

PLANNING APPLICATION REPORT

APPLICATION REFERENCE / ADDRESS:

DC/19/2464

Erection of 94 dwellings with associated access, parking and landscaping at Land West of Worthing Road (Phase 5)

Berkeley Homes Development Site Worthing Road Southwater RH13 9BT

DC/24/1158

Minor Material Amendment (Section 73) to vary condition 2 of application reference DC/24/0772 (non material amendment to previously approved application DC/18/1246) to The development hereby approved comprises 199 no. residential dwellings including 61 affordable dwellings and vary the plans approved under condition 1 of application reference DC/18/1246.

Berkeley Homes Development Site Phase 4 and 5 Worthing Road, Southwater, West Sussex

RESOLVED:

At its meeting on 5th August 2025, Planning Committee resolved to approve both above applications, in accordance with the Officer recommendation and subject to the completion of a s106 legal agreement.

BACKGROUND

Outline planning permission was granted for up to 594 dwellings at Southwater in 2015 under application reference DC/14/0590. Reserved Matters approval has subsequently been granted for phases 1, 2, 3 and 4, totalling 514 units. Phases 1, 2 and 3 have now been completed. Phase 3.2 and Phase 4 were approved under application reference DC/18/1246 for 213 homes.

The Phase 3.2 and Phase 4 reserved matters application DC/24/0772 has now been implemented in part with Phase 3.2 completed and largely occupied to relate to 56 of the 213 homes (including 6 affordable homes). No works other than an internal access road to base course have been completed within Phase 4.

As the period for submitting reserved matters applications had expired, Phase 5 relating to 80 dwellings DC/19/2464 was submitted as a separate full standalone planning application in Dec 2019 (within the parameters of the outline permission). Consequently, Phase 5 is CIL liable, whereas all the other Phases are not, with infrastructure having been delivered via bespoke s106 agreement.

The application DC/19/2464, as considered at the previous committee meetings, sought full planning permission for 80 dwellings as Phase 5 of the Broadacres development. The proposal has subsequently been revised to redistribute plots between Phases 4 and 5 of the Broadacres development, with the total number of homes now proposed within Phase 5 being 94. A parallel application to amend Phase 4 has been submitted (DC/24/1158 refers) which reduces the quantum of homes within Phase 4 by 14, thereby equalising the number of homes across Phases 4 and 5. Both applications have received the necessary Committee consents.

As previous, all the proposed homes in Phase 5 are for open market sale with the required number of affordable homes having been already delivered through the earlier phases of the Broadacres development (total 178 homes). A deed of variation will be secured to the existing Broadacres s106 Agreement to link the current full planning application for Phase 5 to these earlier phases.

The issue that has arisen from this process is the double counting of infrastructure, whereby the financial contributions to make Broadacres acceptable in planning terms have all been paid in full, yet Phase 5 is now subject to CIL proportionately duplicating many of these contributions.

Community Infrastructure Levy (CIL)

Horsham District Council has adopted a Community Infrastructure Levy (CIL) Charging Schedule which took effect on 1st October 2017. As reported, the development that comprises Phase 5 as now sought for planning approval (DC/19/2464) constitutes CIL liable development.

For chargeable development, the development involves the following for market housing net additional floor space (affordable housing being exempt):

Use Description	Proposed	Existing	Net Gain
District Wide Zone 1	15,743	0	15,743

The CIL Charge for Residential Development District Wide (Zone 1) £/m2 for 2026 is £188.81. This equates to a CIL charge of £2,972,435.83 for the Phase 5 permission sought under application DC/19/2464.

Material planning considerations arising post-Committee resolution:

Engrossment of Legal Agreement

Without prejudice to the covenants in the Varied S106 Agreement of DC/24/1158, the Parties have agreed to vary the terms of the Varied S106 Agreement (Deed of Variation/ DOV), under s106 and s106A of the 1990 Act and the District Council is satisfied that the planning obligations are:

- (i) necessary to make the Development acceptable in planning terms; and
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably relate in scale and kind to the Development,
- and satisfy the requirements of in Regulation 122 (as amended).

This DoV is to be entered into simultaneously with the Phase 5 Section 106 Agreement. It is necessary to enter into this DOV to correlate with the Section 73 Permission and Phase 5 Development in order to cap the number of dwellings which may be delivered on the DOV Land pursuant to the Section 73 Permission in order that this aligns with the implemented Outline Planning Permission and Phase 5 Development.

The Parties have agreed and acknowledged the following:

- that no reserved matters application can be made under the Outline Permission for Phase 5 due to the passage of time and therefore a separate full application has been submitted for the Phase 5 Development;
- the Outline Permission granted consent for a total of 594 dwellings across the whole Broadacres Site includes 32 no. over 55 units. In order to enable consent to be granted for 94 dwellings pursuant to the Phase 5 Development DC/19/2464 and for the Phase 5 to align with the Outline Permission, the maximum number of dwellings that may be delivered on the Phase 3.2 and Phase 4 Land (which for the avoidance of doubt is identified on the DOV Land Plan) is 199 dwellings (including 61 affordable dwellings)

which represents a reduction of 14 dwellings currently permitted under the Phase 3.2 and Phase 4 Permission.

- the Phase 5 Development DC/19/2464 is chargeable development in accordance with the Community Infrastructure Levy Regulations 2010 (as amended);
- the obligations that accompanied the Outline Permission to pay the Secondary Education Contribution, Primary Education Contribution, Library Contribution, Indoor Sports Contribution, Outdoor Sports Contribution and Fire Services Infrastructure Contribution in the Varied S106 Agreement (as amended by this Deed) have been paid in full but will result in an overpayment due to the Phase 5 Development being subject to the Community Infrastructure Regulations 2010 (as amended).

It has been confirmed that once the Community Infrastructure Levy liability arises for Phase 5 Development DC/19/2464 and the refund is made on the overpayment, Horsham District Council and West Sussex County Council will not seek to recover the refunded contributions that relate to the 94 units on Phase 5. It is simply comfort for the landowner.

West Sussex County Council covenants that it will within 60 Working Days of receipt of notice in writing from Berkeley Homes (Southern) Limited confirming Implementation of the Phase 5 Development refund to Berkeley Homes (Southern) Limited **£453,446** being the proportionate overpayment of the Fire Services Infrastructure Contribution and of the first three instalments of the Primary Education Contribution and Secondary Education Contribution, as a result of Phase 5 being undertaken pursuant to its stand-alone Full planning permission.

West Sussex County Council have calculated the refunds based on the revised Housing Mix and occupancy rates, in accordance with the methodology set out in the Outline legal agreement. The breakdown is appended to the legal agreement. Horsham District Council's Planning and Community Infrastructure Levy Officers have carried out a check of the calculation and confirmed it is correct.

Horsham District Council covenants that it will, within 60 Working Days of receipt of an invoice from Berkeley Homes (Southern) Limited, refund Berkeley Homes (Southern) Limited **£357,795.40** broken down as follows:

- £208,556.40 on behalf of the County Council being the proportionate overpayment of the Library Contribution and of the fourth instalments of the Primary Education Contribution and Secondary Education Contribution, because of Phase 5 being undertaken pursuant to its stand-alone Full planning permission.
- £149,239 being the proportionate overpayment of the Indoor Sports Contribution and Outdoor Sports Contribution because of Phase 5 being undertaken pursuant to its stand-alone Full planning permission. [NB this sum has not yet been spent]

Horsham District Council Officers calculated the proportionate overpayment in respect of the Indoor Sports Contribution pro rata with respect to the gross number of units.

West Sussex County Council would need to separately apply to Horsham District Council for their Community Infrastructure Levy. This is because Horsham District Council are holding some of the contributions ((£208,556.40) on West Sussex County Council's behalf pursuant to the outline section 106 agreement. Horsham District Council are obliged to send these funds to West Sussex County Council when they request them, and therefore Horsham District Council needs their authorisation to refund this sum to the paying party which is Berkeley Homes Southern Ltd and this is provided for in the legal agreement itself.

Community Infrastructure Levy is paid to Horsham District Council as the charging authority. West Sussex County Council will then need to apply for Community Infrastructure Levy funds for infrastructure projects in the usual way.

In the event of Implementation of the Phase 5 Development prior to the Section 73 Permission

being quashed following a successful legal challenge the County Council and Berkeley Homes (Southern) Limited agree to recalculate the proportionate overpayment of the Fire Services Infrastructure Contribution, Library Contribution, Primary Education Contribution and Secondary Education Contribution

In the event of conflict between the obligations and conditions secured for the Phase 5 Development and the Varied S106 Agreement (as amended by this Deed), then the Phase 5 Development shall take precedence in respect of Phase 5.

The s106 legal agreement has now reached engrossment, securing the necessary obligations set out in the heads of terms and as costed, as reported in the Committee Report and in the preceding paragraphs above. Once the s106 legal agreement has been completed, planning permission is to be formally issued.

In total, therefore, the Phase 5 development of 94 market homes would deliver Community Infrastructure Levy funds of some £2,972,435.83 as currently indexed. The S106 agreement would separately refund £811,241.40 of the s106 sums already paid which amounts to the proportionate double count of fire, library, education and opens pace/sports infrastructure. The Phase 5 development would continue to net £2,161,194.43 in Community Infrastructure Levy receipts.

Case Officer: Matthew Porter	Date: 11-05-2026
Authorising Officer: Adrian Smith	Date: 11/05/2026