

APPENDIX A

DCPlanning

From: planning@chichester.gov.uk [planning@chichester.gov.uk] **Sent:** Mon 17/06/2013 4:49 PM
To: DCPlanning
Cc:
Subject: Application Comments for 13/01391/FUL
Attachments:

Planning Application comments has been made. A summary of the comments is provided below.

Comments were submitted at 4:52 PM on 17 Jun 2013 from Miss Carla Geary.

Application Summary

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

Proposal: The development of 15 new affordable dwellings and associated external works.

Case Officer: Vicki Colwell

[Click for further information](#)

Customer Details

Name: [REDACTED]

Email: [REDACTED]

Address: [REDACTED]

Comments Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Reasons for comment:

Comments: I think its great that Birdham is being considered for new housing, I feel that a generation of people are being pushed from the village, myself included. I understand the concerns that have risen with the application of new houses but I have lived here for 20+ years and it has never flooded until 2012. We only have minor traffic here, most from the school run, which happens twice a day. I am sure any problems that might arise will be addressed and dealt with. Birdham needs new houses, so many families can stay together in the village that they grew up in.

DCPlanning

From: planning@chichester.gov.uk [planning@chichester.gov.uk] **Sent:** Sun 20/10/2013 9:14 PM
To: DCPlanning
Cc:
Subject: Application Comments for 13/01391/FUL
Attachments:

Planning Application comments has been made. A summary of the comments is provided below.

Comments were submitted at 9:18 PM on 20 Oct 2013 from Miss Stacey Bedford.

Application Summary

Address: Field North West Of The Saltings Crooked Lane Birdham
West Sussex
Proposal: The development of 15 new affordable dwellings and associated external works.
Case Officer: Steve Harris
[Click for further information](#)

Customer Details

Name: [REDACTED]
Email: [REDACTED]
Address: [REDACTED]

Comments Details

Commenter Type: Member of Public
Stance: Customer made comments in support of the Planning Application
Reasons for comment:
Comments: Having worked in Birdham for 7 years, as has my mother, I think this development would benefit and be good for local trades. Having such a high demand to house people in Birdham, more houses would prevent so much commuting and therefore pollution. Being pushed out of Birdham as a resident myself, I had to move away from my family and work, this causes me travel expenses, as I know it does for other ex residents. The new houses in Birdham are too expensive for people, so affordable renting would be beneficial. Birdham seems to be losing its sense of community and village life, it is important to keep families together, especially in this day and age, as it is important for children to be around extended family so that both parents can work. I personally struggle with this now that I have had to move to Chichester.

**DCPlanning**

From: [REDACTED] **Sent:** Mon 11/11/2013 10:12 PM
To: DCPlanning
Cc:
Subject: 13/01391/FUL (15 new affordable dwellings off Crooked Lane, Birdham)
Attachments:

RE: 13/01391/FUL (15 new affordable dwellings off Crooked Lane, Birdham)

Dear Sir/Madam,

It has recently been brought to my attention that a proposal for affordable housing has been submitted for an area of land in Birdham. As someone who grew up in Birdham area, I would like to say what an excellent and much needed development this would be for the community. It would allow local families the opportunity to stay living in an area where house prices have continued to rise for many years, forcing local people to move elsewhere. It would also help local trades and services, many of which have been struggling in recent times.

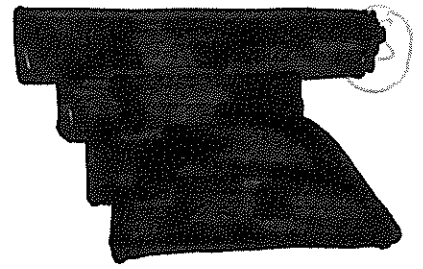
I believe the proposal is for just 15 homes, a number which would not put a strain on the local infrastructure or class sizes within the excellent local school. Furthermore, the village would benefit from the reinvigoration new blood would bring about. Once a thriving village, the sense of community has been diminishing over the years with many houses in the local area no longer used for full time occupancy.

Many thanks.

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16/01/89



To whom it may concern

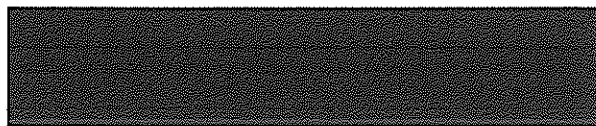
I write regard to the impending appeal regarding the 15 Social houses intended in Crooked Lane. There are many families living here in Burdham that have been residents for at least 50 years including my own. We have generations of young people that have had to move away from the village they have grown up in due to a housing shortage in Burdham.

Whilst there are many or a few that do not want these houses, they are much needed and will be an asset to Village life when they are completed just as the ones built in West Wittering under the same circumstances have become.

These homes are for local connected people only and that does not mean all young teenagers! There are middleage and elderly people that might also need these houses.

Local Houses for local people are desperately needed and their intended building plot will I'm sure be set out in a way that won't intrude the privacy of current residents and their properties.

Lets work together to unite the whole Burdham Village.



16/01/809

To whom it may concern.

With reference to the appeal regarding the siting of 15 houses in Crooked Lane Burdham.

My family have lived and still live in Burdham over the last 50 yrs and I am very concerned that there is little or no affordable housing for our future generations. I attended the original planning meeting and listened to all the arguments but came to the conclusion that there was a lot of NIMBYISM coming from people who have lived in the area for only a few years and know little about the families and the history of Burdham.

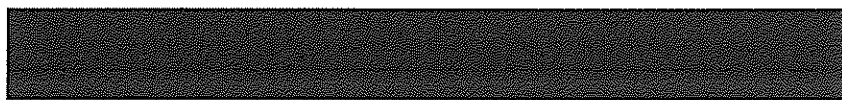
My grandchildren who have lived here all their lives have regrettably had to move out of the village because there was no suitable accommodation for them even though they wanted to stay.

These few houses would be an integral part of the community with probably children attending the nursery and primary school. They would be able to enjoy the various community activities. We don't want to lose this community spirit. We need these to be social housing and not "affordable housing" for those not so fortunate for whatever reason are unable to pay a mortgage.

From what I understand the stumbling block is access, and that the width of the access is actually 4.8 metres ample for 2 cars to pass safely



if necessary. I would press the Council to think very seriously about the long term advantages of these 15 houses and that they act as soon as possible to start this project as soon as can be arranged.



APPENDIX B



Appeal Decision

Inquiry held on 12 – 14 and 19 - 21 September 2023

Site visit made on 14 September 2023

by **R Norman BA(Hons), MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9th February 2024

Appeal Ref: APP/L3815/W/23/3319434

Land off Main Road, Birdham PO20 7DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Gladman Developments Ltd against Chichester District Council.
 - The application Ref 21/01830/OUT, is dated 7 June 2021.
 - The development proposed is outline planning application for up to 150 dwellings (including 30% affordable housing) with community park, public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point. All matters reserved except for means of access.
-

Decision

1. The appeal is allowed and outline planning permission is granted for up to 150 dwellings (including 30% affordable housing) with community park, public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point. All matters reserved except for means of access at Land off Main Road, Birdham PO20 7DR in accordance with the terms of the application, Ref 21/01830/OUT, dated 7 June 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was originally submitted in outline form with all matters reserved apart from access. Matters relating to the layout, appearance, scale and landscaping of the proposal will be considered as part of later Reserved Matters applications. Indicative plans, including a Development Framework Plan, showing a possible layout have been submitted and I have considered these as illustrative only at this stage.
3. The proposal has been accompanied by two legal agreements, a Section 106 Agreement¹ and a Unilateral Undertaking². I will return to these later on.
4. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023. The parties have been given the opportunity to provide

¹ Planning Agreement Under Section 106 of the Town and Country Planning Act 1990 relating to Whitestone Farm, Main Road, Birdham, Chichester, West Sussex, PO20 7UH between (1) Chichester District Council (2) West Sussex County Council (3) Deborah Anne Osborne and Julie Elizabeth Mary Jones (4) Itchenor Gate Farms and (5) Gladman Developments Limited dated 14 September 2023.

² Planning Obligation by deed of undertaking under Section 106 of the Town and Country Planning Act 1990 relating to Whitestone Farm, Main Road, Birdham, Chichester, West Sussex, PO20 7UH (1) Deborah Anne Osborne and Julie Elizabeth Mary Jones (2) Itchenor Gate Farms and (3) Gladman Developments Limited dated 14 September 2023.

comments on the changes and I have taken these comments into consideration. Where references are made to the Framework in this decision, they relate to the December 2023 version unless otherwise specified.

Main Issues

5. The main issues are:

- The effect of the proposed development on the landscape, character and appearance of the area;
- Whether the development would be in a suitable location having regard to access to services and facilities and the scale of the proposal;
- Whether the development could ensure suitable provision for drainage infrastructure;
- Whether the development provides sufficient contributions towards infrastructure, with particular reference to the strategic highway network comprising improvements to the A27; and
- Five year housing land supply and its policy implications.

Reasons

Landscape, Character and Appearance

6. The appeal site is an agricultural field located adjacent to the A286 in Birdham. On the opposite side of the road are a mix of dwellings, a convenience store and a petrol station. There is also a village hall, playground and recreation field in proximity to the appeal site. The proposal would introduce up to 150 dwellings into the site along with public open space, vehicular and pedestrian access and connection points.
7. The appeal site falls within the South Coast Plain National Character Area NCA ID 126 and the Chichester Harbour Character Area SC3. It is also identified as being within Sub Area 98 in the Chichester Local Plan Review 2035 Landscape Capacity Study. The relevant characteristics of these areas, collectively, include flat coastal landscapes, undisturbed stretches of coastline, harbour landscapes including marinas and boatyards, stretches of farmland between developed areas and urban areas. Sub Area 98 of the Landscape Capacity Study is classed as a landscape of medium visual sensitivity which could have some capacity to accommodate some areas of new development, subject to the impacts on the setting and form of existing settlements and the sensitivity of adjacent landscape character areas.
8. The Birdham Parish Neighbourhood Plan (BPNP) includes supporting maps in Policy 3 and Policy 4 showing green infrastructure and ecology networks and important views. However, the appeal site itself does not fall within these areas or views. Policy 4 however does require any development to maintain the local character of the landscape.
9. A Landscape and Visual Assessment³ has been carried out which has assessed the visual and landscape baselines, and the likely effects of the proposed

³ CD E15 Landscape and Visual Assessment June 2021 – The Environment Partnership

development on the surrounding landscape. This included a number of visualisations from various viewpoints. The appeal site is reasonably well enclosed by existing established vegetation. A hedgerow runs partially along the site frontage with varying heights and densities, allowing for some views through into the appeal site. From the rear of the site, there are views across the appeal site from the public right of way, with the existing dwellings on Main Road visible beyond. Whilst there are some more open areas and some gaps along the site boundaries, it is read as a fairly well enclosed single parcel of land.

10. The Landscape and Visual Assessment assessed a number of visual receptors around the appeal site including from the recreation ground, the public rights of way, surrounding rounds and nearby properties. Of these receptors, the only one with a high sensitivity was found to be for visitors to the recreation ground, and whilst the public rights of way around the appeal site had high susceptibility, the sensitivity of these areas were concluded to be medium. It identifies that the overall effect on the site and immediate surroundings would be moderate adverse, which would decrease over the years until Year 15 when it would be classed as minor adverse as a result of the proposed planting having matured. I consider that the main visual and character impacts will be short range, from the adjacent public rights of way and Main Road.
11. Along the A286 a reasonably large proportion of the built development is along the opposite side of the road to the appeal site however the settlement extends back from the road by some distance and is not a typical linear settlement. The proposal would therefore introduce a consolidated form of development into an area which at present, is characterised by more sporadic properties and commercial enterprises to the north east further along Main Road. Nevertheless, I have had regard to the location of the existing properties sited close to the appeal site, along The Straight, Bell Lane and Pinks Lane and consider that the development of the appeal site would be read in the context of these properties also when travelling through the village. As such, I find that the development of the appeal site would not be completely at odds with the character and appearance of the area and, with sensitive and careful design and layout, would assimilate into the existing built form to an acceptable degree. Furthermore, when viewed from the rear and along the public right of way, the proposed dwellings would be seen in the context, and against the backdrop, of the existing properties on Main Road.
12. The appeal site itself is not located within the Chichester Harbour Area of Outstanding Natural Beauty (AONB) however adjoins it. The Chichester Harbour AONB Landscape Character Assessment includes the appeal site in LCA I1: Manhood Peninsula. This character area is defined as having predominantly open arable farmland, medium to large-scale field patterns, historic north-south road and settlement patterns and a largely undeveloped character, amongst other things. The Chichester Harbour Conservancy have provided a letter outlining their objections to the proposal in relation to the impacts on the AONB.
13. I acknowledge that there would be a change in the nature of the appeal site when viewed from Main Road towards the AONB and I have had regard to the characteristics of the site in its current form and its contribution to the setting

of the AONB. The Landscape and Visual Assessment⁴ identifies the landscape receptor overall effect for the various receptors and concludes a sensitivity level of high for the Chichester Harbour AONB and its setting. It goes on to consider that the magnitude of effect and overall effect during the construction period, at year 1 and year 15 would be localised, low negative and negligible overall.

14. As the appeal site is relatively enclosed as a result of the existing boundary treatments this reduces the strength of the links with the wider landscape and its contribution to the AONB. From a number of locations in and around Birdham the appeal site is seen within the context of the existing built form and activity in the village, not just in terms of housing but also the convenience store and petrol filling station. As such, I find that the proposed development could be carried out in a way which would not be detrimental to the setting, character or enjoyment of the AONB, subject to appropriate landscaping and design of the properties themselves.
15. As part of the proposed development, the majority of the site boundary trees and hedgerows would be retained. In addition, further planting and substantial green infrastructure would be introduced into the site to strengthen the existing boundaries and to soften the overall appearance of the development. There would be a substantial green buffer to the eastern boundary which would minimise the impacts on the countryside beyond. The Development Framework and Design Code demonstrate careful thought into the form of the proposed development and any subsequent proposal in line with the indicated parameters would have good potential to achieve a high quality development, with the green infrastructure serving to soften the transition between the built form of the development and the countryside. Given the close range and limited visual and character impacts, I find that with careful design and landscaping, the proposed development could be adequately assimilated into the landscape.
16. The appeal site comprises agricultural land which was in use for growing crops at the time of my visit. The soil sampling carried out by the Appellant indicates that the land comprises Grade 2, Grade 3a and Grade 3b. Grades 2 and 3a are categorised as being best and most versatile (BMV) agricultural land and are therefore high quality. Grade 3b does not fall within this categorisation. As such, there would be a loss of good quality agricultural land however this would amount to a relatively small area in the context of the wider agricultural landscape. Furthermore, I have been provided with the Natural England Agricultural Classification Map which shows that a large proportion of the agricultural land outside of the AONB falls within Grades 1 and 2. Coupled with the designations of the AONB this results in a degree of constraint for developable land within the area.
17. Given the above considerations, whilst it is unlikely that housing on a greenfield site would not cause any adverse visual and landscape effects by its very nature, I find that the proposed development could be successfully assimilated into the landscape, subject to a robust and careful landscaping scheme and a sensitive layout and design. I have considered the existing settlement pattern however find, for the above reasons, that the introduction

⁴ Table 3

of dwellings into this side of Main Road would not be unacceptably harmful to the character and appearance of the area. Furthermore, I accept the findings of the Landscape and Visual Assessment and with the proposed mitigation measures and a carefully designed scheme the proposal would not give rise to unacceptable impacts on the landscape, the surroundings or in terms of any of the character areas.

18. Accordingly, the proposed development would therefore comply with Policies 33, 43, 48 and 52 of the Chichester Local Plan 2014 – 2029 (Local Plan), which seek to ensure that proposals meet the highest standard of design, are in keeping with and protect the character of the surrounding area and its setting in the landscape, conserve and enhance the natural beauty, local distinctive features, character and special qualities of the AONB and contribute towards the provision of additional green infrastructure, amongst other things. It would also meet the aspirations of Birdham Parish Neighbourhood Plan (BPNP) Policy 16.

Access to services and facilities and the scale of the development

19. Policy 2 of the Local Plan sets out the settlement hierarchy and identifies Birdham as a Service Village. Service Villages follow Chichester City and the Settlement Hubs as the third priority for new development and facilities, comprising of small scale housing developments, local community facilities and small scale employment, tourism or leisure proposals. Policy 5 of the Local Plan expands on this and details that small scale housing sites will be identified to address the specific needs of local communities and assigns an indicative housing number of 50 to Birdham. This is reflected in Policy 12 of the BPNP, which also highlights that there are no plans to allocate sites at present.
20. The appeal site is located adjacent to, but outside of, the defined settlement limits for Birdham. Policy 2 also refers to development in the countryside and states that development in these areas are restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification. Policy 45 expands on this and reiterates the types of developments and criteria that would be supported in a countryside location. Policy 13 of the BPNP shows the Settlement Boundary Area for Birdham and states that outside of this boundary is deemed to be rural and Policy 15 reflects Local Plan Policy 45. The proposal does not meet the criteria within Policies 2 and 45 in relation to the countryside.
21. The proposed development would considerably exceed the 50 dwellings specified within Policy 5 and would represent around a 20% increase in the number of dwellings in Birdham at present. Policy 14 of the BPNP states that schemes for 5 or fewer dwellings within the Settlement Boundary Area will be supported subject to criteria. Nevertheless, it is necessary to consider the level of services available to support the settlement and a numerical or percentage increase in itself may not be harmful.
22. Within Birdham facilities and services include a convenience store, located opposite the appeal site, garden centres and café's, a recreation field and club, a petrol station with small shop and a primary school. There is also a business park which may provide opportunity for employment, albeit limited. Plans have been provided which show the walking and cycling distances between the

appeal site and the wider area⁵. These demonstrate that there are reasonable opportunities for access to a number of facilities by foot or cycle and I note the location of local Public Rights of Way⁶.

23. Further afield, Chichester is located to the north east of Birdham, accessed via the A286, and provides a wide range of facilities including employment opportunities, numerous shops and restaurants and a train station with regular services to wider areas. There are existing bus services between Birdham and Chichester, amongst other places, with bus stops located in proximity to the appeal site. I have been provided with details of the bus services and frequencies which demonstrate a reasonable level of service⁷ including some into the evening. It would be possible to catch a bus to Chichester and then utilise the train services further afield. The station in Chichester provides regular services to wider locations including Portsmouth, Brighton and Gatwick Airport.
24. In addition, the development would include a number of highway improvements and links including additional pedestrian routes, crossings, and upgrades to parts of existing public rights of way which would contribute to the accessibility to other areas by means other than the private car.
25. Given the above, whilst the proposed development would exceed the indicative number of 50 dwellings in Policy 5 and would not meet the criteria within Policies 2 and 45 of the Local Plan or Policies 12, 13, 14 and 15 of the BPNP, I find that the level of services in Birdham, as well as the accessibility to wider facilities and services in Chichester and further afield, mean that Birdham is a suitable location for new development. I accept that future residents of the proposed development may be likely to use private vehicles to access services in the wider area particularly as there may be limited employment opportunities within Birdham itself, however I find that there are sufficient and suitable options for alternative transport methods provided to allow access to other areas for a range of journey purposes which would comply with the provisions of Policies 8 and 39 of the Local Plan and Policy 10 of the BPNP. The aims of Section 9 of the Framework would also be met.

Drainage

26. The appeal site is located within an area classed as Flood Zone 1. The proposal has been accompanied by a flood risk assessment⁸ and a groundwater information note⁹ and the site has been assessed via boreholes and the monitoring of groundwater levels over different periods within 2021 and 2022. The data used identifies the appeal site as being at a negligible risk of groundwater flooding. The proposed development would include a surface water management system including the retention of the existing pump and arrangements for flow attenuation. I note that the Development Framework demonstrates that there are substantial areas within the site that would remain undeveloped, such as the areas of open space.

⁵ CD E21 Figures 5.1 and 5.3

⁶ CD E21 Figure 5.2

⁷ CD E21 Transport Assessment Section 6.2.2

⁸ Lees Roxburgh Flood Risk Assessment Ref: 6573/R2

⁹ Land off Main Road, Birdham – Groundwater Information (E11)

27. The development would incorporate a connection to the existing watercourse network to the south eastern corner of the appeal site, as it has been identified by the submitted Flood Risk Assessment that the ground investigations carried out indicate that the conditions, resulting from the underlying sand, silt and clay, would not be suitable for infiltration based drainage. As such, flow attenuation would be via a piped system and pumped, with overall flows restricted to the identified Q_{bar} rates.
28. I note that within the area to the south of site in the vicinity of Briery Cottage and Pink's Lane it has been identified that there have been flooded ditches. The Appellant's LIDAR data and site contour analysis indicates that all surface water leaves the site via the ditch at Briery Cottage. In contrast, at the Inquiry a topographic survey¹⁰ was provided by the BVRA indicating the likely flows from the appeal site from the four catchment areas, with water from catchments B and C leaving the site from the north east and eastern boundaries of the site.
29. In terms of surface water flows, based on the evidence before me, whilst there may be some flows to other areas around the site, it is demonstrated that much of the flows from the appeal site are directed towards the south eastern corner and into the drainage system there. The flows would be directed to the network to the rear of Briery Cottage, to the system that runs along Pinks Lane and onwards to Bookers Lane. Furthermore, it has been shown within the Catchment Assessment that whilst some water may leave the site at points other than the south eastern corner, the flows are then likely to run back towards this point¹¹.
30. The differences between topography and LIDAR data has been highlighted and I accept that topographical is more accurate with a tolerance of +/-5mm rather than +/-15mm associated with the LIDAR approach. However, the figures that I have show the topographical data mainly contained within the site and the LIDAR goes wider. I understand that it is an industry standard to use LIDAR and to carry out topographical surveys over a wider area may be difficult. The analysis has been carried out using both a Digital Terrain Model (DTM) and a Digital Surface Model (DSM) and the results only show a slight difference between the DTM and DSM flow routes. As such, I am satisfied with the appropriateness of the use of LIDAR for assessing the appeal site and surroundings.
31. Reference was made to the Briery Cottage ditch being flooded during the surveys. However, the extent of this was not clarified and there is little evidence to suggest that it had breached and overtopped the ditch at this time. A number of local residents raised concerns in relation to the impacts upon their homes from flood related issues previously and I have been provided with many photographs showing standing water and issues in the local area and further downstream. I viewed the hardstanding and pipe along Pink's Lane which is used by sewage tankers for pumping. I also have had regards to the photographs and additional information provided by Dr Ross in relation to flooding and drainage issues in the area. I understand the significant concerns that the local residents have in relation to this issue, however, it is not clear to me the specific details of these events and I have limited details of the evidence base which accompanied the information presented to me. Also,

¹⁰ ID1 33217 Drawing 04 Rev P1 – Topographic Survey

¹¹ Dr Ellis Rebuttal Proof of Evidence

whilst this existing situation would impact on the lives of local residents, based on the extensive information provided to me in relation to flood risk and water flows in and around the site, it has not been demonstrated that the proposed development would result in significant increases in the volume water flows to this point to exacerbate these issues or that the site could not be developed with suitable measures in place to prevent additional and excessive flows. Furthermore, in relation to the concerns over foul water drainage and previous issues faced by the residents, Southern Water have a statutory duty to ensure that the system is satisfactory and fit for purpose and does not lead to issues locally or elsewhere.

32. Following the Inquiry further points relating to the drainage network were provided by a local resident. I have considered these, however find that they raise no additional evidence or material considerations that would alter my findings in this instance. As such, this additional information does not alter any of my above conclusions.
33. I have had regard to the consultee responses, including those from Southern Water and the objections raised by the Lead Local Flood Authority (LLFA). Southern Water highlight that any network reinforcement that is deemed necessary to mitigate any increased risk of foul flooding from the sewer network would be provided by themselves and provides guidance relating to the requirements of the developer. It is usual that in principle development should connect to the local sewerage system at the nearest point where capacity exists and any works required can be secured by condition. Furthermore, the inclusion of relevant mitigation measures may also overcome constraints to capacity.
34. The LLFA's objections related to the details provided as part of the FRA, Surface Water Drainage Strategy and supporting information. However, having considered the content of these documents, as well as the evidence presented at the Inquiry and the Council's Surface Water and Foul Drainage Supplementary Planning Document¹² and the Strategic Flood Risk Assessment (SFRA)¹³ I am satisfied that the level of evidence provided is adequate and further information relating to additional flows, including velocity and volume, and the details of the appropriate schemes, drainage methods and mitigation measures can be reasonably secured by condition.
35. Considering all of the above, I find that it has been sufficiently demonstrated that the proposed development could achieve a suitable drainage system without resulting in adverse impact upon the surrounding area and that the use of a pumped system is justified. I therefore find it appropriate to secure the additional required information in relation to drainage and flooding via conditions to ensure that the site would not give rise to additional or exacerbate existing issues relating to the drainage network. The proposal would therefore comply with Policy 42 of the Local Plan which seeks to ensure that, as a minimum there is no net increase in surface water run-off and priority is given to incorporating SuDS unless it is proven that SuDS are not appropriate, amongst other things. It would accord with the aims of BPNP Policy 18, Policy 20 and Policy 21. It would also meet the aspirations of Section 14 of the Framework.

¹² CD B08

¹³ CDs C18, C19, C20, C21 and C22

Infrastructure Contributions

36. Two signed legal agreements, comprising a Section 106 Agreement¹⁴ and a Unilateral Undertaking¹⁵ have been submitted. It is only the matter of the contribution to the A27 mitigation that is disputed between the Council and Appellant.
37. Policy 9 of the Local Plan seeks to ensure that all development provides or funds new infrastructure, facilities or services required, both on and off-site, as a consequence of the proposal and, where appropriate, mitigate the impact of the development on existing infrastructure, facilities or services and fund or contribute to improvements to increase the effectiveness and efficiency of infrastructure, facilities or services, amongst other things.
38. Whilst the appeal proposal in isolation would not result in a severe impact on the highway network, the Council have considered that the cumulative impact on the highway network gives rise to the need for mitigation contributions. The Council consider that the current A27 improvement contribution levels in accordance with Policy 9 of the Local Plan and the Planning Obligations and Affordable Housing Supplementary Planning Document are no longer appropriate and to proceed with the lower amount would leave a considerable shortfall. I have also been provided with a letter from National Highways¹⁶ which supports and provides reasons for this position.
39. A number of junctions of the A27 are currently operating over capacity. The Chichester Transport Study¹⁷ was carried out in January 2023 which identified that, going forward, a significant mitigation package would be required overall, identifies a number of schemes in relation to the A27 and prioritises the A27 Fishbourne junction and Bognor junction. It also highlighted estimated costs of between £89 million and £134 million for the A27 schemes and considers that the current requirements are unlikely to achieve sufficient funding to support the various schemes in the short term and by the end of the Local Plan period of 2039¹⁸.
40. The Council have prepared a draft A27 Chichester Bypass Mitigation Supplementary Planning Document¹⁹ (August 2023) (draft SPD) which had been before the Council's cabinet in September 2023. This identifies a new transport contribution based on the apportionment of the overall costs between the level of dwellings anticipated to come forward under the Local Plan Review²⁰. I am not seeking to undermine the work undertaken to date in relation to this matter, nor suggest that it is not relatively robust, I also acknowledge that the current policy is not sufficient to meet the costs arising in relation to the required works. However, this and its evidence base has not

¹⁴ Planning Agreement Under Section 106 of the Town and Country Planning Act 1990 relating to Whitestone Farm, Main Road, Birdham, Chichester, West Sussex, PO20 7UH between (1) Chichester District Council (2) West Sussex County Council (3) Deborah Anne Osborne and Julie Elizabeth Mary Jones (4) Itchenor Gate Farms and (5) Gladman Developments Limited dated 14 September 2023.

¹⁵ Planning Obligation by deed of undertaking under Section 106 of the Town and Country Planning Act 1990 relating to Whitestone Farm, Main Road, Birdham, Chichester, West Sussex, PO20 7UH (1) Deborah Anne Osborne and Julie Elizabeth Mary Jones (2) Itchenor Gate Farms and (3) Gladman Developments Limited dated 14 September 2023.

¹⁶ ID11 – National Highways Letter ref: NH Position Chichester SPD dated 11 September 2023

¹⁷ Stantec Chichester Transport Study: Local Plan Review Transport Assessment Dated January 2023.

¹⁸ Paragraph 9.11.1 Chichester Transport Study

¹⁹ CD L11c

²⁰ Draft SPD Paragraphs 4.8 – 4.12

been formally or fully tested as part of an adoption or local plan process. I have been presented with appeal decisions where the Inspectors have found in favour of the increased contribution, and where the Inspectors have concluded it is appropriate to accord with the current requirements, however based on the specific evidence provided and heard at the Inquiry in this case, I have concerns over the need to test the content of the draft SPD formally. I also acknowledge that there can only be a degree of certainty with the projects themselves and the need for flexibility however, I find that the documents provided to date do not provide a sufficient amount of detail of the works required and how the contributions would be used to meet the necessary tests.

41. Taking all of the evidence into account, whilst I acknowledge that the level of funding secured under the current arrangements would not cover all of the identified schemes. I note that the issue is a collective one and would not be as a result of this development in isolation. Nevertheless, the draft SPD has not been fully tested at this stage. Furthermore, whilst the affected junctions have been identified, I find that there is still a lack of clarity of the works required to the junctions. As such it has not been demonstrated that the higher amount has been justified and would meet the necessary tests. Accordingly, I find that the lower contribution, contained within the submitted unilateral undertaking is justified and meets the tests and as such, the clause within the Section 106 takes effect and the relevant provisions within the Section 106 do not apply.
42. In addition to the highway network contribution, the Section 106 Agreement secures the provision of affordable housing, the provision of first homes, contributions for recreation disturbance mitigation, the provision of open space and play area land, a travel plan and audit. In respect of these provisions, I am satisfied that these are necessary, directly related, and fairly and reasonably related in scale and kind. The Section 106 has been prepared in a way which I am satisfied will secure the necessary contributions.
43. Based on the evidence before me, I find that, in combination, the submitted legal agreements make suitable provision for infrastructure contributions that would sufficiently mitigate the impacts of the proposed development. It therefore complies with Policy 9 of the Local Plan and Policy 9 of the BPNP.

Five-Year Housing Land Supply

44. At the Inquiry, the parties agreed that there was a shortfall in the Council's five year supply of deliverable housing sites with three remaining disputed sites between the Council and Appellant, comprising Land North of Cooks Lane, Southbourne, Graylingwell Hospital, Chichester and Land West of Centurion Way, Chichester. There is also a difference between the Council and Appellant in relation to minor windfall sites and major windfall sites. In relation to the three disputed sites, the Council and Appellant's positions vary by 247 units and the windfall sites total a difference of 260. This has led to the Council's calculated position of 4.65 years in contrast with the Appellant's position of 3.9 years. An Interim Position Statement for Housing Development (IPS)²¹ was produced by the Council to provide an updated position. The IPS identifies 13 criteria by which development proposals should be considered. However, the IPS is not a formally adopted document nor a supplementary planning

²¹ CD B06

document, nevertheless I have had regard to the criteria in my assessment of the proposal.

45. The new National Planning Policy Framework (2023) was published on 19 December 2023 which included changes to the five-year housing land supply requirements, amongst other things. The comments received from the parties in relation to this new version considered that the new arrangements relating to the need for only a 4 year supply of housing land applies to the Council. The Council therefore are of the view that they can now demonstrate a sufficient supply of housing land as their calculations exceed the 4 years. The Appellant agreed that the 4 year requirement applies however, as they consider the housing land supply to be 3.9 years, they state that the Council still cannot demonstrate a sufficient supply and therefore the tilted balance still applies.
46. However, although I do not dispute the Council's revised position going forward, transitional arrangements have been put in place and Footnote 79 states that the policy contained in paragraph 76 and the related reference in footnote 8 of this Framework, and which refers to the 4 year change, should only be taken into account as a material consideration when dealing with applications made on or after the date of publication of this version of the Framework. Consequently, notwithstanding the new position, the transitional arrangements mean that in this particular case, as it was originally submitted prior to the 19 December 2023, the original housing land supply requirements apply.
47. Returning to the original position of the parties therefore, with housing land supplies of 3.9 and 4.65 years respectively, I find that it is not necessary for me to conclude specifically on the disputed sites as in either case there is a shortfall. The Council and Appellant, whilst having a difference in the five-year housing land supply, do not appear to consider that this makes a difference to the weight to be given to the provision of housing. Indeed, in both cases the Council's supply of housing land falls below 5 years.
48. It is agreed by the parties that the Council cannot demonstrate a five year supply of housing land and it is not disputed that this results in the relevant policies of the development being out of date. The Statement of Common Ground identifies the relevant policies²² in relation to this proposal and the most important policies as being Policy 2, Policy 4, Policy 5 and Policy 45. The Council and Appellant agree that they are considered to be out of date²³. As such, these policies cannot carry full weight.
49. Notwithstanding the housing land supply considerations above, the BVRA considered that the tilted balance is not triggered as a result of the reference to flood risk in Footnote 7. Paragraph 11 d) i states that where there are no relevant development plan policies, the policies which are most important for determining the application are out-of-date, granting permission unless the application of policies in this Framework that protect these areas or assets of particular importance provides a clear reason for refusing the development proposed, and footnote 7 includes areas at risk of flooding or coastal change. However, I interpret the provisions of the Framework in this regard to relate to areas designated under Flood Zones 2 or 3 as being those at high risk. Based

²² Paragraphs 3.2.1, Paragraphs 3.3.3 of the Planning Statement of Common Ground (CD J01)

²³ Paragraphs 3.22 and 3.23 of the Planning Statement of Common Ground

on its flood risk classification, the appeal site is located within a low risk flood zone and whilst there has been much debate over the drainage matters, I find that the appeal site is not within an area at risk of flooding based on my drainage conclusions and the designation of the site within Flood Zone 1, which is low risk. Paragraph 165 of the Framework requires development to be directed away from areas at highest flood risk, and paragraph 167 highlights the need for a sequential, risk-based approach. Furthermore, the Planning Practice Guidance refers to areas at risk of river and sea flooding being principally land within Flood Zones 2 and 3 or where a Strategic Flood Risk Assessment shows it will be at risk of flooding in the future²⁴. The appeal site would therefore be sequentially preferable as it is largely within Flood Zone 1 and consequently, I find that the provisions within Footnote 7 in respect of flood risk do not apply in this instance and therefore the tilted balance applies.

50. Consequently, it has been demonstrated that, in this case, there is a shortfall in the Council's five year housing land supply and accordingly the proposed development would make a contribution to the housing need. I will return to this and the weight that it should carry in the following planning balance section.

Other Matters

Highways Matters

51. The proposed vehicular access to the appeal development would be off Birdham Road towards the northern corner of the site. At this point along Main Road, visibility is good. There would be pedestrian and cycle paths along the site frontage, within the landscaping buffer of the appeal site, which would link up with the existing footpath and public rights of way. There would also be an additional pedestrian crossing provided on Main Road and contributions towards improvements to the cycleway between the appeal site and Sidlesham Lane.
52. There have been a large number of concerns raised from local residents in relation to congestion and delays on the A286 and difficulty accessing other areas at certain times of the day. As part of the Transport Assessment, traffic counts were carried out as well as studies into the likely traffic generation from the proposed development and the impacts on the highway network and a study of a number of junctions. It also included details and consideration of accident data for the area. I have also considered the Highways Response²⁵, the Highways Statement of Common Ground²⁶ and the Stage 1 Road Safety Audit.
53. The Parish Council provided a review of the traffic impacts²⁷ and there have been a number of local concerns raised in relation to highway capacity and safety. However, I note that the County Council have not raised any concerns about the impact of the proposed development on the highway in terms of safety or capacity. Having regard to the detailed evidence put forward by the Appellant, I am satisfied that it has been demonstrated that there would not be an unacceptable impact on highway safety or that the cumulative impacts on

²⁴ Paragraph: 001 Reference ID: 7-001-20220825 (ID16)

²⁵ Benjamin David Jackson, Ashley Helme Associates Ltd

²⁶ Highways Statement of Common Ground with West Sussex County Council

²⁷ Transport Planning Associates letter dated 25 August 2023

the highway network would not be severe as a result of the development, as required by paragraph 115 of the Framework.

Protected Species and Habitats

54. The appeal site is within the 5.6km Zone of Influence of the Chichester and Langstone Harbours Special Protection Area (SPA). The Habitat Regulations require that where a project is likely to result in a significant effect on a European site, a competent authority is required to make an appropriate assessment of the implications on the integrity of the European site in view of its conservation objectives. Any likely significant effects arising from the development need to be considered alone and in combination with other development in the area.
55. The appeal proposal has been accompanied by a number of documents²⁸ assessing the impact of the proposal on protected species and habitats and these have also been considered by the relevant statutory consultees, including the Environmental Protection team. The development is likely to result in recreational disturbance through increased coastal visits, dog walking and cycling, jogging and walking, unless suitable mitigation measures are secured.
56. The Solent Recreation Mitigation Strategy (SRMS) has been produced to mitigate the effects of new development through a number of measures including educational material, permits, management activities and monitoring. The Appellant has presented, within the legal agreement, provision for the required contributions towards the necessary mitigation as detailed within the SRMS and no objections have been raised by Natural England on this basis. I am therefore satisfied that the content of the legal agreement is sufficient to secure the necessary mitigation in relation to the European sites and their objectives and accords with the requirements of the SRMS. I therefore find that the proposed development would not conflict with the Habitats Regulations and the mitigation measures and contributions would ensure that there would be no adverse impact upon the integrity of the SPA in accordance with Policy 50 of the Local Plan.

Local Objections

57. A large number of local and Parish Council objections have been received and a number of local residents spoke at the Inquiry. In addition to the above matters, their concerns included lack of medical care and school facilities and adverse impacts on tourism.
58. In relation to lack of facilities, I have been provided with little evidence to demonstrate that there are capacity issues in terms of medical care or education facilities and neither the Council nor any statutory consultees have requested contributions toward such facilities. I have little before me to evidence that levels of tourism would be affected by the location and scale of the development proposed.

Planning Balance

59. I have concluded there would be a breach of Policies 2, 5, and 45 of the Local Plan. However, as a result of the most important policies being considered out

²⁸ CD E05, CD P07, CD P08, CD P09, CD P10, CD P11, CD P12

of date, these conflicts can only attract limited weight. There would also be conflict with BPNP Policies 12, 13, 14 and 15. I acknowledge that there would be a loss of BMV agricultural land, although not a significant amount and this would therefore carry limited weight. There would be some impacts in terms of the landscape and visual effects of the proposed development, however I have found that these would not be unacceptable, therefore these impacts also carry limited weight. I have considered the criteria listed within the IPS document and find that of the 13 listed criteria that are relevant to this case²⁹, the proposed development would comply.

60. The proposed development would also result in a number benefits. It would provide up to 150 dwellings including affordable housing which I give significant weight to given the need for new housing locally and nationally. There would be economic benefits arising in both the short term through employment opportunities during the construction period and in the longer term as a result of new residents contributing to the local economy. I consider this attracts moderate weight. The provision of Biodiversity Net Gain, which could potentially exceed 10%, would also carry moderate weight in the planning balance. The proposed improvements and additions to the pedestrian and cycle networks would constitute benefits of the appeal scheme and taken collectively would provide notable improvements and therefore carry significant weight. I also consider that the provision of open space would attract moderate weight.
61. As a result of the transitional arrangements of the new NPPF, and my findings in relation to the flood risk references in Footnote 7, I conclude that in this case the tilted balance applies. I therefore conclude that, in this case, the harms arising from the proposed development and the identified policy conflicts, and therefore the conflict with the development plan as a whole, are significantly and demonstrably outweighed by the identified benefits. Nevertheless, in any case were the transitional arrangements considered not to apply in this case and the flat balance was therefore applicable, given the limited levels of harm arising from the proposal, I consider the benefits would represent material considerations which would outweigh the development plan conflict in this instance.

Conditions

62. In addition to the standard time limit and reserved matters conditions for outline applications (1, 2, and 3), I have imposed a condition listing the approved plans (4) as this provides certainty. I have been provided with a list of suggested conditions which were discussed with the parties, and I have considered against the necessary tests in the Planning practice guidance.
63. Condition 5 is necessary to ensure the development that comes forward is in compliance with the indicated design code. I have imposed conditions 6 and 8 in order to ensure that the construction period is carried out in a timely manner and in a way that will protect the living conditions of existing residents. Conditions 7 and 22 are necessary in order to ensure the development would protect and enhance local habitats and result in ecological enhancements. Condition 9 is necessary to ensure that the existing trees are protected and not damaged or removed during the construction period.

²⁹ Criteria 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and 13

64. I have imposed condition 10 in order to ensure that the site is safe and appropriate for the end use and to ensure that any contamination is dealt with correctly. Condition 11 is essential to ensure that an adequate and functional system for foul water drainage is provided. Conditions 12, 13 and 14 are necessary to ensure that surface water drainage is carried out in a suitable way to ensure no additional flood risk to the site and surrounding area occurs as a result of the development. I have considered the Council's additional conditions, the suggested drainage conditions in the LLFA Letter³⁰ and the Appellant's comments and revised wording³¹. Based on the information before me, I consider that the Appellant's suggested wording covers the necessary requirements and are sufficient to secure the necessary drainage information. I have therefore used this wording.
65. I have imposed condition 15 to ensure that any archaeological remains on site are protected and not damaged by the works on site. Conditions 16, 17 and 26 are necessary in the interests of highway safety, providing safe vehicular access and egress and to provide alternative travel options to the private car. Condition 26 relates to land outside of the appeal site however it was advised at the Inquiry that the works can be legally carried out.
66. Conditions 18, 19, 20 and 21 are imposed in order to ensure that the development accords with the principles of sustainability and in the interests of future residents. I have imposed conditions 23, 24 and 25 in the interests of the character and appearance of the area, the living conditions of neighbouring and future residents. I have included wording to ensure that the affordable homes are not visually distinguishable from the open market housing to accord with the similar provision in the legal agreements in relation to the first homes as discussed at the inquiry.
67. Conditions 8, 9, 11, 12, 13, 14, 15, 21, and 22 are pre-commencement conditions as it is fundamental to have the details for these agreed before any work commences on site.

Conclusion

68. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

R Norman

INSPECTOR

³⁰ ID13 – West Sussex County Council Lead Local Flood Authority dates 8 September 2023

³¹ Appellant's Revised Drainage Condition and Justification Note

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos D8610.001 rev D Location Plan and 1736/06 rev I Proposed Access Arrangement Plan.
- 5) Detailed plans and particulars of the reserved matters submission(s) shall be in compliance with the approved Design Code (August 2021) 8610.001 rev B and each reserved matters submission(s) must demonstrate compliance with the design requirements set out in the Design Code.
- 6) As part of the first reserved matters application the developer shall submit to and have approved by the local planning authority a construction phasing plan (including timescales) for the carrying out of the development. The development shall thereafter be carried out in accordance with the approved timetable.
- 7) Notwithstanding that 'layout' and 'landscaping' are reserved matters on this application, the subsequent reserved matters details to be submitted for approval by the local planning authority shall incorporate the following mitigation measures and ecological enhancements:
 - a) Wildflower meadow grass planting;
 - b) Filling gaps in tree lines or hedgerows with native species;
 - c) The provision of bat brick/boxes to be installed into the agreed dwellings and bird boxes to be installed within the retained trees on site;
 - d) The provision of 2 no. log piles as hibernacula for reptile mitigation; and
 - e) Gaps to be provided at the bottom of the fences to allow movement of small mammals across the site.
- 8) No development shall commence until a Construction Environmental Management Plan (CEMP) comprising a schedule of works and accompanying plans for that development has been submitted to and approved in writing by the local planning authority. Thereafter the approved CEMP shall be implemented and adhered to throughout the entire construction period unless any alternative is agreed in writing by the local planning authority. The CEMP shall provide details of the following:
 - a) The phased programme of construction works;

- b) The anticipated number, frequency and types of vehicles used during construction;
 - c) The location and specification for vehicular access during construction;
 - d) The provision made for the parking of vehicles by contractors, site operatives and visitors;
 - e) The loading and unloading of plant, materials and waste;
 - f) The storage of plant and materials used in construction of the development;
 - g) The erection and maintenance of security hoarding;
 - h) The location of any site huts/cabins/offices;
 - i) The provision of road sweepers, wheel washing facilities and the type, details of operation and location of other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
 - j) Details of public engagement both prior to and during construction works, including a named person to be appointed by the applicant to deal with complaints who shall be available on site and contact details known to all relevant parties.
 - k) Measures to control the emissions of dust and dirt during construction, to include where relevant sheeting of loads, covering and dampening down stockpiles and restriction of vehicle speeds on haul roads. A dust management plan should form part of the CEMP which includes routine dust monitoring at the site boundary with actions to be taken when conducting dust generating activities if weather conditions are adverse;
 - l) Measures to control the emission of noise during construction;
 - m) Details of all proposed external lighting to be used during construction and measures used to limit the disturbance of any lighting required. Lighting shall be used only for security and safety;
 - n) Appropriate storage of fuel and chemicals, in bunded tanks or suitably paved areas;
 - o) Measures to reduce air pollution during construction, including turning off vehicle engines when not in use and plant servicing;
 - p) Waste management including prohibiting burning and the disposal of litter;
 - q) Provision of temporary domestic waste and recycling bin collection point(s) during construction; and
 - r) Hours of construction.
- 9) No development shall commence on site, until protective fencing has been erected around all trees and shrubs on the northwest and southwest site boundaries in accordance with the recommendations of BS5837:2012. Thereafter the protective fencing shall be retained for the duration of the works, unless otherwise agreed in writing by the local

planning authority. No unauthorised access or placement of goods, fuels or chemicals, soil or other materials shall take place inside the fenced area; soil levels within the root protection area of the trees/hedgerows to be retained shall not be raised or lowered, and there shall be no burning of materials where it could cause damage to any tree or tree group to be retained on the site or on land adjoining at any time.

- 10) In the event that land contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. The development shall not be first occupied until;
 - i. An investigation and risk assessment has been undertaken in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority; and
 - ii. Where remediation is necessary a remediation scheme must be submitted to and approved in writing by the local planning authority. Any remediation shall be fully implemented in accordance with the approved scheme before the development is brought into use; and
 - iii. A verification report for the remediation shall be submitted in writing to the local planning authority before the development is first brought into use.
- 11) No development shall commence until details of the proposed means of foul water sewerage disposal have been submitted to and approved in writing by the local planning authority. Thereafter all development shall be undertaken in accordance with the approved details. No occupation of any dwelling shall take place until the approved off-site works have been completed or, in the event that the off-site works are not completed in full by the time of first occupation, then detailed interim on-site measures for the disposal of foul water sewerage shall be submitted to and agreed in writing by the local planning authority and implemented in full.
- 12) Prior to, or in conjunction with, the first Reserved Matters application for the development hereby permitted, details of a surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall:
 - a) Include a survey of the piped land drainage system within the site and include details of any mitigation works necessary to preserve flow from any contribution land;
 - b) Be designed to secure separate systems of drainage for foul and surface water;
 - c) Limit discharge rates to the predevelopment Qbar rate (12.97l/s) for all storm events up to and including the 1 in 100-year rate plus 40% allowance for climate change;
 - d) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - e) A final drainage plan which details exceedance and conveyance routes;

- f) Demonstrate that only where necessary the surface water that must be discharged via a pumped system is discharged via this method whilst the remainder is discharged via a gravity system; and
- g) Include a timetable for its implementation.

The development shall be carried out and maintained in accordance with the approved scheme and no dwelling shall be occupied until the surface water drainage scheme serving it is operational.

- 13) Development shall not commence until a detailed construction phase surface water management plan, including a method statement for interim and temporary drainage measures during the demolition and construction phases have been submitted to and approved in writing by the local planning authority. This information shall provide full details of who will be responsible for maintaining such temporary systems and demonstrate how the site will be drained to ensure that there is no increase in the off-site flows, nor any pollution, debris and sediment to any receiving watercourse or sewer system. The site works and construction phase shall thereafter be carried out in accordance with the approved method statement, unless alternative measures have been subsequently approved by the local planning authority.
- 14) No development shall take place until a Maintenance Plan detailing the maintenance arrangements for the existing land drainage system and the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed in writing by the local planning authority. Should any part be maintainable by a management company, details of long-term funding arrangements should be provided. The land drainage and surface water drainage systems shall be maintained in accordance with the approved details.
- 15) No development shall commence on the site until a written scheme of archaeological investigation of the site, has been submitted to and approved in writing by the local planning authority. The scheme shall include proposal for an initial trial investigation and mitigation of damage through development to deposits of importance thus identified, and a schedule for the investigation, the recording of findings and subsequent publication of results. Thereafter the scheme shall be undertaken fully in accordance with the approved details.
- 16) No part of the development shall first be occupied until such time as works have been constructed in accordance with the details shown on the drawing titled Proposed Access numbered 1736/06 Rev I.
- 17) No dwelling hereby permitted shall be first occupied until the car parking space(s) and any associated turning space serving that dwelling have been constructed, surfaced and drained in accordance with plans and details that shall have been submitted to and approved in writing by the local planning authority. The parking space(s) and any associated turning space shall thereafter be retained at all times for their designated purpose.
- 18) No part of the development shall be first occupied until Electric Vehicle Charging (EVC) spaces serving the respective dwellings has been

- constructed in accordance with plans and details to be submitted to and approved in writing by the local planning authority.
- 19) No dwelling shall be occupied until covered and secure cycle parking spaces serving the respective dwelling have been provided in accordance with the reserved matters submitted.
 - 20) Prior to the occupation of any dwelling, footways and cycleways identified on Drawing 1736/08 shall be made available for use.
 - 21) No development shall commence until full details shall be submitted to and be approved in writing by the local planning authority showing how the development is to achieve the objectives in Policy 40 of the Chichester Local Plan: Key Policies 2014 – 2029. The development shall thereafter be carried out in accordance with the approved details.
 - 22) Before the development commences a reptile activity survey shall be carried out and the results of that survey together with a reptile mitigation strategy (if required) including a programme for its implementation shall be submitted to and approved in writing by the local planning authority. Thereafter the strategy shall be implemented fully in accordance with the approved details.
 - 23) No construction of any buildings above slab level shall be carried out unless and until a full schedule of all materials and finishes including samples and finishes for external walls and roofs of the proposed buildings and surfacing materials have been submitted to and approved in writing by the local planning authority. At the same time, a design statement shall be submitted detailing how the proposed materials respond to design considerations for new development in the made Birdham Parish Neighbourhood Plan. The affordable homes shall not be visually distinguishable from the open market units based on their external appearance. All approved materials and finishes shall be used for the development unless otherwise agreed in writing by the local planning authority.
 - 24) Before first occupation of any dwelling details of any external lighting of the site shall be submitted to and approved in writing by the local planning authority. This information shall include a layout plan with beam orientation and schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained and operated in accordance with the approved details, unless the local planning authority gives its written consent to any variation. The lighting scheme shall take into consideration the presence of bats in the local area and shall minimise potential impacts to any bats using trees and hedgerows by avoiding unnecessary artificial light spill through the use of directional lighting sources and shielding. Note: Any proposed external lighting system should comply with the Institute of Lighting Engineers (ILE) guidance notes for the Reduction of Light Pollution.
 - 25) Before first occupation of any dwelling, details showing the precise location, installation and ongoing maintenance of fire hydrants to be supplied (in accordance with the West Sussex Fire and Rescue Guidance Notes) shall be submitted to and approved in writing by the local planning authority in consultation with West Sussex County Council's Fire and Rescue Services. The approved fire hydrants shall be installed before

first occupation of any dwelling and thereafter be maintained in accordance with the approved details.

- 26) Details of the upgrade works to Footpath 48 between the site and Sidlesham Lane, to establish this as a bridleway shall be set out in the first reserved matters application, but which shall be broadly in accordance with the route identified on Drawing Ref: ROWLP 002, or another route subsequently agreed. No more than 100 dwellings shall be occupied until that bridleway has been provided in accordance with the approved plans and made available for use in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Martin Carter, Barrister, Kings Chambers, instructed by Stuart Carvel, MTCP (Hons) MRTPI, Planning Director, Gladman Developments Limited

HE CALLED:

Ben Pycroft BA(Hons) Dip TP MRTPI, Director Emery Planning
Ian Grimshaw BA(Hons) MA(LM) MSc CMLI MRTPI, Director, The Environment Partnership (TEP) Limited.
Dr Paul Ellis BSc PhD C.Geol, Managing Director Geosmart Information Limited
Stuart Carvel MTCP (Hons) MRTPI, Planning Director, Gladman Developments Limited

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Dale-Harris, Barrister, Landmark Chambers, instructed by Chichester District Council Legal Department

HE CALLED:

Ivan Tennant MRTPI, MIED, Director, Lambert Smith Hampton
Andrew Robbins MA MRTPI, Senior Planning Officer, Chichester District Council
Tony Whitty BA(Hons) MRTPI, Divisional Manager, Planning Policy, Chichester
Phil Brady BEng MCLITP, Director of Land Development South at Stantec

FOR THE RULE 6 PARTY

Ian Ponter, Barrister, Kings Chambers, instructed by Genesis Town Planning, 26 Chapel Street, Chichester, West Sussex PO19 1DL

HE CALLED:

Paul Gibbs DipLA, CMLI, DipUD, Managing Director of David Jarvis Associates Limited (DJA)
Vincent Carpenter BSc(Hons), CEng, MICE, FCIWEM, MIHT, MIOd, Partner at Archibald Shaw Consulting Engineers
Kris Mitra, MA, MRTPI, Managing Director of Genesis Town Planning

INTERESTED PARTIES:

Timothy Firmston, Birdham Parish Council
Kevin Atree on behalf of Mr Walker, BVRA
Robert Carey, Local Resident
Carey Mackinnon, Local Resident
Linda Park, Chichester Harbour Conservancy
Richard Gubbins, Local Resident
Ian Balantine, District Councillor
Richard Morrison, Birdham Parish Council
Elizabeth Hamilton, Birdham Parish Council and District Councillor
Andrew McFarland, District Councillor
Councillor Pieter Montyn
Dr Colin Ross

DOCUMENTS SUBMITTED DURING THE INQUIRY

- ID1 Topographic Survey Plan prepared by BVRA
- ID2 Appellant's Opening Statement
- ID3 Council's Opening Statement
- ID4 BVRA (Rule 6) Opening Statement
- ID5 Opus 2014 Drainage Review of Bell Lane and Bookers Lane, Earnley commissioned by WSCC
- ID6 Transport and Highways Review (TPA) – Submitted by Birdham Parish
- ID7 Written representation from third party – Carey Mackinnon
- ID8 S106 Legal Agreement
- ID9 Unilateral Undertaking
- ID10a Suggested Conditions
- ID10b Suggested Conditions amended by the Council
- ID11 National Highways Letter dated 11.09.23
- ID12 Representation from Cllr Pieter Montyn WSCC dated 13.09.23
- ID13 Letter from WSCC LLFA dated 08.09.23
- ID14 Appellant's Highway Response by AHA
- ID15 Gladman Response to WSCC LLFA letter
- ID16 Flood Risk – PPG Extract
- ID17 Notes and documents from Cllr Montyn
- ID18 Off-site flood risk assessment from Dr Ross
- ID19 Appeal Decision 3318548 G & R Harris, Main Road, Nutbourne, Chichester
- ID20 Suggested drainage conditions
- ID21 MP Gillian Keegan Email
- ID22 Section 106 Agreement dated 14 September 2023
- ID23 Unilateral Undertaking dated 14 September 2023
- ID24 Closing Submission on behalf of Council
- ID25 Closing Submissions on behalf of BVRA
- ID26 Closing Submissions of the Appellant

DOCUMENT SUBMITTED AFTER THE INQUIRY

- Council's Response to National Planning Policy Framework Dec 2023
- Birdham Village Residents' Association's Response to National Planning Policy Framework Dec 2023
- Appellant's Response to National Planning Policy Framework Dec 2023
- Letter from the Council dated 30 January 2024 and copy of Government Response to the Levelling-up and Regeneration Bill: Reforms to national planning policy consultation – Updated 19 December 2023
- Appellant's Response to Council's further NPPF comments – email dated 9 February 2024.

APPENDIX C

DATED

14th September

2023

- (1) CHICHESTER DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) DEBORAH ANNE OSBORNE AND JULIE ELIZABETH MARY JONES
- (4) ITCHENOR GATE FARMS
- (5) GLADMAN DEVELOPMENTS LIMITED

PLANNING AGREEMENT

Under section 106 of the Town and Country Planning Act 1990

relating to

Whitestone Farm, Main Road, Birdham, Chichester, West Sussex, PO20 7UH

Planning Application reference 21/01830/OUT

Appeal Reference APP/L3815/W/23/3319434

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

Ref: TCP-4.00.5844 (NG)

THIS AGREEMENT is made on

14th September

2023

BETWEEN

1. **CHICHESTER DISTRICT COUNCIL** of East Pallant House, East Pallant, Chichester, West Sussex, PO19 1TY (the "**Council**");

WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (the "**County Council**");

DEBORAH ANNE OSBORNE and **JULIE ELIZABETH MARY JONES** both formerly care of Old Market House, Market Avenue, Chichester, West Sussex, PO19 1JR (the "**Owners**") ^{but now both care of Owen Kenny Partnership Limited, Chichester Business Park Unit 3, City Fields Way, Tangmere, Chichester, West Sussex, PO20 2FT}

ITCHENOR GATE FARMS an unlimited company incorporated in England and Wales (company number 00737145) whose registered office is at Itchenor Gate Farm, Itchenor Green, Itchenor, Chichester, West Sussex, PO20 7DA (the "**Leaseholder**");

GLADMAN DEVELOPMENTS LIMITED a company incorporated in England and Wales (company number 03341567) whose registered office is at Gladman House, Alexandria Way, Congleton, CW12 1LB (the "**Promoter**").

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;
"Additional First Homes Contribution"	<p>means in circumstances where a FH Disposal of a First Homes Unit other than as a First Home has taken place in accordance with paragraphs 4.8, 4.9 or 6 of Part 1B of the First Schedule of this Agreement the lower of the following two amounts:</p> <p>(a) 30% of the proceeds of sale; and</p> <p>(b) the proceeds of sale less the amount due and outstanding to any FH Mortgagee of the relevant</p>

	<p>First Homes Unit under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the FH Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Homes Unit</p> <p>and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the FH Disposal of the First Homes Unit other than as a First Home;</p>
“Affordable Dwelling Units”	<p>the Dwelling Units to be Provided as Affordable Housing in accordance with Part 1A of the First Schedule of this Agreement and subject to the provisions therein to be retained in perpetuity as Affordable Housing in accordance with the Council’s housing policies and “Affordable Dwelling Unit” shall be construed accordingly PROVIDED THAT such term SHALL NOT include First Homes / First Homes Units which (where applicable) shall be Provided as Affordable Housing in accordance with Part 1B of the First Schedule;</p>
“Affordable Dwelling Land”	<p>the part of the Site on which the Affordable Dwelling Units are to be constructed and/or the First Homes Units (as applicable);</p>
“Affordable Rented Units”	<p>means Affordable Housing for rent as described in paragraph a) to the definition of Affordable Housing in Annex 2: Glossary to the NPPF where rent is set in accordance with the government’s rent policy for affordable rent or is at least 20% below local market rents (including service charges where applicable) and “Affordable Rented Unit” shall be construed accordingly;</p>
“Affordable Housing”	<p>affordable housing which includes Affordable Rented, Social Rented, Intermediate Housing , and First Homes provided to eligible households whose needs are not met by the market. The Affordable Housing should :</p> <ul style="list-style-type: none"> • 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;
“All Requisite Consents”	all requisite consents, orders, agreements, authorisations, licences and permissions required to implement a Scheme;
“All Items Index”	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;
‘Annual Infrastructure Funding Statement’	means an annual infrastructure funding statement as required by Regulation 121A of the CIL Regulations;
“Appeal”	The appeal (Planning Inspectorate reference APP/L3815/W/23/3319434) to the Secretary of State against the Council’s non-determination of the Application;
“Application”	an outline application with all matters reserved except for means of access in respect of Proposed Development and given Council reference 21/01830/OUT;
“Approved Body”	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 Planning Obligations and Affordable Housing Supplementary Planning Document;
“Armed Services Member”	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;
“BCIS Index”	means the All in Tender Price Index pulished by the Building Cost Information Service or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the County Council may specify
“Chargee”	any mortgagee or charge (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to

	realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver)) of the whole or any part of the Affordable Dwelling Land and/or Affordable Dwelling Units;
“Chichester and Langstone Harbour Special Protection Area”	means the Special Protection Area designated pursuant to The Conservation of Habitats and Species Regulations 2017 shown edged in orange and marked by orange triangles on Plan 2;
‘CIL’	means Community Infrastructure Levy as defined in Regulation 3 of the CIL Regulations;
‘CIL Regulations’	means the Community Infrastructure Levy Regulations 2010 (as amended);
“Commence	the commencement of the Proposed Development by the carrying out of a material operation on the Land within the meaning of Section 56 (4) of the Act other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence” “Commenced” “Commencement of Development” and “Commencement” shall be construed accordingly;
“Compliance Certificate”	means the certificate issued by the Council confirming that a Dwelling Unit is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 4.2 of Part 1B of the First Schedule applies the Eligibility Criteria (Local) in the form as may be issued / prescribed by Homes England from time to time;
“Decision Letter”	The letter from the Planning Inspectorate reporting the outcome of the Appeal;
“Development”	means development of the Land pursuant to the Permission;
“Development	means the development framework drawing reference

Framework Drawing	A18610.002G dated 18 th February 2021 submitted with the Application;
"Director"	the Council's Director of Planning and the Environment from time to time or his/her authorised representative;
"Discount Market Price"	means a sum which is the FH Market Value discounted by at least 30%;
"FH Disposal"	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <p>(a) a letting or sub-letting in accordance with paragraph 5 of Part 1B of the First Schedule;</p> <p>(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner;</p> <p>(c) an FH Exempt Disposal,</p> <p>and "FH Disposed" and "FH Disposing" shall be construed accordingly;</p>
"RP Disposal"	means a disposal (other than by way of legal mortgage or charge) 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 or by way of a management contract and references to "dispose", "disposal" or "disposed" shall be construed accordingly".
"Dwelling Units"	the dwelling units to be constructed on the Land pursuant to the Permission and "Dwelling Unit" means any one of them;
"Eligibility Criteria (National)"	<p>means criteria which are met in respect of a purchase of a First Home if:</p> <p>(d) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and</p> <p>(e) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National);</p>

<p>“Eligibility Criteria (Local)”</p>	<p>means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:</p> <ul style="list-style-type: none"> (a) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (Local) (if any); and (b) any or all of criteria (i) (ii) and (iii) below are met: <ul style="list-style-type: none"> (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member; and/or (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker;
<p>“Exempt FH Disposal”</p>	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home in one of the following circumstances:</p> <ul style="list-style-type: none"> (c) to a spouse or civil partner upon the death of the First Homes Owner; (d) to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner; (e) to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; (f) to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 6 of Part 1B of the First Schedule shall apply to such sale), <p>PROVIDED THAT in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 5 of Part 1B of the First Schedule;</p>
<p>“First Homes”</p>	<p>means the Dwelling Units which may be disposed of as a</p>

	freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first FH Disposal does not exceed the Price Cap and "First Home" shall be construed accordingly;
"First Homes Owner"	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <p>(a) the Owners; or</p> <p>(b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or</p> <p>a tenant or sub-tenant of a permitted letting under paragraph 5 of Part 1B of the First Schedule;</p>
"First Occupation"	beneficial occupation for any use for which the Proposed Development was designed other than occupation for the purposes of construction or fitting out or for security purposes and "First Occupied" shall be construed accordingly;
"First Time Buyer"	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003;
"Gross Internal Floor Area"	means measured on the basis of gross internal area defined in the Code of Measuring Practice of the Royal Institution of Chartered Surveyors;
"Highway Network Contribution"	is the sum specified in paragraph 5 of Part 2 of the First Schedule to be paid to the Council to be used (either by the Council, National Highways, the County Council or other transport or service providers) as a contribution towards A27 junction infrastructure improvements and/or other identified highway capacity improvements (including by means of facilitating modal shift in existing travel patterns) that will seek to mitigate the impact of the

	development (on its own or in conjunction with others) on the strategic and local highway networks calculated in accordance with paragraph 5.2 of Part 2 of the First Schedule ;
“Income Cap (Local)”	means such local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this Agreement the Council has not set an Income Cap (Local);
“Income Cap (National)”	means eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;
“Index Linked”	means such increase to sums payable to the County Council by an amount equal to the proportionate increase in the All In Tender Price Index published by the Building Cost Information Service (BCIS) 24 August 2022 and the date that payment of the relevant contribution is due to the County Council;
“Infrastructure”	has the meaning ascribed in Section 216(2) of the Planning Act 2008
“Inspector”	means the planning inspector appointed by the Secretary of State to determine the Appeal;
“Interest Rate”	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;
“Intermediate Housing”	means Affordable Housing for sale as described in paragraph d) to the definition of Affordable Housing in Annex 2: Glossary to the NPPF and which may include Shared Ownership Units and/or other forms of low cost home ownership;
“Key Worker”	means a person employed or with a confirmed job offer in one of the following categories of employment: (a) public sector employees who provide frontline services in areas including health, education and community safety – such as NHS staff, teachers,

	<p>police, firefighters and military personnel, social care and childcare workers; and</p> <p>(b) such other categories of employment as may be published by the Council from time to time as the 'First Homes Key Worker criteria' and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the 'Key Worker' criteria which shall apply to that disposal in addition to the categories of employment at limb (a) of this definition above;</p>
"Land"	<p>the freehold and leasehold property known as Whitestone Farm, Main Road, Birdham, Chichester, West Sussex, PO20 7UH being registered with absolute title at the Land Registry under title numbers WSX167401, WSX253426 and WSX366030 shown edged red on Plan 1;</p>
"Landscape Management Plan"	<p>the landscaping scheme and management plan prepared in accordance with the Permission in respect of the Open Space Land to include:</p> <ul style="list-style-type: none"> • long term design objectives; • management responsibilities; • maintenance schedules; and <p>a timetable for implementation of the works required to be undertaken;</p>
"Local Connection Criteria"	<p>means either (a) or (b) below:</p> <p>(c) criteria which are met by a person who satisfies one or more of (i) - (iv) below:</p> <p>(i) is ordinarily resident within Chichester District and has been for a period of either:</p> <ul style="list-style-type: none"> • not less than six (6) months in the twelve (12) months immediately prior to exchange of contracts for the relevant First Home; or • not less than three (3) years in the five (5) years immediately prior to exchange of

	<p>contracts for the relevant First Home.</p> <p>(ii) used to live within Chichester District but was forced to move away because of lack of affordable housing accommodation; or</p> <p>(iii) is permanently employed within Chichester District (more than 16 hours); or</p> <p>(iv) is the parent, sibling or child of a living and permanent resident of Chichester District as defined by the Housing Act 1996.</p> <p>such other local connection criteria as may be published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant FH Disposal of the First Homes Unit and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant FH Disposal of the First Homes Unit shall be the "Local Connection Criteria" which shall apply to that FH Disposal;</p>
"Local Planning Authorities"	the Council and the County Council;
"Managed Land"	means the Open Space Land and the Play Area which will be managed by the Management Company in accordance with paragraphs 3 and 4 of Part 2 (as appropriate) of the First Schedule to this Agreement (but excluding any areas which have been or are to be adopted by the relevant highway or drainage authorities pursuant to an adoption agreement);
"FH Market Value"	means the open market value as assessed by a Valuer of dwellings as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation;
"Management Company"	<p>means a limited company or company limited by guarantee (or companies) established or appointed by the First Owners to carry out the long term management and maintenance of the Managed Land and to be managed by it in accordance with the provisions of this Agreement and:</p> <p>1. whose objectives shall include:</p> <p>1.1. setting the level of charges for funding the running</p>

	<p>of the Management Company or its obligations under this Agreement in connection with the Managed Land and collecting such charges:</p> <p>1.2. ensuring accountability to occupiers of the Dwelling Units:</p> <p>2. whose constitution will facilitate (where the Management Company is to be established by the Owner):</p> <p>2.1. the First Owners retaining control of the Management Company until such time it relinquishes that control to the shareholders; and</p> <p>2.2. this includes any/all subsequent body/bodies that take on this responsibility;</p>
<p>“Management Company Structure Scheme”</p>	<p>means a scheme that addresses the following in relation to the Management Company:</p> <p>(a) details of the proposed or existing constitution of the Management Company which shall be a private company limited by shares or guarantee;</p> <p>(b) proposed banking arrangements for the Management Company;</p> <p>(c) details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of any Managed Land managed by the Management Company and against damage by those comprehensive risks as are reasonable to insure against in the circumstances then prevailing;</p> <p>(d) details of the mechanism together with suitable documentation to enable the transfer of ownership and responsibility for the Managed Land from the Management Company to another Management Company or the Council or its nominee if the circumstances require on terms to be agreed (including details of how and when such transfer and step-in mechanism shall be triggered, settlement of outstanding management costs prior to transfer and liability for legal costs/expenses associated with the transfer);</p>
<p>“Monitoring Fee”</p>	<p>the Council’s administration costs in monitoring and enforcing planning obligations including the collection and distribution of contributions received by the Council pursuant to Section 106 of the Act and the payment of such fee is expressed to be a planning obligation by virtue of Regulation 122 (2A) of the Community Infrastructure Levy Regulations 2010 (as amended);</p>

“FH Mortgagee”	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home;
“Nomination Agreement”	a nomination agreement substantially in the form attached to this Agreement as Appendix 1;
“Nomination Rights”	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;
“the NPPF”	means the National Planning Policy Framework issued by the Department for Housing, Communities and Local Government and dated July 2021;
“Open Market Units”	means all those Dwelling Units to be constructed on the Land pursuant to the Planning Permission which are not Affordable Dwelling Units or First Homes/First Homes Units and “Open Market Unit” shall be construed accordingly;
“Open Space Land”	land including semi-natural open space, amenity open space, sustainable drainage and landscape buffers as indicated on the submitted Development Framework Drawing or as otherwise agreed at Reserved Matters to be provided in accordance with paragraph 3 of Part 2 of the First Schedule of this Agreement;
“Operative Date”	the date the Proposed Development is Commenced;
“Permission”	a planning permission for the Proposed Development granted pursuant to the Application and/or any subsequent permission granted for the Proposed Development pursuant to an application under Section 73 or Section 73A of the Act and including any non-material amendments accepted by the Council under Section 96A of the Act;
“Plan 1 and 2”	the plans so numbered and attached to this Agreement;
“Planning Obligations”	the obligations, conditions and stipulations set out in the First Schedule to this Agreement;
“Play Area”	the land to be provided as an equipped play area in accordance with the Play Area Specification and paragraph 3 of Part 2 of the First Schedule of this

	Agreement;
“Play Area Specification”	<p>Means the specification provided for the provision of the Play Area or any parts thereof to be laid out and maintained in accordance with this Agreement and which may include information relating to any of the following as appropriate:</p> <ul style="list-style-type: none"> • plans, details, specifications and a timetable for provision of the Play Area; • approval of boundaries of any areas or parcels of land to be transferred to the Management Company; • details of the surface treatment; • details of any fencing or materials; • type and size of play equipment; • details and type of any seating; • litter bins; • signage (type and location); and <p>a management plan for the long-term future maintenance and management (including maintenance schedule) and the arrangements for securing the availability of the Play Area for use by the general public;</p>
“Practical Completion”	means in respect of the First Homes / First Homes Units only the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be First Occupied;
“Price Cap”	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first FH Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State;
“Promotion Agreement”	means a promotion agreement dated 1 December 2021 in respect of the Site made between the Owner and the Promoter;
“Proposed	Up to 150 dwellings (including 30% affordable housing)

Development”	with community park, public open space, landscaping and sustainable drainage system (SUDS) and vehicular access point on the Land with all matters reserved except for means of access;
“Protected Occupier”	Any person who: <ol style="list-style-type: none"> 1. Has exercised the right to buy or acquire their Affordable Dwelling Unit 2. Has accomplished final staircasing in accordance with the terms of the Shared Ownership Lease or 3. Has purchased an Affordable Housing Unit of Intermediate Housing
“Provide”	in the case of the Affordable Dwelling Units and the First Homes 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 any replacement standards (or equivalent standards published by any replacement or successor body) and which shall have the following minimum Gross Internal Floor Areas of the following dimensions:- 1 Bed House (58 m ²) 2 Bed House (79m ²), 3 Bed House (93m ²) 4 Bed House (106m ²) 1 Bed flat (50m ²) 2 bed flat (70 m ²) 3 bed flat (74m ²) and “Provided” shall be construed accordingly;
“Recreation Disturbance Mitigation Contribution”	the sum payable in accordance with paragraph 1 of Part 2 of the First Schedule of this Agreement being a financial contribution to mitigate the impact of the Proposed Development on the Chichester and Langstone Harbour Special Protection Area and the Council will pay such contribution to the Solent Recreation Mitigation Partnership Project Board towards the Solent Recreation Mitigation Strategy;
“Registered Provider”	a registered provider of Affordable Housing pursuant to the Housing and Regeneration Act 2008;
“Residents”	the residents of the individual Dwelling Units constructed on the Land; means matters reserved by the Permission and “Reserved

“Reserved Matters”	Matters Application” shall mean an application for such
“ROADCON Tender Price Index”	the tender price index for road construction issued from time to time by the Department for Business, Innovation and Skills (or similar predecessor body);
“SDLT”	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;
“Secretary of State”	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed or any other minister or authority for the time being entitled to exercise the powers given under section s77, 78 and 79 of the Act and includes any successor in function;
“Service Level Agreement”	an agreement between the Council and an Approved Body (or other owner) governing how lettings are to be undertaken;
“Shared Ownership Lease”	a shared ownership lease for a term of at least 125 years in the form as regulated by the Homes and Communities Agency from time to time and which shall accord with the requirements and be consistent with any model shared ownership lease from time to time established by Homes England (or replacement or successor body); and in the case of the land being within an area for which there is an H9 (rural exception) designation shall contain a provision restricting the Lessee's ability to stair case to 80% of the Market Value of the Dwelling;
“Shared Ownership Units”	any Affordable Dwelling Units to be provided as shared ownership units for sale under a Shared Ownership Lease in accordance with paragraph 1.3 of the First Schedule to this Agreement;
“Social Rented Dwellings”	Any Affordable Dwelling Units for rent as described in paragraph a) to the definition of Affordable Housing in Annex 2: Glossary to the NPPF where the rent is set in accordance with the government's rent policy for social rent;
“Solent Recreation Mitigation Partnership Project Board”	is a partnership comprising the fifteen Solent local authorities (including the Council) established to formulate; implement and monitor the strategy using developer contributions transferred from the local planning authorities in respect of implementation of the Solent Recreation Mitigation Strategy;
“Solent Recreation	a strategy, known as "Bird Aware Solent" dated December 2017 which sets out the aims and actions of the Solent

Mitigation Strategy”	Recreation Mitigation Partnership Project Board to prevent bird disturbance from recreational activity;
“Starter Tenancy”	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 an assured tenancy after 12 months and which shall be in a form which accords with the requirements of Homes England or replacement or successor body;
“Statutory Undertaker”	means any gas supplier or transporter water or sewerage company or undertaker electricity supplier or telecommunications supplier or operator;
“Travel Plan Audit Fee”	means the sum of Three Thousand Five Hundred Pounds (£3,500) to be spent by the County Council on monitoring implementation of the Travel Plan;
“Travel Plan”	means a travel plan to be submitted for approval by the County Council;
“Units for Rent”	Any Affordable Rented Unit and “Unit for Rent” shall be construed accordingly;
“Valuer”	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a registered valuer appointed by the First Homes Owner and acting in an independent capacity;
“Working Day”	Means any Monday, Tuesday, Wednesday, Thursday and/or Friday (other than bank or public holidays) and “Working Days” 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 for the area within which the Land is situated and are the authorities by whom the Planning Obligations contained in this Agreement are

FIRST SCHEDULE

The Planning Obligations

PART 1A: AFFORDABLE HOUSING

1. AFFORDABLE HOUSING

- 1.1 Development shall not 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.
- 1.2 Prior to First Occupation of Seventy Five (75) Open Market Units to provide the total of Forty Five (45) Dwelling Units as the mix of Affordable Dwelling Units and First Homes Units as stated in paragraph 1.3 below on the Affordable Dwelling Land and not to allow First Occupation of more than Seventy Four (74) Open Market Units until the said mix of Affordable Dwelling Units and First Homes Units have been provided in accordance with the following provisions and written notification of such has been received by the Council PROVIDED THAT and for the avoidance of doubt the Owner shall not provide more than Forty Five (45) Affordable Dwelling Units and First Homes Units in aggregate, and for the further avoidance of doubt the number of Affordable Dwelling Units and First Homes shall be reduced from 45 proportionate to the number of Dwellings if the Proposed Development provides for fewer than 150 Dwellings at Reserved Matters so that the percentage of Affordable Housing does not exceed 30% of the total number of Dwellings.
- 1.3 The Affordable Dwelling Units or mix of Affordable Dwellings Units and First Homes Units shall (unless otherwise agreed in writing by the Council and for the avoidance of doubt the number of Affordable Dwelling Units will be reduced proportionate to the number of Dwellings if the Proposed Development provides for fewer than 150 Dwellings at Reserved Matters so that the percentage of Affordable Housing does not exceed 30% of the total number of Dwellings) be of the following size mix and tenure and in a location approved by the Council acting reasonably in writing prior to First Occupation:

Eight Shared Ownership Units of the following mix:

Two x 1 bedroom Units

Four x 2 bedroom Units

Two x 3 bedroom Units

Nine Affordable Rented Units of the following mix:

Four x 1 bedroom Units

Two x 2 bedroom Units

Three x 3 bedroom Units

Sixteen Social Rented Units of the following mix:

Six x 1 bedroom Units

Five x 2 bedroom Units

Four x 3 bedroom Units

One x 4 bedroom Unit

Twelve First Homes Units of the following mix:

Four x 1 bedroom Units

Eight x 2 bedroom Units

~~Seventy Five (75)~~

No more than ~~Fifty One (51)~~ of the Open Market Units shall be First Occupied until the Affordable Dwelling Units have been disposed of to the Approved Body and provided that:

- 1.4.1 The RP Disposal is on terms that accord with any relevant Homes England funding requirements current at the date of construction of the Affordable Dwelling Units; and
- 1.4.2 The RP Disposal is on terms which require the Approved Body to enter into the Nomination Agreement with the Council within 28 days of the date of the RP 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 Nomination Agreement within the time specified at 1.4.2 above; and
- 1.4.4 written notification of the RP 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 Nomination Agreement with the Council, the provisions of the Nomination 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 except by:
- 1.5.1 Any Protected Occupier or any mortgagee or chargee of the Protected Occupier or any person deriving title from the Protected Occupier or any successor in title thereto and their respective mortgagees and charges; or
 - 1.5.2 Any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 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 and
 - 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 affordable housing provisions in Part 1A of the First Schedule shall not be binding on a Chargee or any persons or bodies deriving title through such mortgagee or chargee or receiver PROVIDED
- (a) Such mortgagee or chargee or Receiver shall only exercise any power of sale under a mortgage or charge over any Affordable Dwelling Unit in the event of default by the Registered Provider or owner or tenant of an Affordable Dwelling Unit
 - (b) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Dwelling Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwelling Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - (c) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwelling Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely.

1.8 Subject to paragraph 1.9 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 Chargee or Protected Occupier or any persons or bodies deriving title through such Chargee or Protected Occupier who have complied with paragraph 1.7 of this First Schedule.

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

Council Nominations

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

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

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

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

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

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

- (i) twenty (20) working days in respect of initial lettings of the Unit for Rent; and
- (ii) 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 Homes England (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 paragraph) 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 a 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 1.15 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 14 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 1.15.3, with any of the Parishes of Bosham, West Itchenor, West Wittering, East Wittering, Earnley, Sidlesham, Appledram and Donnington;

(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 Homes England 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 Homes England (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 Homes England);
- 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 Homes England (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.

PART 1B: FIRST HOMES OBLIGATIONS

1. FIRST HOMES OBLIGATIONS

- 1.1 Where First Homes / First Homes Units are to be Provided (and unless otherwise agreed in writing by the Council) the Owner covenants with the Council as set out in Part 1B of this First Schedule below save that:
 - 1.1.1 paragraphs 2 and 3 of this Part 1B shall not apply to a First Homes Owner;
 - 1.1.2 paragraphs 4 and 5 of this Part 1B shall apply as set out therein **SAVE THAT** where a First Home is owned by a First Homes Owner

they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and

1.1.3 paragraph 6 of this Part 1B shall apply as set out therein.

2. QUANTUM, TYPE AND DISTRIBUTION OF FIRST HOMES

Subject to paragraph 1.3 of Part 1A of this First Schedule (and unless otherwise agreed in writing by the Council) Twelve (12) of the Dwelling Units on the Land (save that for the avoidance of doubt the number of First Homes will be reduced proportionate to the number of Dwellings if the Proposed Development provides for fewer than 150 Dwellings in total at Reserved Matters) shall be identified reserved and set aside as First Homes in accordance with the details approved under paragraph 1.3 of Part 1A of this First Schedule and shall be provided and retained as First Homes in perpetuity subject to the terms of this Part 1B.

3. APPEARANCE AND DEVELOPMENT STANDARD

3.1 The First Homes shall not be visually distinguishable from the Open Market Units based upon their external appearance.

3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted.

3.3 All First Homes shall be constructed to no less than the standard applied to the Open Market Units.

4 DELIVERY MECHANISM

4.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

4.1.1 the Eligibility Criteria (National); and

4.1.2 the Eligibility Criteria (Local) (if any).

4.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 4.1.2 of this Part 1B shall cease to apply.

4.3 Subject to paragraphs 4.6 to 4.10 of this Part 1B no First Home shall be FH Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price (meaning the Discount Market Price) is funded by a first mortgage or other home purchase plan with a FH Mortgagee.

4.4 No First Home shall be FH Disposed of (whether on a first or any subsequent sale) unless and until:

4.4.1 The Council has been provided with evidence that:

4.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 4.2 of this Part 1B applies meets the Eligibility Criteria (Local) (if any);

4.4.1.2 the Dwelling Unit is being FH Disposed of as a First Home at the Discount Market Price; and

4.4.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be Chichester District Council

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in clauses 4.1 – 4.9 (inclusive) of Part 1B of the First Schedule of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Agreement" in the following terms:

"means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [●] made between (1) the Council; and (2) [●] and (3)[●] as may be amended / supplemented from time to time

d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise FH Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

4.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 4.3 and 4.4.1 of this Part 1B have been met

4.5 On the first FH Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not

being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

4.6 The owner of a First Home (which for the purposes of this clause shall include the Owner and any First Homes Owner) may apply to the Council to FH Dispose of it other than as a First Home on the grounds that either:

4.6.1 the Dwelling Unit has been actively marketed as a First Home for six (6) months in accordance with Clauses 4.1 and 4.2 (and in the case of a first FH Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to FH Dispose of the Dwelling Unit as a First Home but it has not been possible to FH Dispose of that Dwelling Unit as a First Home in accordance with paragraphs 4.3 and 4.4.1 of this Part 1B; or

4.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 4.6.1 of this Part 1B before being able to FH Dispose of the Dwelling Unit other than as a First Home would be likely to cause the First Homes Owner undue hardship.

4.7 Upon receipt of an application served in accordance with paragraph 4.6 of this Part 1B the Council shall have the right (but shall not be required) to direct that the relevant Dwelling Unit is disposed of to it at the Discount Market Price.

4.8 If the Council is satisfied that either of the grounds in paragraph 4.6 of this Part 1B above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 4.6 of this Part 1B that the relevant Dwelling Unit may be FH Disposed of:

4.8.1 to the Council at the Discount Market Price; or

4.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling Unit) other than as a First Home

and on the issue of that written confirmation the obligations in this Agreement which apply to First Homes shall cease to bind and shall no longer affect that Dwelling Unit apart from paragraph 4.10 of this Part 1B which shall cease to apply on receipt of payment by the Council where the relevant Dwelling Unit is disposed of other than as a First Home.

4.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 4.6 of this Part 1B above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 4.6 of this Part 1B serve notice on the owner setting out the further steps it requires the owner to take

to secure the FH Disposal of a Dwelling Unit as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to FH Dispose of the Dwelling Unit as a First Home he may serve notice on the Council in accordance with paragraph 4.6 of this Part 1B following which the Council must within twenty eight (28) days issue confirmation in writing that the Dwelling Unit may be FH Disposed of other than as a First Home.

4.10 Where a Dwelling Unit is FH Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 4.8 or 4.9 of this Part 1B above the outgoing owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution (which obligation shall remain binding on the outgoing owner notwithstanding the disposal of its interest).

4.11 Upon receipt of the Additional First Homes Contribution the Council shall:

4.11.1 within ten working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 4.5 of this Part 1B where such restriction has previously been registered against the relevant title; and

4.11.2 apply all monies received towards the provision of Affordable Housing.

4.12 Any person who purchases a First Home free of the restrictions in this Schedule pursuant to the provisions in paragraphs 4.9 and 4.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

5. USE

5.1 Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise FH Disposed of other than in accordance with the terms of this Agreement PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 5.1.1 – 5.1.4 of this Part 1B below.

5.1.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

5.1.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving

such consent and not to withhold such consent in any of circumstances at 5.1.2.1 – 5.1.2.6 of this Part 1B below:

- 5.1.2.1 the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - 5.1.2.2 the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
 - 5.1.2.3 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - 5.1.2.4 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - 5.1.2.5 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - 5.1.2.6 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 5.1.3 A letting or sub-letting permitted pursuant to paragraph 5.1.1 or 5.1.2 of this Part 1B must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 5.1.4 Nothing in this paragraph 5 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

6. FH MORTGAGEE EXCLUSION

- 6.1 The obligations in paragraphs 1 – 5 (inclusive) of this Part 1B in relation to First Homes shall not apply to any FH Mortgagee or any receiver (including an administrative receiver appointed by such FH Mortgagee or any other person appointed under any security documentation to enable such FH Mortgagee to realise its security or any administrator (howsoever appointed (each a "FH Receiver"))) of any individual First Home or any persons or bodies deriving title through such FH Mortgagee or FH Receiver PROVIDED THAT:
- 6.1.1 such FH Mortgagee or FH Receiver shall first give written notice to the Council of its intention to FH Dispose of the relevant First Home;

- 6.1.2 once notice of intention to FH Dispose of the relevant First Home has been given by the FH Mortgagee or FH Receiver to the Council the FH Mortgagee or FH Receiver shall be free to sell that First Home at its full FH Market Value and subject only to paragraph 6.1.3 of this Part 1B;
- 6.1.3 following the FH Disposal of the relevant First Home the FH Mortgagee or FH Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution; and
- 6.1.4 following receipt of notification of the FH Disposal of the relevant First Home the Council shall:
- 6.1.4.1 forthwith issue a completed application to the purchaser of that Dwelling Unit to enable the removal of the restriction on the title set out in paragraph 4.5 of this Part 1B; and
- 6.1.4.2 apply all such monies received towards the provision of Affordable Housing.

PART 2: OTHER OBLIGATIONS

RECREATION DISTURBANCE MITIGATION CONTRIBUTION

- 1.1 Prior to the Operative Date to pay to the Council the Recreation Disturbance Mitigation Contribution.
- a. The Recreation Disturbance Mitigation Contribution shall be calculated as follows:-
- £443 per one bedroom dwelling
- £639 per two bedroom dwelling
- £834 per three bedroom dwelling
- £980 per four bedroom dwelling
- £1014 per five or more bedroom dwelling

provided that where the Operative Date of the Proposed Development shall take place after the 31 March 2024 the Recreation Disturbance Mitigation Contribution shall be increased by an amount equal to the proportionate increase in the All Items Index between the month preceding the date of this Agreement and the month preceding the Operative Date.