2023**

**Enabling the Delivery of Affordable Housing on the Crooked Lane,  
Birdham Exception Site**

**1. Contacts**

**Report Author:**

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Nicholas Bennett – Divisional Manager for Democratic Services  
Telephone – 01243 534658 Email [nbennett@chichester.gov.uk](mailto:nbennett@chichester.gov.uk)

**Cabinet Member:**

Alan Sutton - Cabinet Member for Housing, Communications, Licensing and Events  
Telephone: 07951 312020 E-mail: [asutton@chichester.gov.uk](mailto:asutton@chichester.gov.uk)

**2. Executive Summary**

The Council is working to enable the delivery of an affordable housing scheme. Ownership of the access to the site is unknown with a number of parties claiming rights of access. To enable the affordable housing provider to complete the scheme a legal right of access is required. This report sets out the grounds for making a Compulsory Purchase Order to provide such certainty and the evidence to be considered before a final decision is made.

**3. Recommendations**

**Following consideration of this report at its meeting on 7 March 2023 Cabinet made the recommendations to Council:**

- 3.1 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 identified within Appendix 1, and in particular that the Council makes the Order.**
- 3.2 The Director of Housing and Communities is authorised, following consultation with the Cabinet Member for Housing, Communications, Licensing and Events, to:**
  - a. 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.**

- b. 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;**
- c. implement the Order powers following confirmation of the Order and so acquire title to and/or take possession of the Order Land;**

#### **4. Background**

4.1 In April 2018 Cabinet agreed to investigate Hyde's formal request to the Council to use its Compulsory Purchase Order powers to purchase the access track, to the development site on the field North West of the Salting's, Crooked Lane, Birdham to enable the delivery of 15 affordable rented homes. An update was also provided to Cabinet in July 2021.

4.1 Since the approval:

- A land referencing exercise has been undertaken which has identified those with a statutory or reputed interest in the access land to the Field North West of The Salting's. The interests identified cover 5 plots of land leading from Crooked Lane to the development site, of which 4 are within the limits of the CPO. The purported interests in the 4 plots of land would need to be acquired and extinguished or renegotiated to enable consistent access to the permitted development. A CPO map and schedule detailing the interests are shown in Appendix 1 (part II exempt).
- A detailed housing needs assessment has been undertaken by the Council's Housing Delivery Team, illustrating a need for affordable rented housing to come forward at the larger district level and more locally on the Manhood Peninsula. That housing needs assessment is shown in Appendix 2 (part II exempt)
- Hyde and the Council's appointed CPO valuer has been in dialogue with relevant landowners who are claiming rights and or interests in the land. Formal offers to acquire such interests were originally made in and from October 2014. The offers were re-issued in May 2018 following the grant of the certificate of lawful development. Since then, there has been regular correspondence with landowners and discussions with some individuals are ongoing. The current position is set out in the Statement of Reasons found in Appendix 3.
- Further external specialist CPO legal advice has been sought, which confirms the most appropriate compulsory purchase power is Section 226(1)(a) of the Town and Country Planning Act 1990 and giving their opinion that there is a compelling case in the public interest for the Council to implement its CPO powers, meeting all the statutory tests. A summary of the legal advice received can be found in appendix 4 (part II exempt).
- A CPO specialist surveyor has been appointed to act on behalf of the Council to conduct further negotiations with landowners and carry out further work, if required following the order.

4.2 The site benefits from planning permission granted on 29 November 2013 (ref BI/13/01391/FUL) for the “development of 15 new affordable dwellings and associated external works”. A certificate of lawful development was granted on 25 July 2017 (ref BI/17/01163/PLD). This confirmed the development permitted by the planning permission could be lawfully carried out.

4.3 This scheme was brought forward through the Chichester Rural Partnership and £305,840 of the partnership money has been allocated towards the delivery of the scheme. Grant funding has also been secured through Hyde’s Homes England Strategic Partnership.

4.4 To enable full understanding and consideration of all relevant elements a statement of reasons has been prepared (shown at Appendix 4) following the statutory format required by the Secretary of State but also including all information required by members to consider the making of the order.

## **5. Outcomes to be Achieved**

5.1 Development of 15 social rented homes on the Field North West of the Saltings in accordance with implemented permission, to meet the identified local need shown by the Housing Needs assessment.

## **6. Proposal**

6.1 That Council approves the use of its compulsory purchase powers under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire the land shown in appendix 1. The land will provide the required access to the site to allow the development and delivery of affordable housing.

6.2 Section 226 of the Town and Country Planning Act 1990 enables a local authority to exercise its compulsory purchase powers:

- if it considers that acquiring the land in question will facilitate the carrying out of development, redevelopment, or improvement on, or in relation to the land being acquired; and
- provided that it 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 (S226 (1A)).

6.3 Any CPO made by the Council will require confirmation by the Secretary of State in accordance with the statutory requirements.

6.4 The Council is entitled to acquire relevant sites through negotiation with third parties before or after the making of the CPO as well as its confirmation by the Secretary of State.

6.5 A Statement of Reasons has been prepared which sets out the full justification for the use of CPO powers. This will demonstrate to the Secretary of State that CDC has:

- A proper statutory and policy basis for making the CPO;



- There is a compelling case in the public interest for the land affected by the proposed CPO to be acquired;
- That the CPO is necessary to achieve that purpose;
- That sufficient resources are likely to be available to implement the CPO within a reasonable time frame;

The CPO, which will be subject to a further resolution, will be consistent with Article 6 of the Human Rights Act 1998. All those who may be affected will be informed and advised of a right to make representations to the Secretary of State, to be heard at a public inquiry and have a fair entitlement to compensation within the statutory provisions; and officers will ensure that the CPO complies with the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to

- (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,
- (ii) advance equality of opportunity between people from different groups, and
- (iii) foster good relations between people from different groups has been and will be complied with as part of the CPO process.

6.6 The Council shall enter into a further indemnity and disposal agreement with Hyde to underwrite any additional costs of making the CPO if required.

6.7 The making of a CPO under the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 (along with other powers) is a function, which can be undertaken on behalf of the Council. The power must be exercised in line with the statutory requirements and the national policy and guidance which have been considered by officers at all times.

## **7. Alternatives Considered**

On 11 January 2018 CDC planning officers gave pre application advice to Hyde on the viability of an alternative access route into the site. It was concluded that there are fundamental concerns with the proposed alternative access and it would be unlikely to receive officer support. Without the access provided by the land covered by the CPO the housing cannot be delivered.

The Council could cease consideration of making a CPO. However, this option would prevent the delivery of 15 much needed social rented homes for local people.

Negotiations to acquire the land and interests will continue as an alternative to the use of powers of compulsory acquisition up to the point of obtaining the land through this CPO process. However, the nature and extent of the negotiations will be governed by the need to deliver the much needed social rented homes for local people.

## **8. Resource and Legal Implications**

### **Financial Implications**

8.1 There are significant up front financial and resourcing implications arising from the proposals in this report, and it will be necessary to prepare a detailed programme of work and resourcing plan to take this process forward. Hyde has and will continue to be underwriting all costs of the compulsory purchase process. As with any land

transaction, there are potential implications for the Council's VAT position and the Council must therefore protect its ability to opt to tax any or all of this land at any stage during the process. This potential impact of this contingency for Hyde will be the subject of ongoing discussions with them.

### **Resource implications**

- 8.2 The CPO process will continue to be managed internally, requiring use of existing staff resources within the Housing Delivery and Legal Teams.

### **Legal implications**

- 8.3 There is a significant risk that affected persons will challenge the decision of the Council to 'make' the CPO. If the Council decides to make the CPO, parties will have 21 days to provide a formal objection. If objections are received, the Secretary of State may deem it necessary to hold a public inquiry into the CPO, conducted by an independent government-appointed inspector.
- 8.4 It is anticipated that objections to the CPO will be received, however officers, along with the Council's external legal advisors consider that the Council is in a robust position to defend such challenge through an inquiry for the reasons set out in this report and in the statement of reasons.
- 8.5 Following a potential inquiry and a decision on the CPO by Secretary of State, the Council is required to publicise the decision in local newspapers and on our website as soon as possible. The validity of the CPO can be challenged through a judicial review within 6 weeks of the first newspaper notice.

## **9. Consultation**

- 9.1 The Council's Legal Services and external advisors, including solicitors with a specialisation in CPO procedures have been consulted on this complex matter.
- 9.2 The local members have been made aware of the work being undertaken in relation to the use of CPO powers including Cabinet who make the recommendations to this report.
- 9.3 Land referencing to identify and liaise with any person having any potential interest in the relevant land has been carried out by a specialist company.

## **10. Community Impact and Corporate Risks**

- 10.1 There is a potential risk of negative publicity for the Council arising from seeking the CPO to deliver the site. However, this has been weighted against the reputational risks to the Council for not supporting an affordable housing scheme for local people.

## 11. Other Implications

	Yes	No
<b>Crime and Disorder</b>		X
<b>Biodiversity and Climate Change Mitigation</b>  The planning permission will ensure there will be limited impact on climate change. Mitigation for the development site was carried out as part of the normal planning procedures when planning permission was granted.	X	
<b>Human Rights and Equality Impact</b>  An equalities impact assessment (EqIA) has been undertaken to assess the potential impacts of the CPO and the proposed development of the Field to the North West of the Saltings, Crooked Lane, Birdham. The land being acquired is agricultural and does not require the relocation of, or directly affect any protected groups. The considerable public benefits to be derived from the implementation of the scheme to deliver affordable units in an area where they are needed, and the benefit to persons with protected characteristics by having sufficient housing of this class are considered in the EqIA to outweigh the harm caused by interference with the human rights of those likely to be affected by Compulsory Purchase.	X	
<b>Safeguarding and Early Help</b>		X
<b>General Data Protection Regulations (GDPR)</b>		X
<b>Health and Wellbeing</b>		X
<b>Other (please specify)</b>		

## 12. Appendices

- 1 Map of the CPO area and schedule of interests (PART II)
- 2 Detailed Housing Needs Report (Amended from Cabinet)
- 3 Statement of reasons (Amended from Cabinet) (PART II)
- 4 Legal advice (PART II)
- 5 Equality Impact Assessment
- 6 Public questions and answers from Cabinet 7<sup>th</sup> March 2023

## 13. Background Papers

Cabinet report of 7<sup>th</sup> March 2023

# CHICHESTER DISTRICT COUNCIL

**Site: Field North West of Saltings Land West of Crooked Lane, Birdham**

**Proposed Development:** The development of 15 new affordable dwellings and associated external works



## HOUSING NEED EVIDENCE

Stephen Brown BSc MTP

Housing Delivery Officer, Chichester District Council

&

Mark Bristow

Principal Affordable Housing Enabling Officer, Chichester District Council

**Chichester District Council Ref: BI/16/01809/FUL**

**Updated: 08/03/2023**

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## 1.0 BACKGROUND

- 1.1 On 29 November 2013 planning permission was granted for “the development of 15 new affordable dwellings and associated external works” (“**the 2013 permission**”) under the exception site policy on the land lying to the West of Crooked Lane, Birdham PO20 7BH shown on the plan at **Appendix 1**.
- 1.2 The 2013 Permission was subject to a section 73 planning application which was granted on 14 October 2016 (“**the permission**”) for “the development of 15 new affordable dwellings and associated external works” (“**the Development**”).
- 1.3 Martlet Homes Limited (“**Martlet**”) purchased the land on the 13 January 2014. Martlet is a subsidiary of the Hyde Group (“**Hyde**”) and is the landowner who obtained the permission.
- 1.4 Access to the site is over an unregistered track to the North East of the site leading from Crooked Lane (“**the Access**”). This is shown at **Appendix 2**. The legal transfer of the development site at the time of purchase granted rights of entry and rights of way over the access only so far as the vendor was able to do so.
- 1.5 The Permission has now been lawfully implemented and this evidenced by a certificate of lawful development which was granted on 25 July 2017 (BI/17/01163/PLD).
- 1.6 Following further investigations, it was identified that the access was unregistered as to ownership. Negotiations are on-going and significant offers to settle have been made but not accepted by persons having a purported interest or right over the land.
- 1.7 As such, Hyde has requested to Chichester District Council (“**the Council**”) to assess whether the access site would meet the statutory requirements for a compulsory purchase order (“**CPO**”) in order to enable delivery of the Development.

1.8 The Council and Hyde jointly sought legal advice as to how to proceed. It was advised that the Council would need to provide robust housing needs evidence at the wider and local levels. This would need to be provided in order to promote the CPO in a robust manner. As such this report will critically evaluate the needs on a district, sub market and local basis to provide robust evidence to support the delivery of 15 new affordable homes through the compulsory purchase of the access track.

## 2.0 Chichester District housing needs

2.1 This section will review the supply and demand for affordable housing within Chichester District Local Plan Area (“**the Plan Area**”). For the avoidance of doubt this does not include the parishes that fall within the South Downs National Park planning authority.

2.2 The Council’s adopted Local Plan: Key Policies 2014-2029 (“**the Local Plan**”) makes provision to deliver 7,388 homes over the period 2012-2029. This equates to an average housing delivery of approximately 435 homes per year. A significant element of the Local Plan housing provision is already identified through outstanding planning permissions. In addition, there are allowances for ‘windfall’ housing which is likely to come forward in small developments of less than 6 dwellings. Table 1 below shows the prevailing Local Plan housing provision approach to 2029, derived from the housing supply position at the time of the adoption of the current Local Plan in July 2015.

**Table 1: Local Plan Housing Provision – Sources of Supply to 2029 (Chichester Local Plan Key Policies 2014 – 2029, Table 7.1)**

<b>Local Plan Housing Target</b>				
Total housing provision 2012-2019	6,156	893	339	7,388
Less homes built 2012-2014	372	129	8	509
<b>Remaining Local Plan housing requirement 2014-2029</b>	<b>5,784</b>	<b>764</b>	<b>331</b>	<b>6,879</b>
<b>Housing Land Supply</b>				
<i>Existing housing commitments and windfall allowance</i>				
Planning permissions and identified housing sites	2,396	589	122	3,107
Remaining Local Plan housing requirement 2014-2029	326	171	87	584
<b>Total yield from existing sources</b>	<b>2,722</b>	<b>760</b>	<b>209</b>	<b>3,691</b>

<i>Remaining housing to be provided through the Local Plan</i>				
Large strategic allocations	2,750	0	0	2,750
Allocations at settlement hubs	230	130	0	360
Parish housing sites	376	7	98	481
<b>Total strategic &amp; Parish Housing</b>	<b>3,356</b>	<b>137</b>	<b>98</b>	<b>3,591</b>
<b>Total Housing Supply 2014-2029</b>	<b>6,078</b>	<b>897</b>	<b>307</b>	<b>7,282</b>

<b>Housing Supply 2014-2029 compared to Local Plan requirement</b>	<b>+294</b>	<b>+133</b>	<b>-24</b>	<b>+403</b>
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- 2.3 The Local Plan requirements were assessed in the Coastal West Sussex Strategic Housing Market Assessment (“SHMA”) 2012. It identified an objectively assessed need



for 560-575 homes per year in the district. An assumption of 70 homes per year was deducted for the parishes within the SDNP to derive an objectively assessed need of 505 homes per year. There are a number of constraints within the plan area, such as Chichester Harbour Area of Outstanding Natural Beauty (AONB), Pagham Harbour, the South Downs National Park and lack of key infrastructure which has meant the Local Plan was not able to meet the full, objectively assessed need (“OAN”). The plan therefore provides for 435 dwellings per year, a difference of 70 dwellings, equating to a reduction of 1,190 over the plan period.

- 2.4 On 15th July 2020, the adopted Local Plan became 5 years old, so from that date the Council’s 5 year supply is assessed against the national standard methodology for assessing housing need. This increased the housing requirement from 435 to 628 dwellings per annum.
- 2.5 The Council’s current assessment of five year housing land supply for the Chichester Local Plan area identifies a potential housing supply of 3,174 net dwellings over the period 2022-2027. This compares with an identified housing requirement of 3,350 net dwellings. This results in a shortfall of 176 net dwellings, equivalent to 4.74 years of housing supply. The assessment (Chichester Local Plan Area – Five Year Housing Land Supply 2022-2027) can be viewed on the Council’s website and provides full details of how the housing supply figure is arrived at, as well as referring to how the Council has successfully passed the Housing Delivery Test.
- 2.6 The Government now sets out in the National Planning Practice Guidance (“**the NPPG**”) a new housing delivery test to assess housing need. As part of the Local Plan review, the Council has conducted Housing and Economic Development Needs Assessments (“**HEDNA**”). These indicate that demand is outstripping supply for housing in the district which is evidenced by the growing affordable housing need and increase in market house prices.

2.7 In line with the standard method for calculating housing need as set out currently in national planning practice guidance, the most recent HEDNA (Iceni Projects Limited on behalf of Chichester District Council, April 2022) identifies a minimum local housing need of 763 homes per annum for Chichester District. The housing need for the area covered by the Chichester Local Plan (which excludes parts of the District within the South Downs National Park) is 638.

**Table 2: Overall Housing Need (Chichester HEDNA April 2022, Table EX.1)**

Chichester	
<b>Step 1 - Setting the Baseline:</b>	
<b>Household Growth (p.a.) over next 10 years, 2021-31</b>	<b>545</b>
<b>Step 2 - Affordability Adjustment:</b>	
Median workplace-based affordability ratio, 2020	14.09
Adjustment Factor	163%
<b>Step 2 Housing Need Figure</b>	<b>884</b>
<b>Step 3- Cap:</b>	
Date of plan adoption	14 <sup>th</sup> July 2015
Plan more than 5 years old	Yes
Housing requirement in last adopted plan	435
Cap @ 40% above Higher of Step 1 or Local Plan	763
<b>Minimum Local Housing Need (p.a.) - District</b>	<b>763</b>
<b>Minimum Local Housing Need (p.a.) - Plan Area</b>	<b>638</b>

2.8 The table above is based on an average household growth of 545 per annum over the 2021-2022 period (which is also the case for the 2022-2032 period), taken from the 2014-based Household Projections and applying an affordability uplift of 163% applied to this based on the 2020 affordability ratio. However, the uplift is capped at 40% above the household projections.

2.9 This section will review the need for affordable housing within the Chichester District Local Plan Area (“the Plan Area”). This does not include the parishes that fall within the South Downs National Park planning authority administrative area. The SHMA (2012) identified a net housing need for 1,350 affordable homes over the 2011-16 period, equating to an average of 270 per annum across the Local Plan area (excluding the SDNP). In this period, 733 affordable homes were delivered in the plan area, equating to an average of 147 homes per year. This illustrates there has been a shortfall of affordable housing delivery of 617 between 2011-2016, equating to a shortfall of 123 affordable homes per year.

2.10 The HEDNA (2022) suggests that there is a strong need for affordable rented and social rented housing to come forward to offset the large affordability pressures. The table below shows the overall calculation of affordable housing need. The analysis shows that there is a need for 278 dwellings per annum across the area – an affordable need is seen in all sub-areas. The net need is calculated as follows:

$$\text{Net Need} = \text{Current Need (allowance for)} + \text{Need from Newly-Forming Households} + \text{Existing Households falling into Need} - \text{Supply of Affordable Housing}$$

**Table 3: Estimated need for social and affordable rented housing by sub-area per annum**  
(Chichester HEDNA April 2022, Table 6.30)

	Current need	Newly forming households	Existing households falling into need	Total Gross Need	Relet Supply	Net Need
Chichester City	17	93	24	134	84	50
EW Corridor	9	71	10	90	34	56
Manhood	15	83	10	108	32	76
Plan Area North	3	30	3	36	9	27
SDNP	14	102	20	136	66	70
All properties	58	380	66	504	226	278

2.11 The HEDNA 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 and is based on households unable to buy or rent in the market and estimates of the supply of social/affordable rented housing as well as resales of low-cost home ownership properties. The HEDNA suggests a need for 278 affordable homes per annum across the whole study area, with a need shown for all individual sub-areas; the Council is therefore justified in seeking to secure additional affordable housing.

**Table 4: Estimated need for affordable housing (social / affordable rented) excluding households already in accommodation (Chichester HEDNA April 2022, Table 6.17)**

	Excluding existing households	Including existing households
Current need	22	58
Newly forming households	380	380
Existing households falling into need	0	66
Total Gross Need	402	504
Re-let Supply	226	226
Net Need	176	278

**Table 5: proportion of households living in Private Rented Sector able to buy and/or rent market housing (Chichester HEDNA April 2022, Table 6.21)**

	Can afford to buy OR rent	Can afford to rent but not buy	Cannot afford to buy OR rent
Chichester City	24%	31%	46%
EW Corridor	25%	31%	44%
Manhood	17%	31%	52%
Plan Area North	14%	32%	54%
SDNP	17%	31%	52%
TOTAL	20%	31%	49%

The table below therefore shows an estimate of the net need for affordable home ownership. This suggests a need for around 301 dwellings per annum, with a need being shown in all areas.

**Table 6: Estimated need for affordable home ownership by sub-area per annum**

(Chichester HEDNA April 2022, Table 6.23)

	Total Gross Need	Low Cost Home Ownership supply	Net need
Chichester City	89	5	84
EW Corridor	64	3	61
Manhood	63	3	60
Plan Area North	20	1	19
SDNP	80	4	76
<b>TOTAL</b>	<b>316</b>	<b>15</b>	<b>301</b>

**Table 7: Suggested mix of housing by size and tenure**

(Chichester HEDNA April 2022, Table EX3)

	1-bedroom	2-bedrooms	3-bedrooms	4+-bedrooms
Market	5-10%	30-40%	35-45%	15-20%
Affordable home ownership	20-25%	45-50%	20-25%	5-10%
Affordable housing (rented)	35-40%	35-40%	15-20%	5-10%

**Table 8: Households on CDC's housing register with a local connection to Chichester District (Source: Council affordable housing waiting list live applicants October 2022)**

Area	Total Live Applicants on Housing Register	Studio/1-Bedroom Need	2-Bedroom Need	3-Bedroom Need	4-Bedroom Need	5-Bedroom Need	6-Bedroom Need
Birdham	18	11	5	1	1	0	0
Chichester District	2265	1273	538	340	102	11	1

- 2.12 One approach the Council explored was to invite developers to intensify and speed up development on sites already underway such as the development at Crooked Lane. This site benefits from extant planning permission and is in the ownership of a reputable Registered Provider, and is immediately deliverable. The addition of the 15 affordable rented homes to the 5-year housing land supply will make a small but

valuable contribution and assist in reducing the risk of speculative planning applications on sites that are not considered to be appropriate.

<b>Table 9: Households on CDC housing register with a local connection to Chichester District – bedroom need and priority (03.10.2022)</b>						
Bands	Bedroom need					Total
	1 Bedroom	2 Bedrooms	3 Bedrooms	4 bedrooms	5 bedrooms	
A-C	496	230	160	80	8	974
D	683	262	92	6	3	1046
Total	1179	492	252	86	11	2020

Bedroom	1-Bed	2-Bed	3-Bed	4-Bed	5-Bed+
Band A	29	5	3	4	
Band B	104	42	13	6	4
Band C	363	183	144	70	4
Band D	683	262	92	6	3
TOTAL	1179	492	252	86	11

2.13 There are currently 8203 affordable/social rented homes in the district. Table 5 below illustrates Chichester District's affordable rented housing stock and average yearly turnover.

**Table 10: Chichester District’s affordable/social rented housing stock and turnover.**

<b>Chichester District’s affordable/social rented housing stock and turnover</b>		
<b>No. of Bedrooms</b>	<b>Total no. units (as at March 2019)</b>	<b>Allocations since 2007</b>
1 bedroom	2,185	1,811
2 bedroom	3,519	2,167
3 bedroom	2,313	797
4 bedroom	179	121
5 bedroom	7	0

- 2.14 The highest turnover since 2007 has been 2 bedroom dwellings. 2,167 re-lets of the 3,519 properties have occurred over the last 12 years; an average of 181 a year. It is evident that 4 bedroom rented properties become available less often. As such, households requiring larger properties usually must wait longer before a suitable property becomes available.
- 2.15 Due to Right to Buy and Right to Acquire purchases over three decades, considerable numbers of social rented housing have been lost, increasing the demand and pressures on existing and new affordable housing. It is estimated that the 3,922 homes have been lost through the Right to Buy in the district. A further 16 homes have been lost through disposals from housing associations.
- 2.16 Chichester District is an affluent district however, its population is ageing. The HEDNA, recent neighbourhood plan and housing need surveys indicate a very significant need for smaller sized housing for older people to downsize and starter homes for young couples wishing to set up home for the first time.
- 2.17 This section has identified that on a strategic level there is high demand to meet the increasing affordable housing need over the plan period.

### **3.0 Sub-market area and local housing need**

3.1 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. A map detailing this area is shown at **Appendix 3**. This section will review the need for affordable housing within the Manhood Peninsula. Regard will be given to the need for affordable rented housing to come forward.



Table 11: Delivery in the Sub Area						
Parish	Name of Development	Planning Reference	Total Units	Tenures of Affordable Housing Delivered		Completed
				Affordable Rent	Low Cost Home Ownership	
Appledram	89 Birdham Road	09/01441/OUT	9	-	1	August 2014
Birdham	Tawny Nursery	BI/12/04147/OUT	30	6	6	November 2013
Birdham	Longmeadow	BI/07/05640/FUL	28	7	3	July 2013
Birdham	Rowan Nursery	BI/17/00316/FUL	27	4	3	March 2020
Donnington	Selsey Tram	D/11/01198/FUL	22	8	-	September 2013
Donnington	Southfields Close	14/00955/FUL	116	33	13	June 2014
East Wittering	Piggery Hall Lane	12/03749/FUL	17	15	2	August 2014
East Wittering	East of Beech Avenue	12/02461/FUL	50	14	6	August 2015
East Wittering	Phase 1 – South of Clappers Lane	14/01806/OUT	110	8	2	January 2019
	Phase 2 – South of Clappers Lane	14/01806/OUT		23	11	February 2020
Hunston	Foxbridge Drive	12/02692/FUL	18	18	-	March 2015
North Mundham	East of Palmers Place	12/04780/FUL	15	15	-	May 2015
North Mundham	South of Stoney Lodge	15/04160/FUL	25	10	15	August 2018

Selsey	Land at Drift Field	SY/15/00490/FUL	110	22	22	March 2017
West Wittering	North of Chaucer Drive	13/03286/FUL	50	14	6	January 2016
West Wittering	Summerfield Road	WW/10/03356/FUL	15	15	-	October 2012
Total			577	159	76	

3.3 The area has a distinctive character and faces specific planning issues relating to the coastal and drainage infrastructure, environmental designations and the local economic dependence on tourism, agriculture and horticulture. The area has an above average older population and is a popular retirement area. Many of the coastal settlements such as the Witterings and Selsey have very high numbers of second homes.

3.4 The HEDNA has identified:

- A total net need of 76 affordable homes 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.

**Table 12 – Pipeline affordable housing delivery October 2019 – March 2029**

Parish	Name of Development	Planning Reference	Total Units	Tenures of Affordable Housing Delivered		Estimated Completion date
				Affordable Rent	Shared Ownership	
Birdham	Crooked Lane	BI/13/01391/FUL	15	15		TBC
Selsey	Land at Park Farm and Middle/Rush Field	SY/19/00321/FUL	119	26	10	Currently being built out
Total			134	41	10	

3.5 This illustrates that at the current time, for the remaining of the plan period, up to 2029; only 41 new affordable rented properties will be delivered over the next 10 years. 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. However, it should be noted that the council has begun work on reviewing the Local Plan 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 and the Regulation 19 consultation on the Proposed Submission Local Plan is being undertaken from the 3 February – 17 March 2023. The Local Plan 2021 – 2039 is at a more advanced stage of preparation and may start to carry some weight in determining planning applications. However, the following parish in the peninsular has been allocated a further 50 homes under draft policy H3.

- North Mundham – 50 units

3.6 When the 30% affordable housing requirement is applied to the above figures it equates to 15 additional affordable homes, equivalent to under 1 per annum (from now to 2039).

- 3.7 Table 13 sets out the current needs of the household on the council housing register (as at 10.10.2022) for parishes in the Manhood Peninsula. Households in bands A-C are considered to be in a high priority housing need.

**Table 13: Households on CDC's housing register with a local connection to a parish in the Manhood Peninsula**

Manhood Peninsula	1-bedroom			2-Bedroom			3-Bedroom			4-Bedroom			5-Bedroom+		
	A-C	D	Total	A-C	D	Total	A-C	D	Total	A-C	D	Total	A-C	D	Total
CDC Appledram		1	1		1	1									
CDC Birdham	1	7	8	4	3	7	1	1	2	1		1			
CDC Donnington	4	12	16	1	3	4	1	2	3	1		1	1	1	2
CDC Earnley		5	5	1	1	2									
CDC East Wittering and Bracklesham Bay	13	26	39	4	18	22	9	9	18	3		3			
CDC Hunston	6	5	11	2	3	5		2	2	1		1			
CDC North Mundham	5	8	13	1	3	4	4	1	5	1		1			
CDC Selsey	33	67	102	21	34	55	13	13	26	7	4	11			
CDC Sidlesham	1	8	9	2	3	5	2	1	3						
CDC West Itchenor	2		2		1	1									
CDC West Thorney		1	1	1	1	2	2	2	4	1		1			
CDC West Wittering	5	7	13	2	4	6	3	1	4						
<b>TOTAL</b>	<b>70</b>	<b>147</b>	<b>220</b>	<b>39</b>	<b>75</b>	<b>114</b>	<b>35</b>	<b>32</b>	<b>67</b>	<b>15</b>	<b>4</b>	<b>19</b>	<b>1</b>	<b>1</b>	<b>2</b>

3.8 There are currently 1,260 affordable rented homes in the Manhood Peninsula. The table below gives details of the existing housing stock and turnover in the parishes.

**Table 14: Manhood Peninsula Parishes affordable/social rented housing stock and lets.**

<b>Manhood Peninsula Parishes affordable/social rented housing stock and lets</b>															
Parish	Total No. Units					Allocations since 2007					Of which allocated 18-19				
	1 Bed	2 Bed	3 Bed	4 Bed	Total	1 Bed	2 Bed	3 Bed	4 Bed	Total	1 Bed	2 Bed	3 Bed	4 Bed	Total
Apuldram	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Birdham	11	40	21	1	73	11	14	9	1	35	1	0	1	0	2
Donnington	14	29	18	7	68	14	17	15	6	52	0	1	1	0	2
Earnley	0	0	6	0	6	0	0	3	0	3	0	0	0	0	0
East Wittering	35	85	78	23	221	53	46	23	10	132	4	8	4	2	18
Hunston	81	66	45	2	194	52	38	16	1	107	3	4	1	0	8
North Mundham	37	55	32	1	125	25	24	14	2	65	6	3	0	0	9
Selsey	148	146	100	17	411	118	57	31	5	211	7	4	1	0	12
Sidlesham	10	22	22	1	55	4	8	9	0	21	0	0	1	0	1
West Itchenor	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
West Thorney	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
West Wittering	9	67	29	2	107	15	35	21	3	74	0	2	0	0	2
<b>Total</b>	<b>345</b>	<b>510</b>	<b>351</b>	<b>54</b>	<b>1260</b>	<b>292</b>	<b>239</b>	<b>141</b>	<b>28</b>	<b>700</b>	<b>21</b>	<b>22</b>	<b>9</b>	<b>2</b>	<b>54</b>
<b>Avg P.A</b>						<b>24</b>	<b>20</b>	<b>12</b>	<b>2.3</b>						

3.9 Over the past 12 years there has been an average of 58 lets a year. It should be noted that these figures include lets of new properties. It is evident that 4-bedroom properties become available less often with only 28 lets occurring since 2007. It can therefore be assumed that households requiring larger properties in the Manhood Peninsula usually have to wait much longer, sometimes in difficult circumstances, before a suitable property becomes available. Consequently such households may seek accommodation outside of the Manhood Peninsula, away from their communities and support networks to be adequately housed. In some cases they seek housing outside of the district and move away from their support network and

local community. In doing this they risk losing their local connection eligibility to the housing register.

- 3.10 The Right to Buy and Right to Acquire have resulted in 496 social rented properties being lost in the Manhood Peninsula. Often it has been the larger most attractive properties on larger plots which have been sold.

**Table 15: Affordable homes lost through the Right to Buy and Right to Acquire since 1980.**

<b>Housing stock lost to the Right to Buy, Right to Acquire and Housing Association Disposals since 1980</b>	
<b>Parish</b>	<b>Number of homes lost</b>
Apuldram	0
Birdham	47
Donnington	7
Earnley	3
East Wittering	50
Hunston	86
North Mundham	60
Selsey	143
Sidlesham	33
West Itchenor	0
West Thorney	0
West Wittering	67
<b>Total</b>	<b>496</b>

- 3.11 The Manhood Peninsula Parishes comparatively have a higher proportion of homes that are owner occupied and a lower proportion of social rented properties compared to the overall District and the South East figures. This is shown in table 16 below which utilises data taken from the 2011 census.

**Table 16 - Percentage comparison of tenures in Parishes in the Manhood****Peninsula, the district and South East England**

<b>Manhood Peninsula, Chichester District and South East England Tenure Comparison</b>					
<b>Parish</b>	<b>Owned</b>	<b>Shared Ownership</b>	<b>Social Rented</b>	<b>Private Rented</b>	<b>Living Rent Free</b>
Apuldram	78.5%	0%	3.1%	13.8%	4.6%
Birdham	78.9%	1.2%	7.8%	9.3%	2.8%
Donnington	83.4%	0.6%	4.3%	10.9%	0.8%
East Wittering	70.7%	1.5%	9.9%	16.2%	1.6%
Earnley	80.8%	0.6%	4.7%	11.6%	2.3%
Hunston	64.9%	1.3%	24.7%	7.3%	1.9%
North Mundham	69.8%	0.8%	18.1%	9.5%	1.8%
Selsey	78.2%	0.5%	8.2%	11.8%	1.2%
Sidlesham	77.7%	0%	8.4%	11.7%	2.3%
West Itchenor	93.6%	0%	0.7%	3.6%	2.1%
West Wittering	80.9%	0.3%	5.3%	11.2%	2.4%
Chichester District	67.2%	0.9%	14.9%	14.9%	2.2%
South East England	67.6%	1.1%	13.7%	16.3%	1.3%

3.12 The HEDNA has identified the stock in the Manhood Peninsula is weighted towards the larger more expensive detached and semi-detached properties which usually command higher sales prices. These are generally unaffordable for young local people wishing to access market housing for the first time. As such there is an identified need for affordable housing for local people.

3.13 In summary, Table 13 demonstrates that 291 households are currently in need of affordable rented accommodation within the Manhood Peninsula and the HEDNA identifies a net housing need of 124 affordable housing units per annum in the area to meet growing demand. At present, as shown in table 12, there are only 51



affordable homes planned (inclusive of Crooked Lane, Birdham) over the next 10 years. The table below illustrates the net affordable housing deficit across each tenure for the adopted plan period (2012-2029).

**Table 17: Net Affordable Housing Deficit – Manhood Peninsula 2019 - 2024**

<b>Affordable housing deficit in the Manhood Peninsula</b>		
<b>HEDNA recommended affordable housing Need</b>	<b>Less units planned</b>	<b>Net affordable housing deficit</b>
2108 <sup>1</sup> @35.7% = 753 social rented units	0	753
2108 @ 35.7% = 753 affordable rented units	68	685
2108@ 28.6% = 602 shared ownership units	24	578
<b>Total</b>	<b>92</b>	<b>2,016</b>

3.14 It is evident that there is a significant deficit of future supply to meet the growing affordable housing need in the Manhood Peninsula. By providing additional affordable housing, it will help foster the creation of mixed, balanced and sustainable communities.

#### **4.0 Birdham Parish Housing Need**

4.1 Birdham Parish is a rural designated parish located on the Manhood Peninsula<sup>2</sup> and is the beneficiary parish of the permitted affordable housing development at the field North West of The Saltings, Crooked Lane, Birdham. A map outlining the parish boundary has been provided at **Appendix 4** of this report. The site was granted

<sup>1</sup> Manhood affordable housing need = 124 p.a (HEDNA) x 17 years (2012-2029) = 2108

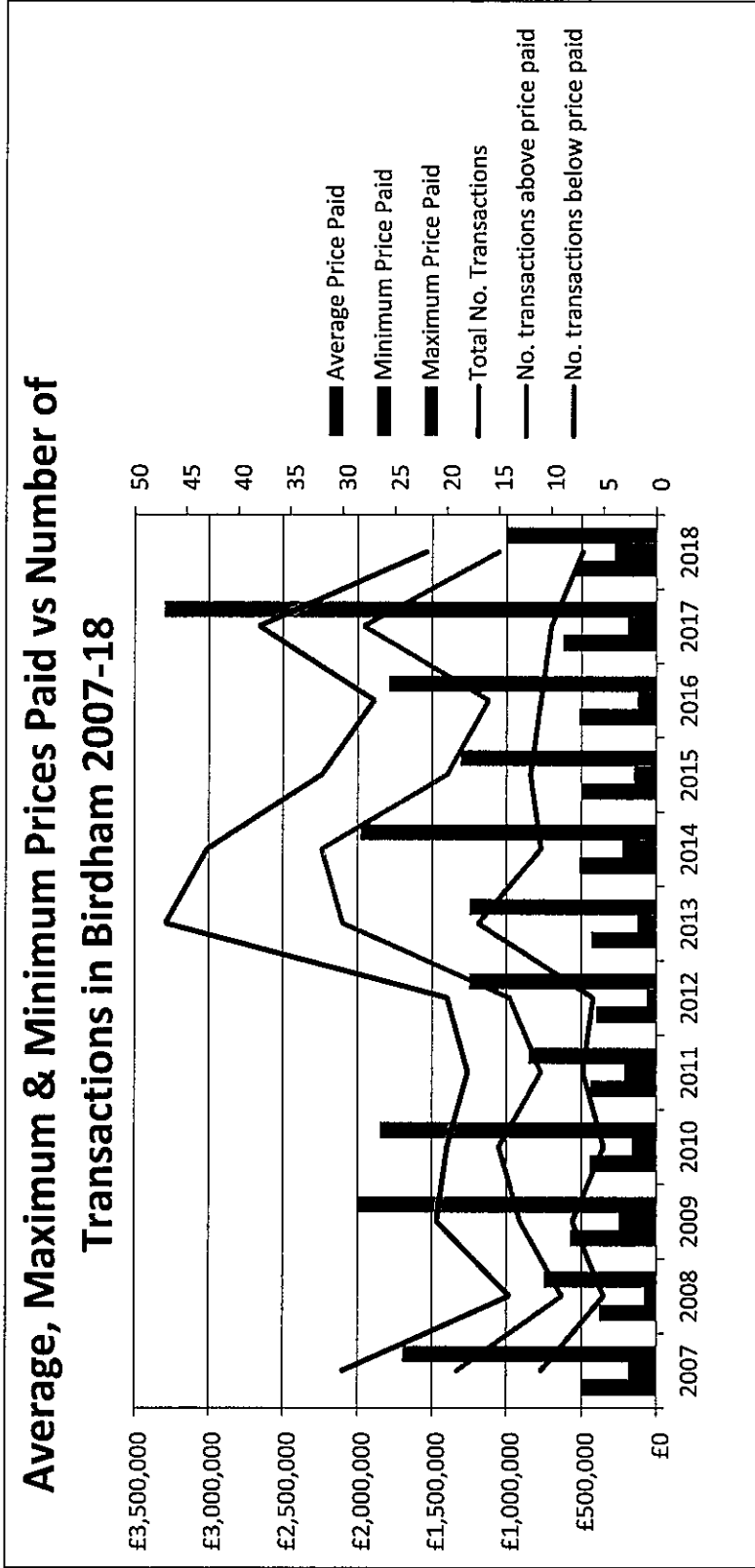
<sup>2</sup> under section 157(1) of the Housing Act 1985 and Right to Acquire provisions under the Housing Act 1996 and Shared Ownership restrictions in the Leasehold Reform Act 1967.

under an exception site policy which requires such scheme to meet the local affordable housing needs (i.e. Birdham Parish and the surrounding rural parishes).

- 4.2 Due to the local connection requirement for the site this section reviews the localised housing need evidence. The HEDNA does not provide information on establishing need at the parish level. It instead focuses on the wider sub area and district level figures to inform the strategic policies included within the Local Plan. Due to the lack of information provided for Birdham within the HEDNA, secondary sources of data have been used, which includes the Council’s Housing Register figures, HM Land Registry data, the 2011 Census and housing data collected annually by the Council’s Housing Delivery Team.
- 4.3 Following its Cabinet meeting on the 7 June 2016 and Full Council meeting on 19 July 2016, CDC resolved to “make” the Birdham Neighbourhood Development Plan (“**the Neighbourhood Plan**”). Section 3.5 of the Neighbourhood Plan provides a brief summary of the housing statistics, brief history and housing developments which have occurred in the parish since the Chichester Local Plan 1999. A copy of section 3.5 is provided in **Appendix 5** of this report. The Neighbourhood Plan identifies the Crooked Lane site towards meeting their 50-unit allocation made by the Local Plan.
- 4.4 The below chart illustrates the average prices paid in Birdham compared to the maximum and minimum prices paid and number of transactions that year. The average sold price in Birdham has seen a lot of fluctuation over the last 12 years. The fluctuation is likely to be attributed to the inconsistency in the volumes of the sales and the prices paid being reflective of the properties sold in that period, rather than changes in the local market itself. Noticeable dips in the local market were seen in 2008. However, the average sold prices in the Manhood Peninsula have consistently exceeded the districts average sold prices. Local incomes have not seen the same growth which has made the affordability gap increase, making it more difficult for local people to access market housing.

- 4.5 The minimum prices paid each year indicates that there are some properties affordable for younger couples. However, it should be noted that these figures are likely to indicate shared ownership values, age restricted properties and mobile and park homes which are not fully reflective of the full market values.

Figure 1 – Birdham Property Market 2007 -2018



Average Price Paid	£495,533	£375,750	£575,904	£442,522	£439,762	£399,180	£434,055	£511,973	£491,043	£517,359	£622,921	£536,723
Min Price Paid	£184,000	£80,500	£250,000	£160,000	£215,000	£63,000	£128,000	£230,000	£150,000	£125,000	£190,000	£280,000
Max Price Paid	£1,700,000	£750,000	£2,000,000	£1,850,000	£855,000	£1,250,000	£1,250,000	£1,985,000	£1,310,000	£1,795,000	£3,300,000	£995,000
Total No. Transactions	30	14	21	20	18	20	47	43	32	27	38	22
No. Transactions above price paid	11	5	8	5	7	6	17	11	12	11	10	7
No. Transactions below price paid	19	9	13	15	11	14	30	32	20	16	28	15

Source: H M Land Registry Price Paid data.

4.6 The higher sold prices in Birdham can be attributed to the larger amount of detached properties sold within the Parish. The table below shows the mix of accommodation types in the parish as identified in the 2011 census.

**Table 19: Birdham Parish accommodation type – 2011 census**

Birdham Parish Accommodation Type – 2011 Census	
Category	Number of Homes
Detached House/Bungalow	413 (64.0%)
Semi-detached house/bungalow	98 (15.2%)
Terraced house/bungalow	89 (13.8%)
Flat/maisonette/apartment	19 (2.9%)
Caravan/mobile home or temporary structure	26 (4.0%)
Shared Dwelling	0 (0%)

4.7 The three sites within Birdham Parish were recognised sites within the Birdham Neighbourhood Plan as they already had planning permission, so no further sites were allocated as these exceed the 50 unit allocation of Policy 5 of the Local Plan.

4.8 There are 13 households on the Councils Housing Register (as at 10.10.2022) with a local connection to Birdham Parish. It should be noted that the figures provided are only a snapshot of the current need and does not consider any need arising over the plan period.

4.9 Apart from the Crooked Lane development, no further development is due to come forward within the parish to meet the identified housing need. The table below illustrates that as a result of the lack of development; there will still be an unmet demand of 13 households.

**Table 19: Unmet housing needs within Birdham Parish from permitted developments.**

<b>Housing Needs to be met by permitted developments in Birdham</b>					
<b>Bands</b>	<b>1 bed</b>	<b>2 bed</b>	<b>3 bed</b>	<b>4 bed</b>	<b>Total</b>
A-C	4	-	1	1	6
D	4	2	1	-	7
<b>Total</b>	<b>8</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>13</b>
Needs met by permitted developments	0	0	0	0	0
<b>Unmet needs</b>	<b>8</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>13</b>

4.10 Affordable housing on market sites are generally expected to contribute towards meeting the strategic needs of the district. In the case of Birdham, the Council would expect such market sites to contribute towards the overall needs of the Manhood Peninsula and the South of the district.

4.11 The Crooked Lane development will provide the following mix of units:

**Table 21: Field North West of Saltings size mix of units.**

Permitted size mix of units for the development at Crooked Lane						
	1 Bed Bungalow	2 Bed Bungalow	2 Bed Houses	3 Bed Houses	4 Bed Houses	Total
Crooked Lane	2	1	8	3	1	15

- 4.12 The scheme will contribute to meeting the needs of a further 9 households on the waiting list with a local connection to Birdham. It will also be able to contribute towards meeting any further arising need.
- 4.13 There are currently 73 affordable rented homes in Birdham Parish, with; an average of 3 lets a year. The turnover of stock in the last year (2 lets) is indicative of the lack of supply of affordable and social rented properties becoming available within the parish. The lack of 4 bedroom rented homes within the parish means that the households with this or higher bedroom need will have to be housed outside of the parish to which they hold a local connection to. The site at Crooked Lane seeks to provide a 4 bedroom house to assist in meeting this need.
- 4.14 The Right to Buy and Right to Acquire has resulted in considerable amounts of social rented stock being lost within Birdham Parish with 47 homes being lost within the parish.

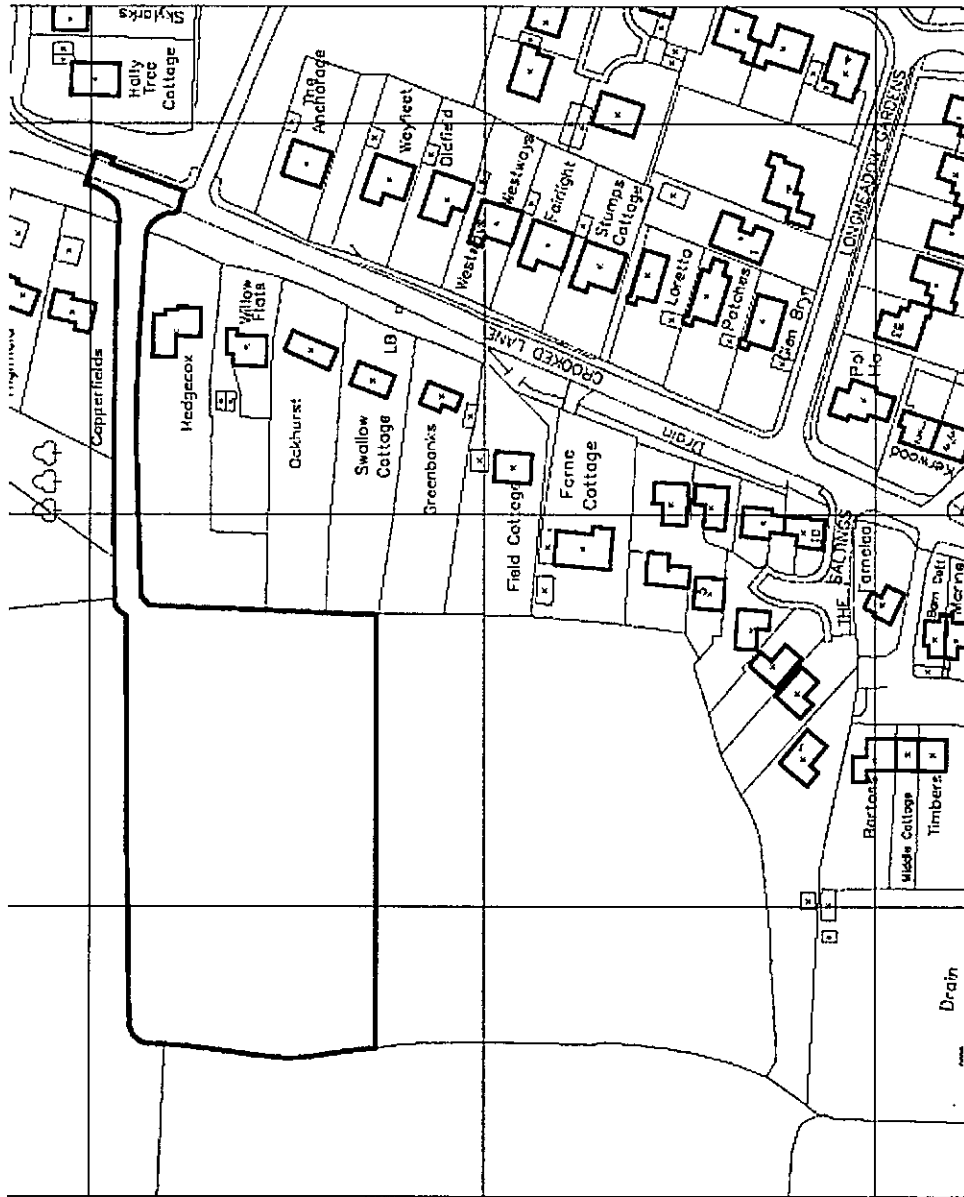
- 4.15 Birdham Parish has a larger amount of homes which are owned (78.9%) and lower amounts of social/affordable rented properties (7.8%) compared to the district and the South East.
- 4.16 The development at Crooked Lane seeks to provide mainly smaller 1 and 2 bedroom dwellings which will provide an opportunity for newly forming households to access the market. The provision of 1 and 2 bedroom bungalows will also provide suitable accommodation for households wishing to downsize, thereby freeing up larger family accommodation elsewhere.
- 4.17 The evidence outlined above indicates that Birdham’s existing stock is largely unaffordable to those in need of housing who need or want to move within the parish. The greater affordability pressures are accentuated by the significant weighting of the stock towards larger detached properties which usually command higher sales values and the low turnover of the existing affordable and social rented properties within Birdham.
- 4.18 Minimal development is planned for Birdham Parish and the households on the housing register with a local connection to Birdham are having to wait a long time before a suitable property becomes available, or be housed outside of the parish. The scheme at Crooked Lane will provide 100% affordable housing for those with a local connection to Birdham Parish. As such, the development will contribute to alleviating the pressures on the existing affordable housing stock and provide much needed affordable rented accommodation for local people with a local connection to the parish.



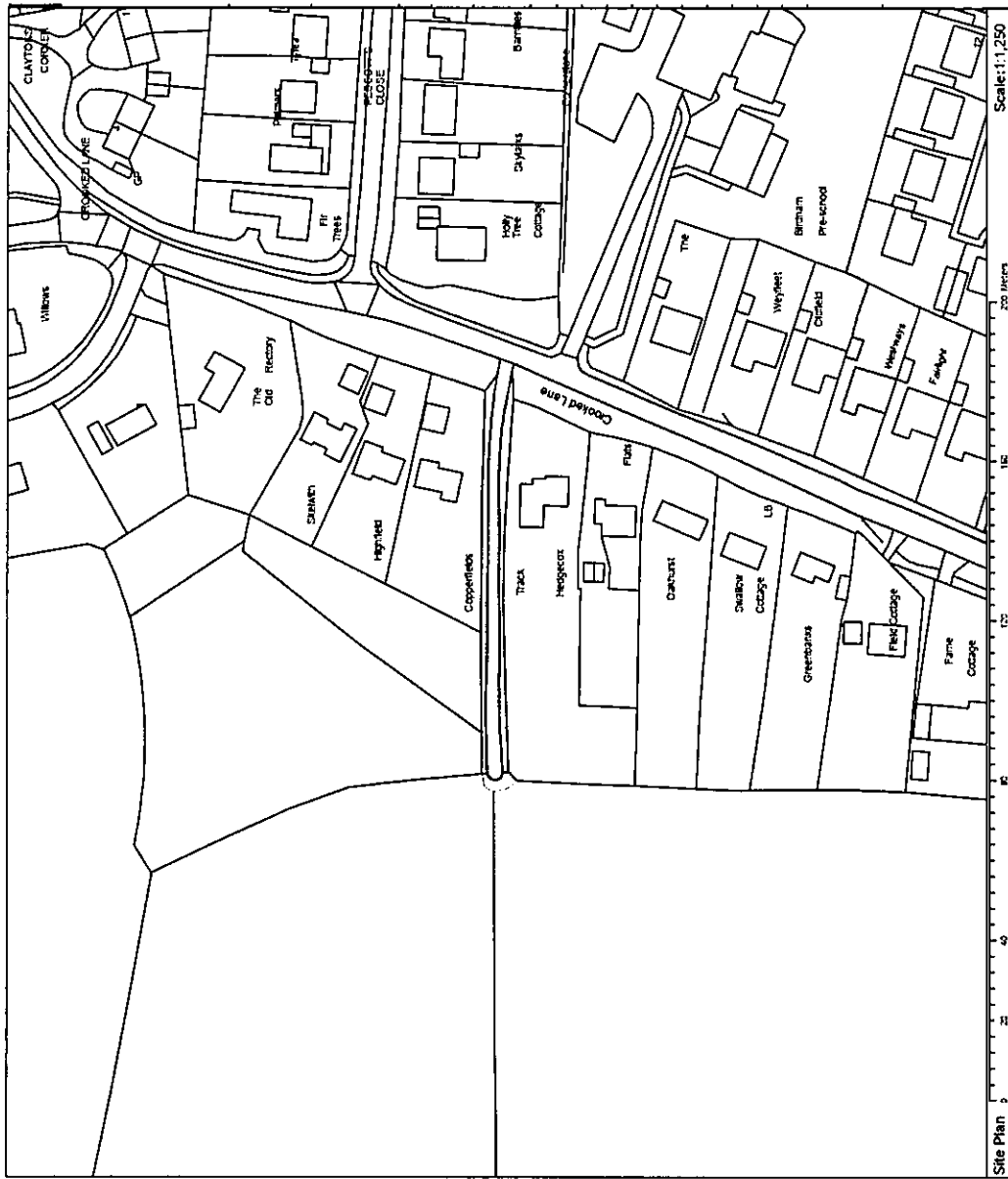
## **5.0 CONCLUSION**

- 5.1 The evidence collated within this report identifies a significant need for affordable rented housing to come forward at the larger district level and more locally at the Manhood Peninsula level. The HEDNA (2022) identifies a net need for 278 affordable homes per year in the plan area. There is an identified deficit in the supply of affordable housing to meet the growing demand identified at all three levels: Chichester District, Manhood Peninsula and Birdham Parish.
- 5.2 Birdham Parish has recognised three sites for development within its adopted neighbourhood plan which will contribute to meeting its indicative housing figure of 50 set out in Policy 5 of the Local Plan. With a low turnover of stock in the parish and typically high property prices in its surrounding areas, the likelihood of newly forming households or first time buyers being able to access a home is slim. As such the need for sites in Birdham to deliver affordable housing is high. The site at Crooked Lane benefits from planning permission and is in the ownership of the Hyde Group; one of the Council's principal registered provider partners. This site will provide 100% affordable housing for local people in perpetuity which the Council's Housing Delivery Team supports.

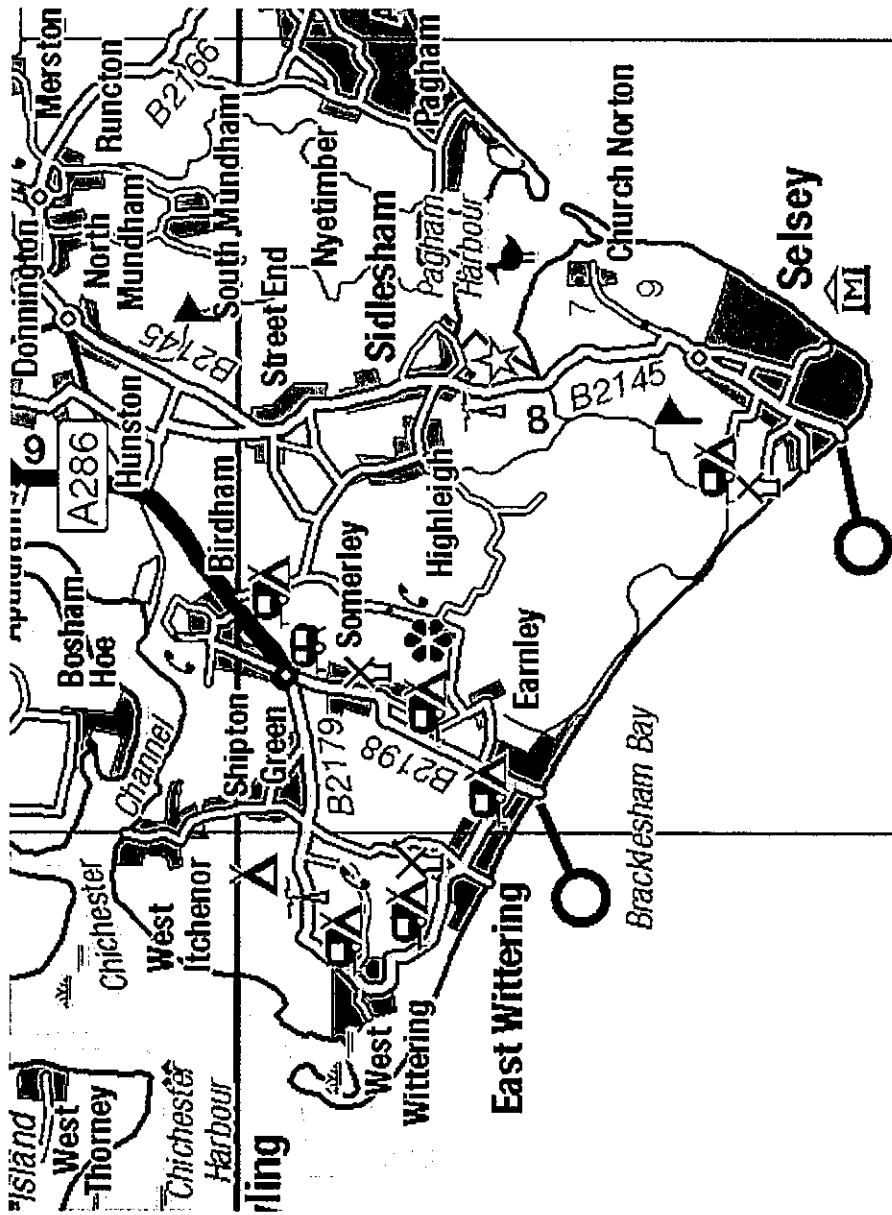
Appendix 1: Site Plan of the land lying to the West of Crooked Lane, Birdham PO20 7BH.



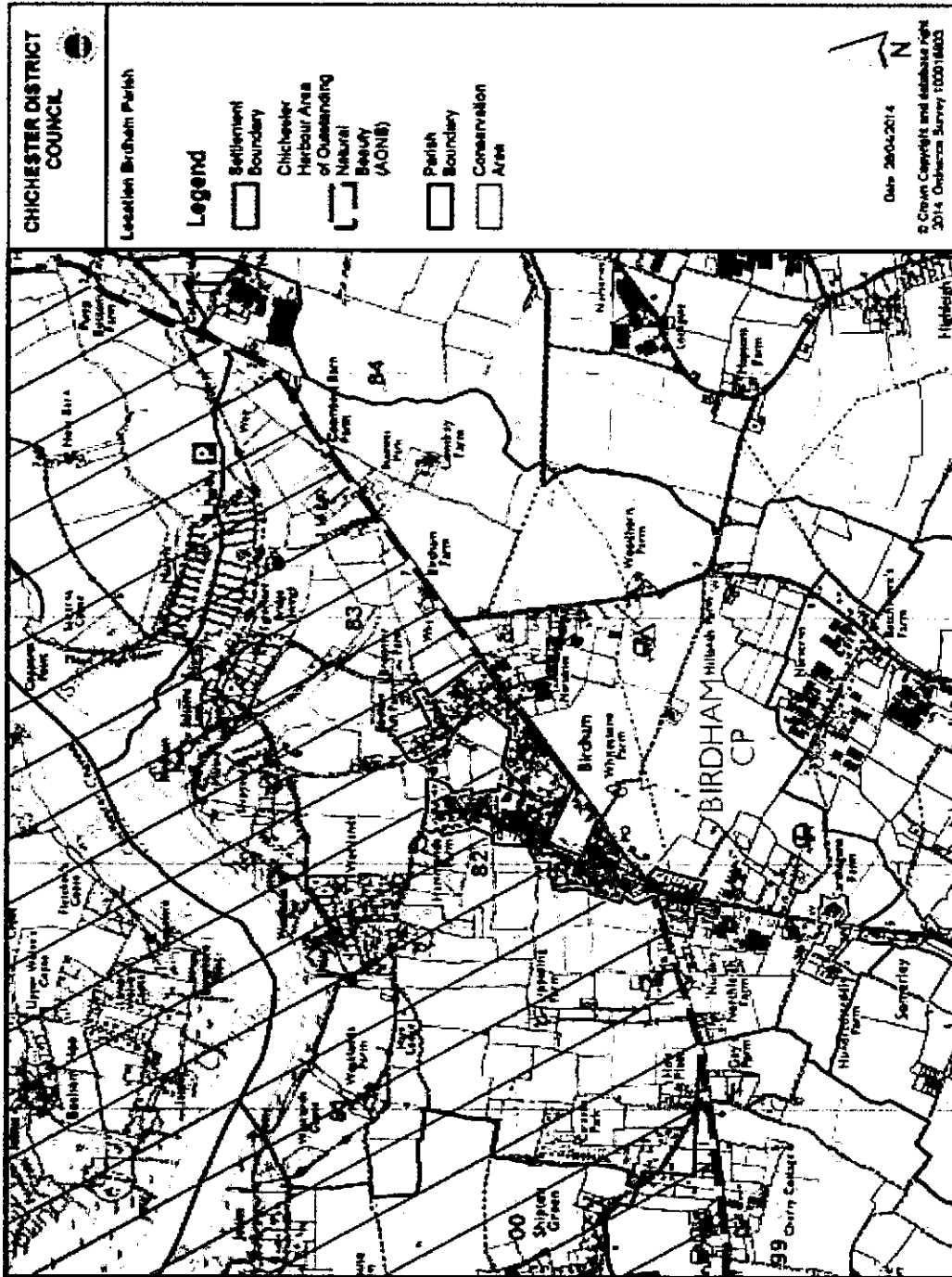
Appendix 2: Map of site access to the Field North West of the Saltings, Crooked Lane, Birdham.



Appendix 3 – Manhood Peninsula Map



Appendix 4: Birdham Parish boundary



## Appendix 5: Section 3.5 (Housing) of the Birdham Parish Neighbourhood Plan

### 3.5 Housing

According to the 2011 Census, the Parish had 730 dwellings and 645 households (the Survey Report 2013 states there are 672 'homes'). About 80% were owner occupied, 9% social rented and 9% private rented with only 1% shared ownership.

Birdham has a wide range of housing but predominantly a mix of detached two-storey houses and bungalows. As the History & Heritage section has already stated, some date back to the 18<sup>th</sup> century. There has been a lot of development post-war and a majority of Birdham has been built since 1945. Much of this has taken place to the north of the A286 and there has been a tendency to build estates, such as Westlands and Greenacres and cul-de-sacs, such as St James', Springfield Close and Cherry Lane, all of which were built before the establishment of the Chichester Harbour Area of Outstanding Natural Beauty in 1964. Social housing is concentrated around the southern end of Crooked Lane and the Playing Field, though some of the recent developments have included social housing. There are also 31 houseboat berths on Chichester Canal leased by Premier Marinas.

More recent developments include Pipers Mead (24 houses 1999), Walwyn Close (43 houses - 11 affordable/rented, 2003), Chaffinch Close (5 houses, 2013) and Old Common Close (28 homes – 9 affordable/rented, 2013).

Planning approval has been given in principle for a further 79 homes (subject to developer contributions) at:

- Rowans Nursery, Bell Lane (25 houses -- 10 affordable),
- Tawny Nursery, Bell Lane (30 houses --12 affordable)
- Site off Crooked Lane (15 affordable homes)
- Chichester Marina (conversion of offices into 9 homes)

This means that the indicative housing numbers of about 50 homes, allocated by CDC's Local Plan, will be met.

The equality impact analysis (EIA) process ensures that we do not disadvantage customers and staff who have Protected Characteristics ([Equality Act 2010: guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk)).

In addition to publishing equality information every year the EIA is the council's main way of ensuring we meet our Statutory Public Sector Equality Duty under the Equality Act 2010. It is important to consider the equality impact before designing or changing a policy, project or service in any way. You should complete an EIA when considering any sized project which will impact people including:

- Developing a service specification
- Commissioning a service
- Providing a new service to residents
- New staff working procedure
- Refreshing and updating a policy
- Removal of service
- Developing a strategy
- Changing a service
- As part of consultation process
- Changes to services delivered jointly with other agencies

There are 4 sections to this Equality Impact Analysis. Answer all the sections and questions. If you are unable to answer any questions this indicates you need more work so that you can answer the question with confidence and evidence\*.

If you need any guidance or assistance completing your Equality Impact Analysis contact Nicholas Bennett (Monitoring Officer) [N.Bennett@chichester.gov.uk](mailto:N.Bennett@chichester.gov.uk)

\*Evidence could include information from consultations; voluntary group feedback; satisfaction and usage data (i.e. complaints, surveys, and service data); and reviews of previous strategies

## YOUR GUIDE TO COMPLETING AN EQUALITY IMPACT ANALYSIS

### Section 1

In Section 1 identify background information to the policy, project or service you are analysing.

### Section 2

In Section 2 highlight any likely impact on equalities as a result of the policy, project or service. You must have evidence\* to support this. Impacts can be positive and negative

### Section 3

Create an action plan which explains what you will be doing as a result of carrying out this analysis

### Section 4

The responsible officer (completing this assessment) must now check the analysis and sign Section 4 and have the relevant senior manager also check and approve this analysis, and sign the relevant part of Section 4. Monitor and review your policy, project or service once it has been implemented to ensure any future adverse effects are mitigated. Ensuring the Equality Impact Analysis is kept up to date will form a core part of this.

SECTION 1

Name of activity/policy/project/decision/function being assessed	Compulsory purchase
Aims of policy/project/service	To seek approval to authorise the making of a Compulsory Purchase Order (CPO) under s.226 Town & Country Planning Act 1990 for the acquisition of land and rights set out in the CPO Map and Schedule, and its subsequent disposal, for the purpose of facilitating the provision of affordable housing accommodation.
Is this new or existing?	It is a new project.
Who is responsible for policy or decision, or advising on decision, and also responsible for this equality analysis	The Housing Standards and Delivery Manager is responsible for the equality analysis. Cabinet, Strategic Management Team and the portfolio holder for Housing are responsible for the decision.
What customer/profile data have you already got? What does it tell you about who is currently using/accessing the service?	SHMA – need for affordable housing CDC Housing Waiting List 2011 census – demographics
What information/evidence do you have on current and future service users and what impact could the change make?	CDC Housing Waiting List shows demand for affordable housing within the District and the delivery of 15 new social rented homes would reduce the Housing Waiting List.
What consultation (either new for the purpose of this change or carried out previously, but relevant) has been carried out to engage service users on the change?	Hyde Housing’s team and agents acting on behalf of the Council has attempted to acquire necessary third party interests and rights by agreement. These are the people who will be affected by the CPO. It is not necessary or appropriate to consult those on the CDC Housing Waiting List on this CPO.
Who are the customers/Stakeholders of the service?	The third party owners and reputed owners having property and rights purchased through the CPO and the future beneficiaries of the proposed affordable housing once the project is delivered (facilitated by the CPO) (i.e. the future occupiers)
List the information and evidence you are using to inform this equality analysis	Statement of Reasons in respect of the CPO. In addition, the SHMA and the HEDNA provide evidence in respect of the need for affordable housing. The CDC Housing Waiting List in respect of households in need of housing and the 2011 census for demographic data.
Summarise the key findings of the information listed above	Attempts have been made by agents acting on behalf of the Council to acquire necessary land and rights by agreement where ownership is known. This has not been successful in progressing negotiations



**Appendix 5 – Equality Impact Analysis**

	<p>to acquired by agreement and two of the third party owners and reputed owners have refused to engage with the Council or their agents. Given the unknown ownership of parts of the land acquired, even if all third party land and rights could be acquired by agreement, it would not be possible to provide clean title to the access track. This is necessary in order to facilitate the delivery of the much needed affordable housing. Once all alternative options have been followed the last resort is to pursue a compulsory purchase order.</p>
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**SECTION 2**

Do you have enough information to complete section 2? If not then you will need to complete some engagement/research with the service area to know your customer

**2.1 Negative Impact?**

	Is the likely effect to be negative on any of the Protected Characteristics listed below (please mark all that apply)		Please describe the effect and evidence that supports this*	How will you ensure the negative impact is removed? Copy into the action plan
	Yes	No		
Age		No	One or more of the third party owners or reputed owners may fall within the protection of the EA as they are elderly. However, we have no evidence of a disproportionate impact on any third party owner or reputed owner due to age.	
Disability		No		
Gender reassignment		No		
Pregnancy and maternity		No		
Race		No		
Religion or belief		No		

**Appendix 5 – Equality Impact Analysis**

Sex	No
Sexual Orientation	No
Marriage/Civil partnerships	No

\*Evidence could include information from consultations; voluntary group feedback; satisfaction and usage data (i.e. complaints, surveys, and service data); and reviews of previous strategies.

**2.2 How are you going to address any negative impact?**

Which of the options below best describes how you are going to address the impact described above?	Answer
1. No major change - the Equality Impact Analysis demonstrates that the policy is robust and that the evidence shows no potential for discrimination and that all opportunities to promote equality have been taken.	The EIA demonstrates that the proposal is robust and that the evidence shows no potential for discrimination and that all opportunities to promote equality have been taken.
2. Adjust the policy to remove barriers or better promote equality	
3. Continue the policy despite potential for adverse impact or missed opportunities to promote equality	
4. Urgent action must be taken if the policy shows actual or potential unlawful discrimination contact Nicholas Bennett, Monitoring Officer	

**2.3. Positive Impact?**

Age	Is the likely effect to be positive (please mark all that apply)		Provide examples of good equality practice or benefits to people with protected characteristics arising from the implementation of this service/policy etc	How will you promote equality and communicate good practice?
	Yes			
	Yes		The Scheme includes two 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.	Copy into the action plan in Section 3  Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.

**Appendix 5 – Equality Impact Analysis**

Disability	Yes		The Scheme includes two 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.	Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.
Gender reassignment		No		Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.
Pregnancy and maternity		No		Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.
Race		No		Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.
Religion or belief		No		Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.
Sex		No		Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.
Sexual Orientation		No		Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.

**Appendix 5 – Equality Impact Analysis**

				policies requirements which include express consideration of priority by need.
Marriage/civil partnerships		No		Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.
What measures does and could the policy include to promote equality and foster good relations				The proposal will increase the number of homes available in this rural area to all groups, including some protected groups. Nomination rights will be delivered through the Councils policies requirements which include express consideration of priority by need.

**SECTION 3**

**ACTION PLAN**

The Public Sector Equality Duty is also a continuing duty, requiring attention and a review of decisions post-implementation. Therefore, every Equality Impact Analysis should result in an action plan that sets out the arrangements for reviewing the actual impact of a new policy or changes to an existing policy once it has been implemented. The action plan could include actions in the following categories:

- Involvement and consultation;
- Further data collection and evidence gathering;
- mitigating disproportionate or adverse impact; and/or
- taking any opportunity to advance equality and foster good relations.

You can produce the action plan by using the template below or by creating one on Covalent. This link provides guidance on producing an action plan in Covalent or through service planning.

**Appendix 5 – Equality Impact Analysis**

Action	By when
1 Work with CDC legal team to make, notify and obtain confirmation of the Compulsory Purchase Order	Once the order is approved by Full Council
2 Implement the Order once confirmed to facilitate delivery of the new housing in this rural location.	Within statutory timescales, and in line with project delivery programme
4 Gather data on impact of implementation of Order, particularly on those with protected characteristics, and consider any mitigation required	Following implementation
3 Work with Hyde to ensure delivery of the new affordable homes	TBC

**SECTION 4**

Based on the information in section 2, what is the decision of the responsible officer (please select one option below):

Tick here  
 X

No negative equality impact (your analysis shows there is no impact) - sign assessment below

Please summarise your responses here .....any impact is within local and national housing policies that are themselves measured against equality duties.

Adverse impact but continue (record objective justification for continuing despite the impact)-complete sections below

[]

This EIA had been checked and approved by responsible officer (sign and print name)	Elizabeth Reed	Date 9 <sup>th</sup> March 2023
This EIA has been checked and approved by Director (sign and print name)	Louise Rudziak	Date 9 <sup>th</sup> March 2023

- (1) Attach your completed Equality Impact Analysis to your decision/recommendation report
- (2) Please send the completed Equality Impact Analysis to the Monitoring Officer at [N.Bennett@chichester.gov.uk](mailto:N.Bennett@chichester.gov.uk)

(3) Upload the completed Equality Impact Analysis to the relevant service improvement action to Jennifer Westerbrook, Policy officer

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Date of Equality Impact Analysis Review: .....10<sup>th</sup> March 2023.....

Even after your activity/policy/project/decision/function has been implemented; it is recommended that analysis is undertaken every three years, and that this analysis is updated at any significant points in between. The purpose of any update is that the actual effects will only be known after the implementation of your policy, project or service. Additionally, area demographics could change, leading to different needs, alternative provision can become available, or new options to reduce an adverse effect could become apparent.

**Chichester District Council**

**Cabinet**

**7 March 2023**

**Public Questions and Answers Sheet**

**Question from: Tony Corkett**

Agenda Item 12:

Would the Cabinet members suggest a site visit for a delegation from the full council to the farm track opposite the primary school on Crooked Lane which is being considered for a CPO to make an access route to a small housing development? If so could this visit be at school drop off or pick up times before the full Council vote is taken?

**Answer from Cllr Sutton:**

Thank you for your question. Members can visit the site freely at any time of day should they wish to and I have visited the site at the time suggested. As such a formal site visit would appear unnecessary. Please be assured that when the planning application was considered the Planning Committee at the time did visit the site when considering the merits of the planning application albeit with a change in membership since.

**Question from: David Williams, Chairman of Birdham Village Residents Association**

Agenda Item 12:

The public is unfortunately in the dark as to what you will discuss today as relevant paperwork is restricted. However at the end you will be making a recommendation to the Full Council. If this matter proceeds to a CPO, because of the public interest and opposition, it will probably end up as a public enquiry where items will be in the public domain.

These are the facts we know:

The person that sold the site to Hyde, made a Statutory Declaration to the Land Registry in January 2010 claiming he had a Right of Way to use the track to Crooked Lane.

Once this Declaration was seen by the public its accuracy was challenged, resulting in the Land Registry removing this claimed Right of Way from the title deeds in October 2012

Hyde bought the site in January 2014 so should have been aware that the site had no Right of Way to use the track. During the planning process this fact was ignored, and classified as a "private legal matter".

Under 2012 version of NPPF para 173: sites should be deliverable.  
Most would consider a site without an access as not deliverable.

This site got its planning approval as an exception site, which comes with its own set of rules.

One of which is that it is for Birdham residents only.

That is someone with a Birdham connection, not someone on the Council housing list from say Donnington.

Birdham never has had a need for this development.

Now many years later, your here today to probably decide whether to recommend to full Council the use of a CPO's "Draconian Powers" that's your legal teams words from the meeting when you last discussed this.

And don't be thinking that because Hyde have agreed to underwrite the cost of all this, so it does not appear on the council's budget, that you are not spending taxpayer's money. Remember Hyde get some of their income from Housing Benefit so taxpayer's money is being used.

Considering the above facts, where CDC failed to apply planning rules and Hyde made a poor commercial decision to purchase a development site without control over the access, is it right and proper for the Council to use CPO powers to overcome these mistakes?

**Answer from Cllr Sutton:**

Thank you for your question. Please be advised that we are not able to revisit the planning permission as granted in 2013 and as such we will not be doing so later.

At the time of originally granting planning permission in 2013 the Planning Committee was advised of the fact that several local residents had questioned the ownership of the site and the rights of access over it. It is a fundamental tenet of the planning system that such matters are not material planning considerations and, accordingly, the Planning Committee was correctly advised that any such uncertainty in this case was not a legitimate reason to withhold planning permission. However, officers were satisfied that the applicant had followed the correct procedures in terms of identifying and serving notice on any owners of the site.

Turning to the Compulsory Purchase Order, Housing, is one of this Council's key priorities and members fully acknowledge the seriousness of considering compulsory purchase orders.

Please be assured that the Council does not take decisions to recommend or authorise a compulsory purchase order lightly. Decisions are made with due consideration given to the relevant legislation and members will be applying those legal requirements alone. Members will absolutely be fully aware of the fact that such powers are a very serious matter.

In relation to Hyde please be advised that Hyde is a registered provider of social housing, and their funding and financial status is regulated by the Regulator of Social Housing although this is not relevant to the matter at hand.



## **APPENDIX 9**

# Chichester District Council

> [Decision register](#) > [Decision details](#) > [Issue](#) > Agenda item

## Agenda item

### Enabling the Delivery of Affordable Housing on the Crooked Lane, Birdham Exception Site

- [Meeting of Council, Tuesday 21 March 2023 2.00 pm \(Item 224.\)](#)
- [View the background to item 224.](#)

The Council is requested to consider the report and its appendices attached to this agenda pack (please note a number of appendices are Part II for members and senior officers only).

**Following consideration of this report at its meeting on 7 March 2023 Cabinet made the recommendations to Council as follows:**

- 3.1 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 identified within Appendix 1, and in particular that the Council makes the Order.**
- 3.2 The Director of Housing and Communities is authorised, following consultation with the Cabinet Member for Housing, Communications, Licensing and Events, to:**
  - a. 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.**
  - b. 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;**

**c. implement the Order powers following confirmation of the Order and so acquire title to and/or take possession of the Order Land.**

**Minutes:**

Cllr Sutton moved the recommendation which was seconded by Cllr Lintill.

Cllr Sutton introduced the item. Members were referred to the A3 colour sheet on their desks which was a copy of page 45 enlarged. Mrs Rudziak wished to clarify that at the Cabinet meeting on 7 March 2023 it had been stated that the Planning Committee had been on a site visit to the site in question. The site visit was proposed but not agreed and therefore any member site visits were not arranged for the Committee by the council. She apologised for any confusion this had caused. Mr Bennett then reminded members that the report was being heard in public but there were part II papers covering some elements which if members wished to discuss would require the meeting to go into Part II. He suggested that if members wished to speak on the Part II papers and remain in public session they refrain from referring to specific people and names. He added that the advice of the Monitoring Officer carried weight. He then confirmed the decision members were facing was not a planning application as this had already been agreed but instead the need to meet two tests. The first whether the proposed Compulsory Purchase Order (CPO) can facilitate the authorised planned development. The second whether the CPO can improve the economic, environmental and/or social wellbeing of the area.

Mr Bennett then referred to a minor amendment which Cllr Moss would be putting to the Council. He confirmed that adding reference to ' the School Streets Project' would be a minor amendment if accepted by the Chair.

Cllr Moss confirmed that he wished to propose the following minor amendment:

To amend the resolution to add 3.3 to read:

*For West Sussex County Council to implement the Safer School Streets project at Birdham School.*

The minor amendment was seconded by Cllr Brisbane.

Cllr Sutton raised a point of order that he had not had sight of the amendment. Mr Ward clarified that under the council's Motion's Procedure section two allows eight motion types without notice. The eighth example is a minor amendment. He confirmed his advice to the Chair that this could be classed as a minor amendment, but the final decision on this is the Chairman's. Cllr Hamilton accepted the amendment as a minor amendment and invited members to comment on the minor amendment first.

Cllr Moss explained that he had visited the site and looked at the access in detail particularly at school times. He had noted the traffic challenges and concerns of those living close by and/or requiring access.

Cllr Apel also noted her concern relating to the traffic at the site.

Cllr Sutton gave his support to the minor amendment.

Cllr Barrett gave his support to the minor amendment noting the limited parking.

Cllr Sharp gave her support to the minor amendment suggesting a number of alternative methods of travelling to school such as walking buses and school streets.

Cllr Purnell requested the addition of the words 'to request' which were accepted by the Chair.

In a vote the minor amendment was agreed:

## **RESOLVED**

### **To request West Sussex County Council to implement the Safer School Streets project at Birdham School.**

Cllr Hamilton then turned to the substantive recommendations and invited members to speak.

Cllr Briscoe spoke in favour of the recommendations noting the need for affordable housing which had been demonstrated by the report. He explained that there were currently only two other exception sites on the Peninsula at North Mundham and in the Witterings.

Cllr Brown agreed the need for affordable homes. With reference to the five neighbours of the access track he requested clarification of whether that access would be maintained and whether the ownership of the land had been resolved. Mr Bennett explained that the council would first try to agree a private treaty however the CPO allows the council to acquire ownership of the land with the intention of passing that to Hyde. With regard to the five neighbours the land would be public highway so they would retain a right of way but would not be able to block the right of way for others to access.

Cllr Brisbane requested clarification of whether the red line indicated on the report plan was the same as the red line on the original planning application. Officers agreed to cross check and amend as needed before the final submission of documentation.

Cllr Brisbane noted the housing deficit outlined on page 70 of the report pack in table 17. He added that page 66 demonstrated in table 13 that of the 18 households on the Housing Register linked to the Manhood Peninsula 13 were linked to Birdham. He further noted with reference to page 71, paragraph 4.3 that the Neighbourhood Plan had accepted the site.

Cllr Plowman asked members to consider for the future the need for a site visit in this instance noting that the original request at Planning Committee had been turned down. Mr Bennett clarified that whether a site visit would be appropriate at the planning application stage is set out in guidance advice provided by officers but is not a legal requirement. Mr Frost added that the decision made by the Planning Committee was valid and stood.

Cllr Bangert raised a query relating to page 105, section 11.31 of the report.

Cllr Sharp explained that although many residents had written to members to let them know they felt there was no requirement for the affordable homes the officer report provides evidence to suggest there is.

Cllr Barrett noted that applicants in adjoining parishes can also apply.

Cllr Timothy Johnson joined the meeting during the debate. He explained that he had driven to the site with Cllr Donna Johnson and asked whether the track to the site would be sufficient for the number of homes. He asked whether there could be a deferral for further options to be explored. Cllr Briscoe explained that the track had

been deemed suitable in the planning application. Cllr Timothy Johnson proposed a minor amendment to request:

*Further work into a longer route not coming out by the school.*

Cllr Hamilton explained that she would not be accepting the amendment as she viewed it as a major amendment and linked to the planning application which was not relevant to the decision on the CPO. Mr Bennett added that alternative routes had been prevented by legal covenants.

Cllr Sutton raised a point of order that Cllr Timothy Johnson had missed part of his opening introduction which had addressed the matter. Mr Bennett explained that it is a choice for individual members to reflect on whether they have heard enough of the information presented and debate in order to make a decision on the matter. Mr Bennett recommended a short adjournment to explain the part II matter to Cllr Timothy Johnson. This was not required as Cllr Brown suggested that by answering whether section 10.9 of the report had been dealt with already could provide the answer needed. Mr Bennett confirmed it had. Cllr Timothy Johnson then withdrew his proposal.

In a vote the following resolutions were agreed:

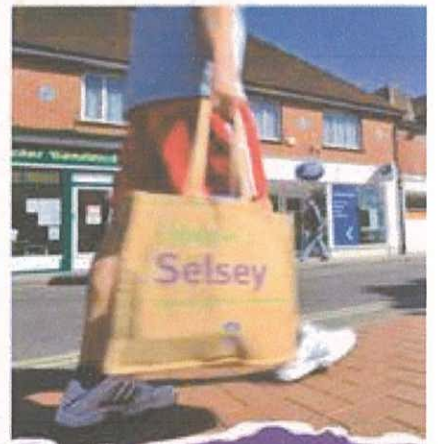
- 3.1 Council authorises the use of Compulsory Purchase powers as set out in Section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 to compulsorily acquire the Order Land identified within Appendix 1, and in particular that the Council makes the Order.**
- 3.2 The Director of Housing and Communities is authorised, following consultation with the Cabinet Member for Housing, Communications, Licensing and Events, to:**
  - a. 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.**
  - b. 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;**
  - c. implement the Order powers following confirmation of the Order and so acquire title to and/or take possession of the Order Land.**
- 3.3 To request West Sussex County Council to implement the Safer School Streets project at Birdham School.**

Members took a short break.

**Supporting documents:**

- [Enabling the Delivery of Affordable Housing on the Crooked Lane, Birdham Exception Site, item 224.](#)  PDF 95 KB
- [Restricted enclosure View the reasons why document 224./2 is restricted](#)
- [Enabling the Delivery of Affordable Housing on the Crooked Lane, Birdham Exception Site - Appendix 2, item 224.](#)  PDF 1 MB

## **APPENDIX 10**



# Chichester Local Plan: Key Policies

2014-2029

[www.chichester.gov.uk/newlocalplan](http://www.chichester.gov.uk/newlocalplan)



## 7 . Housing and Neighbourhoods

<i>Remaining housing to be provided through the Local Plan</i>				
Large strategic allocations	2,750	0	0	2,750
Allocations at settlement hubs	230	130	0	360
Parish housing sites	376	7	98	481
<b>Total Strategic &amp; Parish Housing</b>	<b>3,356</b>	<b>137</b>	<b>98</b>	<b>3,591</b>
<b>Total Housing Supply 2014-2029</b>	<b>6,078</b>	<b>897</b>	<b>307</b>	<b>7,282</b>
<b>Housing Supply compared to Local Plan requirement</b>	<b>+294</b>	<b>+133</b>	<b>-24</b>	<b>+403</b>

### Policy 4

#### Housing Provision

Provision is made in the Plan to deliver 7,388 homes over the period 2012-2029. The broad distribution of housing across different parts of the Plan area is indicated in the table below:

Sub-Area	Housing provision 2012-2029
East-West Corridor	6,156
Manhood Peninsula	893
North of Plan Area	339
<b>Plan Area total</b>	<b>7,388</b>

Strategic development locations are allocated in this Plan to accommodate 3,250 homes over the Plan period (see Policies 15-18). Additional strategic and parish housing sites will be allocated in subsequent Development Plan Documents and neighbourhood plans in accordance with Policies 5, 20, 23 and 24).

Housing delivery will be monitored and managed to ensure there remains an available supply of land for housing development throughout the Plan period.



## 7 . Housing and Neighbourhoods

### Policy 5

#### Parish Housing Sites 2012- 2029

Small scale housing sites will be identified to address the specific needs of local communities in accordance with the indicative parish housing numbers set out below. Suitable sites will be identified in neighbourhood plans or in a Site Allocation DPD which the Council will prepare following adoption of the Local Plan.

Parish	Indicative Housing Numbers
<b>East-West Corridor</b>	
Bosham	50
Boxgrove	25
Chichester city <sup># (1)</sup>	235
Chidham & Hambrook	25
Fishbourne	50
Oving <sup>#</sup>	0*
Southbourne (excluding Southbourne village) <sup>#</sup>	50
West Thorney	0*
Westbourne	25
Westhampnett <sup>#</sup>	0*
<b>Manhood Peninsula</b>	
Apuldram	0*
Birdham	50
Donnington	50
Earnley	0*
Hunston	25
North Mundham	25
Sidlesham	0*

## **APPENDIX 11**



# Birdham Parish Neighbourhood Plan



There is a **cycle and wheelchair route** - The Salterns Way - from Chichester into the Peninsula - part road and part cycle path, only some parts are wheel chair friendly. Cyclists can use the A286, but it is a relatively narrow main road, making overtaking hazardous for both vehicles and cyclists and resulting in tailbacks of traffic.



*Salterns Way Cycle Path*

Pavements only exist along parts of the A286, which limits **pedestrian** safety. Furthermore there are no pedestrian crossings over the A286 to go from one side of the village to the other. It is possible to walk, via Appledram, into Chichester but again parts of the route are on roads. It is reasonably safe to walk within the village itself along pavements and most of the side roads. Though the Primary school operates a 'park and stride' scheme from the Church car park, some of this route is without pavements. (See Cycle Path & Public Rights of Way Map in Appendix 7.3).

**Vehicular access** to the great majority of the properties and businesses in the village, including the School, Village Hall and the Church from the A286 is along Crooked Lane or Church Lane. Most houses within Birdham have on site parking, with the exception of Crooked Lane which can be restricted by on-street parking at the southern end and which becomes very congested at school pick-up times at the northern end.

### 3.5 Housing

According to the 2011 Census, the Parish had 730 dwellings and 645 households (the Survey Report 2013 states there are 672 'homes'). About 80% were owner occupied, 9% social rented and 9% private rented with only 1% shared ownership.

Birdham has a wide range of housing but predominantly a mix of detached two-storey houses and bungalows. As the History & Heritage section has already stated, some date back to the 18<sup>th</sup> century. There has been a lot of development post-war and a majority of Birdham has been built since 1945. Much of this has taken place to the north of the A286 and there has been a tendency to build estates, such as Westlands and Greenacres and cul-de-sacs, such as St James', Springfield Close and Cherry Lane, all of which were built before the establishment of the Chichester Harbour Area of Outstanding Natural Beauty in 1964. Social housing is concentrated around the southern end of Crooked Lane and the Playing Field, though some of the recent developments have included social housing. There are also 31 houseboat berths on Chichester Canal leased by Premier Marinas.

More recent developments include Pipers Mead (24 houses 1999), Walwyn Close (43 houses - 11 affordable/rented, 2003), Chaffinch Close (5 houses, 2013) and Old Common Close (28 homes – 9 affordable/rented, 2013).

Planning approval has been given in principle for a further 79 homes (subject to developer contributions) at:

- Rowans Nursery, Bell Lane (25 houses – 10 affordable),
- Tawny Nursery, Bell Lane (30 houses – 12 affordable)
- Site off Crooked Lane (15 affordable homes)
- Chichester Marina (conversion of offices into 9 homes)

This means that the indicative housing numbers of about 50 homes, allocated by CDC's Local Plan, will be met.

## 5.5 Housing Policies

### Objectives

#### Housing Development

Accommodate sustainable housing development through limited and controlled growth in accordance with the Chichester Local Plan and ensure that the development of sites is appropriate for this rural location.

#### Housing Density & Design

Ensure that the design, style and density of new housing are in keeping with the character of the Parish and the rural environment and that it is sustainable, free from flood risk with adequate parking provision and appropriate landscaping.

#### Housing Need

Ensure that the mix of housing types and supply of social and affordable housing meets the needs of the Parish.

### Policies

#### Policy 12 - Housing Development

The indicative parish housing number for Birdham Parish in the adopted Local Plan is 50. The following sites are estimated to be capable of delivering growth of 79 units for the neighbourhood plan period 2014-2029, including an adequate number of affordable housing units.

The sites, with planning permission are:

- Rowan Nursery, Bell Lane - 25 new homes of which 10 are social/affordable
- Tawny Nursery, Bell Lane - 30 new homes of which 12 are affordable
- Site off Crooked Lane - 15 new social/affordable homes for letting to local people in perpetuity
- Chichester Marina (Opal Building) - 9 new homes converted from commercial premises

There are no plans to allocate sites at the present time, but see Policy 14 'Windfall Sites'.

NPPF para 19 Planning Practice Guidance Methodology Stage 2 Paragraph: 019 Reference ID: 3-019-20140306 was used in assessing the suitability of sites for development, in particular the adopted Local Plan policy. It also states that, sites "with planning permission will generally be considered suitable for development".

The *Chichester* Local Plan, Policy 5 says 'Small scale housing sites will be identified to address the specific needs of local communities in accordance with the indicative Parish housing numbers set out below'. The indicative housing number for Birdham Parish is 50. Recent developments of 33 dwellings at Old Common Close and Chaffinch Close do not count towards this figure but planning permission has been given for 79 homes to be built at Rowan Nursery, Tawny Nursery, a site off Crooked Lane and a conversion at the Chichester Marina. This means that the indicative housing numbers of about 50 homes, allocated by CDC's Local Plan, has already been met.

The Chichester Local Plan classifies Birdham as a Service Village. *Chichester* Local Plan, Policy 2 states that the Service Villages will be the focus for new development and facilities and provision will be made for small scale housing developments consistent with the indicative housing numbers set out in *Chichester* Local Plan, Policy 5.

The Neighbourhood Survey found that 47% of respondents felt that 50 new homes in Birdham by 2029 was too high and 47% thought this was about right, whilst only 6% felt that it was too low.

### **Policy 17 - Housing Need**

Any development must contain a mix of housing sizes and types to suit the demographic characteristics and requirements of the Parish, and social and affordable housing must be allocated in accordance with the Chichester District Council Allocations Scheme.

Several respondents, particularly at the Open Days, mentioned the need for more affordable housing. However, planning consents already granted do satisfy Birdham's immediate affordable housing need. There will be 37 affordable homes of which 15 houses will be subject to a local lettings policy ensuring their availability for people with an affordable housing need and a connection with the Parish, in perpetuity. The situation will need constant monitoring as it would seem that the turnover of social rented housing in Birdham has been approximately one a year for the past seven years.

The Survey also indicated that the overall structure of housing requirements for the next 15 years remains very similar to the existing structure, with a clear preference for owning housing of all types both now and in the future. The only changes identified were a slight increase in the number citing a preference/requirement for flats, bungalows and warden assisted retirement housing, which could be expected in a population getting older. Approximately three-quarters of those responding identified that they could adapt their current home in order to meet their future needs, whilst one quarter identified that they could not.

The Neighbourhood Plan will comply with the Chichester District Council's current Lettings Policy.

*Conformity Refs: NPPF para 50: Chichester Local Plan 17.15 & Policy 34; Birdham Neighbourhood Survey 2013; Open Day Comments 2013*

## **APPENDIX 12**

CHICHESTER DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE  
ORDER) 2010 (now, as amended)

## Agent Details:

Mr David Steel  
 HNW Architects  
 11 West Pallant  
 Chichester West Sussex  
 PO19 1TB United Kingdom

## Applicants Details :

The Hyde Group  
 63 St Mary Street  
 St Mary's  
 Southampton Hampshire  
 SO14 1NU United Kingdom

In pursuance of their powers under the above mentioned Act and orders, the council hereby notify you that they **PERMIT** the following development, that is to say:

**The development of 15 new affordable dwellings and associated external works.  
 Field North West Of The Saltings Crooked Lane Birdham West Sussex**

to be carried out in accordance with your application and plan no. BI/13/01391/FUL as modified by the undermentioned conditions if any submitted to the Council on 3 May 2013 and subject to compliance with the conditions specified hereunder:

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

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

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

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

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

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

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

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



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

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

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

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

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

Reason: To ensure that the development is satisfactorily drained.

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

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

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

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

- 10) No development, including site works of any description or the bringing onto the site of any equipment, machinery or materials, shall take place unless and until details of a scheme to ensure the protection of all existing trees and hedges to be retained on the site (in accordance with condition 8) have been submitted to and approved in writing by the Local Planning Authority. The details shall be based on the submitted Arboricultural Impact Appraisal and Method Statement (Revision D) and BS5837:2012 and, for the avoidance of doubt, the scheme shall, amongst other things, include details of:
- the method of protecting trees (and their root systems) located adjacent to the existing access track during the construction phase of the development
  - the method of constructing, draining and retaining the access roads comprising part of the development and the supervision of those works
  - the method of installing and routing services to the site in areas where such services are to be located within Tree Protection Areas as defined on application drawing TPP REVD and the supervision of those works
  - the location and nature of any protective fencing to be positioned on or adjacent to the site for the duration of construction works. This fencing shall be maintained until all equipment, machinery, surplus materials and soil has been removed from the site. Within the areas so fenced off the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon without the prior written approval of the Local Planning Authority.

The development shall not be carried out other than in accordance with the approved details.

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

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

Reason: In the interests of biodiversity.

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

Reason: To secure satisfactory development.

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

Reason: In the interests of amenity.

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

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

- 15) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- (i) the parking of vehicles of site operatives and visitors;
  - (ii) loading and unloading of plant and materials;
  - (iii) storage of plant and materials used in constructing the development;
  - (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - (v) wheel washing facilities;
  - (vi) measures to control the emission of dust and dirt during construction;
  - (vii) turning on site of vehicles;
  - (viii) the location of any site huts/cabins/offices.

Reason: To ensure safe and neighbourly construction.

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

Reason: In the interests of residential amenity.

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

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

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

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

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

Reason: In the interests of highway safety.

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

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

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

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

- 22) INFORMATIVE

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

- 23) INFORMATIVE

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

- 24) INFORMATIVE

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

- 25) INFORMATIVE

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

- 26) INFORMATIVE

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

27) INFORMATIVE

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

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

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

28) INFORMATIVE

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

## INFORMATIVE

The applicant is reminded that the Council operate a formal procedure for the discharge of conditions. Details of this procedure can be found on the Council's website (<http://www.chichester.gov.uk/index.cfm?articleid=8734>) or by telephone (01243 534734).

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The plans the subject of this decision can be viewed on the Council's website [www.chichester.gov.uk](http://www.chichester.gov.uk) quoting the reference number of the application. For all applications after May 2003, the relevant plans are listed as "Plans-Decided".

Decision Date : 29 November 2013

Signed:   
S. R. Carvell  
Director of Environment

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## NOTES

### **Town and Country Planning Act 1990 Town and Country Planning (Control of Advertisements) Regulations 1992 Town and Country Planning (Trees) Regulations 1999**

**Your attention is directed to the following notes. They are for information only and do not pretend to set out the whole of the law on the subject. It would be well for you to consult your solicitor if you are in any doubt.**

1. If the applicant is aggrieved by the decision of the District Planning Authority to refuse permission for the development, or is aggrieved by a condition imposed on a planning permission, he may appeal to the Secretary of State in accordance with Section 78 of the Town and Country Planning Act 1990 within six months\* from the date of notice or determination giving rise to the appeal. (All appeals must be made on a form which is obtainable from The Planning Inspectorate, Room 3/04A Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN. [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk). Advertisements and ELD/PLD appeal forms are available from County House, Portland Square, Bristol; Tree Preservation Order appeals forms are available from Government Office from The Planning Inspectorate, The Environment Appeals Team, Trees and Hedges, Room 3/25 Hawk Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Email – [environment.appeals@pins.gsi.gov.uk](mailto:environment.appeals@pins.gsi.gov.uk) Telephone – 0303 444 5584. One copy of the appeal form must be submitted to the Head of Planning and Building Control Services, Chichester District Council, East Pallant House, Chichester, West Sussex PO19 1TY).

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the District Planning

## **APPENDIX 13**

THIS AGREEMENT is made on 29th November 2013

BETWEEN

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

## 1. DEFINITIONS

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

- "The Act"** the Town and Country Planning Act 1990 as amended;
- "Affordable Dwelling Units"** the Dwelling Units to be Provided as Affordable Housing in accordance with paragraph 1 of the First Schedule of this Agreement and to be retained in perpetuity as Affordable Housing in accordance with the Council's housing policies and "**Affordable Dwelling Unit**" shall be construed accordingly;
- "Affordable Rented Units"** a form of Affordable Housing, involving homes being made available at a rent level of up to 80% of market rent (inclusive of service charge) at the time of each letting which rent may be increased annually by no more than RPI +0.5% or such other amount as may be prescribed by the Homes and Communities Agency and Affordable Rented Unit' shall be construed accordingly.
- "Affordable Housing"** affordable housing which includes Affordable Rented and Intermediate Housing, provided to eligible households whose needs are not met by the market. The Affordable housing should :
- meet the needs of eligible households including availability at a cost low enough for them to afford and determined with regard to local incomes and local house prices.



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

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

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

**"SPA Welcome Pack"**

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

**"Starter Tenancy"**

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

**Units for Rent**

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

## **2. BACKGROUND**

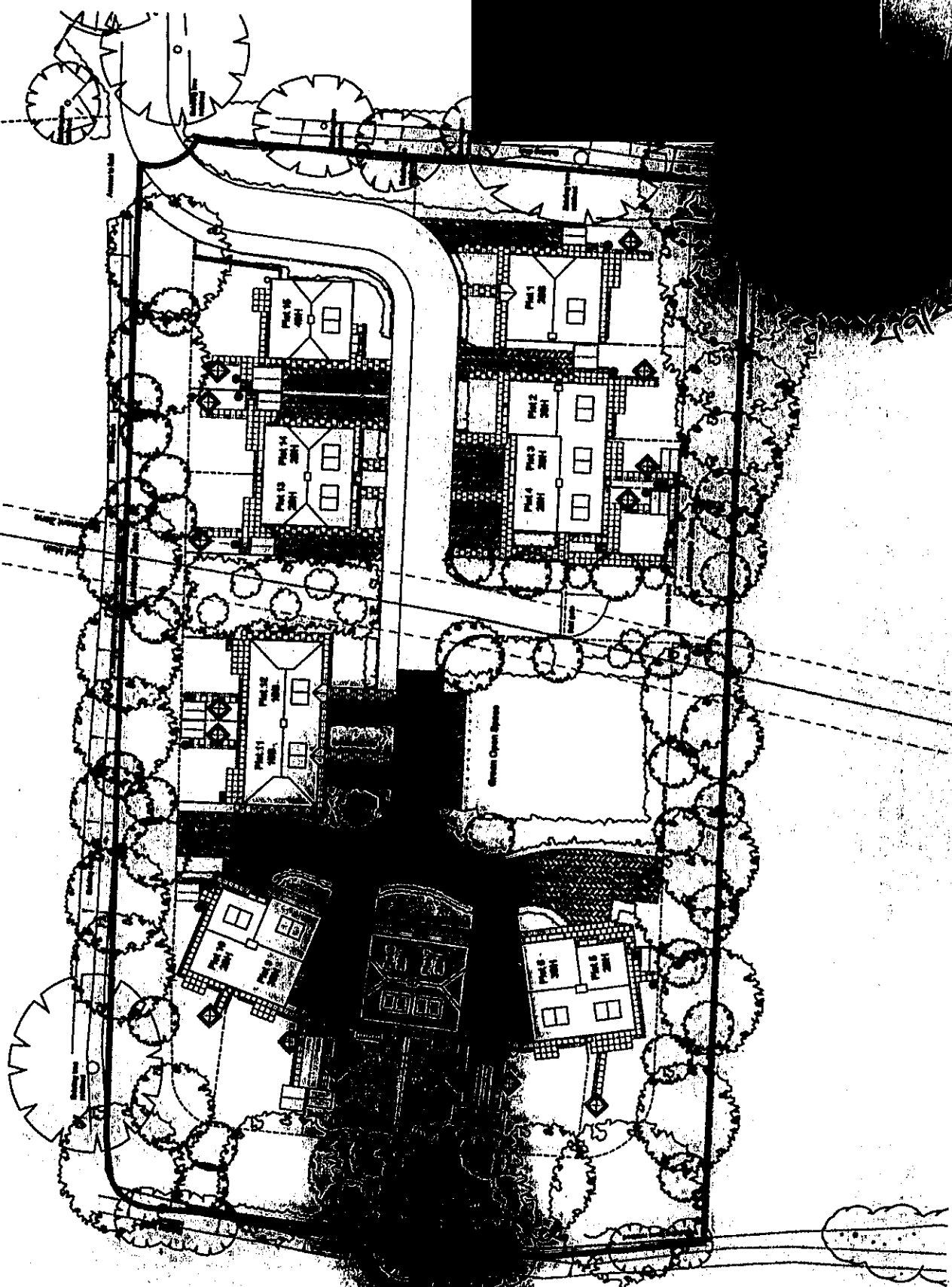
- (A) The Council and the County Council are the local planning authorities, the Council is the Housing Authority and the County Council is the highway authority, education authority and the authority responsible for the provision of library and fire services for the area within which the Land is situated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

The parties agree as follows:

## **3. THE PLANNING OBLIGATIONS**

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

PLAN 1

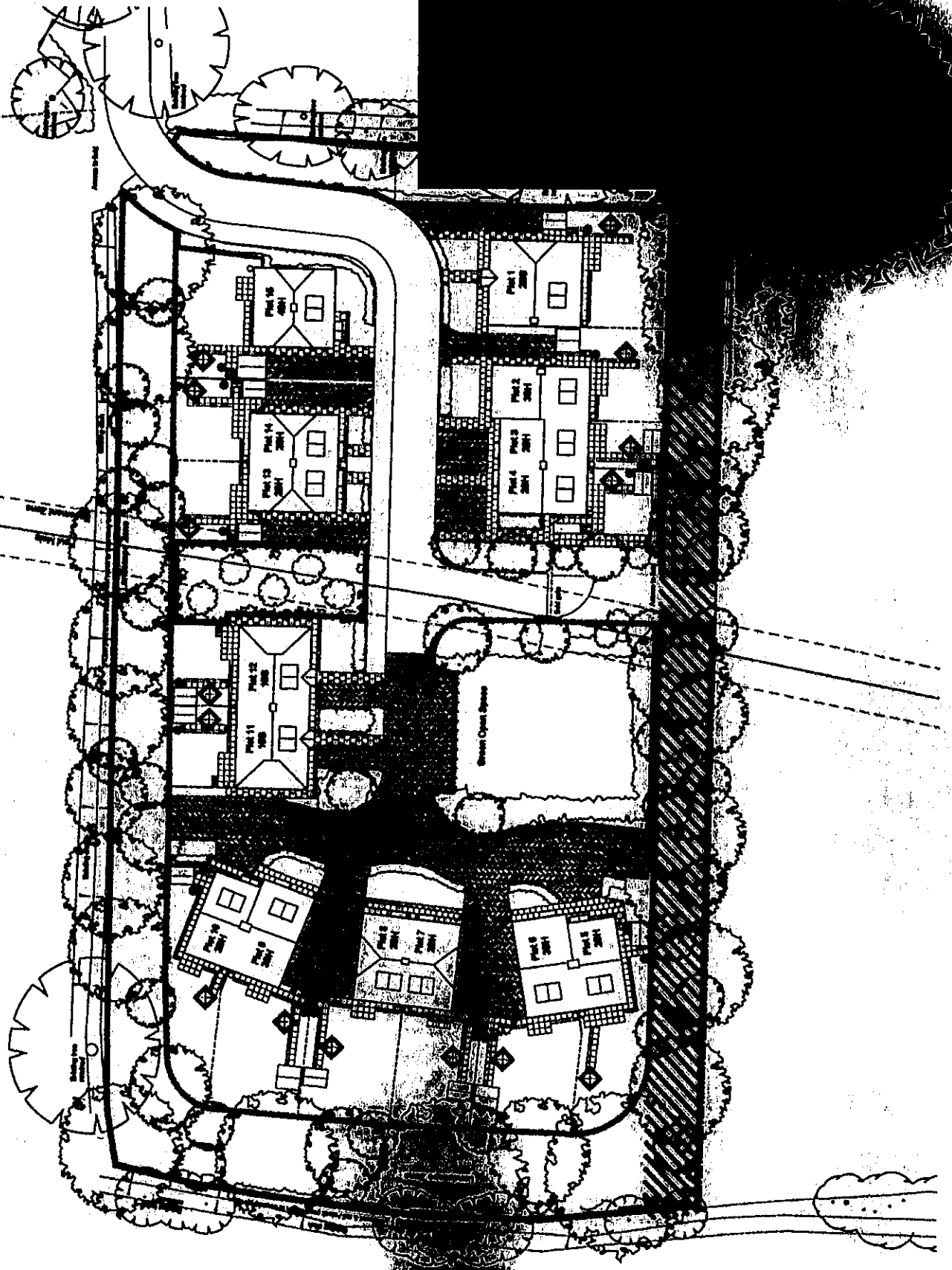


**Hyde Group**  
making a lasting difference  
**NW**

7/2007 Plan as Proposed

2/19/2013

PLAN 2



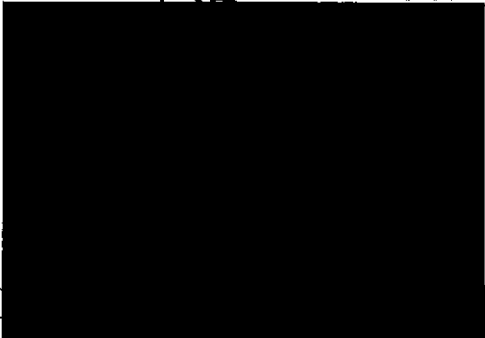
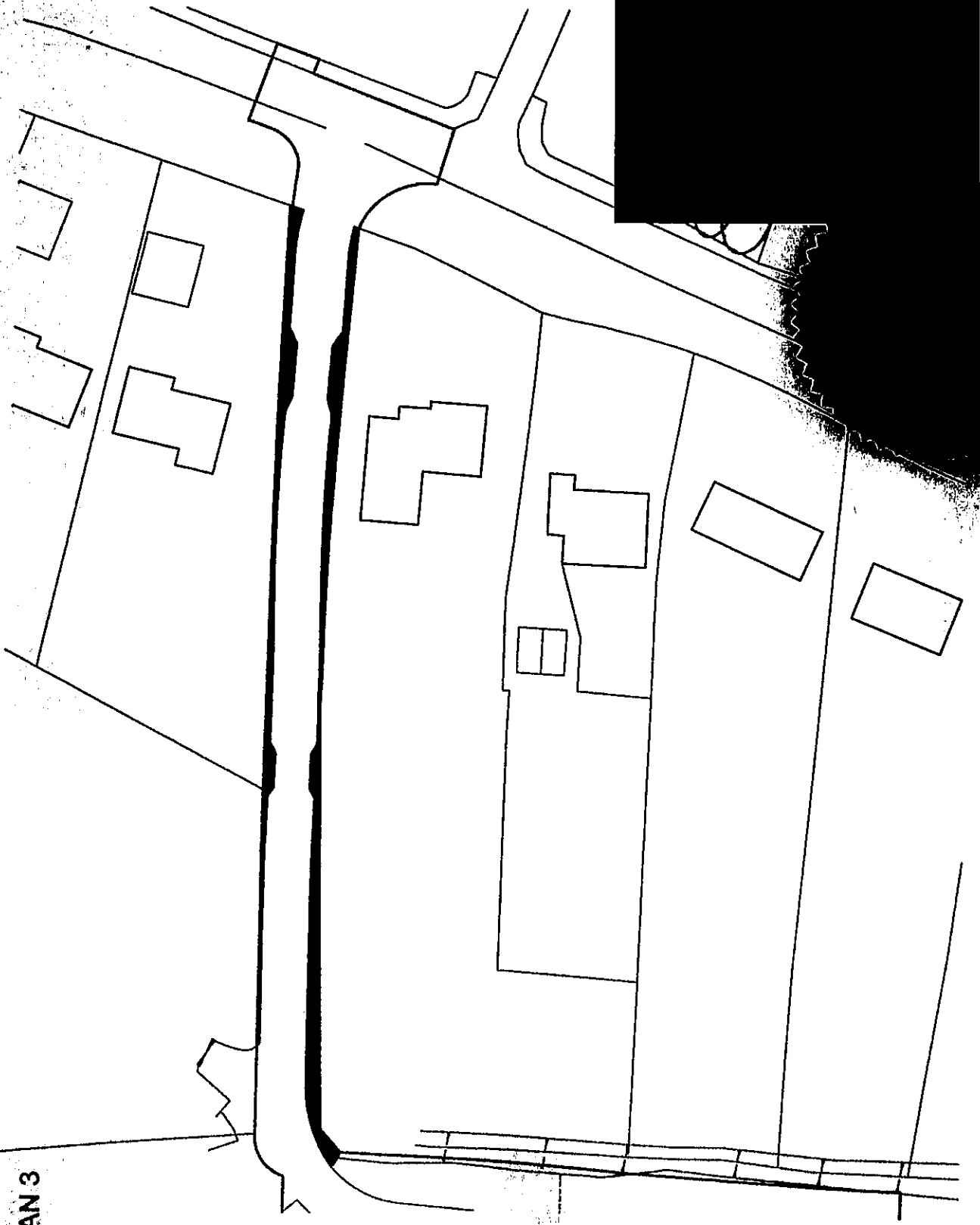
**Hyde Group**  
a lasting difference  
**NW**

Final Plan as Proposed

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PLAN 3



12/13

1. General Notes

2. Schedule of Work

3. Specifications

4. Bill of Materials

5. Formwork Details

6. Reinforcement Details

7. Scaffolding Details

8. Safety Details

9. Environmental Protection

10. Quality Control

11. Construction Methods

12. Site Management

13. Health and Safety

14. Environmental Impact

15. Cost Management

16. Risk Management

17. Communication

18. Project Closeout

Item No.	Description	Quantity	Unit	Notes
1	Concrete	1000	m <sup>3</sup>	
2	Reinforcement	500	kg	
3	Formwork	100	m <sup>2</sup>	
4	Scaffolding	200	m <sup>2</sup>	
5	Environmental Protection	50	m <sup>2</sup>	
6	Quality Control	10	days	
7	Construction Methods	10	days	
8	Site Management	10	days	
9	Health and Safety	10	days	
10	Environmental Impact	10	days	
11	Cost Management	10	days	
12	Risk Management	10	days	
13	Communication	10	days	
14	Project Closeout	10	days	

**Project Information**

Project Name: [Redacted]

Client: [Redacted]

Address: [Redacted]

Site Area: [Redacted]

Scale: [Redacted]

Date: [Redacted]

Drawn by: [Redacted]

Checked by: [Redacted]

Approved by: [Redacted]

**Technical Specifications**

1. **Concrete:** Use Class C30/37 concrete with a minimum 28-day strength of 30 MPa.

2. **Reinforcement:** Use Grade 460 reinforcement bars with a minimum yield strength of 460 MPa.

3. **Formwork:** Use steel formwork with a maximum panel size of 2.0m x 3.0m.

4. **Scaffolding:** Use tubular scaffolding with a maximum height of 10m.

5. **Environmental Protection:** Use plastic sheeting to protect the ground and surrounding areas.

6. **Quality Control:** Perform regular testing of concrete strength and reinforcement placement.

7. **Construction Methods:** Use a cast-in-place concrete method.

8. **Site Management:** Maintain clear access to the site at all times.

9. **Health and Safety:** Implement strict safety protocols, including the use of PPE.

10. **Environmental Impact:** Minimize noise and dust during construction.

11. **Cost Management:** Monitor costs closely and provide regular reports.

12. **Risk Management:** Identify and mitigate risks throughout the project.

13. **Communication:** Hold regular meetings with the client and team.

14. **Project Closeout:** Complete all work and obtain final approval from the client.



**RUBIC**

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**ENWA**

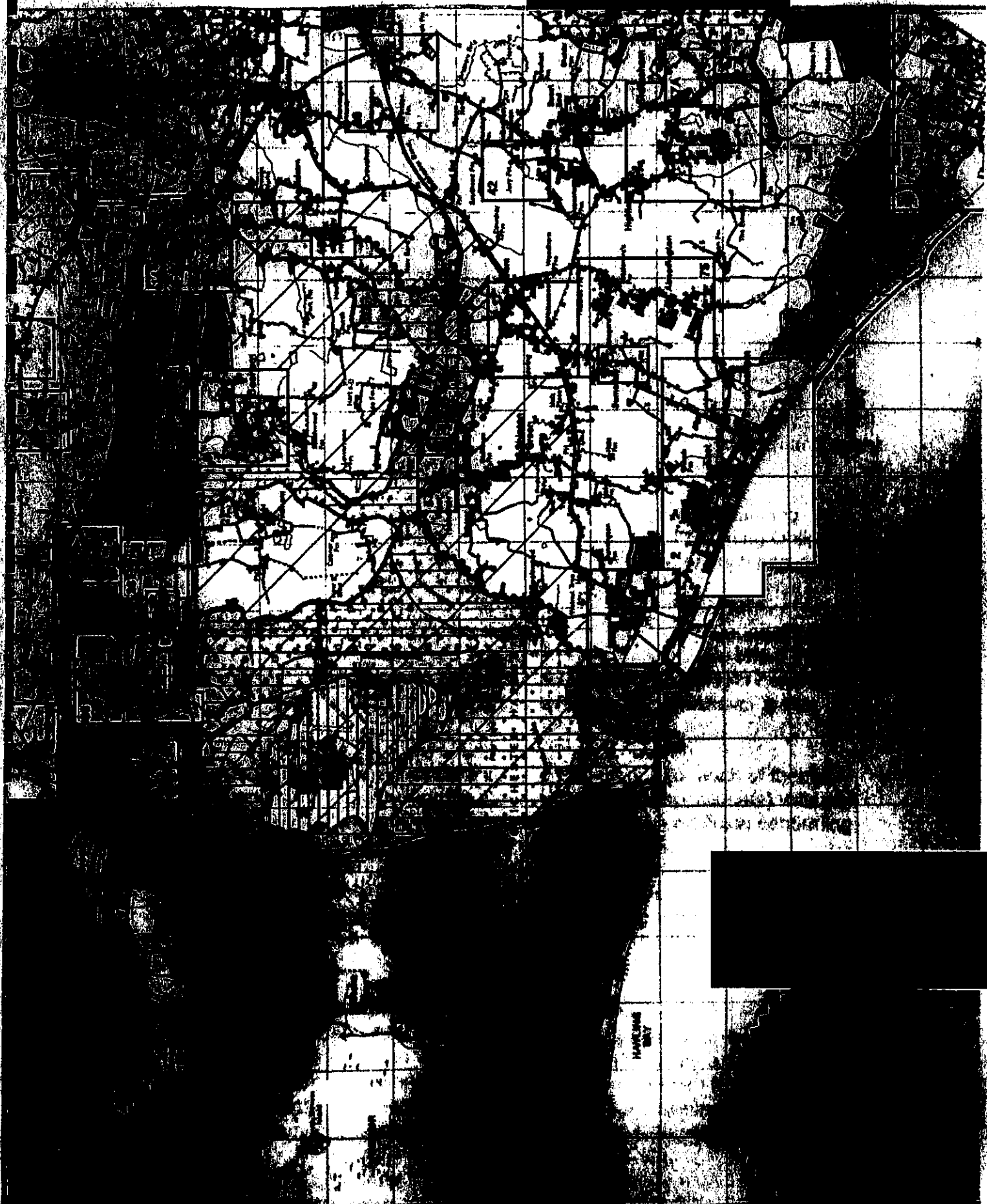
Proposed Housing  
Construction  
Methods

Site Layout / Floor Plan as Proposed

Project No.	12/13
Date	12/13
Scale	1:100
Drawn by	[Redacted]
Checked by	[Redacted]
Approved by	[Redacted]
Project Manager	[Redacted]
Client	[Redacted]
Site Address	[Redacted]
Project Name	[Redacted]
Project No.	12/13
Date	12/13
Scale	1:100
Drawn by	[Redacted]
Checked by	[Redacted]
Approved by	[Redacted]
Project Manager	[Redacted]
Client	[Redacted]
Site Address	[Redacted]
Project Name	[Redacted]



PLAN 4



21912313

#### **4. COMMENCEMENT**

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

4.1.1 the undertakings as to costs contained in clause 11

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

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

#### **5. COVENANTS**

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

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

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

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

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

#### **6. WAIVER**

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

## **7. FUTURE PERMISSIONS**

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

## **8. ARBITRATION**

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

## **9. INTERPRETATION**

- 9.1 Except where the context renders it absurd or impossible every reference to any party to this Agreement shall include the successors to the statutory functions of such party, its or their successors in title, assigns and personal representatives and any other party deriving title from the Owner by and against whom this Agreement shall be enforceable as if they had been originally named as parties.
- 9.2 In this Agreement:
- 9.2.1 words expressed in any gender shall, where the context so requires or permits, include any other gender;
  - 9.2.2 words importing persons shall include bodies corporate and partnerships and other incorporated bodies and vice versa;
  - 9.2.3 words expressed in the singular shall, where the context so requires or permits, include the plural and where any party is more than one person:
    - a) that party's obligations shall take effect as joint and several obligations;
    - b) anything in this Agreement which applies to that party shall apply to all of those persons collectively and each of them separately;
    - c) the benefits contained in this Agreement in favour of that party shall take effect as conferred in favour of all of those persons collectively and each of them separately;

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

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

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

## **10. THIRD PARTY RIGHTS**

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

## **11. COSTS**

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

## **12. SEVERANCE**

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

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

## FIRST SCHEDULE

### The Planning Obligations

#### 1. AFFORDABLE HOUSING

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

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

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

15 Affordable Rented Units of the following mix and sizes:

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

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

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

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

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

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

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

1.4A Upon the Approved Body entering into the Nominations Agreement with the Council, the provisions of the Nominations Agreement shall apply to the Affordable Dwelling Units specified therein and such agreement shall take the place of the provisions of Paragraphs 1.10 to 1.22 below.

1.5 The Affordable Dwelling Units shall not be used other than for Affordable Housing.

1.6 If at any time the Council is reasonably satisfied that:

1.6.1 the Chargee in the proper exercise of its powers intends to dispose of or to cause to be disposed all or any part of the Affordable Dwelling Land

1.6.2 the disposal referred to at 1.6.1 would not comply with the provisions of clause 1.4

no disposal shall take place other than in accordance with clauses 1.7 and 1.8.

1.7 The Chargee (or any receiver appointed by the Chargee) shall:

1.7.1 Only exercise any power of sale arising under a mortgage or charge over any affordable housing unit in the event of default by the Registered Provider

1.7.2 Notify the Council in writing of the aforementioned default as soon as reasonably practicable and in any event within 14 days of serving any notice on the Developer;

1.7.3 Not exercise its power of sale for a period of 18 weeks following the provision of such evidence to enable the Council or a Registered Provider to attempt to complete a transfer of the Affordable Dwelling Units within the said period of 18 weeks provided that the consideration for any such transfer will discharge the debt owed to the Chargee or receiver;

1.7.4 if the Affordable Dwelling Units are not disposed of within the 18 week period, the Chargee (or receiver) may thereafter sell or dispose of the Units as it shall think fit and this Agreement and the Nomination Agreement shall forthwith terminate in relation to such Units;

1.8 The Council's right of pre-emption shall be binding on and enforceable against any successor in title, mortgagee or chargee of all or part of the Affordable Dwelling Land or the income derived therefrom but for the avoidance of doubt shall not be binding upon nor enforceable against any Protected Occupier.

1.9 The parties agree that:

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

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

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

1.10 Until such time as a Disposal has been completed and the Affordable Dwelling Units transferred to an Approved Body who has entered into a Nomination Agreement with the Council as required under paragraph 1.4 above, then the Affordable Dwelling Units shall not be occupied other than as Units for Rent and such units shall not be occupied or managed other than in accordance with the provisions set out in paragraphs 11 to 1.24 below, and the Owner shall appoint an Approved Body (as shall have been previously approved by the Council in writing) and ensure that such Approved Body manages and controls the letting of all the Units for Rent in accordance with the following paragraphs.

### **Council Nominations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **No Council Nominations**

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



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

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

1.15.3 lives within the Parish of Birdham; or

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

is permanently employed within the Parish of Birdham; or

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

Provided that:

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

West Itchenor  
West Wittering  
Earnley  
Sidlesham  
Donnington  
Appledram

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

## **Premiums**

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

## **Rent levels**

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

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

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

#### **Tenancy Agreements**

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

#### **Management and Maintenance**

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

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

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

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

**3. SPA WELCOME PACK**

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

**4. SECTION 106 MONITORING FEE**

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

**5. INTEREST**

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

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

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

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

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

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

Buffer to the transfer of the land to



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

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

## 7. NOTIFICATION

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

## 8. PRIVATE ESTATE ROADS

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

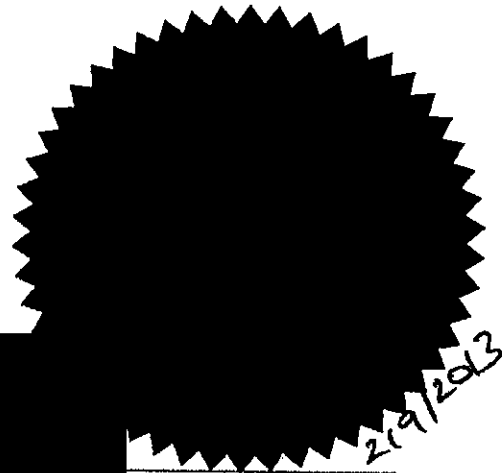
- 8.3 It is agreed with the County Council that all Estate Roads that are stated to be privately maintained by the Owner shall be:
- 8.3.1 Constructed to a standard that is suitable for its intended use;
  - 8.3.2 Maintained by the Owner at their own expense in good and substantial repair and condition;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

## **SECOND SCHEDULE**

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

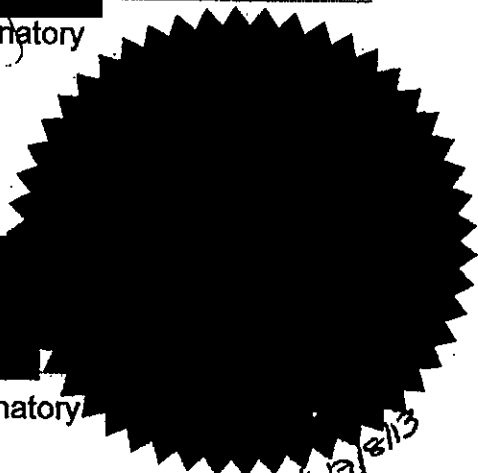
1. The Council covenants that upon receipt of the contribution referred to in paragraph 2 of the First Schedule as paid to the Council under the First Schedule it will keep a separate account of the said contribution and apply the same for the purposes for which the said contribution was paid.
2. In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

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



Authorised Signatory

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



Authorised Signatory

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

.....  
Witness Name  
.....  
.....  
Witness Address  
.....  
Witness Occupation

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

\_\_\_\_\_  
Director  
  
Director/Secretary



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

Authorised Signatory

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

Authorised Signatory

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

[Redacted]

Witness Name

*Richard [unclear] [unclear]*  
Witness Address

*[unclear]*  
Witness Occupation

[Redacted]

[Redacted]

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

[Redacted]

Director

[Redacted]

Director/Secretary



11 255

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

**APPENDIX 2**  
**Draft Nomination Agreement**

**DATED**

**2013**

**(1) MARTLET HOMES LIMITED**

**and**

**(2) CHICHESTER DISTRICT COUNCIL**

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**NOMINATION AGREEMENT**

relating to land at

Land to the west of Crooked Lane, Birdham

Chichester, West Sussex

Re Planning Application 13/01391/FUL

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

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**BETWEEN**

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

**1 DEFINITIONS**

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

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

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

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

## **2 BACKGROUND**

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

The parties agree as follows:

### 3 OCCUPATION OF UNITS FOR RENT

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

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

- 3.2 In respect of the following proportions of the Units for Rent the Association covenants not to cause or permit the units to be occupied other than by persons nominated by the Council and selected pursuant to the following procedure Provided always that all persons nominated by the Council shall be nominated in accordance with the Association's Allocations Policy :

3.2.1 the first tenants to occupy the Units for Rent after practical completion, 100% of the total number of Units for Rent;

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

- 3.3 In respect of the Units for Rent to which the Council has nomination rights the Association shall follow the procedures set out in the Service Level Agreement EXCEPT THAT if no Service Level Agreement is in existence at the relevant time the Association shall:

3.3.1 serve notice on the Council of any vacancy arising (a "**Vacancy Notice**");

3.3.2 allow the Council the following periods from receipt of a Vacancy Notice to supply written particulars (a "**Nomination Notice**") of up to three (3) persons ("**Nominees**") to be nominated as a tenant, that is;

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

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

SAVE THAT the Council shall not be bound to put forward persons within the category set out in paragraphs 3.5.1 to 3.5.3 but shall have the ability to nominate persons with a priority housing need who do not have a local connection to any of the Parishes referred to in the said paragraphs but who satisfy the criteria set out in paragraph 3.5.3 in respect of the Chichester District;

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



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

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

**No council nominations for Units for Rent**

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

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

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

3.5.3 lives within the Parish of Birdham; or

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

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

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

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

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

## **4 UNIT FOR RENT PROVISION**

4.1 The Association shall ensure:

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

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

## **5 MANAGEMENT AND MAINTENANCE**

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

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

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

**7 NOTICES TO EITHER PARTY**

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

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

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

**9 DISPOSAL RESTRICTIONS**

9.1 The parties to this Agreement reaffirm the covenants and conditions contained in the Section 106 Agreement.

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

**10 EXCLUSION CLAUSE**

10.1 It is hereby agreed that the provisions of this Agreement shall not be binding upon nor enforceable against:

10.1.1 A mortgagee in possession of the Affordable Dwelling Land or any part thereof exercising its power of sale who has first followed the pre-emption procedures set out in clauses 6 and 7 of the Planning Agreement

10.1.2 Any person deriving title from any of the persons specified in clause 10.1.1 (inclusive) above.

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

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

Committee Member

Committee Member

Secretary

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

Authorised Signatory

## **APPENDIX 14**

CHICHESTER DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE  
ORDER) 2015 (now, as amended)

Agent Details:

Mr Paul Burgess MRTPI  
Lewis & Co Planning  
2 Port Hall Road  
Brighton BN1 5PD  
United Kingdom

Applicants Details :

Sarah Poulter On Behalf Of Martlett Homes Ltd  
Martlet Homes Ltd  
C/o Lewis & Co Planning

In pursuance of their powers under the above mentioned Act and orders, the council hereby notify you that they **PERMIT** the following development, that is to say:

**Variation of Conditions 3, 5, 6, 8, 13, 20 and 21 of planning permission BI/13/01391/FUL - to vary the wording of conditions in order to allow the development to commence.  
Field North West Of The Saltings Crooked Lane Birdham West Sussex**

to be carried out in accordance with your application and plan no. BI/16/01809/FUL as modified by the undermentioned conditions if any submitted to the Council on 31 May 2016 and subject to compliance with the conditions specified hereunder:

- 1) The development hereby permitted shall be begun before the 29th November 2016.

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

- 2) The development hereby permitted shall be carried out in accordance with the approved plans: 136.0099-2100 REV P1, 136.0099-2101 REV P1, 136.0099-SK3001 REV P3, 136.0099-SK3002 REV P4, P001 REV A, P109 REV D, P221 REV A, P222 REV A, P223 REV A, P224 REV A, P225 REV A, P226 REV A, P227 REV A, P228, P229, P230 and TPP REV D, 381415-CO-01.

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

- 3) No development comprising the access road and the construction of the superstructure of any building hereby permitted shall take place unless and until a schedule of materials and finishes and, where so required by the Local Planning Authority, samples of such materials and finishes to be used for external walls and roofs of the proposed buildings and surfacing materials have been submitted to and approved by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details and retained as such thereafter.

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

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

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

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

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

6) Before the development hereby permitted is begun, other than the erection of site boundary perimeter fencing, or the pegging out of any road or part of a road shown on application drawing 381415-CO-01, a scheme showing the proposed method of surface water disposal from roads, paved areas and roofs, including all necessary on-site and off-site works, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on Sustainable Urban Drainage principles and, unless otherwise agreed by the Local Planning Authority, shall be informed by winter groundwater monitoring of the site. In the event that the scheme involves discharge to the local ditch network, it shall be demonstrated to the Local Planning Authority's satisfaction that the rate of that discharge does not exceed pre-development values and that the ditches are in an acceptable condition to accept such discharge. Before the development hereby permitted is occupied the approved scheme shall be carried out and completed in full accordance with the details shown in the scheme. The responsibility for securing all necessary agreements and permits from the landowner or other party shall rest with the developer.

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

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

Reason: To ensure that the development is satisfactorily drained.

8) No development comprising the access road (save for the pegging out of a road or part of a road shown on application drawing 381415-CO-01) and the construction of the superstructure of any building hereby permitted shall take place unless and until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, which shall include a planting plan and schedule of plants noting species, plant sizes and proposed numbers/densities. In addition, all existing trees and hedgerows on the land shall be indicated including details of any to be retained, together with measures for their protection in the course of development. The scheme shall include seeding with a Native British Wildflower Flora mix appropriate to the soil and climate of the site and shall make particular provision for the conservation and enhancement of biodiversity on the application site including the provision of bat and bird boxes and log piles on the site. The scheme shall be designed to achieve levels of shelter/windbreak, shade and drought resistance to accord with the expected climate changes during the design life of the development.

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

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

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

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

- the method of protecting trees (and their root systems) located adjacent to the existing access track during the construction phase of the development
- the method of constructing, draining and retaining the access roads comprising part of the development and the supervision of those works
- the method of installing and routing services to the site in areas where such services are to be located within Tree Protection Areas as defined on application drawing TPP REVD and the supervision of those works
- the location and nature of any protective fencing to be positioned on or adjacent to the site for the duration of construction works. This fencing shall be maintained until all equipment, machinery, surplus materials and soil has been removed from the site. Within the areas so fenced off the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon without the prior written approval of the Local Planning Authority.

The development shall not be carried out other than in accordance with the approved details.

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

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

Reason: In the interests of biodiversity.

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

Reason: To secure satisfactory development.



13) With the exception of the erection of site boundary perimeter fencing the development hereby permitted shall not be occupied unless and until details of screen walls and/or fences have been submitted to and approved by the Local Planning Authority and the walls/fences erected accordingly. Once erected, they should be maintained in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of amenity.

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

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

15) No development other than the erection of site perimeter boundary fencing, or the pegging out of any road or part of a road shown on application drawing 381415-CO-01 shall take place until a Construction Method Statement has been submitted to and been approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

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

Reason: To ensure safe and neighbourly construction.

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

Reason: In the interests of residential amenity.

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

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

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

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

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

Reason: In the interests of highway safety.

20) The development hereby permitted shall be designed and constructed in accordance with the water efficiency, sustainable construction and on-site renewable energy criteria set out in policy 40 of the Adopted Chichester District Local Plan: 2014-2029. Details to demonstrate how each dwelling has complied with the criteria in policy 40 shall be submitted to and approved by the Local Planning Authority prior to occupation of that dwelling. The development shall not be carried out other than in accordance with the approved details.

Reason: In the interests of the environment and to accord with policy 40 of the Chichester Local Plan.

21) INFORMATIVE

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

22) INFORMATIVE

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

23) INFORMATIVE

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

24) INFORMATIVE

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

25) INFORMATIVE

Your attention is drawn to the provisions of the Countryside and Rights of Way Act 2000, Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended).

These make it an offence to:

- Kill or injure any wild bird or bat;
- Damage, destroy or take the eggs or nest of any wild bird (when the nest is being built or is in use);
- Damage or destroy the breeding sites and resting places (roost) of certain animals including those used by all bats and certain moths.

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

If the tree is being used as a breeding site or resting place (roost) by bats, then a Natural England Licence would be required before removal of the tree. You are advised to contact Natural England for more information on 0845 601 4523.

26) INFORMATIVE

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

27) INFORMATIVE

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

INFORMATIVE

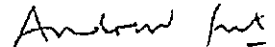
The applicant is reminded that the Council operate a formal procedure for the discharge of conditions. Details of this procedure can be found on the Council's website (<http://www.chichester.gov.uk/planningadvice#planningapplications>) or by telephone (01243 534734).

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The plans the subject of this decision can be viewed on the Council's website [www.chichester.gov.uk](http://www.chichester.gov.uk) quoting the reference number of the application. For all applications after May 2003, the relevant plans are listed as "Plans-Decided".

Decision Date : 14 October 2016

Signed:



Andrew Frost  
Head of Planning Service  
Chichester District Council

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**NOTES**

**Town and Country Planning Act 1990  
Town and Country Planning (Control of Advertisements) Regulations 1992  
Town and Country Planning (Trees) Regulations 1999**

**Your attention is directed to the following notes. They are for information only and do not pretend to set out the whole of the law on the subject. It would be well for you to consult your solicitor if you are in any doubt.**

1. If the applicant is aggrieved by the decision of the District Planning Authority to refuse permission for the development, or is aggrieved by a condition imposed on a planning permission, he may appeal to the Secretary of State in accordance with Section 78 of the Town and Country Planning Act 1990 within six months\* from the date of notice or determination giving rise to the appeal. (All appeals must be made on a form which is obtainable from The Planning Inspectorate, Room 3/04A Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN. <https://www.gov.uk/planning-inspectorate>. Advertisements and ELD/PLD appeal forms are available from County House, Portland Square, Bristol; Tree Preservation Order appeals forms are available from Government Office from The Planning Inspectorate, The Environment Appeals Team, Trees and Hedges, Room 3/25 Hawk Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Email – [environment.appeals@pins.gsi.gov.uk](mailto:environment.appeals@pins.gsi.gov.uk) Telephone – 0303 444 5584. One copy of the appeal form must be submitted to the Head of Planning

## **APPENDIX 15**

**TO BE  
SCANNED**

DATED

*14<sup>th</sup> October*

2016

CHICHESTER DISTRICT COUNCIL

and

WEST SUSSEX COUNTY COUNCIL

and

MARTLET HOMES LIMITED

and

NICHOLAS JOHN MITCHELL WAY

DEED OF VARIATION  
of Agreement made under  
S.106A of Town and Country Planning Act 1990  
relating to land to the west of Crooked Lane,  
Birdham, Chichester, West Sussex

Planning Application Reference: 16/01809/FUL

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

*TCP/4/797/i (NG)*

THIS DEED OF VARIATION is made the 14<sup>th</sup> day of October  
Two Thousand and Sixteen

**BETWEEN**

1. **CHICHESTER DISTRICT COUNCIL** whose offices are at East Pallant House, East Pallant, Chichester in the County of West Sussex (hereinafter called "**the Council**")
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ acting in its capacity as planning highway library and fire authority (hereinafter called the "**County Council**")
3. **MARTLET HOMES LIMITED** whose registered office is situated at 30 Park Street London SSE1 9EQ (company registration number IP030648) (hereinafter called "**the Owner**")
4. **NICHOLAS JOHN MITCHELL WAY** of 6 The Saltings, Birdham, Chichester, West Sussex PO20 7JA ("**the Option Holder**")

**WHEREAS:**

- (1) BY an agreement dated 29<sup>th</sup> November 2013 (hereinafter referred to as "**the Original Agreement**") made between the Council (1) the County Council (2) the Owner (3) and the Option Holder (4) in pursuance of section 106 of the Town and Country Planning Act 1990 ("**the Act**") the Council granted conditional planning permission under application number 13/01391/FUL ("**the Original Permission**") subject to covenants as therein contained in respect of land known as land to the west of Crooked Lane, Birdham, Chichester, West Sussex (hereinafter called "**the Land**")

- (2) THE Owner is the owner in fee simple of the Land registered at H M Land Registry under title number WSX362152 and subject to the interest of the Option Holder but otherwise free from incumbrances
- (3) The Owner has submitted an application to vary the Original Permission under section 73 of the Act for the variation of conditions 3, 5, 6, 8, 13, 20 and 21 of the Original Permission and given planning reference 16/01809/FUL ("**the S73 Application**")
- (4) The Council is minded to grant the S73 Application subject to the parties entering into this Deed to vary the Original Agreement and apply the terms of the Original Agreement to the granted S73 Application ("**the S73 Permission**")
- (5) Once the S73 Permission is issued by the Council either the Original Permission or the S73 Permission may be implemented and it is the parties intention that the planning obligations contained within the Original Agreement will become applicable and enforceable upon implementation of either the Original Permission or the S73 Permission

## 1. RULES OF INTERPRETATION

- 1.1. Except where a contrary intention appears references in this Deed to clauses, paragraphs and schedules are references to those in the Original Agreement
- 1.2. The definitions and interpretations of the Original Agreement shall apply to this Deed where appropriate

## 2. NOW IT IS HEREBY AGREED:

- 2.1. The Council and the County Council in pursuance of their statutory powers and all other enabling powers and the Owner and the Option Holder hereby agree that the Original Agreement shall be **AMENDED** as follows:



- (i) The words "*Affordable Dwelling*" shall be **DELETED** from the first line of the definition of "*Application*"
- (ii) The words "*and/or an application under Section 73 of the Act for variation of conditions of the Permission and given Council reference 16/01809/FUL*" shall be **INSERTED** at the end of the definition of "*Application*";
- (iii) A new definition of "*Surface Water Disposal Scheme*" shall be **INSERTED** with the following meaning; "*the scheme to be approved by the Council in accordance with Condition 6 of the Permission reference 16/01809/FUL*";
- (iv) The word "*Planning*" shall be **DELETED** from the last line of the definition of "*Proposed Development*";
- (v) The words "*in the form of the draft attached to this Agreement as Appendix 1*" shall be **DELETED** from the definition of "*Permission*";
- (vi) The words "*and management plan*" shall be **DELETED** from the first line of the definition of "*Landscape Management Plan*" and **INSERTED** after the word "*Permission*" in the second line of the same definition;
- (vii) The words "*(in the event that Permission reference 13/01391/FUL is Commenced) or prior to First Occupation (in the event that Permission reference 16/01809/FUL is Commenced)*" shall be **INSERTED** after "*Prior to the Operative Date*" in the first line of paragraph 6.1 of the First Schedule;
- (viii) A new paragraph 9 shall be **INSERTED** into the First Schedule as follows:

**"9. DRAINAGE**

9.1 In the event that Permission reference 16/01809/FUL is Commenced no Development SAVE FOR the erection of boundary <sup>perimeter</sup> fencing and/or the pegging out of any road or part of a road in accordance with drawing 381415-CO-01 (entitled "Co-ordinate Setting Out Plan") that have no impact on the

*Surface Water Disposal Scheme shall be undertaken until the Surface Water Disposal Scheme has been approved by the Council in writing*

*9.2 The Owner shall ensure the Surface Water Disposal Scheme is approved by the Council in writing prior to undertaking any Development SAVE FOR the erection of boundary fencing and/or the pegging out of any road or part of a road in accordance with drawing 381415-CO-01 (entitled "Co-ordinate Setting Out Plan") that have no impact on the Surface Water Disposal Scheme"; and*

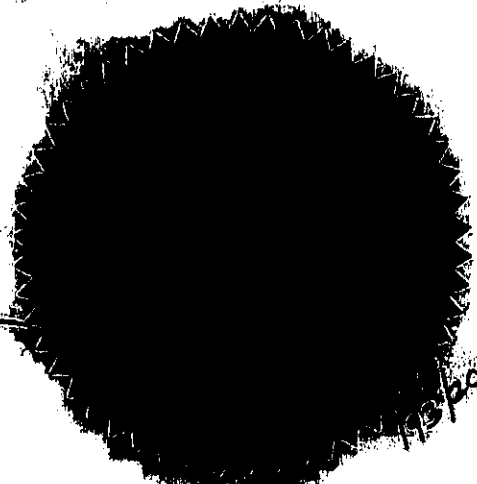
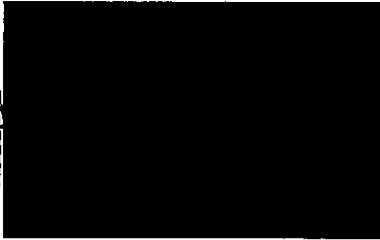
(ix) Appendix 1 shall be DELETED.

- 2.2. Otherwise than as varied by this Deed the Original Agreement shall remain as drawn and shall be enforceable by the Council and the County Council as the local planning authorities for the purposes of the Act against the Original Application and the Owner agrees to remain bound by all the terms of the Original Agreement
- 2.3. The Owner shall be responsible for payment of the legal costs of both the Council and the County Council reasonably and properly incurred in connection with the preparation and completion of this Deed
- 2.4. Nothing contained in this Deed shall affect the powers of the Council and the County Council with regard to the enforcement of planning control under the Act from time to time in force
- 2.5. This Deed shall be enforceable by the Council and the County Council as the planning authorities in the same manner as the Original Agreement
- 2.6. This Deed is made pursuant to section 106A of the Act

IN WITNESS whereof the parties hereto have executed this document  
as a Deed and delivered it the day and year first before written

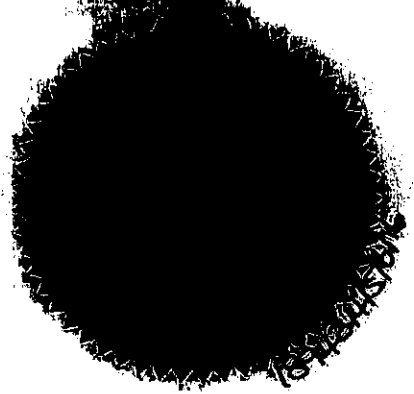
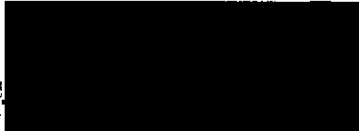
THE COMMON SEAL OF THE  
CHICHESTER DISTRICT COUNCIL  
was hereunto  
affixed in the presence of:-

Authorized Signatory



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

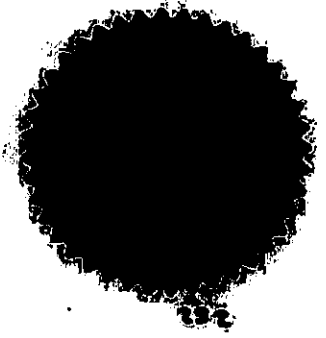
Authorised Signatory



THE COMMON SEAL of MARTLET  
HOMES LIMITED was hereunto affixed  
in the presence of:-

Authorised signatory

Authorised signatory



SIGNED as a Deed by **NICHOLAS** )  
**JOHN MITCHELL WAY** in the presence )  
of: )



Witness signature:

Witness name:  
(BLOCK CAPS)

Kim Harvey

Address:

3 ST Nicholas Rd  
Bridges BN41 2Q

Occupation:

Administrator

## **APPENDIX 16**

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 AND 192  
(as amended by section 10 of the Planning and Compensation Act 1991)  
TOWN AND COUNTRY PLANNING  
(DEVELOPMENT MANAGEMENT PROCEDURE ORDER) 2015 (as amended)  
ARTICLE 39 CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

To:

Agent :

Applicant Details :

Mr Keith Lancaster  
Blake Morgan LLP  
6 New Street Square  
London EC4A 3DJ

Mrs Sarah Poulter  
Martlett Homes Limited  
Telecom House  
125-135 Preston Road Brighton  
BN1 6AF

Chichester District Council hereby certifies that on 18th April 2017 the use and building operations described in the First Schedule in respect of the land specified in the Second Schedule to this certificate and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

1) **FIRST SCHEDULE**

The true pre-commencement conditions were discharged by the Council before 29th November 2016 for the purposes of implementation of the planning permission. All other conditions, for the reasons outlined above, are not considered to true pre-commencement conditions, although a number have, however, still be discharged by the Council. Planning permission (ref: BI/16/01809/FUL) was lawfully implemented on or before 29 November 2016 by the carrying out of material operations and, therefore, the development permitted by the planning permission can be lawfully carried out, pursuant to that permission.

**SECOND SCHEDULE**

Field North West of The Saltings, Crooked Lane, Birdham, West Sussex.

INFORMATIVE

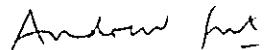
The applicant is reminded that the Council operate a formal procedure for the discharge of conditions. Details of this procedure can be found on the Council's website (<http://www.chichester.gov.uk/planningadvice#planningapplications>) or by telephone (01243 534734).

---

The plans the subject of this decision can be viewed on the Council's website [www.chichester.gov.uk](http://www.chichester.gov.uk) quoting the reference number of the application. For all applications after May 2003, the relevant plans are listed as "Plans-Decided".

Date : 25 July 2017

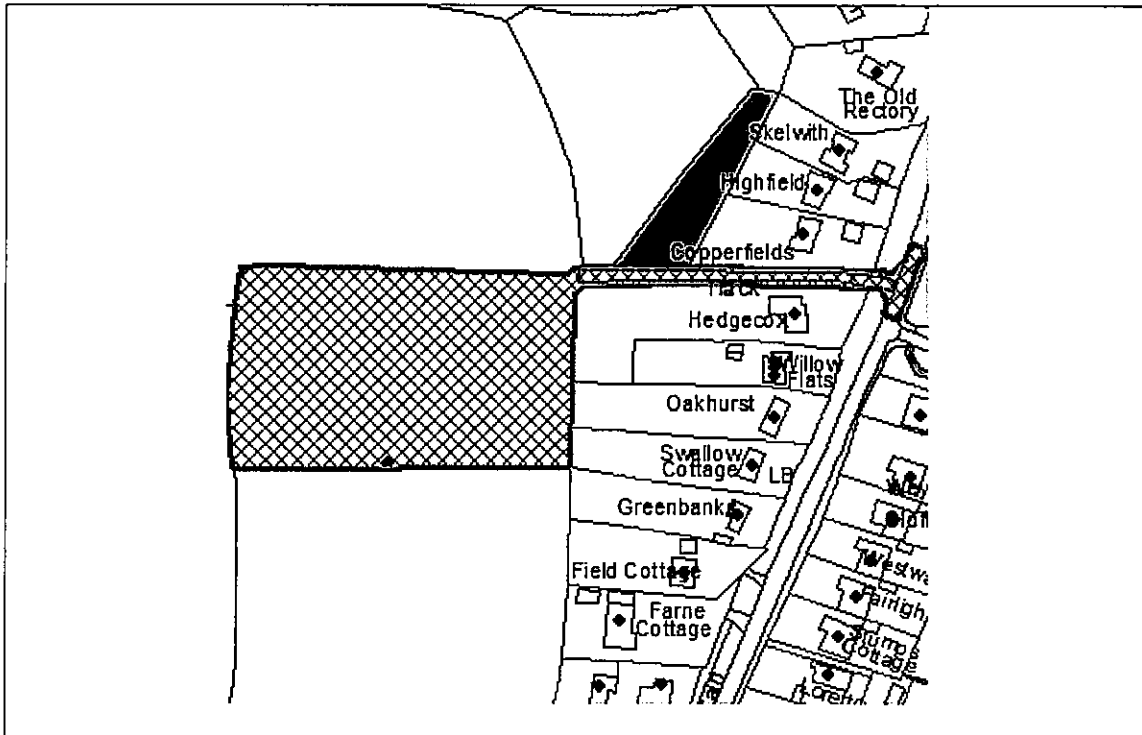
Signed:



Andrew Frost  
Head of Planning Services  
Chichester District Idox

Notes

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use and operations specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful on the specified date and, thus, would not have been liable to enforcement action under section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use and operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or operations which are materially different from those described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness



**CHICHESTER DISTRICT COUNCIL**



**S.R. CARVELL, DIP TP, MRTPI.  
DIRECTOR OF ENVIRONMENT**

**Subject:** Proposed Lawful Development

**Location:** Field North West Of The Saltings  
Crooked Lane  
Birdham  
West Sussex

**File Reference:** 17/01163/PLD

**Date:** 25 July 2017

**O.S. Map Reference:** Eastings - 482016 Northings - 100028

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Chichester District Council, East Pallant House, Chichester, West Sussex, PO19 1TY  
Licence No. LA077 550.



## **APPENDIX 17**

Martlet Homes Limited  
30 Park Street  
London  
SE1 9EQ

If calling  
please ask  
for:

Customer Services  
01243 534740  
Martin Mew  
E-mail:  
mmew@chichester.gov.uk

Our ref:  
Your ref:

BI/17/03600/PREOT

11th January 2018

Dear Sir or Madam

Proposal: Access road to affordable housing site 16/01809/FUL.

Location: Field North West Of The Saltings Crooked Lane Birdham West Sussex

Thank you for your pre-application enquiry regarding the proposal above. This advice is based on a desktop assessment of the submitted information and our records.

### Relevant Planning Policies

National: National Planning Policy Framework - Core Principles and Sections 7 and 11.

Local: Chichester Local Plan - Policy 1: Presumption in Favour of Sustainable Development, Policy 2: Development Strategy and Settlement Hierarchy, Policy 39: Transport Accessibility and Parking, Policy 43: Chichester Harbour Area of Outstanding Natural Beauty (AONB), Policy 45: Development in the Countryside, Policy 48: Natural Environment and Policy 49: Biodiversity.

Neighbourhood Plan: Birdham Neighbourhood Plan is made and is a material consideration. Of particular relevance are Policies 2, 3, 4, 6, 9, 11, 12 and 13.

Other: Adopted Joint Chichester Harbour Area of Outstanding Natural Beauty Supplementary Planning Document.

### Relevant Site Constraints

Other than where the access would join Chaffer Lane, the location of the access is within the 'Rest of the Plan Area' outside of any defined Settlement Boundary. The site is located within Chichester Harbour Area of Outstanding Natural Beauty (AONB).

### Relevant Planning History of Site

13/01391/FUL - The development of 15 new affordable dwellings and associated external works - Permit 2013.

16/01809/FUL - Variation of Conditions 3, 5, 6, 8, 13, 20 and 21 of planning permission BI/13/01391/FUL - to vary the wording of conditions in order to allow the development to commence - Permit 2016

### Relevant Consultations Responses

Comments have been received from Chichester Harbour Conservancy, extracts from this are incorporated into the response.

### Assessment of Proposal

Pre-application advice is sought regarding a proposed alternative access track for the development site to the rear of Crooked Lane, for 15 affordable dwellings. It is stated that alternative access options are being investigated as part of the potential compulsory purchase of the access track for the approved scheme.

The proposed access road is shown from Chaffer Lane to the south west of the approved development site, largely running along field boundaries to the north west, outside of the Settlement Boundary and encroaching into the rural landscape.

Comments have been received from Chichester Harbour Conservancy, and officers agree with these comments. Of particular relevance is:

"The proposed alternative access road would be harmful to the rural landscape and natural beauty of the AONB through an unjustified and excessive length of hardsurfacing 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."

The impact on the amenities enjoyed by occupiers of the surrounding properties would be fully assessed at planning application stage. There is likely to be some impact from noise and activity as the access would run along the rear boundaries of several properties.

In terms of highway safety please be aware that the local highway authority operate their own pre-application advice service for comments. It is therefore suggested that you contact them for any specific comments on the proposal. Guidance on this can be found at <https://www.westsussex.gov.uk/roads-and-travel/information-for-developers/pre-application-advice-for-roads-and-transport/> .

### Summary

For the reasons given above 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.

Should you decide to pursue an application you should consult our Local List for details of validation requirements. This is available at <http://www.chichester.gov.uk/planningadvice>.

This advice is given by an officer of the Council and is not necessarily binding on the Council for any formal application you may submit. You should note that the proposal has not been given any third party publicity and the views of all statutory consultees have not been sought.

If you have any queries regarding the contents of this letter please do not hesitate to contact the case officer Martin Mew. Please note that other than for any clarification of this advice that may be required, this now concludes your Pre-Application Enquiry.

Yours faithfully

Martin Mew

## **APPENDIX 18**

Obj No	Objector	First name	Surname	Property Number	Plot Number	Qualifying / Non qualifying	Objection Summary	Objection Key
1	Linda Corkett	Linda	Corkett	Freehold	1, 2, 3, 4, 5	Qualifying	Inappropriate Access, Highway Safety, Lack of infrastructure and flooding risk and damage to nature, Unsuitable Location / No need for affordable housing.	1, 2, 4, 5
2	Alex Rogers	Alex	Rogers			Non Qualifying	Inappropriate Access, Highway Safety, Lack of infrastructure and flooding risk and damage to nature, Error Planning Permission	1, 2, 4, 8
3	Guy Tremayne and Philippa Tremayne	Guy	Tremayne			Non Qualifying	Inappropriate Access, Highway Safety, Unsuitable use of council powers, Lack of infrastructure and flooding risk and damage to nature, Unsuitable Location / No need for affordable housing.	1, 2, 3, 4, 5
4	Helen Boarer	Helen	Boarer			Non Qualifying	Highway Safety, Unsuitable use of council powers, Lack of infrastructure and flooding risk and damage to nature	2, 3, 4
5	Peter Woolfson	Peter	Woolfson			Non Qualifying	Inappropriate Access, Highway Safety, Unsuitable use of council powers, Error Planning Permission	1, 2, 3, 8
6	R.A. Woodruff	R.A.	Woodruff			Non Qualifying	Inappropriate Access, Highway Safety, No wellbeing benefits	1, 2, 9
7	Robert Crowe	Robert	Crowe			Non Qualifying	Highway Safety, Unsuitable use of council powers, Lack of infrastructure and flooding risk and damage to nature, No wellbeing benefits	2, 3, 4, 9
8	Clive Barrington	Clive	Barrington			Non Qualifying	Inappropriate Access, Highway Safety, Unsuitable use of council powers, Unsuitable Location / No need for affordable housing, Error Planning Permission, No wellbeing benefits	1, 2, 3, 5, 8, 9
9	Paul Kirkin	Paul	Kirkin			Non Qualifying	Inappropriate Access, Highway Safety, Lack of infrastructure and flooding risk and damage to nature, Unsuitable Location	1, 2, 4, 5
10	GW Lawson	GW	Lawson			Non Qualifying	Unsuitable use of council powers, CPO Process	3, 10
11	R.W. Green	R.W.	Green			Non Qualifying	Inappropriate Access, Highway Safety, Unsuitable Location / No need for affordable housing, No wellbeing benefits	1, 2, 5, 9
12	David Owen	David	Owen			Non Qualifying	Inappropriate Access, Highway Safety, Unsuitable use of council powers, Unsuitable Location/ No need for affordable housing.	1, 2, 3, 5
13	Brian Wort	Brian	Wort			Non Qualifying	Highway Safety, Lack of infrastructure and flooding risk and damage to nature, Unsuitable Location / No need for affordable housing, No wellbeing benefits	2, 4, 5, 9
14	Birdham Parish Council	Imogen	Witaker			Non Qualifying	Highway Safety, Lack of infrastructure and flooding risk and damage to nature, Unsuitable Location / No need for affordable housing.	2, 4, 5
15	Rodney S. de Chair	Rodney	Chair			Non Qualifying	Unsuitable use of council powers, Lack of infrastructure and flooding risk and damage to nature, Unsuitable Location / No need for affordable housing, CPO Process	3, 4, 5, 10
16	Marianne Strong sent on behalf of Marianne and Ian Strong	Marianne	Strong			Non Qualifying	Inappropriate Access, Highway Safety, Error Planning Permission, CPO Process	1, 2, 8, 10
17	Emma Wallace	Emma	Wallace			Non Qualifying	Highway Safety	2

Summary of Themes

Theme Number	Theme	Description
1	Inappropriate Access	The proposed access is not suitable for the proposed residential development, will be single track.
2	Highway Safety	The entrance being opposite a school will create more traffic and with vehicles going in and out could lead to accidents, especially dangerous with children walking home and crossing the road after school with parents often parking on the road to pickup their children.
3	Unsuitable use of council powers	Tax payers money should not be used for the CPO to save Hyde from mistake in purchase. There are more suitable places and projects that the council should be funding.
4	Lack of infrastructure and flooding risk and damage to nature	The current sewage infrastructure cannot support the addition of the new houses in the scheme and it will lead to spillage, also the drainage system will not be able to facilitate the development and will lead to flooding in the village.
5	Unsuitable Location and/or no need for affordable housing.	There are more suitable locations both in the village and surrounding towns for affordable housing and/or there is no need for this much affordable housing in Birdham.
6	Affordable Housing Financially not viable	The scheme isn't financially viable and development will not be delivered
7	Human Rights not considered in negotiations	The approach of the Council and Avison Young has not been engaging in a respectful way and that viewpoints have been ignored and communication has been inappropriate.
8	Error Planning Permission	Raises issues over errors in original planning permission decision.
9	No wellbeing benefits	Considers no social, environmental or economic wellbeing benefits delivered from CPO
10	CPO Process	Concerns about adequacy of process