Appendix C-

The Planning Inspectorate

Appeal Decision

Inquiry held on 17 -20, 24 & 25 October 2023

Site visit made on 23 & 24 October 2023

by Lesley Coffey BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th March 2024

Appeal Ref: APP/Z3825/W/23/3321658
Land at Lower Broadbridge Farm, A281, Broadbridge Heath, West Sussex, RH12 3GP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
- The appeal is made by Gleeson Land against the decision of Horsham District Council.
- The application Ref DC/22/1052, dated 28 June 2022, was refused by notice dated 9 February 2023.
- The development proposed is Outline application for the development of the site to provide up to 133 dwellings including the creation of new vehicular access, public open space, landscape planting, surface water attenuation and associated infrastructure with all matters reserved except access.

Decision

1. The appeal is allowed and outline planning permission is granted for the development of the site to provide up to 133 dwellings including the creation of new vehicular access, public open space, landscape planting, surface water attenuation and associated infrastructure with all matters reserved except access, at Land at Lower Broadbridge Farm, Broadbridge Heath, RH12 3GP in accordance with the terms of the application, Ref DC/22/1052, dated 28 June 2022, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural Matters

2. The proposal is for outline planning permission with all matters reserved except access. Appearance, scale, layout and landscaping are reserved for future consideration. Plans submitted by the appellant show how the site could be developed, but these are for illustrative purposes only.

3. All parties agreed that since this was an outline application the revised layout submitted by the appellant would not be prejudicial to their case, and that the appeal should proceed on the basis of this plan.

4. The appellant submitted a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990. This made provisions for affordable housing, open space, monitoring fees and water neutrality measures. These matters are discussed in more detail below.

5. The were two Rule 6 Parties, Protect Our Green Environment (POGE) and Field Place Estates.

6. The Council's Statement of Case confirmed that it would not be defending the reasons for refusal in relation to the impact of noise on residential amenity (reason 2), the harm to the setting of heritage assets (reason 3), or the harm to landscape character (reason 4). Following the submission of the draft Unilateral Undertaking (UU), it also confirmed that it would not be defending the fifth reason for refusal. As a consequence, the Council's case related solely to the water neutrality issue. However, the Rule 6 parties continued to pursue these reasons as well as other matters.

7. An over-arching Statement of Common Ground was agreed between the Council and the appellant, with an additional Statement of Common Ground in relation to water neutrality.

8. I carried out accompanied site visits on the evening of Monday 23 October, and on 25 October 2023. I also carried out unaccompanied visits during and following the Inquiry.

Main Issues

9. I consider the main issues to be:

- The effect of the proposal on water neutrality having particular regard to the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites.
- The effect on the proposal on the significance of the heritage assets.
- The effect of the proposal on flood risk to the surrounding properties and area.
- The effect of the proposal on the character and appearance of the surrounding landscape, including whether the proposed development would contribute to the coalescence of Broadbridge Heath and Slinfold.
- Whether the location of the proposed development outside of the Built-Up Area boundary is acceptable having regard to development plan policies.
- The effect of the proposal on biodiversity.
- The housing land supply position and whether the proposal would make suitable provision for affordable housing.

Reasons

10. The appeal site is located approximately 3.5 km west of Horsham Town Centre and adjoins the built-up area boundary of Broadbridge Heath. The A281 lies to the east (with existing residential development beyond) and the Five Oaks Roundabout to the south-east. The northern and western site boundaries are formed of well-established boundary vegetation, and beyond these lies the wider countryside including a small number of residential dwellings.

11. Most of the site comprises agricultural land defined by tree belts, with one larger field adjoining the A281 and one smaller field adjoining Five Oaks Road. Lower Broadbridge Farmhouse, a Grade II Listed Building, adjoins the northern boundary of the site. The site of the former farm-complex buildings lies to the north of the farmhouse. These buildings are modern in nature and in existing employment use for distribution, processing and storage of stone from a nearby quarry and other commercial uses. There are two further Grade II

listed buildings close to the northern boundary of the site. A public right of way runs along the northern boundary of the site.

12. The proposal would incorporate a mix of 1 and 2 bedroom apartments, as well as 2, 3 and 4 bedroom houses. The proposal includes 45% affordable housing provision (this equates to 60 dwellings). The submitted Parameter plan shows the 2.5 storey housing restricted to the eastern and central sections of the site, stepping down to 2 storeys to the west. Public open space would be provided to the north and west of the site. The proposed vehicle access is to the south of the site from Five Oaks Roundabout. It would require the realignment of the existing roundabout. 45% of the dwellings are to be affordable homes.

Water Neutrality

13. Horsham District lies within Southern Water's Sussex North Water Resource Zone (WRZ). Sussex North WRZ is supplied from groundwater abstraction on the River Arun, close to Pulborough in Horsham district. The abstraction site is located close to a group of nature conservation sites, known as the Arun Valley Sites, that are nationally or internationally designated as Special Areas of Conservation, Special Protection Area, and a Ramsar Site for their rare and protected habitats.

14. The parties agree that the Appeal Proposals, without mitigation, would increase water abstraction resulting in a likely significant effect on the Arun Valley SAC, SPA and Ramsar sites, either alone or in combination with other plans and projects.

15. It is agreed that pursuant to Regulation 63(5) of the Habitats Regulations the Competent Authority may only grant outline planning permission for the appeal proposal after having ascertained that there is no reasonable scientific doubt as to the absence of adverse effects on the integrity of the Protected Sites. In order to demonstrate, beyond reasonable scientific doubt, that no adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites would occur as a result of the appeal proposal, mitigation measures are required to achieve Water Neutrality. This means that the use of water in the supply area before the development would be the same or lower after the development is in place.

16. The appeal proposal would incorporate a combination of efficiency measures and greywater harvesting and re-use systems. The parties agree that these measures, taken together, would achieve a standard of 67.08 litres/person/day and reduce total mains-water demand to 18,907 litres/day. They also agree that a suitable management and maintenance plan is required to ensure all greywater recycling systems are maintained and operated at all times. The Council is satisfied that these on-site measures would be effective and could be secured by the mechanism suggested by the appellant. I agree with this view.

17. In order to achieve water neutrality and to eliminate the possibility of the proposal contributing to adverse effects upon the integrity of Arun Valley sites the reduced water demand of 18.907 litres/day would need to be offset. The appellant originally proposed to offset this usage at a local school, but for reasons beyond the appellant's control this option is no longer available.

18. The appellant proposes two alternatives to ensure that the residual water requirement would be offset thus making the proposal water neutral. These are

secured by the proposed Grampian condition and the UU. Together these would prevent the implementation of the proposed development until either a water neutrality scheme, has been approved by the Council and implemented, or alternatively in the event that the Council has adopted a water neutrality off-setting scheme and the requisite number of water offsetting credits have been purchased.

19. The off-site water neutrality measures within the UU prohibit the implementation of the development until the offsetting land has been procured with obligations as set out within the supplemental deed. It also requires evidence to demonstrate that the necessary measures have been implemented and completed.

20. As an alternative the UU and condition provide for the purchase of off-setting credits within the Council's Strategic North Water Offsetting Scheme (SNOWS). The SNOWS scheme is anticipated to be adopted in mid-2024. The offsetting contributions would be used to deliver water efficiencies elsewhere in the water supply zone through the installation of flow regulators in registered provider housing stock, efficiencies in schools, the installation of rainwater harvesting on commercial sites, and/or providing an alternative source of water for golf course irrigation. The aim of the scheme is to allow Local Plan growth to be delivered in compliance with the Habitats Regulations, and therefore any additional water demand must be offset before occupation of new development.

21. On behalf of the Council Mr Smith advised that there remain a number of uncertainties regarding the SNOWS scheme. These include the capacity of the scheme, the timeframe for the implementation of mitigation, costs and prioritisation of access to the scheme. I also note that the Sussex North Water Neutrality Study: Part C – Mitigation Strategy (December 2022) states that there will be no contribution available for Local Plan growth until 2025 due to the need to accommodate sites with full extant planning permission on or prior to September 2021.

22. Mr Smith contends that in terms of SNOWS, previously permitted development would have a greater priority than the appeal scheme. He states that there is no prospect of the appeal scheme being able to access SNOWS even if it is allocated for development in a future development plan.

23. The Local Plan for both Horsham District Council (HDC) and Crawley are currently subject to review. In the case of HDC the preparation of the Regulation 19 Horsham District Local Plan was postponed in 2021 due to the water neutrality issues raised by Natural England and a revised timetable is currently under consideration. There remains uncertainty with regard to the capacity of the SNOWS scheme and the timeframe for the implementation of off-setting measures. I also note that the Sussex North Water Neutrality Study: Part C – Mitigation Strategy (December 2022) states that there will be no contribution from the scheme available for Local Plan growth until 2025 due to the need to accommodate sites with full extant planning permission on or prior to September 2021.

24. Whilst I acknowledge the extent of the uncertainties in relation to SNOWS, having regard to its stated objective to accommodate planned growth within the Plan period, I consider that the Council's position, namely that there is no prospect of the scheme accessing SNOWS, overstates the case. Whilst it may

ultimately be that the appeal scheme is unable to access SNOWS during the lifetime of the permission, there remains some prospect that it would be able to do so. I also accept that other schemes would be likely to be prioritised over the appeal scheme. For this reason I consider that the SNOWS scheme by itself may not avoid an increase in water abstraction resulting in a likely significant effect on the Arun Valley SAC, SPA and Ramsar sites, either alone or in combination with other plans and projects.

25. The Council's position is that the UU and proposed condition would defer the detailed assessment of the proposed mitigation until the reserved matters stage and as such the proposal would not comply with the Conservation of Habitats and Species Regulations 2017.

26. The Council and the appellant agree that an appropriate assessment should be undertaken at the outline permission stage. However, they differ as to whether there is sufficient information to ascertain that the proposal would not adversely affect the integrity of the protected sites beyond all reasonable scientific doubt, as required by Regulation 63(1).

27. Regulation 63 also states that when considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out, or to any conditions or restrictions subject to which it proposes that the consent, permission, or other authorisation should be given.

28. Regulation 70(3) explicitly considers outline permissions as follows:

"*Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely to adversely affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after objecting to approval of any reserved matters*".

Consequently, outline planning permission should not be granted unless the proposal would not, beyond all reasonable scientific doubt, lead to an adverse effect on the integrity of a European Site.

29. Both parties make extensive reference to case law. I address those I consider to be most relevant to this case.

30. *Case C-6/04 Commission v United Kingdom [2006] Env LR 29* concerns the application of the Habitats Directive to the adoption of development plans in the UK. It found that the requirements of the Habitats Directive did apply to the adoption of development plans even though planning permission would be required for any development supported by such plans. This judgement was informed by the opinion of AG Kokott. This stated:

"*AG49. The United Kingdom Government is admittedly right in raising the objection that an assessment of the implications of the preceding plans cannot take account of all the effects of a measure. Many details are regularly not settled until the time of the final permission. It would also hardly be proper to require a greater level of detail in preceding plans or the abolition of multi-stage planning and approval procedures so that the assessment of implications can be concentrated on one point in the procedure. Rather, adverse effects on*

areas of conservation must be assessed at every relevant stage of the procedure to the extent possible on the basis of the precision of the plan. This assessment is to be updated with increasing specificity in subsequent stages of the procedure."

31. The Council contends that the AG Kokott's Opinion is not helpful to the appellant's case since it refers to the "*precision of the plan*" and not the mitigation. However, the opinion assessed the consistency of a development plan process with the Habitats Directive. Therefore it is not surprising that the reference is to the plan rather than the mitigation and the failure to reference the mitigation does not detract from the relevance of this case, that has been referenced in subsequent judgements.

32. Sale LJ endorsed this approach in *R (Forest of Dean (Friends of the Earth)) v Forest of Dean District Council [2015] PTSR 1460*, where it was held that the planning authority is entitled to adopt a staged approach to the consideration of individual projects as they are brought forward, ensuring at each stage that the protected site is not subject to a detrimental impact.

33. These judgements did not find that full details of mitigation should be required at outline permission stage, provided that any conditions or planning obligations imposed are strict enough to avoid a detrimental effect on the protected site(s).

34. *Abbotskerswell Parish Council v SSHCLG [2021] Env. L.R. 28 ,* Lang J held that reg.70(3) of the Habitats Regulations expressly provides that the role of conditions and limitations in contributing to the avoidance of adverse effects to integrity can be taken into account when considering applications for outline planning permission. She went on to state that:

"The approach contended for by the claimant, whereby all details of matters which may affect site integrity have to be assessed at the outline stage, would effectively require an application for a full planning permission. This would render the role of outline planning permissions in relation to development requiring appropriate assessment nugatory and would mean that the wording in reg.70(3) is meaningless."

35. Both parties also refer to *R (Wingfield) v Canterbury CC [2019] EWHC 1974 (Admin),* This was a case where a planning authority had sought to discharge its obligations under the Habitats Regulations at the stage of approving reserved matters having failed to do so in granting outline planning permission. It was held that for the purposes of the Habitats Regulations, there is no decision authorising the implementation of the project in the case of a multi-stage consent until reserved matters are approved. Reserved matters approval is the "*implementing decision*". It was found that the Habitats Directive does not require an appropriate assessment at the "earliest possible stage" but is focussed on ensuring the avoidance of harm to the integrity of protected sites.

36. A similar conclusion was reached in *R (Swire) v Canterbury CC [2022] EWHC 390 (Admin)* Holgate J found that there is no legislative objective requiring appropriate assessment to be carried out at the earliest possible stage. Accordingly, an appropriate assessment may lawfully be completed at the reserved matters stage, even if not carried out prior to the grant of outline permission.

37. The Council submits that this appeal differs from Swire, since in that case Natural England was satisfied that the matter was capable of being resolved by mitigation measures. In this appeal Natural England's initial response was informed by the Council's appropriate assessment which concluded that it was unable to ascertain that the proposal would not result in adverse effects on the integrity of any of the sites in question. It advised that additional work on the assessment was required to enable it to be sufficiently rigorous and robust.

38. Following the close of the Inquiry, I sought the views of Natural England as to whether the proposed UU and Grampian conditions would provide the necessary certainty required by the Habitats Regulations. It responded that measures which are uncertain with respect to their efficacy and/or delivery are not suitable to be considered as mitigation measures at the appropriate assessment stage of Habitats Regulations Assessment. It also stated that since the SNOWS was not yet secured, there is insufficient practical certainty, at this time, to rely upon a future contribution to this strategy as a mitigation measure for the Arun Valley designated sites. It made no comments regarding the suitability of conditions or unilateral undertakings and deferred this matter to the judgement of the competent authority. Accordingly, I do not consider that the position of Natural England in relation to this appeal means that the principles within Swire are not applicable in this case.

39. There is no dispute between the Council and the appellant as to the fundamental principles of the appropriate assessment process as set out at Regulation 70(3). As is evident from the above, the aim is to avoid a detrimental effect on the integrity of the protected sites. Outline planning permission is a multi-stage consent, with reserved matters being the implementing decision (Wingfield). It is also clear that it is appropriate to take account of conditions and limitations in contributing to the avoidance of adverse effects when considering applications for outline planning permission (Abbotskerwell, Forest of Dean).

40. In my opinion none of the judgements referenced above would preclude the approach advocated by the appellant. The UU covenants not to allow the implementation of the development until the offsetting measures on the offsetting land have been implemented and the Council has confirmed in writing that the development is considered to be water neutral. The suggested conditions require the submission of a water neutrality strategy prior to the commencement of development and confirmation that the water neutrality offsetting measures have been implemented. In addition, the water efficiency measures within the proposed development are required to be approved prior to the commencement of development and implemented prior to the occupation of the proposed development.

41. The Council's position is that an offsetting scheme which does not exist at the point of granting planning permission cannot lawfully result in a positive appropriate assessment. It contends that this approach is supported by other appeal decisions and refers to the Land North of Lyons Road appeal decision where the Inspector found that shifting the burden of proof to some point in the future would not satisfy the need for certainty at the point of undertaking an appropriate assessment.[1] However, this position is clearly at odds with the judgements above, where it has been held that a staged approach to the

[1] APP/Z3825/W/23/3315111

consideration of individual projects as they are brought forward, ensuring at each stage that the protected site is not subject to a detrimental impact would be compliant.

42. The measures secured by the UU and Grampian condition would ensure that at the outline permission stage there is no reasonable scientific doubt as to the absence of adverse effects on the integrity of the Protected Sites. This approach is consistent with the Abbotskerswell and Swire judgements, as well as the wording of Regulation 70(3). Additionally, this appeal would appear to differ from the Lyons Road appeal, since in that case the mitigation related to a single school site and the Inspector found that it was unclear how variables would be addressed and remedied through the long-term operation of the scheme. Therefore, the Lyons Road appeal does not alter my view above.

43. I am satisfied that the UU and Grampian condition would act to prevent development proceeding until the offsetting scheme is in place, and, therefore, the mitigation is sufficiently secured and there would be no risk of the development proceeding unless the off-site water neutrality measures had been implemented to the satisfaction of the Council. As such, there is no reasonable scientific doubt that the proposed development would be water neutral.

44. Accordingly, taking account of the proposed mitigation, I conclude that the appeal proposal would not result in an increase in water abstraction in the Sussex North WRZ. Therefore, the proposal would not adversely affect the integrity of the Arun Valley SAC, SPA and Ramsar sites.

45. The Council also contends that the use of Grampian Conditions would not comply with the guidance within PPG.[2] This states that negatively worded conditions "*should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission".*[3]

46. This is because the Council considers that there is no prospect of the proposal being able to access the SNOWS scheme. I agree that there remain uncertainties affecting when the scheme will become operational, how much offsetting capacity it would provide, and when schemes would be able to access it and implement their permissions.

47. The condition includes the SNOWS scheme as an alternative to offsetting. Notwithstanding Mr Smith's view, for the reason given above I consider that there is some prospect that the proposal would be able to access the SNOWS scheme within the time limit proposed by the permission. In these circumstances a Grampian condition would accord with the tests within PPG.

48. Both parties referred to a number of appeal decisions. Both the Duckmoor decision and the Storrington decisions included Grampian conditions.[4]

49. In the case of Duckmoor, planning permission was granted for 83 dwellings, subject to a condition requiring the delivery of off-site water neutrality measures at Dedisham Farm by way of the provision of a new building to facilitate rainwater harvesting. The appeal was accompanied by detailed data and calculations in relation to offsetting but was also dependant on the delivery

[2] Reference ID: 21a-009-20140306 & 010 Reference ID: 21a-010-20190723
[3] Para 009 Reference ID: 21a-009-20140306.
[4] APP/Z3825/W/22/3308455, APP/Y9507/W/22/3308461 &

of a new building, that at the time of the decision did not have planning permission. The planning condition precluded development until planning permission had been granted for the works necessary to achieve water neutrality at Dedisham. Although it was not submitted to this Inquiry, it would seem that the UU secured the implementation of these measures.

50. The Council contend that Dedisham differs from the appeal scheme in that there was certainty that the development adversely affecting the site could not be carried out before or after the reserved matters stage. It explained that this was because the land where the offsetting development was to be provided was identified. On the basis of the available information, it would seem that the development could not commence until the offsetting works were complete. I agree with the Council that taken together, the UU and planning condition would ensure that development could not take place until the water offsetting measures had been implemented and would therefore not have a significant or adverse effect on the protected sites.

51. However, I disagree that the appellant's proposal is any less robust. I understand that the appellant has a particular location in mind for offsetting, but there is a considerable amount of work required to identify the scope for offsetting and there is a possibility that this particular site may not be realised. Taken together the UU and proposed Grampian conditions would prevent development until the offsetting measures have been implemented, which is the same situation as the Duckmoor decision. Indeed, the Duckmoor decision was based on offsetting calculations for a building that had not been permitted and there was no certainty that it would be approved.

52. The Council state that the Storrington decision differs from the current appeal in that the Inspector found that the mitigation was secured although the landowner was not a party to the planning obligation, whereas in this appeal neither the mitigation land nor landowner are identified. It also submits that although the Storrington Inspector imposed a Grampian condition in respect of SNOWS, the situation was different in that the Storrington appeal related in part to an allocated site and would therefore be prioritised over an unallocated site such as the appeal site. Whilst, for the reasons given above, I have less confidence than the Storrington Inspector that the appeal proposal would be able to access the SNOWS scheme, there remains a prospect that it could do so during the lifetime of the permission.

53. As set out above, there is no dispute that the appeal proposals, without mitigation, would increase water abstraction resulting in a likely significant adverse effect on the Arun Valley SAC, SPA and Ramsar sites, either alone or in combination with other plans and projects. Regulation 63(5) of the Habitats Regulations provides that as the Competent Authority I may only grant outline planning permission for the appeal proposal after having ascertained that there is no reasonable scientific doubt as to the absence of adverse effects on the integrity of the Protected Sites.

54. The hydrology of the Arun River is the major factor affecting the quantity, depth and flow of water within the Arun Valley sites, which in turn contribute to achieving the favourable conservation status of their qualifying features. It follows that any groundwater abstraction that reduces water quantity in the River Arun, could affect water levels and flow within the Arun Valley sites, and thereby associated qualifying features.

55. In order to achieve water neutrality, the appellant proposes to mitigate the increased demand for mains water from the proposed development through a combination of on-site water reduction measures and an off-site offsetting scheme. The S106 UU and Grampian condition would act to prevent development proceeding until the offsetting scheme is in place, and, therefore, the mitigation is sufficiently secured. As such, there is no reasonable scientific doubt that the proposed development would be water neutral.

56. Taking account of the proposed mitigation, I conclude that the appeal proposal would not adversely affect the integrity of the Arun Valley SAC, SPA and Ramsar sites. Consequently, it would be consistent with Policy 31 of the HDPF which seeks to protect the hierarchy of designated sites and habitats.

Heritage

57. Lower Broadbridge Farmhouse, Mill House and Mill Cottage are listed buildings situated close to the appeal site. It is common ground between the Council and the appellant that the impact of the appeal scheme on the heritage significance of these listed buildings are the only heritage matters requiring consideration as part of the appeal and that the significance of no other heritage assets would be impacted by the appeal scheme. The Council and the appellant agree that the proposal would cause less than substantial harm to the significance of these listed buildings. They also agree that the harm would be at the lower end of the spectrum.

58. The appellant submitted a Heritage Statement at the time of the application, and the Council agrees that this correctly assesses the particular significance of these built heritage assets, including the contribution made by setting to that significance in accordance with the requirements of the Framework, Development Plan policy and best practice guidance/advice. This assessment was supplemented by Mr Timlin's evidence on behalf of the appellant.

59. Section 66 of the Town and Country (Listed Buildings and Conservation Areas) Act 1990 provides a statutory requirement for decisionmakers to have special regard to the desirability of preserving a listed building or its setting.

Lower Broadbridge Farmhouse

60. Lower Broadbridge Farmhouse is a Grade II listed farmhouse. Its current appearance largely dates to the 17th Century (with earlier origins and elements). It is located adjacent to the existing site access. It has architectural and historic interest as a substantial, stone-built 17th Century farmhouse. It illustrates the important regional tradition of vernacular stone construction in Sussex, and the dominance of agriculture in the society and economy of Sussex.

61. Historically, the farmhouse was part of a working farm complex. The ancillary buildings, which formed the historic agricultural group with the farmhouse, appear to have been replaced by the existing, large scale agricultural sheds. The site of the former farm complex is now associated with commercial premises, as well as the storage, processing, and distribution of stone. These utilitarian buildings and the commercial activity associated with them do not contribute positively to the special interest of the listed building and have eroded the former group value of the farmhouse.

62. The setting of Lower Broadbridge Farmhouse includes the location of the historic farmstead, together with a wider rural landscape, and the nearby urban settlement of Broadbridge Heath.

63. The open space between Lower Broadbridge Farmhouse, Mill House, and Mill Cottage contributes positively to its setting. The openness allows for views towards the high-status, western elevation of the farmhouse and an awareness of the pond as a long-established element of its rural setting. The open space also provides an opportunity to appreciate the heritage significance of the listed building from within an area of rural character. The rural landscape context to the north, south and west of the listed farmhouse is an appropriate context to this building.

64. The A281, together with the recent housing development on its eastern side, creates an awareness of the urban edge of Broadbridge Heath and neither make a positive contribution to the setting of the building.

65. The bund enclosing the southern and eastern parts of the garden limits views of the building from the wider area and diminish the ability to appreciate its special architectural character and historic interest. It also reduces inter-visibility between the listed building and the site.

66. The appeal site comprises a part of the agricultural landscape that was associated with the function of the farmhouse. Although the field patterns have been altered, the agricultural character makes a positive, albeit altered and targeted contribution to the significance of the listed building.

67. The proposed development would harm the significance of the listed building through the change to part of its setting from its existing agricultural use, which formed part of its historic landholding and supported its original function. This would be replaced by a residential development with associated urbanising impacts, such as an awareness of new domestic buildings, patterns of activity and lighting.

68. The siting of new buildings to the south of Lower Broadbridge Farmhouse, beyond the late 20th century landscaped bund would minimise visual changes in that part of its altered setting.

69. Retention of a significant area of open space around the listed building and at the northern part of the site, would maintain the reciprocal spatial and visual relationships between it, Mill Cottage and Mill House (and associated group value), including views to the western elevation of the farmhouse. That approach also retains the most important, surviving and positively contributing elements of its historic setting, including the ponds and watercourses to the west of the listed building, albeit there would be an awareness of new residential development beyond the areas of open space.

70. The proposed new vehicular access would connect to the existing roundabout on the A264. This would allow the reuse of the existing road access/public right of way from the A281, principally as an access to the existing residential properties, but also as a pedestrian and cycle link, thereby avoiding an increase in the intensity of vehicular activity, and associated impacts from movement and noise.

71. There would be some limited harm to the setting of the Farmhouse, but the proposed development would retain the most strongly contributing elements of the listed building's setting.

Mill Cottage and Mill House

72. The list entry for Mill Cottage states that is was *"Originally a cart store and stables for the adjacent mill, converted into a house. C18. Two storeys. Two windows. Coursed stone. Steeply-pitched hipped tiled roof. Casement windows".*

73. Mill House is of special interest as a good example of vernacular architecture, which provides evidence of the important regional tradition of timber-frame construction in rural Sussex and the south of England. Mill Cottage is of heritage significance as an example of 18th century domestic architecture. I agree with the appellant that it is influenced by an enduring legacy of vernacular building traditions, including the re-purposing of functional rural buildings.

74. In addition to the remaining elements of the mill structure within the garage, both Mill House and Mill Cottage illustrate the historic presence of small-scale industry on this site, connected to the predominantly agricultural economy of the region. This historic value is reduced by the absence of a functional connection with the historic milling function of Slinfold Mill due to the extensive works of demolition of the mill building.

75. The listed buildings also have group value with the nearby garage structure, which retains fabric from the former mill and provides some evidence of the mill operations. Remaining evidence of the wheel pit for the undershot waterwheel on the southwest side of the current garage, along with the remains of a wooden sluice control, are surviving elements of the function of the mill complex.

76. The setting of these buildings includes their domestic curtilages, together with a wider rural landscape, and the nearby urban settlements of Broadbridge Heath and Horsham to the east. The immediate setting of the listed buildings comprises the trackway leading to the A281, past Lower Broadbridge Farmhouse (and the River Arun, which flows southwards). The proximity of the river to Mill House and Mill Cottage assists with an understanding of their historic functions as domestic/ancillary buildings associated with the operation of Slinfold Mill and makes a positive contribution to their setting.

77. The nearby wetlands and ponds may have been part of a system of managed waterworks at the mill site. These elements of setting amplify an appreciation the former function of the listed buildings as part of Slinfold Mill. The watercourses are a long-established element of the buildings' shared setting and contribute to the rural character of the surrounding landscape. Those watercourses seemingly form part of a wider network of managed waterways, including a medieval mill race south of the A264, which also allows an appreciation of the historic function of the mill complex.

78. The surrounding rural landscape is a positive element of the experiential qualities of setting. In particular, the field to the immediate north and west provides views towards the buildings. The informal grouping with Lower Broadbridge Farm, located within an agricultural landscape (including the open

space between the listed buildings), reinforces an understanding of the listed buildings' significance.

79. Most of the site comprises part of the historic agricultural landscape that was formerly associated with the Lower Broadbridge Farmhouse. The continuing agricultural/arable character of the site makes a positive contribution to the significance of Mill House and Mill Cottage.

80. The impacts of the proposed development on the significance of the listed buildings would be indirect, due to the change in part of their settings. The proposed development would change part of the rural context and experience of approaching Mill House and Mill Cottage from the east along the public right of way. This route is already experienced in the context of the altered field pattern, commercial development at Lower Broadbridge Farm and awareness of the development of Broadbridge Heath to the east. The proposed development would introduce further urbanising development that would reduce a positively contributing element of the listed buildings' rural setting that allows an appreciation of their historic origins, function, and vernacular architectural character.

81. The impacts of the proposed development have been minimised by the design and layout of the proposal as set out above. The proposed landscape strategy would provide extensive structural native planting to the northern and north-eastern boundaries of the site to reduce the visual impacts of new built form and related activity in the approach towards the listed buildings, thereby maintaining the overall cohesive group value and siting, within a prevailing rural context.

82. Having regard to the separation distances between the proposed development and Mill House and Mill Cottage, when considered in the context of the proposed areas of open space and the strongly defined existing landscaped areas, there would not be a significant impact on the special interest of the listed buildings or an appreciation of that special interest.

83. I also visited the site at night. I consider that there is potential for the proposed lighting to impact on the setting of Mill House. Whilst any lighting would be viewed against the backdrop of the lighting to the A281 and the residential development at Broadbridge Heath, the proposal would bring it closer to the listed building. A suitable lighting scheme could minimise these impacts, but some residual harm may remain in this regard.

84. POGE consider that the Council and appellant have underestimated the significance of Lower Broadbridge as an ancient settlement. They refer to research that suggests that the farmhouse dates to the very early 1500s, rather than the 1700s as stated by the appellant. Mr Timlin, on behalf of the appellant conceded that this may be the case, but advised that it did not alter his overall assessment. The evidence from POGE does not alter the status of the Lower Broadbridge Farmhouse as part of a working far complex, or the changes to its setting including the commercial uses, landscaped bund and loss of the functional relationship with the surrounding agricultural land.

85. POGE also questioned the robustness of the Heritage Statement which stated that Slinfold Mill had been demolished. The Heritage statement referred to the description of the Mill as a 4 storey building in sales particulars from 1886, held by West Sussex Archives. Based on information in other publications the

Heritage Statement took the view that the existing garage was a replacement on the site of the previous mill. However, the appellant's evidence to the Inquiry was clear that the garage structure retains fabric from the former mill and provides some evidence of the mill operations. I am therefore satisfied that the Mill has been properly assessed by the appellant.

Field Place

86. Field Place, a Grade I listed country house is situated over 500m to the north east of the site. It is common ground with HDC that the Appeal scheme would preserve the special interest and/or setting and significance of Field Place.

87. The listed building has historic value derived from its age and rarity in the local, regional and national context as a particularly early survival of a high-status medieval hall house. Field Place derives additional historic value from its strong and well documented association with the poet, Percy Bysshe Shelley who was born in the house in 1792 and spent his formative years there. Mary Shelley, the poet's widow also lived there. Historic value is also derived from the wider association with the Shelley family, a long-standing and prominent family in Sussex for several centuries.

88. Field Place has group value with other, ancillary structures within the estate ensemble, including a 15th century barn (Grade II listed building); a 16th century cart house/stable (Grade II listed building); three 17th–18th century hovels (Grade II listed building); and, an 18th century cart shed (Grade II listed building). The listed building forms the focus of this small domestic and agricultural grouping, which amplifies an understanding of Field Place as a high-status, secluded dwelling and the focal point of an agricultural estate.

89. The setting of Field Place includes its immediate domestic curtilage, together with the wider historic parkland grounds, the surrounding historic estate, and more widely, the rural landscape of Sussex, with the nearby settlements of Broadbridge Heath and Horsham.

90. Field Place is set within large, landscaped grounds, with dense, mature trees and woodland copses. This landscape includes a series of historic ponds or small lakes, which drain southwards into a small tributary of the River Arun. The river makes a positive contribution to the significance of Field Place as an element of its setting through the its function as part of linked planned water system. The wider rural landscape of Sussex and settlements of Broadbridge Heath and Horsham had an important role in shaping the life and work of Percy Bysshe Shelley. The landscaped lawns and ponds create a picturesque domestic setting to the listed building, and together with the parkland context make a positive contribution to its special interest in terms of reciprocal visual, aesthetic, and historic relationships.

91. The parkland and grounds of Field Place make the greatest contribution to the setting of the listed building. Field Place is set within a surrounding rural and agricultural landscape, with the urban settlements of Broadbridge Heath and Horsham located to the south. The rural context provides a complementary backdrop to the Field Place Estate, through its open, verdant, rural character, and agricultural uses.

92. The site is located to the south of Field Place, beyond an extensive area of agricultural land and the A281, which was modified and extended to connect to

Five Oaks Road in the late 20th century. The Estate is separated from the site by a mainly deciduous tree screen, a quarry extracting Horsham stone and a materials processing operation. There is a substantial spatial and physical buffer between Field Place and the site.

93. The character of the site has also changed. While it remains in agricultural use, the historic field boundaries have been amalgamated to create the existing large arable field. The historic farm buildings at Lower Broadbridge Farm have been replaced by later 20th century functional buildings and a range of non-agricultural activities. There is also an awareness of the expanded settlement at Broadbridge Heath.

94. The site does not appear to have a strong historical or functional relationship with Field Place. Mr Prichard Jones referred to the historic relationships between the owners of Strood Park and the Shelleys of Field Place. However, those personal relationships are not legible or tangible in the existing experience and do not equate to functional, historic or ownership connections between the site and the listed building that would help to better understand or appreciate its heritage significance.

95. The proposed development would have no impact on the listed building's fabric or plan form. Its archaeological, architectural, and historic values –would therefore, be sustained. In addition, the positively contributing group value between Field Place and its ancillary structures would be sustained.

96. There would be very limited intervisibility between the site and Field Place because of separation distances (c.1km), the screening provided by the substantial structural landscaping enclosing the parkland, interposing landscape elements, and the existing bund to the north of Broadbridge Farm. There would be a significant distance and retained area of rural character between the listed building and the site that would reduce the scope for any material visual impacts on its heritage significance. Mr Prichard Jones considered that the roofs of the proposed dwellings would be visible from the Estate. It may be that some roof tops would be visible from some locations within the Estate, but these would be distant views from the high point of Three Oak Field, which is almost 1km from the closest part of the appeal site.

97. The parkland, grounds and wider landscape in an arc west-north-east of Field Place make the strongest contribution to the overall heritage significance of the listed building as elements of setting, due to the historic integrity of the landscape, which helps in the understanding of its historic seclusion and function as an important country seat. Those elements of setting would not be affected by the proposed development and their reciprocal relationships would also be sustained.

98. The area to the south of Field Place (including the site) makes a limited contribution to its overall heritage significance. Where elements of the proposed development may be visible from the listed building and/or grounds these are likely to be glimpsed views of incidental elements, over a significant distance, and experienced in the context of existing development at Broadbridge Heath.

99. I viewed Field Place Estate both during the daytime and at night and noted that from some of the fields the traffic using the A281 could be glimpsed from some limited viewpoints together with the roof of Newbridge Nurseries in the

background. These views form part of the wider setting of the listed building, they are from the periphery of the Estate and would not impact on the architectural or historic significance of the listed building. During my evening visit I noted that from some parts of the Estate the lights beside the roundabout at the junction of the A281 and the Old Guildford Road West can be seen, as well as some cars using the A281. There was also some light noticeable from the Lawson Hunt Industrial Park in views to the southeastern part of the Estate.

100. The potential impacts are not of sufficient magnitude to erode an understanding or appreciation of the significance of the listed building or the reciprocal relationships with the parkland context and more intact elements of historic landscape setting. Those landscape elements that contribute to an understanding of the contemporary landscape that influenced the life and works of Percy Bysshe Shelley would be maintained. The mitigation measures proposed by Field Place Estate, including landscaped bunds, tree belts and restrictions on the permitted development rights of the proposed dwellings are, therefore, in heritage terms, neither proportionate nor necessary.

101. Paragraph 205 of the Framework requires great weight to be given to the conservation of designated heritage assets, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 208 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I address this matter below.

102. POGE argue that the quality and thoroughness of the appellants Heritage Statement was inadequate and flawed and therefore should be afforded little weight. In my view the Heritage Statement was detailed and thorough. The fact that additional information in relation to the origins of Lower Broadbridge Farm has come to light since does not detract from it or undermine its conclusions. Whilst the Heritage Statement incorrectly assumed that Slinfold Mill had been demolished, it did acknowledge a view put forward in another publication that the garage structure may retain some of the mill's lower brickwork. Moreover, the latter position formed the basis for Mr Timlin's evidence to the Inquiry.

103. POGE referred to the Dragons teeth and WWII pill box located close to the western boundary of the site. Whilst these structures may have some historic interest, they are not a heritage asset for the purposes of the Framework since they have not been identified by the Council as such. Moreover, due to their location along the footpath to the west of the site they would remain well screened from the site and would not be impacted by the proposal.

104. POGE argues that the importance of the heritage assets has been systematically undervalued by the appellants and these assets should instead be afforded much greater weight. It contends that the level of harm should be recalibrated towards the 'middle' weighting of less than substantial harm.

105. As set out above, both the Council and the appellant consider that the harm to Lower Broadbridge Farm, Mill House and Mill Cottage would be towards the lower end of the less than substantial category. In the case of Lower Broadbridge Farmhouse, I have found that there would be harm to its

significance due to changes to its setting. Its setting is heavily influenced by the commercial uses immediately to the north as well as the activity associated with these uses, including the considerable number of large lorries and other vehicles. The introduction of the bund has further eroded its setting. Traffic associated with the appeal proposal would be separated from the Farmhouse and its significance would still be readily appreciated. I therefore conclude that the harm to the significance of Lower Broadbridge Farmhouse would be towards the lower end of the spectrum.

106. Mill House and Mill Cottage are located further along the access road and the tree belt to the western boundary of the site provides a substantial buffer between these properties and the appeal site. The significance of these listed buildings and their immediate setting would be unchanged, and they would be separated from the proposed houses by the open space. Moreover, the approach to these properties includes existing urbanising elements, such as the commercial activities at Lower Broadbridge Farm and residential development at Broadbridge Heath, nonetheless, the appeal proposal would introduce further urbanising elements. In my opinion the harm arising from this would be toward the lower end of the spectrum. Nevertheless, having regard to paragraph 205 of the Framework I afford the harm to these listed buildings considerable weight in the heritage balance.

107. I find that although the proposal may alter the setting of Field Place Estate to a negligible extent, it would not harm the significance or setting of the listed building.

108. POGE was concerned with the Council's failure to defend the reason for refusal in relation to heritage. The reason for refusal referred to the impact of the proposed development "*…both individually and in conjunction with the proposed development to the north of the site*.." on the rural setting of Lower Broadbridge Farm, Mill House & Mill Cottage. Mr Rix, on behalf of the Council, contended that taken together the proposals would result in greater harm to the listed buildings due to the greater quantum of development, as well as additional impacts from artificial light, noise, vehicular movement and perception of domestic activity. POGE nevertheless contends that although the harm would be less, so would the public benefits and therefore this reason for refusal should still stand. Notwithstanding POGE's concerns it is a matter for the Council whether it wishes to defend a reason for refusal.

109. I conclude that the proposal would result in less than substantial harm to the setting of Lower Broadbridge Farm, Mill House and Mill Cottage for the reasons given above and therefore it would fail to comply with Policy 34 of the HDPF which amongst other matters requires proposals to retain and improve the setting of heritage assets.

Flood Risk

110. The application was accompanied by a Flood Risk Assessment (FRA) and drainage strategy. With the exception of a small area in the northwest corner, the site comes within Flood Zone 1. The northwest corner of the site comes within Flood Zone 2 (6% of the site) and Flood Zone 3. (2.8% of the site) Therefore the site overall is at a low risk of flooding from fluvial sources. The Environment Agency surface water mapping indicates that the risk of flooding from surface water varies from very low to high.

111. Whilst the layout of the site is a reserved matter the indicative plans demonstrate that the residential development would be located within the areas at low risk of flooding (less than 1 in 1000 years), whereas the water compatible public open space would be located in the areas at highest risk of flooding. Horsham District Council's Strategic Flood Risk Assessment indicates that the site is located within an area with a negligible groundwater flood risk.

112. The Environment Agency did not object to the proposal subject to the a condition requiring the finished floor levels set no lower than 28.78 metres above Ordnance Datum (mAOD) in accordance with the FRA.

113. The Council and the appellant agree that the drainage strategy is acceptable subject to conditions and the proposal is therefore acceptable in flood risk and drainage terms. Both Rule 6 parties provided examples of flooding in the locality and questioned the robustness of the Environment Agency's modelling as well as the mechanism for the maintenance of the SuDS.

114. It is proposed that surface water generated by the development would be attenuated using detention basins located at topographical low points, prior to discharging to the ditch. It is also proposed to incorporate areas of permeable paving to provide additional storage. The basins and permeable paving have been designed to accommodate a 1 in 100 year plus climate change storm. An additional 10% roof area allowance has been included to account for urban creep.

115. The Rule 6 parties consider that the zoning by the Environment Agency, does not reflect reality and is out of date in the current climate conditions, and as such cannot be relied upon. Mr Prichard Jones, on behalf of Field Place Estate suggested that local knowledge is more reliable.

116. The FRA utilised the flood levels from the Environment Agency's Upper Arun Hydraulic Model to confirm the Flood Zone classification at the site. This model was updated in 2017 to take account of climate change. In 2017 a 35% allowance for climate change was required, however the most recent guidance requires a 25% allowance. Mr Guma, on behalf of the appellant, confirmed that he had used a 35% climate change allowance to ensure resilience.

117. The EA's modelling of the River Arun involves undertaking detailed channel surveys of the watercourse, hydrological analysis and building catchment wide flood models to simulate flooding. Calibration of the hydraulic modelling results is also undertaken using of specific and relevant historic flood data. Whilst the data does not include the flood events in 1986 and 2000, I do not consider that this undermines the robustness of the model. In addition to a climate change allowance, the model also includes an allowance for urban creep and increased urbanisation or changes in catchments. In the absence of any alternative model, I am satisfied that the Environment Agency model is sufficiently up to date and robust. It represents a suitable starting point for the assessment of flood risk on the appeal site.

118. POGE submitted photographs of previous off-site flooding events in 2000, 2012 and 2019. These showed extensive flooding in the vicinity of Mill Cottage and Mill House. These locations are within Flood Zone 2 and Flood Zone 3. There were also photographs of two small areas of flooding on the appeal site. Neither is within the part of the site to be built on and both would be addressed by the proposed drainage strategy. Mrs Ingram Clarke and Mrs

Short explained that when the flooding happened it was often at speed and remained for several days. POGE is understandably concerned that the proposal may worsen the existing situation. Their concerns were reinforced by flooding that had occurred at Highwood and Wickhurst Green, both residential developments completed about 4-5 years ago.

119. Both national and local planning policy require development to be safe from flooding and not add to flood risk elsewhere. It does not require proposals to improve flooding issues elsewhere. In the case of the appeal proposal the drainage strategy would manage the surface water on the site and would restrict flows from the SuDS basins to discharge rates lower than the existing greenfield rates.

120. Mr Prichard Jones raised concerns about the perceived failure of the SuDS system at Solomons Seal, a residential development nearby. He contends that the failure of this system causes increased water flows, upstream of the Estate. There was no substantive evidence submitted to the Inquiry regarding the extent and nature of any failure of the SuDS system. It is a matter for the Local Authority to ensure that the drainage system functions as planned. In the case of this appeal, the condition agreed between the Council and the appellant requires details of the maintenance and management of the SuDS system and would accord with the guidance in PPG[5]. A further condition requires the proposal to be implemented in accordance with the FRA. This would ensure that the SuDS would operate effectively over the lifetime of the development.

121. SuDS are designed to control surface water runoff close to where it falls, combining a mixture of built and nature-based techniques to mimic natural drainage as closely as possible, and accounting for the predicted impacts of climate change. They provide benefits for water quantity, water quality, biodiversity and amenity. SuDS systems have been used for many years and there is no evidence to suggest that they are inherently defective, and indeed they are encouraged in suitable locations due to the benefits they can deliver.

122. Field Place Estate suggest that due to the flood risk the proposed dwellings may be uninsurable and therefore unsaleable and perhaps even undeliverable. Gleeson Land is an experienced and professional operator. Given the evidence within the FRA and the absence of any objection from the Environment Agency, I am not persuaded that the proposed dwellings would be at significant risk from flooding or uninsurable. If this were a genuine risk, it would be surprising that the appellant would be pursuing the appeal.

123. I am conscious that there have been instances of flooding elsewhere in the locality, but based on the submitted evidence I am satisfied that the proposed development would not be at risk from flooding and would not increase flood risk elsewhere. It would therefore comply with HDPF Policy 38 and paragraphs 173 and 175 of the Framework.

Character and appearance

124. The application site is largely open in character and has most recently been used as agricultural land. The site is bounded by a network of trees and hedgerows.

[5] Paragraph: 058 Reference ID: 7-058-20220825

125. It is located on the edge of Broadbridge Heath. It is bound to the east and south by the A281 and Five Oaks Road both of which form part of the wider strategic road network. To the southeast is Newbridge Nurseries, a large garden centre, and the recently developed residential area of Wickhurst Green. The area to the east beyond the A281 is residential and is associated with the main built-up area of Broadbridge Heath.

126. The commercial buildings to the north of the site and adjoining residential development, together with the dwellings on the opposite side of the A281, and the extensive parking area at Newbridge Nurseries taken together provide an urban fringe character, in contrast to the more tranquil rural open countryside further west.

127. The site falls gently from east to west, towards the River Arun which defines its western boundary. Mature woodland defines the western boundary of the site following the course of the river and visually separating the site from the wider landscape to the west. Three residential properties lie outside of the site to the west. These properties are separated from the site by mature vegetation and are not readily apparent from within the site or views from the A281.

128. The appeal site and its landscape setting are not covered by any landscape designations at a national or local level. Nor is it considered to represent a "*valued landscape*" for the purposes of the Framework. The appeal site does not contain any notable landscape features that elevate it above that of ordinary countryside.

129. The site currently comprises two arable fields, one larger main field alongside the A281 and one smaller field alongside Five Oaks Road. Lower Broadbridge Farmhouse lies just outside the northern boundary of the site and includes a listed farmhouse, active stone processing business and commercial premises. The industrial use means that the area north of the farmhouse comprises several large storage sheds and hardstanding used as surface storage.

130. The Horsham District Landscape Character Assessment locates the appeal site within the Upper Arun Valley Landscape Character Area. The Council and the appellant agree that the site contains some of the landscape characteristics of this character area but consider that it is more contained and enclosed than the area in general due to the woodland to the west and is also influenced by the settlement edge.

131. The application was supported by a Landscape and Visual Impact Assessment (LVIA). The selection of Viewpoints contained within the LVIA are considered to be representative of the site and its landscape context. Neither the Council nor Place Services requested any additional viewpoints.

132. The LVIA concluded that although there would be a change to the character of the appeal site, there would be no significant adverse effects on key characteristics and sensitivities of the Landscape Character Areas at National, County, or District scale, due to the containment of the site.

133. The majority of the appeal site falls within Area 32 of the HDC Landscape Capacity Assessment 2021. The south-western most portion of the appeal site lies within the Area 31 parcel. The HDC Landscape Capacity Assessment 2021 identified Area 32 as having a "*moderate*" overall landscape capacity to accept

medium scale housing. Area 31 is identified as having a "*no/low*" overall landscape capacity to accept medium scale housing.

134. The proposed dwellings would generally be located towards the eastern part of the site, with the public open space situated towards the northern boundary and western boundaries. Based on the indicative layout and the parameter plans the proposed development would be similar in scale, density and pattern to the existing development on the western edge of Broadbridge Heath. The majority of the existing vegetation on the appeal site is proposed to be retained. Whilst this provides a good degree of screening from Five Oaks Road, it is more open in nature along the eastern boundary of the site. The landscape strategy proposes additional trees hedges and shrubs along this boundary and should provide an equivalent, or greater degree of screening by comparison with that on the opposite side of the road.

135. Mr Goodman, on behalf of POGE, described the experience of walking along the public footpath to the north of the site that leads from the A264 to the surrounding countryside. POGE submit that the development of this site would represent a major loss of amenity for local dog walkers and those wishing to traverse into the more distant public footpaths and bridleways. POGE submits that the development of this site on the west side of the A281 would be out of character with the existing landscape and would harm the amenity of the local community.

136. There would be a change in the character of the site from where the public footpath adjoins the A281 until shortly before the entrance to the commercial uses at Lower Broadbridge Farm due to the proposed dwellings in this location. Although the dwellings would be separated from the footpath by a narrow area of landscaping, the open views across the fields from this location would be replaced by views of the proposed dwellings. This would be harmful to the semi-rural character of the footpath that the local community currently enjoys. Beyond this point, due to the alignment of the footpath and the proposed open space the semi-rural character would be maintained. Moreover, views from the network of public footpaths to the west would not be significantly impacted by the proposed dwellings due to the containment of the site by the existing vegetation.

137. POGE contends that the development of the site would cause an urbanising effect on the small gap remaining between Broadbridge Heath and Slinfold on the A264. HDPF Policy 27 states that landscapes will be protected from development that causes coalescence and where it reduces the openness between settlements it will be resisted.

138. The village of Slinfold is about 1.9 km from the appeal site. There would be no intervisibility between the appeal site and Slinfold Village.

139. The Council and the appellant agree that proposal would not significantly erode the separation which exists between Broadbridge Heath and Slinfold nor would it significantly close the gap between these two settlements.

140. POGE consider that the settlement of Slinfold commences at the point where the Slinfold sign is located. However, in landscape terms there is a distinction to be made between the parish boundary and the village itself which is located further away. Although HDPF Policy 27 seeks to avoid coalescence, it is a landscape policy that seeks to maintain the visual break between settlements

and in particular the sense of leaving one place and arriving at another. There is a distinct break between the appeal site and Lyons Road that leads to Slinfold village. As one leaves Broadbridge Heath the landscape is more enclosed by trees and other vegetation and there are very few buildings or urbanising features. In contrast Broadbridge Heath has an urban character, and the immediate locality of the appeal site is strongly influence by its urban fringe location. I consider that the site is more closely associated with the residential edge of Broadbridge Heath and would not result in coalescence between Slinfold and Broadbridge Heath.

141. I conclude that the proposal would change the character and appearance of the appeal site and this part of the A281 due to the loss of the open character of the appeal site. The harm arising from this change would be localised due to the containment provided by the River Arun corridor, and would also be mitigated to some extent by the proposed landscaping. However, the proposal would not result in coalescence with Slinfold village which would retain its own distinctive character. The proposal would therefore be contrary to Policy 25 that seeks to protect, conserve and enhance the landscape and townscape character of Horsham, and Policy 26 which aims to protect the countryside from inappropriate development. It would not however conflict with Policy 27.

Whether the location of the proposed development outside of the Built-Up Area boundary is acceptable having regard to development plan policies.

142. The development plan includes the HDPF (adopted November 2015) and the Slinfold Neighbourhood Plan (made June 2018).

143. The HDPF seeks to ensure development takes place in a manner that retains and enhances the settlement pattern and the rural landscape character of the District, but still enables settlements to develop in order for them to continue to grow and thrive. Within built-up area boundaries development is accepted in principle, whereas land outside settlement boundaries is considered to be in the countryside and development is more strictly controlled.

144. HDPF Policy 2 is a strategic policy that seeks to focus development in and around Horsham, whilst Policy 3 confirms that Broadbridge Heath is a suitable location for development in accordance with the settlement hierarchy. Strategic Policy 4 states that outside the built-up area boundaries the expansion of settlements will be supported subject to the specified criteria. The Council and the appellant agree that the proposal would fail to comply with the first criterion of Policy 4 in that it is not allocated in a Local Plan or Neighbourhood Plan. The appellant contends that it complies with all other criteria, although accepts that it fails to comply with the policy as a whole.

145. Criterions 2, 3, and 4 require that the level of expansion is appropriate to the scale and function of the settlement type; would meet the identified housing need, and would not prejudice long term development or conflict with the development strategy. Again, there is general agreement in relation to these matters. The fifth criterion requires the development to be contained within a defensible boundary.

146. POGE submits that the A281 forms the defensible boundary for the purposes of this policy. The appellant maintains that the River Arun provides a defensible boundary. This boundary is however punctuated by the industrial

and commercial uses immediately to the north of the appeal site that extend almost to the industrial estate at Guildford Road on the opposite side of the A281. I do however appreciate that this area is well screened by existing vegetation and therefore is not prominent in views from the A281. Moreover, the western boundary of the site is adjoined by sporadic housing development to the east that is accessed by a private road.

147. There is a marked absence of development to the west of the wooded corridor of the River Arun, which as set out above provides a high degree of containment to the site. In my view this provides a more robust defensible boundary by comparison with the A281.

148. I therefore conclude that the proposal would satisfy criterion 5 of Policy 4. Nonetheless the proposal would fail to comply with Policy 4 as a whole. It would also fail to comply with Policy 26 that seeks to protect the countryside from inappropriate development.

149. POGE submit that the Slinfold Neighbourhood Plan determined that the site was not suitable for development. It contends that the criteria used to assess the site have not changed, and therefore a new neighbourhood plan would reach the same conclusion. At the time the Slinfold Neighbourhood Plan was made the housing requirement was markedly lower than at the present time. Using the standard method to calculate the housing requirement, it is now 948 dpa by comparison with 800 dpa within the HDPF. Therefore there can be no certainty that if the Neighbourhood Plan was reviewed that it would reach the same conclusion.

150. The HDPF is currently subject to review. The review was paused in 2021 following the publication of an updated Framework, as well as to allow consideration of the implications of the Position Statement issued by Natural England in September 2021 in relation to water neutrality. The preparation of a revised Regulation 19 HDC Local Plan was paused in January 2023. The Council has a new majority administration and is seeking to agree a new local plan timetable. However, at the present time the timescale for the examination and or adoption of a revised local plan is uncertain.

151. HDPF Policy HA8 of the emerging Review proposes the allocation of the appeal site for up to 150 dwellings. The Council explained that due to the water neutrality position, it is uncertain whether the Regulation 19 plan can progress without changes to the proposed site allocations including those within Policy HA8 of the Plan. Having regard to paragraph 48 of the Framework, I agree with the Council and the appellant that only limited weight can be afforded to this review.

152. In October 2022 the Council published Facilitating Appropriate Development (FAD) in order to address the shortfall in housing land supply. Paragraph 5.7 of the FAD closely reflects the wording of Policy 4, other than it requires sites to adjoin an existing settlement, in place of the requirement for it to be an allocated site. As with Policy 4 POGE contend that the site is not contained within a defensible boundary. For the reasons given above I disagree and find that the proposal would comply with paragraph 5.7 of FAD.

153. The proposal would fail to comply with HDPF Policy 4 since it is not an allocated site, although it would comply with it in all other respects. It would also fail to comply with Policy 26 due to its location in the countryside.

However, these policies are out of date since the settlement boundaries on which they rely are based on a lower housing requirement by comparison with the HDPF and also because the Council is only able to demonstrate a 3-year supply of deliverable housing sites.[6] Therefore they do not carry full weight. In these circumstances, although the FAD is not part of the development plan, it is a material consideration of significant weight and seeks to address the housing shortfall within the District. I have found above that the proposal would comply with paragraph 5.7 of FAD and this lends significant weight in support of the proposal.

154. In addition, the site is proposed as an allocated site in the most recent iteration of the Local Plan Review. Whilst I appreciate that there is no certainty that this draft allocation will be carried forward into the final version of the Plan, particularly given the water neutrality issues, it does nonetheless indicate that the location of the site is considered to be acceptable by the Council.

155. POGE suggest that there are more suitable sites for development within the Broadbridge Heath area. They identify three specific sites. The West Sussex County Council Depot, the Novartis site and the Nowhurst Business Park. Two of these sites benefit from planning permission and an application for planning permission has been submitted on the third. Therefore, I am not persuaded that these sites are available or suitable for housing development.

156. Overall, I conclude that the location of the proposed development outside of but adjacent to, the Built-Up Area boundary is acceptable having regard to development plan policies and other material considerations.

Biodiversity

157. The Appeal site is not subject to any ecological designation and there is no ecological objection from HDC. The Ecological Appraisal included a full suite of ecological surveys to assess wildlife supported by the site. This has included surveys for bats, badger, dormouse, water vole, otter, reptiles, great crested newt, breeding birds and white-clawed crayfish. The site was revisited in September 2023. This verified the findings reported within the Ecological Appraisal and confirmed that the conclusions drawn within the appellant's assessment remain valid.

158. Mr Prichard Jones considers the wildlife surveys, undertaken for the appellant, are out of date and inadequate because they did not take into account the increasing populations of important species on Field Place Estate, as set out in a report from Dr Case. The Estate is located over 500m from the Appeal site and separated from it by the strategic road network. Therefore it is unlikely to be directly impacted by the appeal scheme. The Council's consultant Ecologist has reviewed the appellant's Ecology Assessment and is satisfied that the likely impacts upon designated sites, protected and Priority species and habitats is appropriate and that the identified mitigation is suitable.

159. A number of biodiversity enhancements are proposed. These are set out in the Ecological Appraisal and include:

- New tree and shrub planting to comprise native species of local provenance or species of value to wildlife;

[6] Statement of Common Ground paragraph 5.3

- Creation of new wildflower grassland;
- Creation of new wetland features as part of the SuDS;
- Provision of bird and bat boxes on trees and new buildings;
- Installation of Hedgehog nest domes and garden fence cut-outs to provide permeability for Hedgehogs and other small mammals;
- Creation of habitat piles to provide refuges for invertebrates, and installation of bee bricks.

160. It is common ground with HDC that the scheme would result in a 21.93% net gain in biodiversity. The River Arun and associated tributaries and riparian habitats which form the key wildlife features west of Broadbridge Heath lie outside of the site.

161. POGE submits that the proposal would not necessarily deliver the suggested 28% Biodiversity Net Gain (BNG), and that due to the impact of construction the proposal would be likely to have a significant impact on biodiversity and wildlife. The agreed conditions include a Construction Environmental Management Plan for Biodiversity. Amongst other matters this requires a risk assessment for damaging construction activities, as well as a range of practical measures including specialist ecologists on site to oversee particular works. A further condition requires the submission of a Biodiversity Enhancement Strategy for Protected and Priority species. This would include a requirement to deliver the BNG and details of aftercare and maintenance. I am therefore satisfied that the proposed BNG is secured and it is likely that it will be delivered.

162. POGE consider that there are failings in the appellant's baseline environmental assessment of the site. They suggest that the watercourse running south to north across the middle of the proposed development area had been dismissed by the appellant's environmental assessment as "*a ditch by a hedge*". However, the Ecological Appraisal identifies and records the ditch. In accordance with the Guidance on BNG and Habitats classification, since it is associated with a hedgerow, it has correctly been assessed as part of a hedgerow, rather than a watercourse. Mr Maughan, on behalf of the appellant, explained that the possibility there could be biodiversity in the ditch, would have been picked up in the surveys.

163. POGE also consider that the evidence in relation to Great Crested Newts is incomplete in that only some of the ponds in the area were surveyed. The appellant acknowledges that not all ponds were surveyed due to issues with access.

164. Supporting evidence of Great Crested Newts was found in Pond P3, but the other 5 ponds surveyed found no evidence. With the exception of Pond 5, those that were not surveyed are more than 250 m from the appeal site. Place Services, on behalf of HDC, raised no issues in relation to the methodology of the survey and assessment work by Mr Maughan's team, including as regards Great Crested Newts. Therefore, on the basis of the evidence submitted to the Inquiry, I concur with the appellant that Great Crested Newts are not considered to form a constraint to the proposals and no specific mitigation or licensing is likely to be required.

165. POGE explain that the Weald to Waves corridor borders the site. This is a 1-kilometre-wide route that seeks to maximise habitat connectivity. Mr Prichard

Jones made a similar point. It is the result of a partnership of Natural England The South Downs National Park Authority and other bodies. The northern end of the site sits within the corridor and POGE submit that any further development would have consequences not only for the local environment but also further south.

166. The landscape strategy proposes a mosaic of native planting and habitats. The River Arun and associated tributaries and riparian habitats which form the key wildlife features west of Broadbridge Heath lie outside of the site. These existing habitat corridors would be retained and enhanced under the proposals. Accordingly, on the basis of the submitted evidence, I conclude that the proposal would be unlikely to impact on the connectivity along the Weald to Waves corridor, and indeed has the potential to enhance connectivity.

167. Field Place Estate has taken significant and positive steps to enhance biodiversity on the Estate. Mr Prichard Jones contends that the Solomon's Seal development upstream of Lake 4 has caused increased pollution and nutrient flows into the Estate giving rise to poisonous Water Hemlock and invasive Himalayan Balsam as well as causing algae blooms in the eastern end of Lake 4 during the summer months. In Mr Prichard Jones's view additional pollutants and nutrients from the proposal would be likely to flow into the River Arun if the indicative flood and other water management proposals are adopted by the appellant on the site.

168. It is intended that the SuDS would include a wetland feature and contribute to the biodiversity of the proposal. The suggested condition includes a requirement to submit details of measures to control and prevent the distribution of pollutants and contaminants to existing watercourses. This measure would address the concerns raised by Mr Prichard Jones.

169. Overall, the proposal would deliver a number of benefits for biodiversity, including a 21.93% BNG, and measures to enhance the existing habitats on the site. Subject to appropriate conditions the proposal would not harm protected species or other ecological interests. I conclude that the proposal would be acceptable in terms of its effect on biodiversity and in this regard it would comply with HDPF Policy 31 and Policy 4 of the Slinfold Neighbourhood Plan which seeks to conserve and enhance biodiversity.

The Mens SAC

170. The Mens SAC is designated on the basis of Atlantic acidophilous beech forests with Ilex and sometimes also Taxus in the shrub layer (Quercion robori-petraeae or Ilici-Fagenion) and the Barbastelle Bat. The conservation objectives for the SAC are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features.

171. The Draft Sussex Bat Special Area of Conservation Planning and Landscape Scale Enhancement Protocol was developed to facilitate sustainable development around the Mens SAC, whilst conserving the resident bat populations and providing a diverse and healthy landscape for bats. The site is located within the 12km wider conservation zone for Barbastelle for the Mens SAC. As such, development of the site could result in an adverse effect on bats associated with the designation and therefore an Appropriate Assessment is required.

172. Previous detailed surveys, tracking Barbastelle bat movements, have been undertaken in and around the SAC to guide conservation objectives related to the species. The report details that foraging areas for bats in the SAC were all off to the east of the SAC as were "*principally on the floodplain of the River Arun, from close to Horsham in the north to Parham in the south*"' This northernmost extent could bring them close to the site. As such, although not reaching the site, it demonstrates that Barbastelle from the Mens SAC do travel in the direction of the site.

173. In terms of the site's potential to offer substantial foraging resources for Barbastelle, the fact that the site is predominantly arable fields reduces its value as a resource. Furthermore, the core sustenance zone for Barbastelle is 6.5km – 7km from roosts (i.e. from the extent of the SAC), which the site is beyond.

174. In the absence of mitigation, small numbers of foraging and commuting Barbastelle bats could be adversely affected by the proposals. As such, it is proposed that mitigation measures are put in place to avoid any likely significant effects, on either individual Barbastelle bats or the integrity of the Mens SAC.

175. The implementation of mitigation and enhancement measures, including habitat retention and creation, the implementation of a sensitive lighting scheme and provision of SuDS would ensure that features of use to commuting bats are retained whilst also improving the site for Barbastelle bats in terms of foraging and commuting opportunities.

176. Accordingly, it is evident that the proposed development, alone and in-combination with other plans and projects, would not adversely affect the Barbastelle bats which occasionally enter the site (possibly from the Mens SAC). As such, the development would not have an adverse effect on the integrity of the Mens SAC in view of the site's conservation objectives. Natural England support this view.

Other Matters

177. POGE raise concerns about the impact of the proposal on traffic congestion and air quality. The Transport Assessment considered the impact of the proposal on the local highway network. The results of the junction modelling indicate that all junctions would operate within capacity in 2027 following the implementation of the development of the site. The Transport Assessment concludes that the proposed development would not result in any material adverse disruption to the free-flow of traffic on the local highway network or any safety concerns.

178. These findings were accepted by the Local Highway Authority. It advised that subject to the implementation of highway mitigation measures, the Proposed Development would be acceptable in highway and accessibility terms. There is no substantive evidence to the contrary.

179. POGE are concerned that the additional traffic associated with the proposal would have a detrimental effect on air quality. It stated that less than 3% of cars in December 2022 were electric or hybrid and at peak times the impact of vehicle emissions on climate change is a known risk. It contends that adding an extra 200 cars would add to the climate problem and there would be no

mitigating measures to make the houses carbon free or introduce car free initiatives.

180. An Air Quality Impact Assessment was submitted with the application. It was based on the traffic flow data within the transport assessment and included other committed developments. The assessment confirmed that the annual mean NO_2, PM_{10} and $PM_{2.5}$ concentrations would remain well below the relevant air quality standards and objectives set out in the Air Quality Strategy for England, Scotland, Wales and Northern Ireland at all receptors with or without the development.

181. There are no diffusion tubes in Broadbridge Heath, however there are three tubes on tributary roads in Horsham that are likely to be used by residents of the appeal scheme when accessing services. Annual mean concentrations of NO_2 have generally declined at North Horsham since 2008, from 29.3 µg/m3 to 17.6 µg/m3 in 2021. Annual mean concentrations of NO_2 have also been in decline at receptors HD1 and HD10 from levels of well above 30 µg/m3 in 2008 to about 20 µg/m3 in 2021. HD26 was only installed in 2020 and showed stable levels of circa 30 µg/m3 through to 2021. The Council's Annual Status Report 2022 confirms that NO_2 levels at these diffusion tubes show a downward trend. This trend can be attributed to improvements in car efficiency.

182. The appeal site lies in a sustainable location where residents would be able to access local shops and services by foot or cycle. The proposed travel plan would support active and sustainable travel choices. The proposal would make provision for appropriate levels of car and cycle parking, the provision of an electric vehicle charging point, infrastructure for a car club, the appointment of a Travel Plan Coordinator and the provision of travel information packs to residents. These measures would be secured by way of a planning condition and their impact would be monitored for a period of five years.

183. Mr Prichard Jones raised concerns about bunds to the north of the site. He stated that they were partially composed of refuse imported onto the land but acknowledges that work appears to have been undertaken to reduce the quantity of refuse, but such reduction may not have removed all of the refuse. He was concerned the dumping of the refuse was unregulated and, therefore, the content is unknown and it could be a potential health risk.

184. The Council submitted a note to the Inquiry outlining the circumstances of a planning permission that included the extension of the bund and evidence of a current enforcement investigation. The bunds fall outside of the appeal site and are separated from it by the commercial activities at Lower Broadbridge Farm. The bunds and the enforcement investigation fall outside of the jurisdiction of this appeal. Mr Prichard Jones was also concerned that contaminants may leach from the bunds and thus find their way on to the appeal site. This matter could be addressed by a condition in relation to contaminated land.

185. POGE refer to the extent of local opposition to the proposal. Whilst matters raised by those objecting to the proposal may be a material consideration in relation to the appeal, the number of representations in support of or objecting to a proposal do not justify allowing or dismissing the appeal.

186. POGE considers that the change in position by HDC following the decision not to pursue an appeal in relation to application DC/22/1057 is materially

unsound. Whilst I understand POGE's concern's in relation to this matter, and that in terms of most issues it has fallen to POGE to defend the original reasons for refusal, PPG encourages Councils to review their case promptly following the lodging of an appeal against refusal of planning permission as part of sensible on-going case management.[7] Although the Councils actions were disappointing to POGE, it was entitled to review its position.

187. Mr Prichard Jones contends that the development of the site would lead to a loss of food production in the area. The agricultural land classification of the site is Grade 3(b) and therefore it does not constitute Best and Most Versatile Agricultural land. Whilst there would be some loss of production the site area is relatively small. Moreover, land adjacent to settlements is expressly contemplated by the FAD for housing development and the loss of the appeal site would not constitute a material adverse effect of the scheme.

188. Since the HDPF is more than five years old, in accordance with Paragraph 61 of the Framework, the rolling five-year housing land requirement must be calculated using the standard method. On this basis the Council the housing need is 948 dwellings per annum, which is an increase from 800 dwellings per annum set out within the HDPF. A number of recent appeal decisions have concluded that on this basis the Council cannot currently demonstrate a 5-year supply of deliverable housing land.

189. The most recent Authority Monitoring Report (December 2022) confirms that the Council have calculated their 5-year requirement for the period between 1st April 2022 to 31st March 2027, including the buffer is 4,977. The Council has calculated the total housing supply during this period as 2,990 which means that it can only demonstrate a 3-year supply of deliverable housing sites. This represents a very substantial shortfall. The need to address this shortfall urgently is recognised by the Council, and it has published FAD to guide development on unallocated site to more appropriate areas within the countryside.

190. The proposal would deliver 133 dwellings in a District with a significant housing shortfall. It would also provide 45% of the dwellings (60 dwellings) as affordable housing. The Council agreed that the need for affordable housing is acute and worsening and therefore this would be a significant benefit of the proposal.

191. The proposal would also provide short term economic benefits during the construction phase, and long term economic benefits once the dwellings are occupied.

Unilateral Undertaking

192. The appellant submitted a Unilateral Undertaking dated 9 November 2023. In addition to matters in relation to water neutrality, the UU included planning obligations to provide 45% of the dwellings as affordable homes, provide and manage the open space proposed, set up a management company and pay a monitoring fee in relation to the obligations. The Council submitted a CIL compliance statement in relation to these obligations.

193. Section 122 of the Community Infrastructure Levy Regulations 2010 states the three tests which planning obligations must comply with. These are that

[7] Paragraph: 049 Reference ID: 16-049-20140306

the obligation shall be necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development.

194. The Water Neutrality issues are discussed above. The provision of affordable housing is necessary in planning terms to meet an identified housing need to comply with Policy 16 of the HDPF (and the accompanying Planning Obligations and Affordable Housing SPD) and is directly related to the development. The delivery of the open space in accordance with submitted details, and the need for a management company are directly related to the development and are necessary in order to ensure suitable provision for residents.

195. I conclude that the submitted planning obligations would satisfy the tests of the Section 122 of the Community Infrastructure Levy Regulations.

196. Mr Prichard Jones, made a number of comments on the s106. These were discussed at the Inquiry, and in some instances the detailed wording was amended to reflect these points.

197. Clause 6.4 addresses the circumstances where a clause or clauses are found to be invalid. Mr Prichard Jones suggested an addition to this paragraph requiring the parties to work together to achieve the intention of the clause. However, since the deed is a UU it is not possible to impose requirements on other parties. I have therefore considered the UU as submitted.

198. Mr Prichard Jones suggested that the final part of clause 10.2 that refers to the disposal of land to statutory undertakers should be deleted. However, the wording was agreed between the Council and the appellant, and I consider that the deletion of this exclusion is unnecessary.

Conditions

199. I have considered the suggested planning conditions, including the pre-commencement conditions. These were provided and discussed in draft at the Inquiry on a without prejudice basis. These were subsequently amended and agreed between the Council and the appellant in the light of the discussion at the Inquiry. I have considered the conditions against the relevant advice given in paragraphs 55 and 56 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in PPG. Where necessary I have amended them in the interests of clarity, precision, and enforceability.

200. In addition to the standard outline planning permission conditions regarding the submission of reserved matters a condition requiring the development to be carried out in accordance with the approved plans is necessary in the interests of certainty and in the interests of the safe and efficient operation of the highway. The parameter plan sets out the areas to be developed, the maximum number of storeys and areas of green infrastructure. The proposal should broadly agree with this plan in order to ensure an acceptable development.

201. A Construction Environmental Management Plan, including in relation to construction traffic and parking is necessary in the interests of highway safety and the amenities of the area. A separate condition limiting the hours of work on the site is necessary to safeguard the living conditions of nearby residents.

A Construction Environmental Management Plan (Biodiversity) is required in order to safeguard biodiversity during construction.

202. A Written Scheme of Archaeological Investigation is required since there have been other significant archaeological finds in the locality. There was some discussion as to whether any finds should be donated to Horsham Museum. Whilst this may be desirable in the event that some of the finds have particular local significance, it would be more appropriate for this matter to be agreed and approved by the Local Planning Authority in consultation with the County Archaeologist. This is provided for within the proposed condition.

203. A scheme to address the potential risks of contamination, together with a verification report is necessary in the interests of human health and that of the wider environment, including controlled waters. A separate condition in respect of the risk of contamination from the bund to the north of the site is not necessary since any risk of contaminants leaching from the bund would be encompassed in the site wide condition.

204. An Arboricultural method statement, including measures to protect trees during construction is necessary. A drainage strategy for foul water disposal is required to ensure that satisfactory arrangements are in place.

205. For the reasons given above, in the interests of water neutrality details of water efficiency measures and the water offsetting requirements are necessary.

206. Details of the acoustic fence, including its appearance and location are necessary in the interests of the appearance of the proposed development and to ensure an acceptable level of amenity for future residents. Details of the proposed glazing specification is required for the same reason. POGE suggested that the condition should be expanded to include protection for the existing dwellings during construction, however, construction noise would be managed as part of the CEMP that makes specific reference to the management and control of noise.

207. Details of the sustainable drainage system, as well as its management and maintenance are necessary in order to manage flood risk and safeguard water quality. I have had regard to the amendments proposed by Mr Prichard Jones that seek to ensure the system functions well over its lifetime and is adequately maintained. I am satisfied that the amended wording submitted by the Council and appellant would achieve this end.

208. Since Great Crested Newts and Badgers are mobile species, and given the date of the previous surveys, updated surveys are required. A Biodiversity Enhancement Strategy for Protected and Priority species, including a BNG assessment is required in the interests of biodiversity. Mr Prichard Jones suggested that an updated Bat survey was also required. However, the Council and the appellant agreed that since the bats used the woodland area of the site and this would not be impacted by the development an updated survey for bats was not necessary. I agree with this view.

209. A lighting scheme is necessary in order to minimise light to the nearby heritage assets and also to safeguard biodiversity, including bats. The parties explained that it was necessary to make particular provision for bats due to the proximity of the MENs SAC two separate conditions were preferred.

210. The Council seeks a condition in relation to air quality mitigation. It was explained at the Inquiry that the aim of this condition was to limit any adverse impacts on air quality arising from the development through the provision of on-site measures, including limiting traffic and providing electric vehicle charging points. I agree that this condition is necessary in the interests of the environment.

211. I agree that a condition requiring the access arrangements to be implemented prior to the occupation of the dwellings is necessary in the interests of highway safety. A Travel Plan is necessary in order to encourage sustainable transport and in the interests of the environment. High speed broadband is necessary to meet the needs of future occupants.

212. Landscape details need to be submitted as part of the reserved matters. The UU also requires the submission of an open space plan, details of management of the open space and the management company. Therefore, an additional condition requiring landscape details and maintenance schedules is not necessary. Mr Prichard Jones advocated particular species of trees including evergreen varieties. However, the precise species will be determined as part of the reserved matters application.

213. To ensure that the proposed dwellings are safe from flooding and that the proposed development would not increase the risk of flooding elsewhere the proposal should be carried out in accordance with the FRA and finished floor levels should be no lower than 28.78 metres above Ordnance Datum. Mr Prichard Jones suggests that in addition to the FRA the SuDS system should take account of flooding from the A281, Broadbridge Heath and the Broomswick stream. On the basis of the evidence submitted to the Inquiry and having regard to the views of the Local Lead Flood Authority (LLFA) and the Environment Agency, I am satisfied that the FRA is robust and has taken account of the relevant sources of flooding. Moreover, the condition in relation to the SuDS requires full details of the drainage strategy and would allow the consideration of any relevant sources not included within the FRA.

214. Given the proximity of the site to the River Arun a condition requiring any soils to be imported to be tested is necessary in order to control the risk to future users of the site and controlled waters.

215. In addition to these conditions Mr Prichard Jones suggested additional conditions.[8] Mr Prichard Jones suggested a number of conditions to safeguard the heritage assets in the locality. These include restricting the height of the proposed dwellings to two storeys, and preventing the installation of dormers within the roof, as well as restricting permitted development rights for roof extensions. Restricting the height and hours of street lighting, constructing a planted bund 6 metres high along the northern boundary of the site. The suggested conditions also seek the use of mainly evergreen trees within the landscaping scheme and landscaped bunds to surround areas of open car parking.

216. The height and design of the dwellings, including the roofs, are a matter of detailed design and would be considered as part of the reserved matters. The parameter plan would be secured by condition and shows the developable area of the site and the maximum number of storeys in different parts of the site.

[8] INQ22

The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. This is an application for outline planning permission, and the need for restrictions on permitted development rights in relation to extensions and alterations would need to be specific to individual dwellings and would be considered as part of reserved matters. In making this assessment the Local Planning Authority would have regard to its duty under Section 66 of the Town and Country (Listed Buildings and Conservation Areas) Act 1990. I therefore do not consider the suggested condition to be necessary or reasonable.

217. The suggested conditions require the submission of a lighting scheme. This would be the appropriate time to consider the height, design and location of proposed lighting. Similarly, the landscape scheme required by reserved matters would be the appropriate context to consider the need for bund around the parking areas. The screening of these areas must be balanced against the impact of any proposed bunds in the landscape.

218. Mr Prichard Jones also suggested that restrictive covenants should be imposed on each property in relation to extensions, out buildings, additional windows in the north or north west elevation, drones, leaving car engines running and recorded or broadcast material. As set out above there needs to be clear justification to restrict permitted development rights, and this is a matter that would be considered as part of the reserved matters. Matters such as leaving car engines running and noise from recorded or broadcast material, would usually be addressed as an issue between neighbours or occasionally through environmental protection. Conditions cannot require a party to enter into a planning obligation other than in exceptional circumstances. In my judgement these concerns would not represent exceptional circumstances.

219. In relation to flood risk, Mr Prichard Jones seeks the submission of additional information to the LLFA and the Environment Agency, the implementation of the flood risk measures prior to the occupation of the dwellings, details of sediment pumps, pollution barriers and filtration systems, maintenance and funding details. These matters are largely covered by the suggested condition in relation to SuDS. This requires full design details of the proposed drainage system, as well as details of a management and maintenance plan for the lifetime of the development. It will be a matter for the LLFA and/or the Environment Agency as to whether additional information is required.

220. Mr Prichard Jones's suggested conditions for wildlife and biodiversity include a wildlife protection and biodiversity plan and covenants on individual dwellings to restrict the use of external lighting, artificial fertilisers and pesticides. The proposed conditions include the submission of a biodiversity enhancement strategy and updated species surveys, as well as a lighting strategy. It would not be appropriate to impose covenants on individual dwellings as suggested, but, as referred to above a lighting scheme is required in order, amongst other matters, to minimise effects on biodiversity.

Heritage and Planning Balance

221. I have found above that the proposal would cause harm to Lower Broadbridge Farmhouse, Mill House and Mill Cottage, all Grade II listed buildings. In all cases the harm would be less than substantial and towards the lowest end of the scale. I am however required to give great weight to this

harm and in accordance with paragraph 205 of the NPPF the harm must be weighed against the public benefits of the proposal.

222. The social benefits include the delivery of housing and affordable housing. It is common ground that there is an acute need for affordable homes and worsening housing affordability in Horsham. The provision of 60 (45%) affordable homes would be in excess of the 35% currently required by the Development Plan. I agree with the appellant that this matter would be a significant benefit of the proposal and should attract very substantial weight.

223. The proposed biodiversity enhancements would provide a 21.93% BNG, considerably in excess of the 10% sought by the Environment Act and I accord it substantial weight. The Site is located in a location with sufficient access to services and amenities and where additional housing would contribute to the vitality and viability of existing shops and services. The proposal would also make provision for public open space adjacent to the public right of way. This would be an environmental and social benefit of the proposal. There would also be economic benefits in the form of employment opportunities during construction and in the longer term a contribution to the wider economy. I accord these matters significant weight.

224. I conclude that when weighed against the very low level of harm to the significance and setting of Lower Broadbridge Farmhouse, Mill House and Mill Cottage, these public benefits, when taken together, the balance is clearly in favour of the proposal. The proposed development would therefore accord with the Historic Environment Policies of the Framework.

225. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found above that the proposal would harm the significance of Lower Broadbridge Farmhouse, Mill House and Mill Cottage contrary to Policy 34 of the HDPF, although I have found above that this harm is outweighed by the public benefits of the proposal. It would also give rise to landscape harm contrary to HDPF Policies 25 and 26, although such harm would be localised and visually contained. The proposal would not result in coalescence between Broadbridge Heath and Slinfold and therefore there would be no conflict with Policy 27. In addition, due to the location of the appeal site outside of the settlement boundary it would conflict with HDPF Policies 4 and 26, as well as the Slinfold Neighbourhood Plan.

226. Balanced against these harms, the proposal would be safe from flooding and would not add to flood risk elsewhere and would therefore accord with HDPF Policy 38. It would also deliver significant biodiversity enhancements, including BNG and would therefore accord with HDPF Policy 31 and Policy 4 of the Slinfold Neighbourhood Plan. However, I find that when assessed against the development plan as a whole the proposal would fail to comply.

227. The Framework is a material consideration in respect of this appeal. In the light of the housing land supply issues the Council and the appellant agree that the policies most important to the consideration of housing applications are out of date and the provisions of Paragraph 11 of the Framework apply, meaning that planning permission should be granted unless (i) the application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the development or (ii) adverse impacts are identified which would significantly and demonstrably outweigh the benefits.

228. Since I have found above that the proposal would be water neutral and that the heritage harm is outweighed by the public benefits of the proposal, paragraph 11(i) does not apply. There is agreement that the most important policies to the consideration of housing applications are HDPF Policies 2, 4, 15, and 26. The Appeal scheme does not comply with part of Policy 4 and Policy 26, due to the location of the site outside of an existing settlement boundary. Given the increase in the housing requirement since the adoption of the HDPF and the Council's acknowledgement that sites outside of the Built up Area Boundaries is likely to be required to meet the housing requirements I afford this conflict limited weight.

229. The Council has published the FAD, which seeks to guide development within the countryside to areas which the Council considers to be more appropriate. It is acknowledged by the Council that the Appeal scheme meets all the requirements set out by Paragraph 5.7 of the FAD. Whilst this is not Council policy it nonetheless reflects the Council's approach to development within the Countryside and is therefore a significant material consideration.

230. I have also found some conflict in terms of the landscape effects of the proposal, however, this would result in only very localised harm to a non-designated landscape.

231. The proposal would deliver significant social, economic, and environmental benefits, and that subject to the submitted UU and attached conditions it would achieve water neutrality. Overall, I conclude that the adverse effects of the development would not significantly and demonstrably outweigh the benefits, and that material considerations indicate that a decision other than in accordance with the development plan is justified.

Conclusion

232. For the reasons above given I conclude that the appeal should succeed.

Lesley Coffey

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Graeme Keen KC instructed by Gleeson Land
He Called:

Gerald Guma	Odyssey
Marc Timlin	Turley
Chris Jenkinson	Aspect Landscape
Peter Rainier	DMH Stallard
Dan Maughan	Aspect Ecology
Phil Bell	Motion

FOR THE LOCAL PLANNING AUTHORITY:
Naomi Byrd

She called:

Giles Holbrook	Horsham District Council
Adrian Smith	Horsham District Council
Sean Rix	Horsham District Council

RULE 6 PARTIES

Protect Our Green Environment (POGE)
Alex Ross
Andrew Goodman
Tracey Chaplin
Helen Goodman
Pippa Ingram Clark
Alex Ingram Clark
Christina Short

Field Place Estate (Rule 6 Party)

Mr K Prichard Jones

INTERESTED PARTIES:

Chris Leyland	Slinfold Parish Council

DOCUMENTS SUBMITTED DURING THE INQUIRY

INQ 1	Opening Statement on behalf of Appellant
INQ 2	Legal Submissions on behalf of Appellant
INQ 3	Draft Unilateral Undertaking submitted by the Appellant
INQ 4	Opening Statement Horsham District Council Including Legal Principles in relation to Appropriate Assessment
INQ 5	Opening Statement POGE
INQ 6	Duckmoor Lane Appeal Decision Ref:APP/Z3825/W/21/3283823
INQ 7	Note on Noise submitted by the Appellant
INQ 8	Solomon's Seal Appeal Decision Ref: APP/Z3825/W/14/2224668 submitted by the Council
INQ 9	Solomon's Seal Reserved matters approval LPA Ref: DC/16/1073 submitted by the Council
INQ 10	Excerpt From Holocaust War Memorial Decision submitted by the Appellant
INQ 11	Gleeson Annual Report and Accounts submitted by POGE
INQ 12	Earth Bunds Compliance Note submitted by the Council
INQ 13	Extract from Draft Crawley Borough Local Plan 2024 – 2040 May 2023 submitted by the Council
INQ 14	Odyssey Flood Risk and Drainage Note submitted by the Appellant
INQ 15	West Sussex County Council objection to Field Place application dated 12 October 2023
INQ 16	Appeal site visit and itinerary
INQ 17	Field Place Site Visit and Itinerary
INQ 18	Draft Planning Conditions
INQ 19	Field Place Estate comments on Draft Planning conditions
INQ 20	Field Place Estates comment on Draft Unilateral Undertaking
INQ 21	Draft Unilateral Undertaking
INQ 22	Field Place Suggested Conditions
INQ 23	Closing Submissions Field Place Estate
INQ 24	Closing Submissions POGE
INQ 25	Closing Submissions Horsham District Council
INQ 26	Closing Submissions Appellant

DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY

INQ P1	Inspector's letter to Natural England dated 27 October 2024
INQ P2	Natural England's response to the Inspector dated 1 November 2024
INQ P3	Final conditions
INQ P4	Executed Unilateral Undertaking dated 9 November 2024
INQ P5	Appellant's comments on revised Framework
INQ P6	Council's comments on revised Framework

Appeal Ref: APP/Z3825/W/23/3321658

Schedule of Conditions

1) The development hereby permitted shall be carried out in accordance the following approved plans:
   - Location Plan, ref: 1273.S01 (dated 25.01.2022)
   - Indicative Access/Roundabout Arrangement, ref:1902029-21 A (dated 23.09.2022)

2) The detailed design of the development proposed through Reserved Matters applications pursuant to this outline permission shall have regard to, and broadly accord with, the principles set on the parameter plan ref:1273.S03 (dated 25.01.22).

3) 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.

4) 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.

5) 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.

Pre-commencement Conditions

6) No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following details:
   i. An introduction consisting of a description of the construction programme, definitions and abbreviations and project description and location;
   ii. Details of how residents will be advised of site management contact details and responsibilities;
   iii. Detailed site logistics arrangements (to include details shown on a plan), including location of site compounds, location for the loading and unloading of plant and materials, site offices (including height and scale), and storage of plant and materials (including any stripped topsoil);
   iv. Details regarding parking or site operatives and visitors, deliveries, and storage (to include details shown on a plan);
   v. The means of access and routing of construction traffic to and from the construction site;
   vi. The arrangements for public liaison prior to and during the demolition and construction works – newsletters, fliers etc;
   vii. Details of any floodlighting, including location, height, type and direction of light sources, and intensity of illumination;
   viii. Locations and details for the provision of wheel washing facilities and dust suppression facilities (to include details shown on a plan);
   ix. Details for the management and control of noise.

The construction shall thereafter be carried out in accordance with the details and measures approved in the CEMP.

7) No development shall commence until a Construction Environmental Management Plan (Biodiversity) (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority, in line with the details contained within the Ecological Appraisal (Aspect Ecology Ltd, April 2022). The CEMP (Biodiversity) shall include the following.
    a) Risk assessment of potentially damaging construction activities.
    b) Identification of "biodiversity protection zones".
    c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
    d) The location and timing of sensitive works to avoid harm to biodiversity features.
    e) The times during construction when specialist ecologists need to be present on site to oversee works.
    f) Responsible persons and lines of communication.
    g) The role and responsibilities on site of an Ecological Clerk of Works or similarly competent person.
    h) Use of protective fences, exclusion barriers and warning signs.
    i) Containment, control and removal of any Invasive non-native species present on site.

   The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

8) No development shall take place until a programme of archaeological work has been secured in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority.

   The development hereby permitted shall not be commenced until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation and that provision for analysis, publication and dissemination of results and archive deposition has been secured and approved by the Local Planning Authority in writing.

9) No development shall commence until the following components of a scheme to deal with the risks associated with contamination of the site be submitted to and approved, in writing, by the Local Planning Authority:

   (a) Having regard to the Phase II Contamination Risk Assessment (Reference: ES0007) full details of the remediation measures required and how they are to be undertaken; and
   (b) a verification plan providing details of what data will be collected in order to demonstrate that the remedial works are complete.

   The scheme shall be implemented as approved, with the completed verification plan submitted to and approved by the Local Planning Authority in advance of the first occupation of any dwelling hereby approved.

10) No development shall commence, including ground clearance, or bringing equipment, machinery or materials onto the site, until an Arboricultural Method Statement detailing all trees/hedgerows on site and adjacent to the site to be retained during construction works, and measures to provide for their protection throughout all construction works, has been submitted to and approved in writing by the Local Planning Authority. The details to be submitted shall have regard to the recommendations of the Arboricultural Impact Assessment, Aspect Arboriculture Ltd, 10251_AIA.001 Rev A, dated 26.04.2022.

The development shall, thereafter, be implemented and thereafter carried out at all times strictly in accordance with the agreed details.

Any trees or hedges on the site, identified for retention, which die or become damaged during the construction process, shall be replaced with trees or hedging plants of a type, size and in positions agreed by the Local Planning Authority.

11) No development shall commence until a drainage strategy detailing the proposed means of foul water disposal has been submitted to, and approved in writing by, the Local Planning Authority. The development shall subsequently be carried out in accordance with the approved strategy in advance for the first occupation of any dwelling hereby approved.

12) No development pursuant to the outline planning permission hereby permitted shall commence until:

a) A water neutrality strategy containing the water offsetting measures as defined in the Section 106 Unilateral Undertaking accompanying this planning permission has been submitted to and approved in writing by Horsham District Council.
and
b) The approved water neutrality measures have been carried out and a report verifying the same has been submitted to and approved in writing by Horsham District Council.
or alternatively until
c) Horsham District Council has confirmed in writing that the requisite number of offsetting credits have been purchased, or alternatively that an appropriate water neutrality contribution has been paid, pursuant to the Section 106 Unilateral Undertaking accompanying this planning permission, in respect of the development under the Sussex North Offsetting Water Strategy and that development may commence.

13) Prior to the commencement of development full details of the acoustic fence, which shall be located and dimensioned broadly in accordance with Appendix 1 to the Noise Impact Assessment (Cass Allen Associated Ltd, Revision 3, dated 11th July 2023), shall be submitted to and approved by the Council in writing. The acoustic fence shall subsequently be installed in accordance with the approved details in advance of the first occupation of any approved dwelling, and thereafter maintained for the lifetime of development.

14) Prior to the commencement of development full details of the Sustainable Drainage System (SuDS) together with provisions for the implementation, long

term maintenance and management of the system shall be submitted to and approved by the Local Planning Authority. Those details shall include:

(i) full design details (which should be broadly in accordance with the Flood Risk Assessment and Drainage Strategy, dated May 2022, by Odyssey),
(ii) details of phasing,
(iii) details of measures to control and prevent the distribution of pollutants and contaminants to existing watercourses,
(iv) a management and maintenance plan for the lifetime of the development, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the system throughout its lifetime.

No part of the development hereby permitted shall be occupied until a verification report demonstrating that the relevant phase of the SuDS system has been constructed as approved has been submitted to and approved in writing by the Local Planning Authority. The system shall, thereafter, be maintained in accordance with the approved details.

15) No development shall commence until full details of the water efficiency measures and greywater recycling systems required by the Water Neutrality Report V2 (by Quantum CE, dated 20 April 2023), appended to the DMH Stallard Statement of Case, together with intended measures for future maintenance and management, have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be fully implemented prior to the first occupation of any relevant dwelling and thereafter retained, unless replaced with measures with an equivalent and/or greater standard of efficiency in respect of mains-water consumption.

16) No development shall take place (including any ground works, site or vegetation clearance) until an ecological report containing updated baseline surveys in relation to Great Crested Newts and Badgers has been submitted to and approved in writing by the Local Planning Authority.

17) No development above ground floor slab-level shall take place until a Biodiversity Enhancement Strategy for Protected and Priority Species has been submitted to and approved in writing by the Local Planning Authority. The content of the Biodiversity Enhancement Strategy shall include the following measures:

(a) Purpose and conservation objectives for the proposed enhancement measures;
(b) detailed designs to achieve stated objectives;
(c) locations of proposed enhancement measures by appropriate maps and plans;
(d) timetable for implementation;
(e) persons responsible for implementing the enhancement measures;
(f) details of initial aftercare and long-term maintenance (where relevant)
(g) a Biodiversity Metric 4.0 calculator completed on the basis of the proposed measures confirming that these achieve a 21.93% gain in habitat units.

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

18) No development shall commence, above ground floor slab level, until full details of the glazing specification and means of mechanical ventilation have been submitted to and approved by the Local Planning Authority. The measures to be submitted shall have regard to the recommended mitigations set out within the submitted Noise Impact Assessment (Cass Allen Associated Ltd, Revision 3, dated 11th July 2023),

The approved sound attenuation works shall be completed before the dwellings are occupied and be retained thereafter.

Pre- Occupation Conditions

19) No dwelling hereby permitted shall be first occupied until evidence has been submitted to and been approved in writing by the Local Planning Authority that the on-site water efficiency measures and greywater recycling systems as outlined in the Water Neutrality Report V2 (by Quantum CE, dated 20 April 2023), appended to the DMH Stallard Statement of Case, relevant to that dwelling have been implemented in full. The evidence shall include the specification of fittings and appliances used, evidence of their installation, and completion of the as built Part G water calculator or equivalent. The installed measures shall be retained as such thereafter.

20) No part of the development hereby permitted shall be occupied until a scheme of measures to eliminate and/or minimise light pollution resulting to nearby heritage assets has been submitted to and approved by the Local Planning Authority in writing. The approved measures shall be implemented in advance of the first operation of street-lighting and shall subsequently be retained as approved.

21) No part of the development hereby permitted shall be occupied until a lighting design scheme for biodiversity has been submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging/hunting; and detail how and where external lighting will be installed (through the provision of appropriate lighting contour plans, lsolux drawings and technical specifications) together with hours of operation so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

No external lighting shall be installed except in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.

22) No part of the development hereby permitted shall be occupied until a scheme of air quality mitigation has been submitted to and been approved in writing by the Local Planning Authority. The details shall have regard to the Council's latest Air Quality & Emissions Reduction Guidance document. The approved measures shall be installed prior to first occupation of the development and shall thereafter remain as such.

23) No part of the development shall be occupied until such time as the A264 Five Oaks Road Roundabout has been altered to enable access to the development in accordance with the details shown on the drawing titled Indicative Access/Roundabout Arrangement and numbered 1902029-11 revision A.

24) No part of the development shall be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan once approved shall thereafter be implemented as specified within the approved document. The Travel Plan shall generally accord with the Framework Travel Plan submitted as part of the outline planning application and shall also take account of the latest guidance and good practice documentation as published by the Department for Transport or as advised by the Highway Authority.

25) No part of the development hereby permitted shall be occupied until the necessary in-building physical infrastructure and external site-wide infrastructure to enable superfast broadband speeds of a minimum 30 megabits per second through full fibre broadband connection has been provided to the premises.

Other Conditions

26) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) ('Lower Broadbridge Farm South, Horsham. Flood Risk Assessment and Drainage Strategy', Project no: 20-125, dated May 2022, by Odyssey) and the following mitigation measures detailed within the FRA:

- Finished floor levels of all accommodation shall be set no lower than 28.78 metres above Ordnance Datum (mAOD) (section 6.1.4 of the FRA).

These mitigation measures shall be fully implemented prior to the occupation of any dwelling hereby approved .

27) No works for the implementation of the development hereby approved shall take place outside of 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays, Bank or Public Holidays

28) No soils shall be imported to the development site until the developer has submitted details of the chemical testing and assessment of the soils which demonstrates the suitability of the soils for the proposed use. The assessment shall be undertaken by a suitably qualified and competent person and full details shall be submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation (or use) of any part of the development hereby permitted, a written verification report shall be submitted which demonstrates only soils suitable for the proposed use have been placed. The verification report shall be submitted and approved, in writing, by the Local Planning Authority.

DATED 9th November 2023

By

1. PENNTRUST LIMITED and ROBIN HOBSON

To

2. HORSHAM DISTRICT COUNCIL

Unilateral Undertaking Section 106 of the Town and Country Planning Act 1990 and all other enabling powers

relating to land south of Lower Broadbridge Farm, Broadbridge Heath

THIS UNDERTAKING is dated 9th November 2023 and given by:

(1) **PENNTRUST LIMITED** (Company Number 05710616) the registered office of which is at 125 Wood Street, London, EC2V 7AW and **ROBIN HOBSON** of 28 Church Road, Burgess Hill, RH12 9AE as the trustees of the **Ivor Outram Warren Will Trust** (together **"the Owner"**);

TO

(2) **HORSHAM DISTRICT COUNCIL** of Parkside, Chart Way, Horsham, West Sussex RH12 1RL (**"the Council"**)

BACKGROUND

(A) The Owner is the freehold owner of those parts of the Land as are registered at HM Land Registry under title number WSX285697 and is interested in the Land for the purposes of section 106 of the Act.

(B) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.

(C) Gleeson Land Limited ("the Developer") submitted the Planning Application to the Council which was refused by the Council on 9 February 2023.

(D) The Developer has lodged the Appeal with the Secretary of State.

(E) The Owner agrees that in the event that the Planning Permission is granted pursuant to the Appeal the obligations contained herein are reasonable and necessary to make the Development acceptable in planning terms in accordance with Regulation 122 of the CIL Regulations and therefore enters into this Deed in order to secure the planning obligations contained herein.

(F) The Owner has entered into this Deed to regulate the Development in the event that the Planning Permission is granted pursuant to the Appeal.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **Definitions**

The definitions and rules of interpretation in this clause apply in this Deed:

"the 1982 Act"	means the Local Government (Miscellaneous Provisions) Act 1982
"the Act"	means the Town and Country Planning Act 1990 as amended
"Affordable Housing"	means affordable housing at the Development comprising Affordable Rented Housing Units and/or Intermediate Housing Units (or such other forms of intermediate tenure as are defined as affordable housing under the National Planning Policy Framework as that definition may be amended from time to time) provided to eligible households whose needs are not met by the market and which should meet the needs of eligible households, including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and shall include provision for the homes to remain at an affordable price for future eligible households or if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision
"Affordable Housing Target Tenure Mix"	means 45% (forty five percent) of the Dwellings (rounded to the nearest whole Dwelling) of which: a) 70% (seventy per cent) shall be provided as Affordable Rented Units AND b) 30% (thirty per cent) shall be provided as Shared Ownership Units
"Affordable Housing Plan"	means a plan and accommodation schedule to be submitted to the Council indicating the location of the Affordable Housing Units on the Land

"Affordable Housing Scheme"	means the scheme to be submitted by the Owner for approval by the Council which will include (unless otherwise agreed with the Council) • the Affordable Housing Plan; • details of the tenure and tenure split of the Affordable Housing Units (which shall comply with the Affordable Housing Target Tenure Mix); • the type and size of Dwelling to be provided as the Affordable Housing Units; and • (if applicable) identify which of the Affordable Housing Units are to comprise fully wheelchair accessible Dwellings their location within the Development (as shown on the plan above) and the type and size of Affordable Housing Unit to be provided as fully wheelchair accessible
"Affordable Housing Unit(s)"	means the Dwellings to be provided as Affordable Housing in accordance with **Schedule 2**
"Affordable Rented Housing"	means rented housing let by a Transferee to a Qualifying Person and which is subject to rent controls that require a rent of no more than 80% (eighty per cent) of local Open Market Rent (including service charges, where applicable) at the time of letting which may be increased by no more than the Consumer Price Index plus 1% (one per cent) annually or other such amount as is prescribed by Homes England
"Affordable Rented Unit(s)"	means the Affordable Housing Unit(s) that are only available to be used and Occupied as Affordable Rented Housing
"Allocations Policy"	means the District Council's published scheme of allocations presently contained in the District Council's document entitled "Housing Register and Nominations Policy April 2023" or any amendment update or

	variation thereto or any subsequent replacement thereof
"Appeal"	means the appeal against the refusal of the Planning Application made by the Developer to the Secretary of State under s78 of the Act and assigned appeal reference number APP/Z3825/W/23/3321658
"Base Rate"	means the higher of 4% (four per cent) and the base rate of interest from time to time of Nat West Bank plc
"Chargee"	in relation to any Affordable Housing Unit in **Schedule 2** means any mortgagee or chargee or Receiver of the relevant Affordable Housing Unit(s)
"Chargee's Duty"	means the tasks and duties set out in **paragraph 14 of Schedule 2**
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 (as amended)
"Commencement of Development"	means the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development pursuant to the Planning Permission but excluding (for the purposes of this Deed and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof, enabling works, demolition, site clearance works, earthworks, archaeological investigations and digs, exploratory boreholes, operations permitted by the Town and Country Planning (General Permitted Development) Order 2015, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) and the construction of any highway works required under

	a highways agreement and "**Commence Development**" shall be construed accordingly
"Commencement Date"	means the date on which the Commencement of the Development occurs;
"Commencement Notice"	means the written notice confirming the Commencement Date referred to and served in accordance with **Clause 7.6**
"Compliance Notice"	means a notice served by the Council which shall include: • the action required to ensure compliance with the Water Neutrality Strategy; or • any remedial action which needs to be taken or actions stopped to ensure compliance and remedy any non-compliance with the Water Neutrality Strategy; • a reasonable timeframe for compliance which shall not be less than 21 (twenty-one) days.
"Complete"	means a) in relation to a Dwelling practically complete save for minor snagging items such that it is reasonably fit for Occupation or use (and Completion shall not be achieved unless all the services to and from the Dwelling are connected and operating and it is accessible by both vehicles and pedestrians as evidenced by the issue of the Practical Completion Certificate (Dwellings); and b) in relation to any Open Space Areas means as evidenced by the issue of the Practical Completion (Open Spaces) Certificate; and **"Completion"** and **"Completed"** shall be construed similarly

"Contribution"	means each financial contribution payable under this Deed
"Deed"	means this Unilateral Undertaking entered into in accordance with section 106 of the Act
"Deed of Nomination"	means a deed substantially in the form of the Council's standard nomination deed which appears in **the Annex to Schedule 2** hereto subject to such amendments thereto as may be agreed between the Transferee and the Council
"Default Interest Rate"	means 4% (four per cent) above Base Rate
"Development"	means the development of the Land by the erection of up to 133 Dwellings including the creation of a new vehicular access, public open space, landscape planting, surface water attenuation and associated infrastructure pursuant to the Planning Permission
"Disposal"	means a transfer of the freehold or the grant or assignment of a leasehold interest and **"Dispose"** and **"Disposed"** shall be construed accordingly
"Dwelling"	means any house, apartment or self- contained residential unit forming part of the Development including Market Housing Units and Affordable Housing Units and the term "Dwellings" shall be construed accordingly
"Help to Buy Agent"	means the organisation appointed by Homes England to administer low-cost home ownership products in each region of England;

"Help to Buy Scheme"	means a scheme under which a Help to Buy Agent (or any third party to be determined from time to time by Homes England) retains the nomination rights for the Shared Ownership Units;
"Homes England (HE)"	means Homes England which is the trading name of the Homes and Communities Agency established by Section 1 of the Housing and Regeneration Act 2008 or such other body replacing it in its function of regulating the provision of Affordable Housing in England
"Homes England's Fundamental Clauses"	means clauses as defined by the Homes England's Affordable Homes Capital Funding Guide current at the date of this Deed (or such document as shall succeed or replace it)
"Implementation of the Development"	means the carrying out of a material operation as defined in section 56(4) of the Act in respect of the Development pursuant to the Planning Permission and the terms "**Implement**" and "**Implemented**" shall be construed accordingly
"Index"	means the All in Tender Price Index published by the Building Cost Information Service (BCIS) of the Royal Institute of Chartered Surveyors in relation to the Contributions unless otherwise stated in this Deed or (if such index is at the relevant time no longer published) such other comparable index or basis for indexation as the Owner and the Council may agree in writing
"Index Linked"	means increased in accordance with the following formula: Amount payable = the Contribution x (A/B) where: A = the figure for the Index that applied immediately preceding the date of actual payment and

	B = the figure for the Index that applied when the Index was last published prior to the date of this Deed
"Intermediate Housing"	means Affordable Housing homes for sale and rent provided at a cost above Social Rented Housing but below open market levels subject to the criteria in the Affordable Housing definition above the form of which shall be agreed with the Council but may include shared equity (Shared Ownership Housing and equity loans) other low-cost homes for sale, starter homes and intermediate rent but not Affordable Rented Housing
"Intermediate Housing Unit(s)"	means the Affordable Housing Unit(s) that are only available to be used and Occupied exclusively as Intermediate Housing
"Land"	means those parts of the land known as land south of Lower Broadbridge Farm, Broadbridge Heath, Horsham shown edged red on Plan A as are registered at HM Land Registry under title number WSX285697
"Management Company"	means the private limited company or company limited by guarantee to be established by the Owner (and registered at Companies House) the purpose of which will be (amongst other things) for the long-term management and maintenance of the Open Space Areas (including for the avoidance of doubt any unadopted SuDs infrastructure and any acoustic fencing situated therein) and any other publicly accessible parts of the Land (excluding any private garden areas) on which landscaping has been undertaken and trees and shrubs planted and which shall be responsible for setting the level of charges for funding and running the company and shall be accountable to the Occupiers;

"Management Company Structure Scheme"	means a scheme that addresses the following in relation to the Management Company; a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee (or alternative structure); b) details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of any Open Space Areas managed by the Management Company and against damage by those comprehensive risks as are reasonable to insure against in the circumstances then prevailing;
"Management Scheme"	means the scheme setting out the detailed arrangements for the ongoing management and maintenance of the Open Space Areas to the satisfaction of the Council and which shall include but not be limited to the following: - arrangements for securing the availability of the Open Space Areas for use by the general public; - approximate location and details of any apparatus to be vested in or adopted by statutory undertakers, drainage authorities, or highway authorities; - frequency and standard of maintenance and repair of the Open Space Areas including any unadopted SuDs infrastructure situated therein and any fencing (including acoustic fencing); - measures to replace any trees, shrubs or turb which may die or become diseased;

	- how the costs of maintenance shall be funded including a mechanism for recovery of costs and evidence of structures and arrangements in place to ensure that such ongoing maintenance shall be funded at no cost to the Council through the imposition of a proportionate Rentcharge (revenue and capital costs considered); - details of proposed Management Company; - point of contact and details of complaints procedure for raising issues with management and maintenance and mechanism to ensure this is publicised to Occupiers and members of the public; and - process to be followed where the Management Company is found to be in breach of its obligations under this Deed;
"Market Housing Units"	means those Dwellings constructed and identified as part of the Development as general housing for sale or rent on the open market and which are not Affordable Housing Units
"Monitoring Fee"	means the sum of £1800 (eighteen hundred pounds) towards the Council's costs of monitoring the delivery and performance of the planning obligations contained in **Schedules 2, 3 and 4**
"National Rent Regime"	means the rent policy set out in the Social Rent Guidance within the Rent Standard Guidance as published by the Homes & Communities Agency in March 2015 and any other guidance issued by Homes England or its successors in relation to those documents

"Occupation"	means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations and for the avoidance of doubt the sale of any Dwelling shall constitute permitting its occupation and **"Occupation" "Occupier"** or **"Occupied"** shall be construed accordingly
"Open Market Rent"	means the rent calculated in accordance with the definition of "Market Rent" at Practice Statement 4 of the Royal Institution of Chartered Surveyors' Red Book 2017 or any subsequent version which amends or replaces it
"Open Market Value"	means a price to be calculated in accordance with the definition of "Market Value" at Practice Statement 4 of the Royal Institution of Chartered Surveyors' Red Book 2017 or any subsequent version which amends or replaces it
"Open Space Areas"	means the open spaces to be provided in perpetuity within the areas shown for identification purposes only hatched green and labelled "Green Infrastructure" on Plan B the final details and location of which are to be agreed in writing between the Owner and the Council pursuant to the Reserved Matters Approvals for the Development and the Open Space Plan
"Open Space Plan"	means a landscape plan and programme to be provided by the Owner for the laying out, construction and landscaping of the Open Space Areas which shall include but not be limited to: - plans, details, specifications and a timetable for the provision;

	- details of any play areas to be provided therein; - approval of boundaries of any areas or parcels of land to be transferred to the Management Company; - details of layout, landscaping and planning; - details for topsoil and seeding; - details of surface treatment; - details of earthworks, excavations, construction and drainage; - fencing details - signage
"Practical Completion (Affordable Housing Certificate(s)"	means the certificate or certificates issued by the Council if it is satisfied that the Affordable Housing Units have been provided and laid out in accordance with the approved Affordable Housing Scheme;
"Practical Completion (Open Space) Certificate(s)"	means the certificate or certificates issued by the Council if it is satisfied that the Open Space Areas (or any part thereof) have been provided and laid out in accordance with the approved Open Space Plan confirming that the same is ready for use by the public;
"Position Statement"	means the Natural England Position Statement for planning applications within the SNWSZ September 2021 as supplemented by the November 2022 addendum
"Plan A"	means the plan with reference number **1273.SO1** annexed at **Schedule 1** hereto
"Plan B"	means the plan with reference number **1273.SO3** annexed at **Schedule 1** hereto
"Planning Application"	means the outline planning application for residential development on the Land for up to 133 dwellings including the creation of a new vehicular access, public open space, landscape planting, surface water attenuation and associated infrastructure and assigned reference number DC/22/1052 by the Council

"Planning Permission"	means the planning permission for the Development on the Land that may be granted by the Secretary of State pursuant to the Appeal
"Protected Tenant"	means any tenant who: a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; c) has been granted a shared ownership lease by a Transferee (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Transferee) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Transferee all the remaining shares so that the tenant owns the entire Affordable Housing Unit
"Qualifying Person"	means a) in respect of Affordable Rented Housing an individual (or individuals) who meet(s) the requirements of the Allocations Policy and who is unable to compete in the open housing market from time to time as the financial resources of his household are too low to facilitate the purchase or rent of a house in the area at Open Market Rents and who is considered by the Council to be a person whom it is proper to be allocated accommodation in an Affordable Housing Unit and before taking up occupation of the Affordable Rented Unit has not owned a freehold or a lease for a term

	exceeding 3 years within the previous 12 months (save that the condition shall not apply where the Council or the Transferee is satisfied that the circumstances of that person are such as to put them in need of housing) and intends to occupy and subsequently occupies the Affordable Rented Unit as his/her only or principal home; and b) in respect of the Shared Ownership Units the requirement by a person to be registered with the Help to Buy Agent to be granted a Shared Ownership Lease because the persons income is insufficient to enable them rent or buy housing available locally on the open market determined with regard to local incomes and local house prices
"Receiver"	means any receiver (including an administrative receiver) appointed by any 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
"Registered Provider"	means a registered provider as defined by Section 80 of the Housing and Regeneration Act 2008 and/or registered by Homes England and/or a non-profit making body which is registered with Homes England and/or any other body which is authorised by Homes England to own and manage Affordable Housing
"Remedial Notice"	means a notice or notices issued the Council following an inspection of the Open Space Areas (or any part thereof) requiring the Owner to carry out any works that it considers (at its reasonable discretion) to be necessary for the Open Space Areas to be provided in

	accordance with the Open Space Plan including (without limitation) re-planting of unhealthy deed diseased or dying plants and trees and a reasonable timescale within which those works are to be completed;
"Rentcharge	means the perpetual yearly variable estate management charge to be imposed on each Dwelling to cover the annual costs of the Management Company complying with the obligations of the Management Scheme in accordance with **Schedule 3** of this Deed.
"Reserved Matters Application"	means a reserved matters application submitted for the Development pursuant to the Planning Permission
"Reserved Matters Approval"	means an approval of reserved matters for the Development pursuant to a Reserved Matters Application
"Section 73 Consent"	means a planning permission granted pursuant to section 73 of the Act which varies and/or removes any condition subject to which the Planning Permission and/or such planning permission pursuant to section 73 of the Act was granted;
"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 and includes any successor in function and any Inspector(s) appointed to act on their behalf
"Shared Ownership Lease"	means a lease which accords with the HE's model form of shared ownership lease issued from time to time

"Shared Ownership Housing"	means housing to be occupied by person who is a Qualifying Person whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Unit of not less than 10% and not more than 75% and pay rent on the unsold equity with flexibility for such a person to purchase further equity shares in the Shared Ownership Unit up to 100% (one hundred per cent) or such other equity sharing or retention terms from time to time approved by the Council
"Shared Ownership Unit(s)"	means the Affordable Housing Unit(s) that are only available to be used and Occupied exclusively as Shared Ownership Housing
"SNWSZ"	means the Sussex North Water Supply Zone within which Southern Water supplies drinking water
"Social Rented Housing"	means the housing owned and managed by a Transferee for which guideline target rents are determined through the National Rent Regime
"Standards"	means the Nationally Described Space Standards 2015 as published by the Secretary of State
"Supplemental Deed"	means a supplemental deed entered into between the owner of the Water Offsetting Land (and anyone else with a legal interest therein) and the Council pursuant to section 106 of the Act (or if the Water Offsetting Land is outside of Horsham District section 33 of the 1982 Act) and any other relevant enabling powers in order to bind the Water Offsetting Land with the maintenance and management obligations in respect of the Offsetting Measures as set out at the **Annex to Schedule 4** hereto in perpetuity or for such

	alternative period as may be agreed with the Council to the Council's reasonable satisfaction.
"Transferee"	means the Registered Provider, the Council in its capacity as local housing authority (at the Council's absolute discretion) and/or a third party which meets the requirements of the Council to own and manage Affordable Housing Units
"Water Neutral"	means the use of water in the SNWSZ after the Development has taken place is the same or lower than it was before the Development so as to accord with the Position Statement and "Water Neutrality" shall be construed accordingly;
"Water Neutrality Contribution"	means a contribution paid to the Council for the purchase of Offsetting Credits within a strategic water neutrality offsetting scheme (or which otherwise allows for payment of a financial contribution to the Council towards strategic water neutrality offsetting measures in lieu of provision by the Owner) which has been adopted by the Council (as outlined in the Sussex North Water Neutrality Study Report – Part C (November 2022)) and endorsed by Natural England ("**Offsetting Scheme**");
"Offsetting Credits"	means a value which is attributed to the Development following the delivery of offsetting measures specified within an Offsetting Scheme
"Water Neutrality Strategy"	means the written detailed scheme of water saving measures on the Water Offsetting Land secured by the Supplemental Deed in accordance with the Annex to Schedule 4 hereto, and approved in writing by the Council pursuant to the relevant grampian condition/condition on the Planning Permission (or in the event that the Inspector does not impose the

	proposed grampian condition in this regard) on the Planning Permission to be submitted and approved by the Council in writing pursuant to this Undertaking
"Water Offsetting Land"	means the area of land or the buildings within which the Water Offsetting Measures are to be provided which shall be set out within the Water Neutrality Strategy and shown edged red on a plan appended to the Supplemental Deed
"Water Offsetting Measures"	means a scheme of water saving measures to be implemented on the Water Offsetting Land to achieve a saving of at least 6,901,055 litres of water per annum (or such greater saving as shall be identified as may be reasonably required and agreed in the Water Neutrality Strategy in order to allow for a reasonable buffer) and thus make the Development Water Neutral which shall be set out in the Water Neutrality Strategy
"Working Day(s)"	days on which clearing banks in the City of London are open to the public and for the avoidance of doubt such days shall not include any Saturday or Sunday New Year's Day Good Friday Easter Monday May Day Christmas Day and Boxing Day

2. **Construction of this Deed**

2.1. Words importing the masculine include the feminine and neuter gender and vice versa

2.2. Words importing the singular include the plural and vice versa

2.3. Words importing persons include companies corporations and vice versa and all such words shall be construed interchangeable in that manner

2.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually

2.5. Insofar as different parts of or interests in the Land are owned by different persons each person covenants with the Council and with one another to co-operate insofar as they are able to ensure that the covenants herein on behalf of "the Owner" are fulfilled as expeditiously as possible

2.6. The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed

2.7. Any reference to a clause paragraph schedule or plan is to one in to or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed

2.8. In the absence of contrary provision any reference to a Council document to be completed which is annexed or referred to in this Deed shall be the Council document which is current and in force at the date of its completion

2.9. In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it

2.10. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council

2.11. Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done

3. **Statutory provisions**

3.1. This Deed is made pursuant to Section 106 of the Act and all other enabling powers and the covenants restrictions and requirements created by this Deed at **Schedules 2**

to 4 are planning obligations for the purposes of Section 106 of the Act to the intent that they shall bind the Owner and its successors in title to each and every part of the Land and are enforceable by the Council as local planning authority.

3.2 Subject to **clause 4.2** it is agreed by the Owner that the obligations contained in this Deed are:

3.2.1 necessary to make the Development acceptable in planning terms;

3.2.2 directly related to the Development; and

3.2.3 fairly and reasonably related in scale and kind to the Development

in accordance with the requirements of Regulation 122 of the CIL Regulations.

4. Commencement

4.1 The covenants and obligations at **Schedules 2-4** of this Deed are conditional on and do not take effect until both the grant and issue of the Planning Permission and the Commencement of Development save for **paragraphs 2 and 3 of Schedule 2, paragraph 1 of Schedule 3 and paragraphs 1 and 2 of Schedule 4** which shall come into effect on the grant and issue of the Planning Permission.

4.2 In the event of the Secretary of State granting Planning Permission and stating in the Appeal decision letter that one or more of the planning obligations in this Deed do not satisfy the requirements of regulation 122 of the CIL Regulations then the relevant obligations(s) shall not be enforceable by the Council but without prejudice to the validity or enforceability of the remaining provisions of this Deed

5. The Owner's Covenants

5.1 The Owner covenants and undertakes to the Council to observe and perform the obligations set out in this Deed at **Schedules 2 to 4** hereof.

6. General

6.1 Nothing in this Deed constitutes an obligation to grant planning permission or any other approval consent or permission required from the Council in the exercise of any other

statutory function and nothing in this Deed constitutes and such approval, consent or permission.

6.2 This Deed does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council)

6.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest

6.4 Insofar as any clause or clauses or any part thereof of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

6.5 If the Appeal is dismissed or before Commencement of Development the Planning Permission:

a) expires; or

b) is varied, revoked, quashed or modified without the consent of the Owner;

c) is quashed following a successful legal challenge

this Deed shall cease to have effect but will remain in full force and effect so far as or for so long as any subsisting Section 73 Consent is extant

6.6 The Owner shall pay to the Council its proper and reasonable legal costs incurred in respect of the Disposal of any land or facility to the Council pursuant to this Deed

6.7 This Deed shall be registerable as a local land charge by the Council

6.8 It is hereby agreed by the Owner that failure by the Council at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by the Owner of any of the conditions, covenants, agreements, or obligations of this Deed or any failure or delay by the Council to exercise any right, act or remedy shall not be construed as creating an estoppel in connection with any such condition, covenant, agreement or obligation and shall not affect the validity of this Deed or any part thereof or the right of the Council to enforce any provision and any variation of this Deed shall not vitiate the

remainder of the Deed which shall remain in full force and effect subject to such amendment or amendments.

6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

6.10 Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations

6.11 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the Courts of England and Wales

6.12 This Deed shall not bind nor be enforceable against the following:

6.12.1 Any statutory undertaker or other person who acquires any part of the Land or any interest in it for the purpose of the supply of electricity, gas, water, drainage or telecommunications nor any mortgagee or charge of any such persons; or

6.12.2 Any owner occupier or tenant of an individual Dwelling or their mortgagee or successor in title save that the provisions of **paragraphs 11 to 13 of Schedule 2** shall be enforceable against the owners or occupiers of the Affordable Housing Units (subject to **paragraphs 14 and 15** therein);

6.12.3 Any chargee or mortgagee acquiring an interest in the Land after the date hereof unless and until said chargee or mortgagee becomes a chargee or mortgagee in possession of the Land (or part thereof)

6.12.4 After their entry into the Supplemental Deed and save in respect of any covenants therein (or herein as a consequence of their entry into the Supplemental Deed) which are expressed to bind the Water Offsetting Land any person who has an interest in the Water Offsetting Land but no interest in the Land.

6.13 Subject to the proviso to this clause if any Section 73 Consent is granted after the date of this Deed:

6.13.1 the obligations in this Deed shall relate to and bind such Section 73 Consent; and

6.13.2 the definitions of Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent, the development permitted by the Section 73 Consent and the Section 73 Consent itself

PROVIDED THAT:

6.13.3 nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

6.13.4 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and

6.13.5 the Council shall have the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council considers it desirable to do so

6.14 The Owner hereby undertakes that:

6.14.1 this Deed supersedes and replaces all previous negotiations whether oral or written;

6.14.2 the Owner has not relied on any express or implied statement warranty representation or undertaking given by or on behalf of the Council; and

6.14.3 nothing herein contained excludes the liability of the Owner in relation to fraud.

6.14.4 The Owner hereby gives consent for the plans at **Schedule 1** hereto to be reproduced by the Council.

7. **Notices**

7.1 The Owner covenants with the Council as follows:

7.1.1 to give the Commencement Notice to the Council not less than 10 (ten) Working Days before the anticipated Commencement Date; and

7.1.2 to give the Occupation Notice to the Council not less than 10 (ten) Working Days before the anticipated Occupation Date.

7.2 If the Owner fails to give the notice required by **clause 7.1.1 and clause 7.1.2** above then the Council shall be entitled to determine the Commencement Date and Occupation Date and may give notice to the Owner of the Council's determination.

7.3 Any notice, certificate or other communication required or permitted to be given under this Deed shall be given in writing to the relevant party at the relevant address referred to at the start of this Deed or such other address as may be notified in writing to the other party and must be served personally or by first class registered or first class recorded delivery post and, in the case of the Council, the relevant party shall address any notice to the Head of Legal and Democratic Services of the Council.

7.4 Any notice, certificate or other communication sent by post shall be deemed (in the absence of evidence of receipt) to have been delivered 2 (two) Working Days after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope was properly addressed and posted.

7.5 Any notice, certificate or other communication delivered personally shall be deemed to have been delivered at the time it is received provided it is received between 0900 and 1700 on a Working Day but otherwise it shall be deemed to have been received on the next Working Day.

7.6 The Owner will notify the Council of:

7.6.1 the Commencement of Development;

7.6.2 the date of Occupation of the 1st (first) Dwelling;

7.6.3 the date of Occupation of 60% (sixty per cent) of the Market Housing Units within the Development;

7.6.4 the date of Occupation of 75% (seventy-five per cent) of the Dwellings within the Development;

and the Owner agrees that no time shall run to the detriment of the Council if and so long as the Owner has failed to serve notice.

8. **Costs**

8.1 The Owner undertakes to pay on or before the date hereof the Council's reasonable legal costs incurred in preparing and entering into this Deed

9. **Waiver**

9.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

10. **Change in Ownership**

10.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Land.

10.2 The Owner undertakes to the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged. Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation transferred by reference to a plan **PROVIDED THAT** this clause shall not apply to the Disposal of an individual Dwelling nor shall it apply to the Disposal of any part of the Land to any statutory undertakers for electricity substations gas governor station or pumping stations or the provision of other infrastructure as may be required to fulfil their statutory functions

11. **Indexation**

11.1 All financial contributions payable to the Council under this Deed shall be Index Linked

11.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council and the Owner shall agree in writing.

12. Interest

12.1 If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount from the date payment is due until the date of actual payment at the Default Interest Rate. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

13. VAT

13.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable in respect thereof

13.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

14. DISPUTE RESOLUTION

14.1 Should a dispute or difference arise between any of the parties to this Deed concerning anything herein then the provisions of this clause 14 shall apply.

14.2 All differences and disputes which may arise between the parties concerning this Deed shall be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties and the finding of any expert appointed shall be final and binding on the parties save in the case of manifest error or fraud.

14.3 Any expert appointed pursuant to clause 14.2 shall:

14.3.1 on his appointment serve written notice thereof on the parties in dispute;

14.3.2 consider any written representations by or on behalf of those parties which are received by him within 20 (twenty) Working Days of such service and immediately forward a copy of the written representation of one party to the other party;

14.3.3 allow the parties to the dispute an opportunity of commenting in writing on the other party's representations within 20 (twenty) working days of receipt by the other party thereof;

14.3.4 have an unfettered discretion to determine the reference to him;

14.3.5 serve notice of his determination as soon as he has made it;

14.3.6 give full and clear reasons for his decision; and

14.3.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die, become insolvent or of unsound mind or if any of the parties in dispute shall serve on him written notice in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert.

14.4 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, and any other means of enforcing this Deed and consequential and interim orders and relief.

15. DELIVERY

15.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

15.2 This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

Plans

Plan A	Land
Plan B	Open Space Areas (Indicative)



LOWER BROADBRIDGE FARM
SOUTH, BROADBRIDGE HEATH

Site location plan

25.01.22

1273.**S01**

KEY

richards



LOWER BROADBRIDGE FARM
SOUTH, BROADBRIDGE HEATH

Parameters plan

1:1000 (A1)

25.01.22

1273.**S03**

KEY

Site boundary

DEVELOPMENT AREAS AND SCALE

Maximum 3.5 storey development (up to 15m)

Maximum 3.5 storey development (up to 11 m)

Residential Development area (Land Use C3) residential use, roads, parking, open space, sustainable urban drainage system and landscaping

GREEN INFRASTRUCTURE AND OPEN SPACE

Green Infrastructure including landscape buffers, public open space including areas of natural play, landscape planting and sustainable urban drainage system

ACCESS AND MOVEMENT

Existing public right of way / access retained

Proposed vehicular access

[redacted]

richards

SCHEDULE 2

Affordable Housing

The Owner covenants with the Council as follows:

1 To provide the Affordable Housing Units in accordance with the Affordable Housing Scheme as approved by the Council

2 To submit to the Council for approval the draft Affordable Housing Scheme prior to Commencement of the Development

3 Not submit any Reserved Matters Application without simultaneously submitting the draft Affordable Housing Scheme to the Council for the Affordable Housing Units contained within the relevant Reserved Matters Application and not to Commence Development on any part of the Development until the draft Affordable Housing Scheme and the Affordable Housing Target Tenure Mix relating to that area/part of the Development have been approved by the Council in writing;

4 Unless otherwise agreed with the Council, not to Occupy more than 25% (twenty-five percent) of the Market Housing Units unless and until either:

4.1 the land upon which the Affordable Housing Units are to be constructed is the subject of a binding contract that provides for its Disposal from the Owner to a Transferee together with a contract for the construction of the Affordable Housing Units; or

4.2 the Affordable Housing Units are the subject of a binding contract for transfer from the Owner to a Transferee in a clean condition and fully serviced unless otherwise agreed in writing by the Council;

5 Prior to Occupation of 60% (sixty per cent) of the Market Housing Units to:

5.1 construct, deliver and Complete at least 45% (forty five percent) of the Dwellings as Affordable Housing Units in accordance with the Affordable Housing Scheme (as approved) and the Standards and to provide a copy of the Practical Completion (Affordable Housing) Certificate to the Housing Manager with a copy to the Section 106 Monitoring Officer; and

5.2 transfer the freehold interest, or grant a leasehold interest of at least 125 (one hundred and twenty-five) years on a full repairing and insuring basis, of each of the

Affordable Housing Units to the Transferee free from all encumbrances (other than those on the title of the relevant area of the Land at the date of this Deed) and free from all financial charges for the Affordable Housing Units and to provide evidence of the same to the Strategic Housing and Health Manager within 5 (five) Working Days of completion of the transfer or grant.

6 Not to Occupy more than 60% (sixty percent) of the Market Housing Units until all of the Affordable Housing Units have been Completed and made available for Occupation and transferred to the Transferee.

7 Within any transfer and/or lease of the Affordable Housing Units (or any of them) to the Transferee:

7.1 to require or procure the execution by the Transferee and delivery to the Council of Deed of Nomination substantially (but subject to such amendments as may be agreed between the Transferee and the Council) in the form set out in Annex A to Schedule 2 with the Council's reasonable costs to be paid by the Transferee; and

7.2 in respect of the Shared Ownership Units where a Help to Buy Scheme is in place, the Owner shall procure that within 10 (ten) Working Days of such transfer the Transferee gives notice in writing to the Help to Buy Agent of such transfer.

8 Prior to Occupation of the Affordable Housing Units:

8.1 all public highways (if any) and public sewerage and drainage serving the Affordable Housing Units shall be in place and shall meet all statutory requirements for such public sewerage and drainage including any build over consents or agreements that might be required

8.2 all private roads footways and footpaths (if any) serving the Affordable Housing Units shall be in place and constructed to an adoptable standard

8.3 all private sewage and drainage pipes channels and gutters and all mains water gas and electricity pipes and cables serving the Affordable Housing Units shall be constructed laid, connected, operational, and serviceable

9 To ensure that:

9.1 the equity share of any Shared Ownership Units which is retained by the Transferee is only let at a rent (excluding service charge) that is no more

than 3% (three per cent) per annum of the value of the share retained by the Transferee with each subsequent annual rent increase or increases limited to further increases in the Retail Price Index plus 0.5% (nought point five per cent); and

9.2 any Affordable Rented Units are let at a rent of no more than 80% (eighty per cent) of local Open Market Rent (including service charges where applicable at the time of letting which may be increased by no more than the Consumer Price Index plus 1% (one per cent) annually);

10 To ensure that the Affordable Housing Units are materially indistinguishable (in terms of outlook and appearance) from the Market Housing Units of similar size (other than to accommodate any differences required as a result of this Schedule and specifically to meet the additional requirements in respect of any wheelchair accessible or adapted Affordable Housing Units).

11 Subject to **paragraphs 14 and 15** ensure that the Affordable Housing Units are at all times owned and managed by the Transferee and used and Occupied in accordance with this Deed and the Deed of Nomination as:

11.1 Affordable Rented Units let by way of tenancy agreements in the form approved by the HE or its statutory successor; and/or

11.2 Intermediate Units which in the case of any Shared Ownership Units are owned and occupied in accordance with a lease that includes Homes England's Fundamental Clauses;

12 Subject to **paragraphs 14 and 15** not to cause, allow or permit the use of the Affordable Housing Units from the date of Completion other than for Affordable Housing other than by:

12.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or

12.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty.

13 Subject to **paragraphs 14 and 15**, ensure that the Affordable Housing Units are Occupied and let to a person(s) who satisfies the following conditions:

13.1 is a Qualifying Person whom it is proper for the Transferee to house in accordance with its rules; and

13.2 complies with the requirements of the Allocations Policy

14 The Owner and the Council hereto agree that the Affordable Housing provisions of this Deed shall not be binding on a Chargee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Chargee PROVIDED THAT

14.1 any power of sale available shall only be exercised in the event of there being a default of any obligation under the security documentation;

14.2 such Chargee shall first give written notice to the Council of its intention to Dispose of the Affordable Housing Units; and

14.3 such Chargee shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a Disposal of the Affordable Housing Units to another Transferee for a consideration of 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 if such Disposal has not completed within the three (3) month period the Chargee shall be entitled to Dispose of the Affordable Housing Units free from the Affordable Housing provisions of this Schedule 2 which provisions shall determine absolutely.

15. The provisions of this Schedule 2 shall not be binding on or enforceable against any person who has acquired from a Transferee 100% (one hundred per cent) of the freehold and/or leasehold interest in an Intermediate Housing Unit nor shall the provisions of this Schedule 2 be binding on or enforceable against any person who acquires a 100% (one hundred per cent) freehold and/or leasehold interest in an Affordable Housing Unit pursuant to the Right to Buy or Preserved Right to Buy provisions under the Housing Act 1985 or the Right to Acquire provision under the Housing Act 1996 nor shall the provisions of this Schedule 2 be binding on or enforceable against successors in title or respective mortgagees thereof.

Annex To Schedule 2

Draft Deed of Nomination

DATED ***202X***

[REGISTERED PROVIDER]

and

HORSHAM DISTRICT COUNCIL

DEED OF NOMINATION

for

[ ] Affordable Rented Units

at

[ ] West Sussex

Authority: Signed and Dated S106 [ ]

Lauren Kelly
Interim Head of Legal and Democratic Services
Horsham Council
Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

Ref:

THIS DEED OF NOMINATION RIGHTS *is made the day of 202X*

BETWEEN:

(1) ("the Registered Provider"); and

(2) ***HORSHAM DISTRICT COUNCIL*** *of Parkside, Chart Way, Horsham West Sussex RH12 1RL ("the Council")*

1. Definitions

In this Deed the following expressions shall have the following meanings:

1.1 ***"Affordable Housing"*** *means subsidised housing comprising Rented Units and shared ownership units (or such other forms of intermediate tenure as are defined as affordable housing under the National Planning Policy Framework as that definition may be amended from time to time) provided to eligible households whose needs are not met by the market and which should meet the needs of eligible households, including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and shall 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;*

1.2 ***"Exempted Void"*** *means a Void which has occurred as a result of the Council transferring the previous tenant to more suitable accommodation to meet that tenant's needs;*

1.3 ***"Homes England"*** *means Homes England, an executive non-departmental public body, sponsored by the Department for Levelling Up, Housing and Communities or any bodies undertaking the existing functions of Homes England within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or redefined by any amendment replacement or re-enactment of such Act;*

1.4 ***"Housing Register and Nominations Policy"*** *means the Council's Housing Register and Nominations Policy:*
https://www.horsham.gov.uk/__data/assets/pdf_file/0005/58586/Nominations-Policy-August-2021.pdf

or other document which may replace it;

1.5 ***"Initial Let"*** *means the first tenancy or lease of a newly constructed and previously unoccupied Rented Unit;*

1.6 ***"Insufficient Persons"*** *means that in the reasonable opinion of the Council there are fewer Nominees with a Local Connection to the parish of Slinfold and/or Broadbridge Heath, than the total number of Rented Units available for occupation in accordance with the written notice served by the Registered Provider in accordance with Clause 4.1 or 4.10;*

1.7 ***"Local Connection"*** *means in relation to an individual, that such individual:*

1.7.1 *immediately before taking up occupation of a Rented Unit had his only or principal home in the parish of Slinfold and/or Broadbridge Heath for a continuous period of not less than two years; or*

1.7.2 *a member of his household has a parent, child, adult child, brother or sister whose only or principal home is and has been for a continuous period of not less than two years in the parish of Slinfold and/or Broadbridge Heath and he wishes to be near that relative; or*

1.7.3 *is and has been permanently employed in the parish of Slinfold and/or Broadbridge Heath for a continuous period of not less than two years*

provided that where no person or Insufficient Persons can be identified as having a connection with the parish of Slinfold and/or Broadbridge Heath as outlined above then the District of Horsham shall be substituted for the parish of Slinfold and/or Broadbridge Heath;

1.8 ***"Nominee"*** *means a person who may be nominated by the Council to the Rented Units and who is in need of Affordable Housing, who is not easily able to compete in the local housing market and who meets the following criteria:*

(i) is an individual or are individuals;

(ii) is considered in their reasonable opinion by the Council or the Registered Provider in accordance with its rules or its allocations and lettings policies to be in need of the accommodation provided by the Rented Unit;

(iii) is not able easily to compete in the open market for equivalent housing accommodation in the administrative area of the Council;

(iv) before taking up occupation of the Rented Unit has not owned a freehold or a lease for a term exceeding 3 years within the previous 12 months (save that the condition shall not apply where the Council or the Registered Provider is satisfied that the circumstances of that person are such as to put him in need of housing) and intends to occupy and subsequently occupies the Rented Unit as his/her only or principal home;

(v) is an individual who meets the criteria of the Council's Housing Register and Nominations Policy;

(vi) has a Local Connection.

and **"Nominee"** and **"Nominees"** shall be construed accordingly;

1.9 **"Registered Provider"** has the same definition as set out in the Housing & Regeneration Act 2008;

1.10 **"Rented Units"** means housing made available by a Registered Provider as low-cost rented accommodation (as defined by the Housing and Regeneration Act 2008 section 69) with a rent charged at a level up to 80% of the equivalent market rent inclusive of any service charges applicable, as detailed in Schedule [TBC] of the S106 Agreement and Schedule 1 of this Deed and which have been constructed or are to be constructed upon the Site and each of which is to be offered under a Tenancy Agreement;

1.11 **"S106 Agreement"** means the agreement relating to the Site and dated [ ] and made between (1) [ ] and (2) [ ] and any subsequent supplemental agreements varying it thereafter;

1.12 *"**Site**" means the land upon which the Rented Units are constructed [address of property] shown edged red on the attached plan;*

1.13 ***"Tenancy Agreement"** means an assured tenancy agreement in a form prepared by the Registered Provider and containing terms which accord with the form of tenancy agreement being used by the Registered Provider from time to time for its general lettings or such other form of tenancy as the Registered Provider specifies (acting reasonably);*

1.14 ***"Vacancy Notice"** means a written notice given by the Registered Provider to the Council (in a form to be agreed between the Registered Provider and the Council within 5 (five) weeks from the date of this Deed) the function of such notice being the notification to the Council by the Registered Provider that the construction and fitting out of the Rented Unit is completed;*

1.15 ***"Void"** means a Rented Unit which is vacant as a result of the tenant vacating the Rented Unit;*

1.16 ***"Void Notice"** means a written notice given by the Registered Provider to the Council (in a form to be agreed between the Registered Provider and the Council within 8 (eight) weeks from the date of this Deed) the function of such a notice being the notification to the Council that a Void is now available for re-letting;*

1.17 ***"Void Notification"** means the notification to the Council by the Registered Provider that a Rented Unit is to become a Void with such notification to include the anticipated period that the Rented Unit will remain as a Void; and*

1.18 ***"Working Day"** means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.*

2. Interpretation

2.1 *Clause headings shall not affect the interpretation of this Deed.*

2.2 *A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).*

2.3 *A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.*

2.4 *Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.*

2.5 *Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.*

2.6 *A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.*

2.7 *Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.*

2.8 *Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.*

2.9 *A reference to writing or written excludes faxes and e-mail.*

2.10 *A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated from time to time.*

2.11 *References to clauses are to the clauses of this Deed.*

2.12 *Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.*

3. *Enabling Provisions*

This Agreement is made pursuant to s111 of the Local Government Act 1972, s33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers.

4. *Procedure for Rented Units*

The parties agree that the following nomination procedure shall apply to the nomination of persons in respect of the Rented Units:

Initial Lets

4.1 *The Registered Provider shall give the Council not less than 10 (ten) weeks' written notice of the date when the Initial Lets will be ready for occupation.*

4.2 *The Registered Provider shall serve on the Council a Vacancy Notice not less than 2 (two) weeks' notice in respect of the Rented Unit prior to such newly constructed and previously unoccupied Rented Unit becoming available for occupation.*

4.3 *The Council shall within 10 (ten) Working Days of receipt of a Vacancy Notice or written notice served in accordance with clauses 4.14.1, 4.14.2 or 4.14.3 as appropriate, serve upon the Registered Provider details of a Nominee.*

4.4 *Details of a Nominee served by the Council shall:*

4.4.1 *specify the type of Rented Unit which the Nominee requires and sufficient details of the Nominee's requirements and circumstances to justify their nomination to the particular Rented Unit or type of Rented Unit; and*

4.4.2 *include any other details that the Registered Provider may reasonably require from time to time.*

4.5 *The Registered Provider shall have the right to let/grant the Initial Let in respect of the Rented Units to persons of its own choosing (subject to provisions within the S106 Agreement) in the event of the Council's failure to serve details of the Nominees within the period of 10 (ten) Working Days of receipt of the Vacancy Notice or written notice served in accordance clause 4.14.1-4.14.3 subject to the provisions of Clause 4.16.*

4.6 *Within 10 (ten) Working Days of the receipt of the details of a Nominee, the Registered Provider shall, use its reasonable endeavours to arrange viewing of the Rented Unit and offer a Tenancy Agreement to the Nominee.*

4.7 *If the Nominee fails to enter into a Tenancy Agreement within 10 (ten) Working Days of receipt of the Registered Provider's offer of a Tenancy Agreement that Nominee shall be deemed to have rejected the Registered Provider's offer. Upon receipt of written notice served in accordance with clause 4.14.1, 4.14.2 or 4.14.3, the Council shall serve details of a further Nominee upon the Registered Provider and the parties will follow the procedure set out in Clause 4.3 to 4.6 for a second time, but for the*

purposes of this Clause 4.7 the 10 (ten) Working Day period referred to in those Clauses 4.3 to 4.6 shall be reduced to 5 (five) Working Days.

4.8 *If the Registered Provider's offer of a Tenancy Agreement on the second occasion is deemed to have been rejected the procedure set out in Clauses 4.3 to 4.6 shall be repeated for a third time but for the purposes of this Clause 4.8 the 10 (ten) Working Day period referred to in Clauses 4.3 to 4.6 shall be reduced to 5 (five) Working Days.*

4.9 *In the event a third Nominee fails to accept the Registered Provider's offer of a Tenancy Agreement within the time prescribed by clause 4.8 then the Registered Provider shall have the right to let the Initial Let in respect of the Rented Unit to persons of its own choosing (subject to the provisions within the S106 Agreement) or in the event of the Council's failure to serve details of the Nominees within the period of 10 (ten) Working Days of receipt of the Vacancy Notice (subject to the provisions of Clause 4.16).*

<u>Voids</u>

4.10 *Should a Rented Unit become a Void after the Initial Let or the Registered Provider has reasonable cause to believe it will become a Void then and in each case:*

4.10.1 *the Registered Provider shall serve a Void Notification in respect of the relevant vacant Rented Unit within 5 (five) Working Days of the Rented Unit becoming a Void;*

4.10.2 *the Registered Provider shall serve a Void Notice in respect of the relevant vacant Rented Unit upon the Council as soon as the Rented Unit is available for re-letting; and*

4.10.2 *within 10 (ten) Working Days of receipt of the said notice the Council shall serve upon the Registered Provider details of a Nominee.*

4.11 *The Registered Provider shall have the right to let the relevant vacant Rented Unit to a person of its own choosing (subject to the provisions within the S106 Agreement) in the event of the Council's failure to serve details of a Nominee referred to in Clause 4.10 within 10 (ten) Working Days of receipt of the Void Notice (subject to the provisions of Clause 4.16).*

4.12 *Upon receipt of the details of a Nominee referred to in Clause 4.10 the Registered Provider shall follow the procedure set out in Clauses 4.6 to 4.9 SAVE THAT where the Void is an Exempted Void and on each and every occasion that 75% of the Voids (which for the avoidance of doubt means 75% of the total number of Rented Units) have been let, the Registered Provider shall not be required to follow the procedure set down in Clauses 4.10 -4.12 and the Registered Provider shall then be entitled to let the remaining 25% of the Voids (which for the avoidance of doubt means 25% of the total number of Rented Units) to a person of its own choosing (subject to the provisions within the S106 Agreement).*

4.13 *Where the Void is an Exempted Void the Registered Provider shall follow the procedure set out in Clauses 4.6 to 4.9 in the event that fewer than 75% of the total number of Rented Units have been let.*

Provision of information

4.14 *The Registered Provider shall give written notice to the Council of the occurrence of the following events within 5 (five) Working Days of their occurrence:*

4.14.1 *a Nominee failing to view a Unit within 10 (ten) or 5 (five) (as appropriate) Working Days of an offer being made;*

4.14.2 *a Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Agreement;*

4.14.3 *the Registered Provider rejecting a Nominee in accordance with Clause 4.17 such written notice to explain the reasons for rejecting the Nominee;*

4.14.4 *a Nominee accepting an offer of a Tenancy Agreement from the Registered Provider.*

4.15 *Within 10 (ten) Working Days of the Council receiving notice served in accordance with Clause 4.14 above save for notice under 4.14.4 the Council shall serve upon the Registered Provider the names and addresses of a Nominee to include the information set out in Clause 4.4.*

4.16 *If the Council shall, within the period mentioned in Clause 4.15 notify the Registered Provider that the Council then has no suitable Nominee, the Council shall advise the Registered Provider of a Nominee as soon as reasonably practicable but this period shall not be any longer than a total of 20 (twenty) Working Days from the date the Council received the notice served in accordance with Clause 4.14.*

4.17 *The Registered Provider shall have the right to interview and make enquiries of each Nominee and to reject any Nominee if in the opinion of the Registered Provider the grant of a Tenancy Agreement to such Nominee would be in contravention of the Registered Provider's registered rules or its letting criteria and if a Registered Provider rejects a Nominee in accordance with this clause, the Registered Provider must serve written notice upon the Council in accordance with Clause 4.14.3.*

4.18 *Where the Registered Provider intends to reject a Nominee in accordance with clause 4.17 and it serves notice of this upon the Council in accordance with Clause 4.14.3, the Council shall:*

4.18.1 *within 5 (five) Working Days of receipt of the said notice be entitled to send the Registered Provider written representations setting out the reason(s) why the Nominee does meet the Registered Provider's registered rules or its lettings criteria; and*

4.18.2 *within 5 (five) Wording Days of receipt of the Council's written representations, the Registered Provider shall consider the written representations and will notify the Council in writing that the Nominee has been accepted or that they have not and the reasons for their decision.*

4.19 *When calculating percentage for the purposes of this Deed percentage in excess of 0.5 shall be rounded up and percentages equal to or less than 0.5 shall be rounded down.*

4.20 *The Council and the Registered Provider agree that the nomination rights contained in this Deed may be varied from time to time but only by agreement in writing by the parties.*

5. **Notices**

5.1 *Any notice to be given under this Deed must be in writing and must be:*

(a) *delivered by hand; or*

(b) *sent by pre-paid first class post or other next working day delivery service.*

5.2 *Any notice to be given under this Deed must be sent to the relevant party at the address indicated above or such other address notified by one party to the other and addressed, in the case of the Council to Head of Housing & Community Services and, in the case of the Registered Provider [TBC].*

5.3 *Any notice given in accordance with clause 5 will be deemed to have been received:*

(a) *if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or*

(b) *if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.*

6. *Transfers to other Registered Providers*

The Registered Provider shall ensure that any Registered Provider to which the Site and Affordable Housing erected thereon are transferred otherwise than by direction of the Homes England under its statutory powers shall enter into a similar agreement with the Council.

7. *Disputes*

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Housing.

8. Costs

The Registered Provider agrees with the Council to pay the reasonable and proper legal costs of £ [TBC] which the Council incurs in preparing and entering into this Deed.

9. Agreements and declarations

The parties agree:

9.1 nothing in this Deed fetters or restricts the exercise by the Council of any of its powers;

9.2 the obligations contained in this Deed are covenants for the purpose of s33 of the Local Government (Miscellaneous Provisions) Act 1982.

10. Discrepancies and priority

Where there is any discrepancy between this Deed and the s106 Agreement the S106 Agreement shall take priority.

11. Exclusion Clause

The provisions of this Deed shall not be binding nor enforceable against any of the following:

11.1 Any person who shall exercise a statutory right to buy (including the preserved right to buy) or right to acquire any Rented Unit and their successor in title or chargee;

11.2 Any mortgagee or chargee (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 of a Registered Provider provided that such party so appointed shall have first complied with the procedure in clause [xx] Schedule [xx] of the S106 Agreement.; and

11.3 Any and all successors in title from the persons specified in clauses 11.1 – 11.2 above.

Execution clause for the

Registered Provider

The common seal of
HORSHAM DISTRICT COUNCIL
was affixed in the presence of:

Authorised signatory

Schedule 1 (Nominations Agreement)

Rented Unit Details

[Details to depend upon the scheme but will typically include address/plot number, type of property (flat/house), no. bedrooms, no. persons property will accommodate, type of tenure (usually affordable rent), location (ground, first floor etc), any other relevant details such as accessibility details, wet rooms etc

SCHEDULE 3
OPEN SPACE AREAS and MONITORING FEES

Open Space Areas

The Owner covenants with the Council as follows:-

1 The Owner shall submit to the Council for approval in writing as part of the first Reserved Matters Application the Open Space Plan and not to Commence Development until the Open Space Plan has been approved in writing by the Council

2 Prior to the Occupation of more than 75% (seventy-five per cent) of Dwellings the Owner shall:

2.1 provide and Practically Complete the Open Space Areas in accordance with the approved Open Space Plan and the programme set out therein and make the same ready for use and invite the Council to inspect the Open Space Areas; and

2.2 submit to the Council for its written approval the draft Management Scheme.

3 The Owner shall not cause permit or suffer the Occupation of more than 75% (seventy-five percent) of Dwellings until:

3.1 the Open Spaces Areas have laid out and Practically Completed to the Council's reasonable satisfaction and in accordance with the specification in the approved Open Space Plan respectively so that it is ready for use by the public and has obtained a Practical Completion (Open Space) Certificate; and

3.2 The Council has approved in writing the Management Scheme.

4 The Owner shall not use or allow the Open Space Areas to be used for any other purpose other than for the use by and for the enjoyment of the public in perpetuity

5 Upon receipt of an invitation to inspect the Open Space Areas (or any part thereof) pursuant to paragraph 3 of this Schedule the Council shall inspect the Open Space Areas within a reasonable period and issue either:

5.1 a Practical Completion (Open Space) Certificate;

5.2 or if in the opinion of the Council there any defects in any of the works undertaken in the Practical Completion of the Open Space Areas, a Remedial Notice

6 Upon receipt of a Remedial Notice pursuant to paragraph 5 the Owner shall make good any defects in the works in accordance with the same, including the timescale set out therein, and the provisions of paragraph 5 shall apply until the Council considers it can issue an Practical Completion (Open Space) Certificate and, in the event that the Owner fail to comply with any Remedial Notice in accordance with the timescales set out therein, the Council shall be entitled to enter onto the Land (or any part thereof) in order to carry out the required works.

7 The Owner shall pay the Council's reasonable costs in undertaking any inspection pursuant to paragraph 6 and in taking any action to remedy the failure to comply with any Remedial Notice within 21 (twenty-one) Working Days of the Council serving notice of the amount due.

8 The Owner shall insure and maintain or procure the maintenance of the Open Space Areas at its own cost in accordance with the approved Management Scheme to the satisfaction of the Council until completion of its transfer to the Management Company

9 The Owner shall not allow more than 90% (ninety percent) of the Dwellings to be Occupied until the Open Space Areas have been transferred to the Management Company created in accordance with the provisions of paragraphs 10 – 13 of this Schedule and the Open Space Areas shall thereafter be maintained in perpetuity in accordance with the approved Management Scheme.

Management Company Provisions

10 The Owner shall not use or Occupy or cause or suffer or permit the use or Occupation of any of the Dwellings until such time as the Owner has at its own expense:

10.1 submitted to the Council and the Council has approved in writing the Management Company Structure Scheme:

10.2 Set up and registered the Management Company in accordance with the Management Company Structure Scheme as approved by the Council.

10.3 Ensured that the Management Company has at least 2 (two) named persons as Directors and one Company Secretary that are eligible to be appointed and (if required) removed and replaced by the Members of the Management Company;

10.4 Procured that the Management Company appoints a named manager ("**the MC Manager**") responsible for liaising with the Council and Occupiers of the Dwellings.

10.5 Procured through the Management Company documentation (as set out in paragraph 14 below) that the Management Company will hold at least one (1) public meeting per year.

10.6 Procured through the Management Company documentation that the Management Company is to be responsible for the upkeep and on-going maintenance of Open Space Areas in accordance with the approved Open Space Plan and the obligations under this Deed.

Management Company Documents

11 Not to use or Occupy or cause or suffer or permit the use or Occupation of any of the Dwellings until such time as the Owner has provided the Council with the following information and documents relating to the Management Company:

11.1 a copy of the company Certificate of Incorporation and Articles of Memorandum;

11.2 a copy of its Rules (including the holding of at least one (1) public meeting per year and the giving of a minimum of seven (7) days written notice of each meeting to the Council and all Company Members and any other interested parties and to provide suitable facilities for the meetings of the Management Company) and Regulations and operational manuals;

11.3 any other relevant documentation relating to the Open Space Areas;

11.4 details of the names and addresses of all Directors, Members and the Company Secretary;

11.5 such evidence as may be reasonably required by the Council of the financial resources available to the Management Company including evidence that (through the levying of a Rentcharge) there will be adequate resources in place to undertake the maintenance of the Open Space Areas in perpetuity in accordance with the Management Scheme.

Operation of the Management Company

12 The Owner hereby covenants;

12.1 to ensure that upon the transfer of any Dwellings that all freehold and registrable leasehold Occupiers of the Dwellings are able to be Members of the Management Company and eligible to vote at any Annual General and Special Company Meetings;

12.2 to ensure that the Transferee is able to be a member of the Management Company;

12.3 that the MC Manager will ensure that their contact details including his name address and telephone number are regularly updated and distributed to the owners and occupiers of all of the Dwellings

12.4 to ensure that the Rentcharge is secured on the first Disposal of any Dwellings and that covenants are contained on the transfer to procure that on any subsequent Disposal the Rentcharge is secured in favour of the Management Company

13 Not to transfer any parcel of land comprising or comprised of the Open Space Areas to the Management Company except upon the following terms and conditions unless otherwise agreed with the Council:

(i) title shall be deduced in accordance with the Land Registration Act 2002;

(ii) the parcels of land comprising or comprised the Open Space Areas will be transferred free of any financial charges together with the rights and easements but subject only to the exceptions reservations right easements and other matters relating to the Land;

(iii) vacant possession of the parcel of land comprising the Open Space Areas shall be given on the date of the transfer in accordance with the provisions of this Deed;

(iv) completion shall take place within 60 Working Days after the Council confirms

that the relevant works have been Practically Completed pursuant to paragraph 5 of this Schedule unless otherwise agreed in a contract for the transfer/conveyance made between the Owner and the Management Company;

(v) the transfer of the Open Space Areas to the Management Company shall be subject to a covenant to comply with the following:

(a) the Open Space Areas shall be made available for the use of the general public and shall only be used for the purposes of public open space as defined in this Deed and shall not be used for any trade or business and that no development requiring planning permission shall be carried out thereon;

(b) the Owner and the Council agree that when the Open Space Areas are transferred to the Management Company the Owner shall be entitled to include in the transfer of the title a requirement that the Management Company shall enter into a direct covenant with the Owner to restrict the use of the land in accordance with the restrictions set out in this Deed

14 That the Open Space Areas shall be maintained at all times in accordance with the Management Scheme approved under this Schedule subject to any amendments or revisions thereto subsequently approved in writing by the Council.

Monitoring Fee

15 To pay the Monitoring Fee to the Council on or prior to Commencement of the Development.

16 Not to Commence the Development unless and until the Monitoring Fee has been paid to the Council.

SCHEDULE 4

OFF-SITE WATER NEUTRALITY MEASURES

Obligations Binding the Land

1. The Owner covenants with the Council not to Implement or permit the Implementation of the Development until such time as the Owner has procured the binding of the Water Offsetting Land with the obligations set out **the Annex to this Schedule 4** through a Supplemental Deed.

2. The Owner covenants with the Council not Implement or to permit or allow Implementation of the Development unless:

2.1 the Water Offsetting Measures on the Water Offsetting Land have been implemented and completed;

2.2 the Owner has submitted to the Council evidence in writing that the Water Offsetting Measures as have been implemented in full, the evidence to include the specifications and photographs of the installed measures; and

2.3 the Owner has received confirmation in writing from the Council that the Water Offsetting Measures have been implemented in full at the Water Offsetting Land such that the Development is considered to be Water Neutral;

PROVIDED THAT

2.4 In the event that at any point prior to Implementation of the Planning Permission the Council adopts an Offsetting Scheme and the Owner is allocated and purchases the requisite number of Offsetting Credits to render the Development Water Neutral pursuant to the Offsetting Scheme by payment to the Council of a Water Neutrality Contribution or otherwise pays a Water Neutrality Contribution that is accepted by the Council then the provisions of **paragraphs 1 and 2.1 to 2.3** above shall cease to have effect and the Owner shall be considered to have discharged any obligations herein in respect of off-site Water Neutrality measures.

AND PROVIDED FURTHER THAT

2.5 In the event that the Council agrees in writing that the Water Offsetting Measures as set out in the Water Neutrality Strategy are no longer required on the Water Offsetting Land then the relevant obligations in this **Schedule 4** shall determine and cease to have legal effect.

Annex A – Schedule 4

Obligations and covenants to be contained within the Supplemental Deed

The Supplemental Deed shall contain the following covenants and obligations (save where any amendments are agreed by the parties to the Supplemental Deed in order to reflect the final details of the Water Offsetting Measures or otherwise) in respect of the maintenance and management of the Water Offsetting Measures on the Water Offsetting Land:

1. Covenants and obligations from the owner of the Water Offsetting Land to the Council as follows:

1.1 to implement, operate, maintain and keep in good repair the Water Offsetting Measures in accordance with the Water Neutrality Strategy (subject to any amendments that may be agreed with the Council from time to time) in perpetuity or for such alternative period as may be agreed with the Council and is set out in the Supplemental Deed;

1.2 during said period not to remove or otherwise replace the Water Offsetting Measures installed on the Water Offsetting Land in accordance with the Water Neutrality Strategy other than with replacement measures, fixtures and/or fittings which meet an equivalent or more efficient water standard (or as otherwise agreed in accordance with paragraph 1.1 above);

1.3 from the date on which the Water Offsetting Measures are installed on the Water Offsetting Land and thereafter in perpetuity or for such alternative period as may be agreed with the Council and as set out in the Supplemental Deed the Council may from time to time request that evidence is provided in respect of the Water Offsetting Measures to demonstrate that the Water Neutrality Strategy is being complied with and the owner of the Water Offsetting Land shall provide such evidence as may be reasonably required as soon as reasonably practicable but in any event by no later than 3 (three) Working days upon any such request;

1.4 from the date on which the Water Offsetting Measures are installed on the Water Offsetting Land and thereafter in perpetuity or for such alternative period as may be agreed with the Council and is set out in the Supplemental Deed to afford the Council access (upon receipt of a written request and at reasonable notice wherever possible AND (where the Water Offsetting Land is a school or other form of educational establishment at all times having regard to its responsibilities and duties in relation to the care and safety of students) to inspect and assess whether the Water Offsetting Measures have been implemented on the Water Offsetting Land and are being maintained in accordance with the Water Neutrality Strategy;

1.5 granting a right for the Council to serve a Compliance Notice in the event that the Council considers that any action is required to ensure compliance with the Water Neutrality Strategy at any point together with covenants from the owner(s) of the Water Offsetting Land to comply with any such Compliance Notice within the

timeframe notified by the Council and at no cost to the Council and providing that in the event that the recipient of the Compliance Notice fails to comply with any Compliance Notice served on it pursuant to paragraph 1.5 within the timeframe provided;

1.5.1 the Council may enter onto the Water Offsetting Land (or any part required) to take the action reasonably required to remedy any non-compliance with the Water Neutrality Strategy; and

1.5.2 the recipient shall pay the Council's costs incurred in taking any action or remedying anything that has been done under paragraph 2 or 3 within 30 (thirty) Working Days of receipt of the Council's invoice for the same.

2. The Supplemental Deed shall contain a provision whereby the owner(s) of the Water Offsetting Land shall not be liable for any breach of the covenants at therein after they shall have parted with their interest in the Water Offsetting Land or that part of the Water Offsetting Land in which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest and also that they shall not be liable for the obligations at **Schedules 1 to 3** hereof if they have no interest in the Land.

3. The Supplemental Deed shall contain a provision providing that:

3.1 In the event that the Owner purchases a sufficient number of Offsetting Credits under the Offsetting Scheme and/or otherwise pays a Water Neutrality Contribution to the Council pursuant to **paragraph 2.4 of Schedule 4** prior to the Implementation of the Development and the Water Offsetting Measures have not yet been implemented; or

3.2 In the event that the Council agrees in writing that the Water Offsetting Measures as set out in the Water Neutrality Strategy are no longer required on the Water Offsetting Land:

then the relevant obligations in the Supplemental Deed shall determine and cease to have legal effect and for the avoidance of doubt in such circumstances the Water Offsetting Land will no longer be bound by the relevant terms of the Supplemental Deed or this Deed.

Executed as a DEED by:
PENNTRUST LIMITED
Acting by:

[redacted]

Executed as a DEED by:
ROBIN HOBSON

In the presence of:

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

[redacted]

Ministry of Housing, Communities & Local Government

Our ref: APP/Z3825/W/23/3333968

Your ref: DC/23/0856

Mr Peter Warren
Savills
Mountbatten House
1 Grosvenor Square
Southampton
SQ15 2BZ

25 October 2024

Dear Peter Warren,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY CREST NICHOLSON OPERATIONS LIMITED
KILNWOOD VALE SUB-PHASE 3DEFG, KILNWOOD VALE, CRAWLEY ROAD, FAYGATE, HORSHAM, WEST SUSSEX, RH12 0DB
APPLICATION REF: DC/23/0856

This decision was made by the Minister of State for Housing and Planning, Matthew Pennycook MP, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Darren McCreery MA BA (Hons) MRTPI, who held a public local inquiry on 11-14 March 2024 and 18 March 2024 into your client's appeal against the failure of Horsham District Council to determine your client's application for reserved matters approval for layout, appearance, landscaping, and scale (in accordance with DC/15/2813) for Phase 3DEFG of the Kilnwood Vale development, comprising 280 dwellings with associated landscaping, access and parking, in accordance with application Ref. DC/23/0856, dated 28 April 2023.

2. On 8 April 2024, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the reserved matters should be approved.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. She has decided to approve the reserved matters. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing Communities & Local Government Email: PCC@communities.gov.uk
Laura Webster, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Environmental Statement

5. An Environmental Statement (ES) was submitted with the outline application (DC/10/1612) under the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, and an addendum to the ES was submitted in support of the S73 application (DC/15/2813) under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011(as amended). The Secretary of State is satisfied that the environmental information already before her is adequate to assess the significant effects of the development on the environment. In reaching her decision the Secretary of State has taken this information into consideration.

Matters arising since the close of the inquiry

6. A list of representations which have been received since the inquiry is at Annex A. The Secretary of State is satisfied that the issues raised do not affect her decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.

7. On 30 July 2024, the Written Ministerial Statement (WMS) 'Building the Homes we Need' (UIN HCWS48) was published. On that same date, the government launched a consultation to reform the National Planning Policy Framework (the Framework). The Secretary of State does not consider that publication of the WMS and the consultation on the existing Framework raise any matters that would require her to refer back to the parties for further representations prior to reaching her decision on this appeal, and she is satisfied that no interests have thereby been prejudiced.

Policy and statutory considerations

8. In reaching her decision, the Secretary of State has considered this proposal within the context of the Outline Planning Permission that these reserved matters are pursuant to.

9. In this case a hybrid planning application, including a masterplan for the site, was approved in 2011 (DC/10/1612) for "Outline approval for the development of approximately 2500 dwellings, new access from A264 and a secondary access from A264, neighbourhood centre, comprising retail, community building with library facility, public house, primary care centre and care home, main pumping station, land for primary school and nursery, land for employment uses, new rail station, energy centre and associated amenity space. Full planning permission for engineering operations associated with landfill remediation and associated infrastructure including pumping station. Full permission for the development of Phase 1 of 291 dwellings, internal roads, garages, driveways, 756 parking spaces, pathways, sub-station, flood attenuation ponds and associated amenity space. Full permission for the construction of a 3 to 6 metre high (above ground level) noise attenuation landform for approximately 700 metres, associated landscaping, pedestrian/cycleway and service provision (land known as Kilnwood Vale)". The permission was varied in 2016 by application reference DC/15/2813 for the "Variation of conditions 3, 4, 7, 8, 9, and 10 of hybrid planning application DC/10/1612 to enable the reconfiguration of the neighbourhood centre, community facilities and open space".

10. The Secretary of State has had regard to the relevant policies within the development plan. In this case the development plan consists of Horsham District Planning Framework (HDPF) (27 November 2015), Horsham District Council Site Specific Allocations of Land

(November 2007) and Horsham District and Crawley Borough Local Development Frameworks West of Bewbush Joint Area Action Plan (JAAP) (July 2009).
The Secretary of State considers that relevant development plan policies include those set out at IR5.5-IR5.14.

11. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance ('the Guidance'), as well as the matters set out in IR5.25-IR5.26.

Emerging plan

12. The Horsham District Local Plan 2023-2040 was published for consultation under regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 on 19 January 2024 and was formally submitted to the Planning Inspectorate on Friday 26 July 2024 after the close of the Inquiry. The Secretary of State notes the Inspector's comment at IR5.4 that the draft plan continues to rely on delivery at Kilnwood Vale as a source of housing supply.

13. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State notes that the Local Plan has been submitted for examination since the close of the Inquiry. The Inspector concludes at IR5.4 that the emerging Local Plan does not attract weight, however, having regard to the stage of preparation she considers that the emerging Local Plan should be given limited weight.

Main issues

Whether a Habitats Regulations compliant appropriate assessment can be concluded and, if so, on what basis.

14. The Secretary of State has taken into account the legal principles underpinning appropriate assessment summarised by the Inspector at IR10.3-IR10.10, the Inspector's conclusion in respect of Imperative Reasons of Overriding Public Benefit (IROPI) set out at IR10.11 and his consideration of proportionality in applying the precautionary principle set out at IR10.12-IR10.19 and agrees with the Inspector's approach.

15. For the reasons set out at IR10.20-IR10.90 the Secretary of State agrees with the Inspector's conclusions at IR10.85-IR10.90 that it cannot be ascertained (with reasonable certainty) that the proposal will not adversely affect the integrity of the Arun Valley Sites.

16. In relation to likely significant effects, she agrees that as the Water Supply Zone includes supplies from groundwater abstraction it cannot, with certainty, be concluded that there will be no adverse impact on the Arun Valley Sites for the reasons set out at IR10.24-IR10.27. For the reasons set out at IR10.28-IR10.32 she agrees that the concept of Water Neutrality is not of central relevance to the question of whether a favourable appropriate assessment can be concluded.

17. In relation to the effects on the site's nature conservation objectives, the Secretary of State agrees with the Inspector at IR10.37 that the qualifying interest affected by the issue in the NE Position Statement cannot be narrowed to the Lesser Ramshorn Whirlpool Snail, for the reasons set out at IR10.33-IR10.39.

18. The Secretary of State has considered matters arising in relation to reliance of other regulatory regimes (IR10.41-IR10.45); Southern Water Voluntary Minimisation and Environment Agency action following the Sustainability Review (IR10.46-IR10.57); The WRMP 2024 (IR10.58-IR10.69); Alternative Sources of Supply (IR10.70-IR10.75); and Demand Management Savings (IR10.76-IR10.84). For the reasons set out at IR10.40-IR10.91, she agrees with the Inspector's conclusions at IR10.85-IR10.91, and agrees that based on the Appellant's evidence of avoidance/mitigation it cannot be ascertained (with reasonable certainty) that the proposal will not adversely affect the integrity of the Arun Valley Sites (IR10.90).

19. In considering whether compliance with conditions or other restrictions enable it to be ascertained that the proposal would not adversely affect the integrity of the site, for the reasons set out at IR10.92-IR10.112 the Secretary of State agrees with the Inspector's proposed amendments to the Council's suggested Sussex North Offsetting Water Scheme (SNOWS) condition set out at IR10.111 and his conclusion at IR10.112 that compliance with conditions enables her to ascertain that the proposal would not adversely affect the integrity of the Arun Valley sites.

20. The Secretary of State agrees with the Inspector's conclusion at IR10.113 that subject to compliance with conditions, she is able to ascertain with reasonable certainty that the proposal would not adversely affect the integrity of the Arun Valley Sites. She further agrees that she is able to conclude a favourable appropriate assessment and discharge her duty under Regulation 63(5) of the Habitat Regulations. The Secretary of State adopts IR10.3-IR10.114 as the necessary Appropriate Assessment in her role as the Competent Authority on this matter.

21. Like the Inspector at IR10.114 in fulfilling her duty, the Secretary of State has had regard to the representations made by Natural England, as the appropriate nature conservation body for the purposes of Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017.

Whether the evidence otherwise indicates that the reserved matters should be approved

22. For the reasons set out at IR10.115, the Secretary of State agrees that the proposal accords with the parameter plans, the s.106 under the Outline Permission, and accords with the relevant policies identified in paragraph 10 of this decision letter.

23. For the reasons set out at IR 10.115-IR10.119, the Secretary of State agrees with the Inspector's conclusion at IR10.120 and agrees with the assessment of matters unrelated to habitat effects provided by the Council. She further agrees with the Inspector at IR10.127 that the benefits listed in the appellant's statement of case (housing, affordable housing, employment, economic benefits, provision of open space, remediation of landfill and biodiversity benefits), are collectively significant material considerations and she gives these benefits significant weight.

Planning conditions

24. The Secretary of State had regard to the Inspector's analysis at IR10.90-IR10.112 and IR11.1-IR11.4, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. She is satisfied that the conditions recommended by the Inspector, including Condition 6, comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of her decision.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the Outline Permission and the relevant policies of the HDPF and of the JAAP and is in accordance with the development plan as it relates to the reserved matters under consideration. She has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the relevant development plan policies.

26. Weighing in favour of the proposal are housing, affordable housing, employment, economic benefits, provision of open space, remediation of landfill and biodiversity benefits. The Secretary of State gives these benefits significant weight.

27. Overall, the Secretary of State considers that the accordance with the outline planning permission and relevant development plan policies, and the material considerations in this case indicate that the reserved matters should be approved.

28. The Secretary of State therefore concludes that the reserved matters should be approved subject to the conditions set out in Annex B.

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby allows your client's appeal and approves the reserved matters subject to the conditions set out in Annex B of this decision letter for reserved matters approval for layout, appearance, landscaping, and scale (in accordance with DC/15/2813) for Phase 3DEFG of the Kilnwood Vale development, comprising 280 dwellings with associated landscaping, access and parking, in accordance with application Ref. DC/23/0856, dated 28 April 2023.

30. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than the approval of reserved matters subsequent to outline planning permission granted under section 57 of the TCPA 1990.

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.

32. A copy of this letter has been sent to Horsham District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully,



Laura Webster
Decision officer

This decision was made by the Minister of State for Housing and Planning, Matthew Pennycook MP, on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

General representations

Party	Date
Kevin Curd	3 September 2024

Annex B List of conditions

1. The development hereby permitted shall be carried out in accordance with the approved plans listed in Appendix 1 of the Statement of Common Ground between Horsham District Council and Crest Nicholson Operations Limited dated 18 March 2024.

2. No development above ground floor-slab level shall commence until a schedule of materials, finishes and colours to be utilised for the external walls, windows and roofs of the approved buildings, has been submitted to and approved by the Local Planning Authority in writing. All materials to be utilised in the construction of the approved buildings shall, thereafter, conform to those approved.

3. No development shall commence above ground floor-slab level, until full details of underground services, including locations, dimensions and depths of all service facilities and required ground excavations, have been submitted to and approved by the Local Planning Authority in writing. The development shall be carried out as per the approved details and coordinated with the approved Residential Landscape Masterplan (ref: 30125-5 DR-5000 S4-P12), Softworks Proposals (3015-5-DR-5001-P9, 3015-5-DR-5002-P9, 3015-5-DR-5003-P6, 3015-5-DR-5004-P6, 3015-5-DR-5005-P6, 3015-5-DR-5006-P10, 3015-5-DR-5007-P10, 3015-5-DR-5007-P10 and 3015-5-DR-5008-P9) and Preliminary Surface and Foul Water Drainage Strategy (refs: 2107120-002 G and 2107120-003 G).

4. No development shall commence above ground floor-slab level, until full details of any street-furniture to be installed, which can include any lighting columns, public cycle stands and bollards have been submitted to and approved by the Local Planning Authority in writing. The development shall be implemented in accordance with the approved details.

5. No development above ground floor slab level shall commence until full details of the water efficiency measures required to achieve a maximum of 91.4 l/p/d have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include the specification of all fixtures and fittings to be included in all dwellings, and a completed Part G calculator confirming the targeted water consumption is achieved.

    i) No dwelling hereby permitted shall be occupied until the approved water efficiency measures to serve that dwelling have been installed and made available for use in accordance with approved details, with evidence of installation submitted to an approved in the writing by the Local Planning Authority.
    ii) The installed water efficiency measures, or any subsequent replacement of measures over the lifetime of the development, shall achieve equivalent or higher standards of water efficiency to those approved unless otherwise agreed in writing with the Local Planning Authority.

6. No dwelling hereby permitted shall be first occupied until written agreement from the Local Planning Authority has been provided that either:
    i) A water neutrality mitigation scheme has been secured via Horsham District Council's adopted Offsetting Scheme (in line with the recommendations of

the Sussex North Water Neutrality Study: Part C – Mitigation Strategy, Final Report, December 2022). OR

ii) A site-specific water neutrality mitigation scheme has been (a) agreed in writing with the Local Planning Authority as being equivalent to Horsham District Council's adopted Offsetting Scheme AND (b) implemented in full.

7. All approved soft/ hard landscaping and boundary treatments within the curtilage of an approved building shall be implemented prior to the first occupation of that dwelling, in accordance with the approved soft/hard landscaping drawings, unless alternative hard and soft landscaping details and/or boundary treatments are submitted to and been approved in writing by the Local Planning Authority prior to the commencement of development above ground-floor slab level.

8. All soft landscaping outside of the curtilage of an approved dwelling shall be carried out in the first planting and seeding season, following the first occupation of the relevant buildings or the completion of the development, whichever is the sooner. Any trees or plants detailed on the approved landscaping strategy which die, are removed, become seriously damaged or diseased, within a period of five years following the completion of the development shall be replaced with new planting of a similar size and species.

9. Prior to the first occupation of any part of the development, a landscape management responsibilities plan (delineating areas of ownership and maintenance responsibility) for all communal landscape areas shall be submitted to and approved in writing by the Local Planning Authority. The landscape areas shall be managed and maintained in accordance with the approved details.

10. No dwelling hereby permitted shall be occupied until secure covered cycle parking facilities to serve that dwelling have been constructed and made available for use in accordance with approved drawings. The cycle parking facilities shall thereafter be retained as such for their designated use.

11. No dwelling hereby permitted shall be occupied until the car parking spaces serving the respective dwellings have been constructed and made available for use in perpetuity. All unallocated (visitor) parking spaces shall be completed and made available for use prior to the completion of the development and shall, thereafter, remain available only for use as visitor parking.

12. No part of the development shall be occupied until details of the proposed solar PV apparatus, including locations and amounts, have been submitted to and approved in writing by the Local Planning Authority. The equipment shall, be installed prior to the first occupation of each respective dwelling in accordance with the approved details.

13. No dwelling shall be first occupied until secure covered provision for the storage of refuse and recycling has been made for that dwelling in accordance with the submitted plans. The refuse and facilities shall thereafter be retained for use at all times.

14. No dwelling shall be first occupied until confirmation has been provided to the Local Planning Authority that either:- 1. All foul water network upgrades required to accommodate the additional flows from the development have been completed; or- 2. A development and infrastructure phasing plan has been agreed with the Local Authority in consultation with Thames Water to allow development to be occupied. Where a

development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.

15. No dwelling shall be first occupied until details showing the location of fire hydrants and method of installation and maintenance in perpetuity have been submitted to and approved in writing by the Local Planning Authority, in consultation with West Sussex County Council's Fire and Rescue Service. The development shall be carried out in accordance with the approved details and retained as such, unless a variation is agreed with the Local Planning Authority.

16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and/or any Order revoking, amending and/or re-enacting that Order), no roof extensions falling within Class B, Part 1, Schedule 2 of the Order shall be erected, constructed and/or installed to any dwelling hereby approved without express planning permission from the Local Planning Authority first being obtained.

17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and/or any Order revoking, amending and/or re-enacting that Order), all garages hereby permitted shall be used only as private domestic garages for the parking of vehicles incidental to the use of the properties as dwellings and for no other purpose.