

Secretary of State for Levelling Up, Housing & Communities
Planning Casework Unit
23 Stephenson Street
Birmingham
B2 4BH

~~Copperfields~~
~~Crooked Lane~~
Birdham
Chichester
PO20 7HB

22 June 2023

Signed for Delivery

Chichester District Council (Access Track Off Crooked Lane, Birdham) Compulsory Purchase Order 2023 - Objection

Dear Secretary of State for Levelling Up, Housing and Communities,

I refer to the above Compulsory Purchase Order which was made on 2 May 2023 pursuant to Section 226(1)(a) of the Town and Country Planning Act 1990.

I jointly (with Linda Corkett) own the title deeds to Copperfields, Crooked Lane, Birdham PO20 7HB which is immediately to the north of the proposed access track and we have interests in the track.

I understand that the access track is unregistered and believe that we have rights to 50% ownership to the midpoint of the said track under the "Ad Medium Filum" legal presumption as our property boundary runs along most of the northern side of the track and also to Crooked Lane.

Chichester District Council have described the access track as running between the site boundaries of Copperfields and Hedgecox. I have recently measured the distance between the two property boundaries with 2 witnesses present and it is approximately 3.6 metres wide half way along the track. The CPO states that the proposed new road would be 4.8 metres wide. Clearly this creates an issue as the track is not wide enough for the new road.

I am formally objecting as a statutory objector to the Compulsory Purchase Order issued by Chichester District Council on 2 May 2023 in relation to the access track for the associated housing development. The order was served on 17 May 2023 and revised with an objection deadline of 30 June 2023. As the owner of Copperfields which will be impacted by the CPO, I have significant concerns regarding the proposed development and the adverse impacts it will have on my property rights, safety, and local infrastructure. I consider that constructing an access road to the Birdham H9 Exception site for 15 affordable houses opposite Birdham Primary school is not in the public interest and that the Birdham H9 Exception site is located in the wrong location as the area is prone to flooding and there is a lack of adequate sewerage facilities. Also there has never been enough need for the Birdham H9 Exception site nor is there now a compelling need that justifies the use of a CPO.

I understand Martlet Homes (part of the Hyde Group) will indemnify Chichester District Council in respect of the Chichester District Council's costs of making and prosecuting the Order.

I do not consent to the written representations route and I reserve the right to be heard if a Public Inquiry is called.

The comments below follow the headings in the “Town and Country Planning Act 1990 and Acquisition of Land Act 1981 Statement of Reasons of Chichester District Council accompanying the Chichester District Council (Access track off Crooked Lane, Birdham) Compulsory Purchase Order 2023”.

1. Introduction

There is no mention that planning permission is for an H9 Exception site within the AONB, which was originally granted in November 2013 (almost 10 years ago) without a legal access route.

2. Description of the Order Land, Its Location, Present use and Ownership

2.1 Access to the proposed housing development is shown in red below. This is opposite the Birdham CE Primary school shown in purple.



The entrance to the access track will create a dangerous junction being opposite the Birdham Primary school and also adjoining our driveway entrance. At school drop off and pick up times cars park along Crooked Lane on both sides of the school entrance.

The photo below was taken on 17 June 2023 and shows the site notice in front of the gate looking down the track. The width of the track is narrow (3.6 metres) between the two property boundaries of Hedgecox and Copperfields. This is less than 4.8 metres quoted in the Statement of Reasons (s4.7) for the new road.

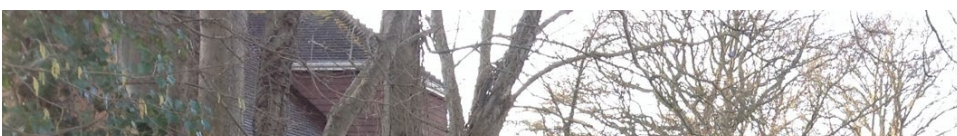
A number of overhanging branches will need to be removed to enable a fire engine, crane or construction lorry to safely pass down the track.



Paragraph 2.20 should read “Anthony Corkett and Linda Corkett” in both references instead of “John Corkett and Linda Corkett”.

3. Description of the Crooked Lane Site, Its Location, Present Use and Ownership

There is no mention of the ditch on the Eastern boundary of the proposed housing site, probably for reasons that become clear later when looking at problems with the access track. The Eastern boundary of the housing site has a significant ditch running along the rear of the properties on Crooked Lane. This ditch then turns 90 degrees around the boundary of Hedgecox and continues along the track towards Crooked Lane. During winter months this ditch is full of water and in heavy rain the whole of the track is awash as the water proceeds to the ditch on the West side of Crooked Lane.



4. The Scheme (H9 exception site rules attached)

The scheme does not mention that this is an H9 Exception site which comes with it's own set of rules these are attached. It is not like a normal development site. An exception site is allowed on land not usually available for building, (in this case building on the AONB) and one of the rules is that it is intended to meet the need of people with a local connection, in this case Birdham.

As regards the access road no mention of how the ditch water mentioned above will reach Crooked Lane. One of the planning conditions is that a full winter monitoring of the water table on the site is carried out. This has not happened, so the extent of any problem is not known. The available width for the access has been measured and is only 4.2 metres at the entrance (rather than 4.8 metres) which is to be a shared surface but no mention of a ditch, only retaining walls.

At the planning meeting in November 2013 the Chichester District Council Design and implementation Manager noted that the Exception site was "relatively isolated" and pedestrian / cycle links seem "poor". The full text included in the councillor briefing pack is shown at 6.8 below:

"6.8 CDC Design and Implementation Manager

Layout

The layout has been amended to provide a better relationship between the built development and new public open space.

Whilst the layout is significantly improved, the site is in a relatively isolated location poorly connected to the rest of the village via a narrow, poorly overlooked track leading off Crooked Lane. Pedestrian/cycle links also seem poor, having to share the narrow access road with cars and other vehicles which does not create an attractive circulation route.

The site's location and relationship to the existing village in effect prevents the development from integrating naturally with the existing settlement.

Whilst it is quite a small scheme that would be legible in its own right, it is likely to be difficult to navigate to in relation to the village as a whole."

It should be noted that the bus stops next to Birdham stores on the main Birdham Road are approximately 1km away from the housing development.

5. Purpose of Compulsory Acquisition (track Right of Way (ROW) history attached)

Initially back in 2010 CDC was going to purchase the site and an agreement was drawn up. Interestingly on the 13th July 2010 the CDC Executive Board meeting **identified lack of ownership of the track as a risk back in 2010.**

This agreement to purchase was terminated on 15th April 2013.

The claimed ROW over the track made in 2010 was questioned by the public. This resulted in October 2012 the Land Registry removing the note claiming a ROW over the track from the title deeds of the site.

So at the time Hyde purchased the Land in Jan 2014 it was well known that the vendor was not able to grant any ROW over the track. **Hyde would have purchased the land knowing full well that it did not include the access track and there was no ROW to use the track.**

During the planning phase this issue was classified by CDC as a private legal matter.

There was even a letter was read out just before the planning hearing was started. It was from Hyde's solicitors "the position regarding the access to the development site on this project has been investigated and we are satisfied that the Association will be in a position to implement the scheme in line with the terms of the application."

Was this misleading to the Planning Committee? Hyde have never been able to implement the scheme.

This a misuse of a CPO's power, as it's real reason, is to get Hyde out of a poor commercial decision to purchase a site without control of the access. There were many other sites available at the time.

Draconian powers, that was the term used by Mr. Bennett (CDC's top legal adviser), when explaining a CPO to councillors before they debated the issue.

In less dramatic words, there has to be a compelling case in the public interest for a Council to instigate a CPO however such a small scheme as this (15 houses) does not constitute a compelling case in the public interest. There is no mention of the local need in Birdham in section 8.

There is no " strong planning justifications for the use of the power" (para 95 CPO Guidance). At the planning stage, issues with Ownership and ROW of the track were always classified as a private legal matter.

7. Planning Policy Framework (NPPF 2012 attached)

The site did not conform to then new NPPF 173 & 177 relate to sites being deliverable, which is a planning issue, obviously without an access, a site is not deliverable. In the planning officer notes to councillors at the planning hearing : item 8.15 " A number of third parties have questioned ownership of the track and adjoining land. Whilst these comments are noted, **this is a private legal matter** that should not prejudice consideration of this planning application". No mention of the NPPF requirement to be deliverable.

3 years after planning was approved, when it is obvious that the site is non deliverable, at the hearing to vary conditions, it was classified as " **Access is a complex civil matter**" . This was another opportunity for CDC to enact NPPF on sites being deliverable.

Also in Hyde's planning application, section 6 under the heading 'Pedestrian and Vehicle Access, Roads and Rights of Way' asks the question. 'Do the proposals require any diversions /extinguishments and /or creation' Hyde highlighted "NO" in response to the question in contradiction to the known facts at the time of submission. More mis-information.

Paragraph 7.18 refers to the 2016 Birdham Neighbourhood Plan. The 15 affordable houses were included in the Birdham Neighbourhood Plan as planning permission had been granted in 2013 and so the general view was that the site should not be omitted. However, there was and is considerable local opposition to this planned development.

8. Need for and Delivery of Social Rented Housing

The Council's case to use a CPO depends on proving a large housing need.

So there is about 50 pages on Housing need in the HEDNA. Lots of colourful tables and graphs, proving a large requirement for affordable homes in the Chichester district.

However, this is an H9 Exception Site which comes with it's own set of rules, It is not like a normal development site. An exception site is allowed on land not usually available for building,(in this case building on the AONB) and one of the rules is that it meets a need of people with a local connection ,

in this case Birdham, not a need for social housing from other Parishes. There is no mention of the current housing need in Birdham.

Affordable homes have been built in the past 10 years at :

Longmeadow	10	in July 2013,
Tawney Nursery	12	in Nov 2013,
Rowan Nursery	7	in Mar 2020.

Also there are several live planning applications in Birdham :

Off Main Road, Birdham	150 dwellings,	45 affordable (Public inquiry in September),
Bell Lane 3 nurseries	73 dwellings	21 affordable (Appeal which will be heard in July)
Russel Nursary	14 dwellings	4 affordable (Planning application stage)
Total		70 affordable

So 70 affordable homes (including social rented) could be on the way and built without using a CPO.

Another point to note on need, I understand that Hyde have just sold one of their properties, a 2 bed house at 6, Farne Lane, Birdham, reducing the social housing stock. This suggests that the need for affordable housing in Birdham is not that great.

So there never has been a large enough housing need in Birdham to justify this development or now a CPO.

9. Justification for Compulsory Acquisition

Chichester District Council has outlined its justification under 3 headings and I contest these as shown below:

9.2 Promotion or improvement of the economic well being of the area

- a) Affordable Housing should be developed on Brownfield sites (eg at 2 of the 3 Nursery sites in Bell Lane) first instead of destroying a field which could be farmed for crops.
Section 9.2.1 and 9.2.6 The construction jobs will only be temporary (up to 1 year) and should be discounted. The construction industry is already working at full capacity so no need for more work.
- a) Section 9.2.2 and 9.2.3 There are very few local jobs in Birdham and so not much local employment. The small local family run nurseries struggle to survive against the big out of town stores, a few years ago one put in planning application to become 73 houses , it will be heard at appeal in July 2023. Another has just put in an application to site 14 houses.
- b) There is only one bus, few amenities, and the site is isolated. There are no pubs or tea room as quoted. Most people in Birdham commute to Chichester and further afield. The H9 Exception site shows 2 parking spots per dwelling meaning an additional 30 vehicles.
- c) Any new houses will lead to more commuter traffic and associated noise and pollution.
- d) The local sewerage facility is at capacity and any new houses will only make the situation worse. Southern water recently announced that “ there is currently no headroom at Sidlesham Waste Water Treatment Works” in addition they have just published their Drainage and Management Plan for the period 2025 – 2030 which identifies a number of capital projects which will aim to increase capacity at Sidlesham. These however have to be submitted to OFWAT for funding.
- e) A number of existing houses along Crooked Lane and in the Saltings may have their house valuations reduced if their rear outlook is over new houses rather than views over open countryside.
- f) The main Birdham road can be gridlocked on sunny weekends in summer. More houses means more congestion and slower journey times for all.

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

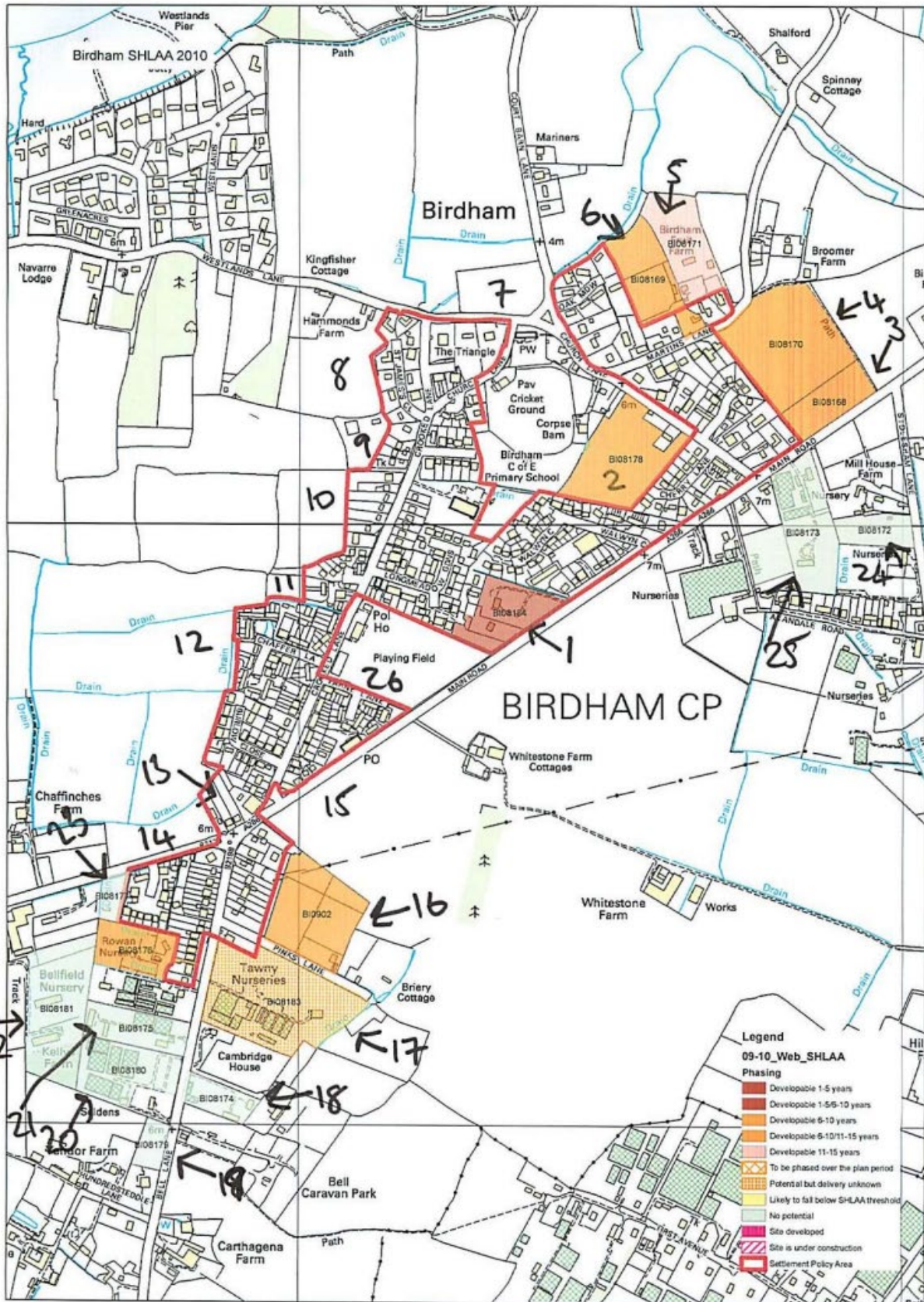
- a) Section 9.3.2 Putting 15 affordable houses in a distant remote field which is subject to flooding is not the answer.
- b) Section 9.3.3 Elderly or disabled residents may have to cope with flood water in winter and will only have access to Crooked Lane via a narrow access track with no pavement. There is no flood evacuation plan available.
- c) The access track entrance is opposite Birdham Primary School and a new road will create a hazardous junction with increased risks for the safety of school children and their carers.). The Head teacher has commented that he has worked at a number of schools in West Sussex over 30 years but never seen a road built opposite a school entrance before (due to safety concerns for school children). The risk of an accident outside a primary school is very high. Only yesterday on 22nd June during school afternoon pick up a cyclist was knocked off his bike by a car outside neighbouring Fishbourne Primary School.
- d) The access route is narrow and will have no pedestrian pavement. This will create hazards and conflict when delivery vans, pedestrians, cyclists and cars are travelling along the track.
- e) The GM Traffic Consultants road safety survey was carried out over 10 years ago and is out of date. Also a stage 2 RTA will need to be completed before final design of the access, which should take into account vulnerable road users.

9.4 Promotion or improvement of the environmental well-being of the area.

- a) The housing exception site is located within Chichester Harbour AONB. The field is home to wild deer, birds, bats and natural wildlife which will be lost forever.
- b) Section 9.4.2 omits that this site has a risk of flooding. Crooked Lane has had it's own flooding issues and it is not clear how this site will lead to improvements. Floodwater on fields around Birdham stayed for several weeks in late December 2022 and January 2023.
- c) As noted above, the sewerage systems are at full capacity. Southern Water were fined a record £90m in 2021 for 6,971 unpermitted sewerage discharges into rivers and the sea. Clearly more wastewater investment is needed before allowing more houses to be built.
- d) Climate change indicates that sea levels and water tables will continue to rise over the next 50 years on the Manhood Peninsula. The flood risk will increase and any run-off water will have nowhere to go.
- e) There is a lack of information on Nutrient Neutrality.
- f) The mature trees running along the access track have tree roots and low overhanging branches which are at risk of being damaged during the construction of the road and utilities. There are tree route protection areas covering large parts of the track.
- g) 15 houses will mean additional construction traffic, delivery vans, service vehicles and cars will go past the entrance to the school leading to more air pollution for school children.

10. Potential Alternative Access to the Crooked Lane Site

The Statement of Reasons looks at alternative access points. However, at the planning stage there were plenty of alternative sites available as shown with 26 sites marked on the map below. The site chosen was number 10.



Site 10 was chosen, despite the fact that the track was not owned by the vendor, resulting in a search for alternative access and now a CPO.

The last bullet point under section 10 was misleading “site in ownership of the owner of track over which access is required”.

	Pros	Cons
Site 8	<ul style="list-style-type: none"> • Flexible south boundary enables optimisation of site layout. • Flat and open site • Worked land that low in ecological value except at boundaries. • Nearby highway access 	<ul style="list-style-type: none"> • Pumped main runs through site will constrain layout. • Road access hampered by obstructed visibility splays in third party land in both directions. Likely to fail WSCC highway's requirements • Land will require landscape buffer • Furthest from local amenities
Site 9	<ul style="list-style-type: none"> • Well contained land with existing established boundaries that would shield the development from the wider landscape • Flat site albeit with a rise to get into site from track 	<ul style="list-style-type: none"> • Higher levels of habitat to be disturbed • Vehicular access will require removal of substantial trees, with wide and deep road turning to access off track • No direct access to the highway • Access would be required over third party land for vehicles, pedestrians and services.
Site 10	<ul style="list-style-type: none"> • Flexible south boundary enables optimisation of site layout • Flat and open site • Straight route into site in contrast to site 9. • Worked land that low in ecological value except at boundaries. • Site in ownership of the owner of the track over which access is required. 	<ul style="list-style-type: none"> • Pumped main runs through site will constrain layout • No direct access to the highway • Land will require landscape buffer
Site 14	<ul style="list-style-type: none"> • Good connectivity to local amenities • Flat and open site • Worked land that low in ecological value except at boundaries. • Good highway visibility splays • Proximity with adjacent site to north. Possible land assembly opportunities or road access. • Limited tree removals to effect site access. 	<ul style="list-style-type: none"> • Possible highways issue given proximity of roundabout. Not as bad as site 15. May push any road entrance to the south side of Pipers Mead opposite. • Given the above, would promote a long site (full length of field) extending the ribbon development into the countryside – perhaps a planning issue. • Possible that highways would require a new length of footpath on the western verge to connect site with paths to the north. • Noisy site, especially in busy periods • Land will require landscape buffer
Site 15	<ul style="list-style-type: none"> • Clear open site with no apparent obstacles • Closest to village amenities • Flat and open site • Good highway visibility splays • Limited tree removals to effect site access. 	<ul style="list-style-type: none"> • Severe highways hazards presented due to numerous existing highway junctions. Would arise at the intersection of four busy roadways. • Highly likely to fail on grounds of highway safety • Would require long and thin development to push road junction suitably clear of existing hazards. This increases ribbon development. • Land will require landscape buffer

Site 15 is for 150 dwellings at Whitestone Farm off the main road Birdham (42 affordable) with a public hearing planned for September 2023.
 Sites 20, 21 and 22 are 73 dwellings the Koolbergen, Kelly and Bellfield Nurseries (21 affordable) with a public hearing in July 2023.

The Birdham Village Residents' Association letter from Mr L Pocock dated 13 July 2013 refers to an email sent from Hyde Martlet "to the Birdham Parish Council dated 19 Sep 2012 in which they showed the pros and cons for 5 shortlisted sites. For site 10 (the proposed Crooked Lane site), Hyde Martlet stated that the owner of the site owned the track. This was, and still is factually incorrect; and this was known by Hyde Martlet. However, it was used to promote the site as the best option. We think such action is highly misleading, and also that the site selection procedure was not transparent."

The site was not deliverable as the developer never had legal access to the site. In the CDC literature it is stated that an H9 Exception site must "(d) be accessible for Development".

Many local residents objected during 2013 – for example the objection letter from the previous owners of Copperfields (dated 7 October 2013) stated "The severe danger at the entrance and exit of the track allied to the limited width is suicidal, anyone supporting this proposal should be held accountable in the certain event of accidents..."

The CDC planning councillors never undertook a site visit as minuted in the November 2013 planning minutes. This was contrary to CDC guidance at the time.

The GM Traffic Consultants road traffic survey was carried out over 10 years ago in January 2013 concluded that "traffic flows were light" but did not mention the time of day that the survey was carried out. Since then the younger nursery school children have moved to the school site with approximately 25 nursery children now attending per day. This means that the school drop off and pick up times have been extended and cars are parked along Crooked Lane for much of the school day during term time and Crooked Lane then becomes a single track road due to the parked cars.

11. Scheme Deliverability

In the Statement of Reasons prepared by CDC Paragraph 11.6 states that upon confirmation of the Order Martlet Homes Limited intends "to immediately to commence the development" and this contradicts the statement in paragraph 11.12 where the development has already started in November 2016 with "material operations".

Paragraph 11.12 states that "on or before 29 November 2016 'material operations' (as defined in the 1990 Act) were carried out". A few pegs were put in the ground to mark out a road and a fence was placed between 2 fields. This action was carried out to keep the planning application alive. How can these be classified as material operations if there was no legal access to the site at the time?

Paragraph 11.13 CDC granted a certificate of lawful development on 25 July 2017 and yet there was no legal access to the site.

Hyde have agreed to underwrite CDC's costs to apply for a CPO. This and the costs and officer time to get to this point make the idea that these affordable homes will be good value to the taxpayer somewhat unlikely.

The Surface water drainage scheme and over winter monitoring have yet to be done.

A Road Safety Audit (stage 2) is required before the detailed plan of access road is made, where would the two big pipes go, ditch water and sewage, there are several tree root protection areas sometimes overlapping from either side of the track.

Then there is the traffic conflict with the school. (Please see Headmaster's objection comments.)

So there are still many problems ahead.

It's doubtful that CDC at this stage have a clear idea of what they are going to do contrary to section 13 CPO Guidance.

12 Negotiations to Acquire the Order Land

Paragraph 12.10 Avison Young did make an offer in February 2022 but with a time limit of 30 April 2022. Apart from the offer of a goodwill payment there was no information on how the building works would take place, the level of construction activity and the impact on Copperfields driveway entrance.

13 Human Rights

Paragraph 13.6 discusses notifications of the order.

The site notice at the entrance to the access route dated 10 May 2023 and the public notice in the Chichester Observer dated 18 May 2023 noted that objections should be submitted by post or via email to pcu@communities.gsi.gov.uk. However, this email address did not work and I notified Elizabeth Reed at CDC by phone and email to Nicholas Bennett at CDC on 24 May 2023.

A new site notice with the correct email address pcu@levellingup.gov.uk and an extended objection deadline date of 30 June 2023 has been placed at the entrance to the track.

Lack of information

Access to Copperfields

It is not clear how CDC and Hyde Martlet will use the track if the CPO is granted and still provide 24 hour access to Copperfields and I have the following concerns:

- a) The existing pipe (for the drainage ditch) across the entrance to the access track may not support heavy construction traffic passing over it
- a) There is no detailed plan showing how access to Copperfields will be permitted safely whilst the access road is being constructed.
- b) There is no detailed design showing how the utility services to the 15 houses will be installed in the access track without damaging tree roots yet still providing 24 hour driveway access to Copperfields.
- c) Lack of Flood Evacuation plans in place when the track and housing development flood in future
- d) Copperfields driveway has no view along the access track and so exiting Copperfields will be dangerous unless modifications to the Copperfields driveway are made.
- e) The existing plans do not include a noise reduction wall along the length of the track which would help minimise the noise of heavy construction vehicles and other vehicles
- f) Lack of information regarding the number of planned construction vehicle movements
- g) whether the fence on our boundary line would require to be removed and replaced
- h) how any future floodwater in the track would be dealt with
- i) how engagement with the school has taken place and Headteacher safety concerns addressed
- j) how any cars parking illegally in the new bell mouth in future would be monitored and dealt with.

Conclusions

In summary I believe that the Crooked Lane Birdham H9 Exception site is the wrong location for additional affordable housing and the proposed access route along the farm track being opposite the Birdham Primary school will create a dangerous junction and is not in the public interest.

The H9 Exception Site is on the Chichester Harbour AONB, is isolated from the rest of Birdham and this land and the access route are prone to flooding. There are plenty of alternatives to build affordable housing on brownfield sites or more accessible sites in the area.

Grounds for my key objections are detailed in this letter and summarised below:

1. Track is narrow (3.6 metres wide between the 2 property boundaries) and not possible to build a 4.8 metre wide road
2. Track and site flood with a lack of suitable groundwater drainage plans and no flood evacuation plan
3. Concern for safety at track and School entrances since the pre-school nursery now operates from the school premises – lack of a recent Traffic Road Safety Audit
4. Dispute the need for 15 Affordable Houses on AONB given other planning applications and appeals which could result in 70 Affordable Houses being built elsewhere in Birdham
5. Lack of Sewerage capacity in Birdham as noted by Southern Water
6. Lack of information (eg how the track will be constructed at the Copperfields driveway entrance, services installed, levels of noise, number of planned vehicle movements during the construction phase, 24 hour access required).

I would like to emphasize the need to thoroughly assess and address the concerns raised regarding the access road construction and associated housing development. It is crucial to prioritise the AONB, the safety and well-being of school children and their carers and ensure that alternative sites have been thoroughly considered before proceeding with the Compulsory Purchase Order.

It is my view that the CPO does not meet the criteria for public benefit as required by the relevant legislation. Furthermore, the economic, social and environmental implications of the CPO have not been adequately assessed and the proposed use of the land fails to demonstrate a genuine public need.

I would like to request a comprehensive assessment of the potential adverse effects on our property and the implementation of appropriate mitigation measures regarding access in the event the CPO proceeds.

Please can you keep me informed of any further developments and provide me with an opportunity to participate in any relevant consultation process. We may choose to present additional evidence and arguments in support of our objections during the review process.

In the event that the CPO proceeds despite our objection, I request fair and just compensation for our interests. We expect CDC and Martlet Homes to adhere strictly to the provisions of the applicable legislation and that we receive adequate compensation for the compulsory acquisition of the track between the boundaries of Copperfields and Hedgecox. I request a detailed explanation of the valuation methods employed and the basis for determining the compensation figure.

Please acknowledge receipt of this objection letter.

Kind regards,

Tony

~~Anthony John Giddett~~

~~Crippsfield~~

~~Crooked Lane~~

~~Stratham~~

Chichester

~~PO20 7HB~~

~~tel 07771294324~~

Appendices

List of Documents

H9 exception site

Track ROW history

NPPF 2012

LR title deeds 330917