

**PLANNING APPLICATION FOR 9 NO. NEW
DWELLING HOUSES AND 9 NO.
CARPORTS/STUDIOS WITH ASSOCIATED ACCESS,
INFRASTRUCTURE, PARKING AND LANDSCAPING.**

APPEAL STATEMENT

**LAND NORTH OF 1 TO 16 STURT AVENUE
CAMELSDALE LINCHMERE WEST SUSSEX GU27 3SJ**

ON BEHALF OF CASA COEVO GROUP LTD

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PLANNING | **DESIGN** | **ENVIRONMENT** | **ECONOMICS**

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1. Introduction

1.1 This appeal is submitted following the decision by Chichester District Council (the Council) to refuse planning permission for '9 no. new dwelling houses and 9 no. Carports/studios with associated access, infrastructure, parking and landscaping' on land north of 1 To 16 Sturt Avenue, Camelsdale, Linchmere. West Sussex. GU27 3SJ, planning application reference: **LM/21/02428/FUL.**

1.2 The planning application was submitted to the Council on 9th August 2021 and validated on 2nd September 2021. The application was accompanied by a suite of documents comprising:

- Completed Planning Application Form and Certificates
- Completed CIL Additional Information Form
- Planning Drawings by DSP Architecture, including:
 - Site location plan
 - Site Plan
 - Site Masterplan
 - Proposed North West and South East Streetscene Elevations
 - Site Sections AA BB and CC
 - House Type A (Units 1-5) – Floor Plans, Roof Plan and Elevations
 - House Type B (Units 6-9) – Floor Plans, Roof Plan and Elevations
 - 3D Views House Type A
 - 3D Views House Type B
 - Sketch View
- Arboricultural Impact Assessment by Arbortrack Services

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- Contaminated Land Investigation Report by Aviron
 - Delivery Statement by Pegasus Group (within Planning Statement)
 - Design Statement by DSP Architecture
 - Ecological Assessment by Ecology Co-op
 - Energy and Sustainability Strategy by Envision
 - FRA and Drainage Strategy by Scott White and Hookins
 - Landscape Masterplan and supporting documentation by ACD Environmental, including:
 - Soft Landscape Management and Maintenance Plan
 - Soft Landscape Specification
 - Landscape Proposals
 - Nitrogen Neutrality Assessment by Tetra Tech
 - Noise Assessment by ACCON
 - Planning Statement by Pegasus Group
 - Transport Assessment and Travel Plan by Pulsar
 - Utilities Assessment by Envision

1.3 The application was refused under delegated powers on 18th February 2022 with the Officer citing a number of concerns with the scheme as set out in the reasons for refusal (RfR) within the Decision Notice, these being as reproduced below:

1) The introduction of significant backland development would be out of character, resulting in an incongruous form of residential development in relation to the immediate residential streets and existing grain of development to the south and west of the site. It would detract from the wider character and appearance of the locality, taking little account of the existing pattern development within

this edge of settlement location. Moreover, the layout is considered to be an unacceptable overdevelopment of the site, due to the quantum of development proposed, the dominance of the studio/car port buildings within the streetscene and the low-quality outdoor amenity space, which is largely dominated by mature trees and shrubbery, resulting in a significantly reduced 'usable garden space' for all plots. Furthermore, the proposed dwellings by reason of their significant scale, mass, and bulk, would result in a top-heavy structures, with stark blank elevations, exacerbated by the use of white render result in an unconvincing detailed design which appears unbalanced and poorly thought out. The proposal would consequently result in a form of development which is out of character with the area, fails to consider local distinctiveness and causes harm to the visual amenities of the streetscape. The proposal is, therefore, contrary to Policy 25, 33, 48 and 52 of the Chichester Local Plan and Paragraphs 124, 127(a), (b), (c), (d) and (f) and 130 of the NPPF.

- 2) The proposed housing mix (9 x 4-bed) fails to accord with the Chichester Housing and Economic Development Needs Assessment (HEDNA) 2020 market mix, in that it proposes a single 'size' large unit of accommodation. In addition, in the absence of any S106 legal agreement the application makes no provision for securing the affordable housing. As such, this application fails to comply with CDC Policy 34, Planning Obligations and Affordable Housing SPD, criterion 7 of the interim position statement for housing delivery and Paragraph 64 of the NPPF.*
- 3) In the absence of a site-specific FRA, it is not possible to conclude the proposal is acceptable in respect of flood risk. In addition, in the absence of information to support the LPA in applying the Sequential and Exception Tests, the LPA is not satisfied that the proposal fulfils the requirements of these tests, as set out within Paragraph 164 of the NPPF. As such, the proposal fails to comply with Paragraphs 161, 162, 163, 164, 165, and 167 of the NPPF and Policy 42 of the CDC Local Plan.*
- 4) As a result of the exclusion of the private way from within the application site and in the absence of further supporting information to confirm the suitability of this access to serve the proposed development and because of the absence*

of information concerning the proposed bridge, the LPA is not satisfied that safe access can be provided in an acceptable and satisfactory manner. Consequently, the proposal fails to comply with Policy 39 of the CDC Local Plan.

- 5) The proposal would result in a net loss of 2.05 Biodiversity Units, even with on-site enhancements currently proposed. This represents a certain, significant and permanent adverse impact on ecology at the local level, for which inadequate mitigation has been proposed. In addition, insufficient information has been provided in respects of the ongoing bat surveys and a full mitigation strategy (including offsite mitigation), detailing the timings of the works, temporary roosting sites (if required), details of the off-site woodland planting, methodology of the works, roost restoration post development, and post development monitoring and safeguarding. Moreover, in the absence of an invasive species management plan, including biosecurity protocols, the LPA is not satisfied that the proposal would not result in the further spread of INNS which could potentially damage to property/infrastructure, and will undermine the integrity of the onsite ecological mitigation. Finally, insufficient information has been provided in respects of mitigation for nesting birds or reptiles and in respects of the replacement tree planning and the aquatic wildlife corridor, as set out within the Haslemere Neighbourhood Plan. As such, the proposal is contrary to Policies 49 and 52 of the Chichester Local Plan and Paragraph 174 and 183(a) of the NPPF and Policy H12 of the Haslemere Neighbourhood Plan.*
- 6) It has not been demonstrated that the existing water network infrastructure is able to satisfactorily accommodate the needs of this development proposal, in respects of the supply of fresh water. No proposals to address this issue have been submitted and the LPA is not satisfied that there is a suitable solution to this problem. The proposal is, therefore, contrary to Criterion 7 of the IPS.*
- 7) The application site is located within Source Protection Zones and insufficient information has been submitted to assess if the development can meet requirements to prevent, minimise and/or control pollution. The proposal, therefore, fails to ensure that the proposed development would not result in pollution to health, living conditions and the natural environment. The proposal,*

therefore, conflicts with Policy 42 of the Chichester Local Plan and Section 15 of the National Planning Policy Framework, including paragraph 185.

- 1.4 This statement will therefore consider these issues in turn, taking into consideration the concerns raised within the reasons for refusal and any relevant consultations. It will also address any other matters which are not directly relevant to the reasons for refusal but are relevant to the consideration of the proposals. The statement will conclude that the Planning Officer was incorrect in their decision as well as premature in making the decision, given correspondence between parties to evidence that detail to satisfy outstanding matters was being produced and in light of the decision being made significantly in advance of the agreed extension period for determination.

2. Site Description

- 2.1 The site is roughly rectangular in shape and is approximately 0.62 ha in size. It is currently unoccupied land, covered mostly by vegetation and trees which are protected by Tree Preservation Order ref: FH/93/00478/TPO.
- 2.2 The site is situated to the north of Sturt Avenue and is accessed by a private road at the eastern end of Sturt Avenue.
- 2.3 The site immediately backs on the gardens of the residential properties fronting Sturt Avenue on its southern boundary. To the north of the site is further trees and vegetation with residential properties beyond off Sturt Road. To the west, are further residential gardens backing on to the site, with community buildings beyond, including St Paul's Church and Camelsdale Primary School. The River Wey runs the length of the eastern boundary of the site.
- 2.4 Access to the site is via a private road off the eastern end of Sturt Avenue. This is owned by Thames Water and serves the pumping station, but a right of access is in place for the site.
- 2.5 The site is located within the primarily residential, Camelsdale area of Linchmere, Haslemere, some 1.5km to the south west of Haslemere town centre. It is characterised by primarily two storey, detached and semi-detached properties and buildings.

3. The Proposal

3.1 The agreed description of the proposed development at land north of 9-16 Sturt Avenue is: *'Planning application for 9 no. new dwelling houses and 9 no. Carports/studios with associated access, infrastructure, parking and landscaping.'*

Amount, Design and Use

3.2 The proposed development provides for some 9 family dwellings. It was proposed at planning application stage that this would comprise 4 bed houses, all of which are of two storeys, and incorporate flat, green sedum roofs. The rationale for the choice of development was to provide much needed family accommodation in a low-impact, sustainable and energy-efficient manner.

3.3 A pre-application scheme was submitted in February 2021 to seek advice on quantum and mix. At this time, a scheme of between 15 and 24 units was proposed to respond more rigidly to planning policy requirements regarding provision of a mix of dwellings and housing need as cited in the Housing and Economic Needs Assessment (HEDNA).

3.4 Without response to the pre-application submission by the Council either during the pre-application or planning application period, a decision was taken to provide for a more sensitive, low-density approach with the dwellings being carefully designed and integrated into the natural setting, taking a lead from Policy 33 of the Chichester Local Plan (CLP), the subtext for which identifies that schemes for new residential development *inter alia* "will be determined by its immediate context, on-site constraints, the type of development proposed and the need to provide an appropriate mix of dwellings".

3.5 A detailed application, providing greater detail in respect of design and layout, was also made in line the Interim Position Statement on Housing Delivery (IPSHD), published in November 2020 to proactively identify means of boosting housing supply in the District. The IPSHD provides advice on the detail required of planning applications and how the Council will judge planning applications on their own individual merits with reference to the adopted Development Plan and national planning policy including the NPPF paragraphs 11 and 74. Clear preference is given

in this document to applications able to more effectively demonstrate expedited delivery, i.e. detailed schemes, rather than those outline in nature.

- 3.6 In tandem with the lack of pre-application advice, a decision was therefore made to progress with a more detailed scheme than the appellant would have necessarily liked to have submitted. On this basis, a focus on quality and a sensitive response to the immediate surroundings was employed leading to the 9 dwellings proposed in the form identified.
- 3.7 To provide variety to the streetscene, two differing house types were developed with each being designed to have a separate single storey studio space within its curtilage, providing a dedicated area for working from home, incorporating a flat, green Sedum roof. The green roof extends over the parking areas for each property.
- 3.8 The planning application proposed that all housing on the site would be market housing but that affordable housing would be provided as a contribution towards off-site provision as per the requirements of Policy 34 of the CLP. It was considered that this solution would allow for improved management of stock by an RSL on another site where the purchase of a greater number of units to enable for effective on-site control may be possible.

Access and Parking

- 3.9 Vehicular access to the proposed development has been proposed via a private road off Sturt Avenue at the south-eastern corner of the application site over which the appellant has rights of pass and repass. A Parking Management Proposal, as submitted with the planning application, was produced for Thames Water's review and sign off and subsequent a Statement of Common Ground regarding the proposals has also been signed between the appellant and Thames Water. This latter document forms **Appendix 1** to this submission and is a relevant material consideration given it makes provision for access and right of pass and repass over the private highway to the public highway on Sturt Avenue.
- 3.10 To enable access into the site from the private road, a new access bridge has been proposed over the River Wey. Extensive discussions have taken place with Thames Water and the Environment Agency to agree on these access arrangements, which in the case of agreements with the EA were completed post-decision. The

discussions with Thames Water were completed, enabling the signing of the SoCG, regarding safeguarding of the operation of its pumping station.

- 3.11 In this respect of agreements made between parties, an area for standing vehicles associated with Thames Water's operations has been provided within the application site, ensuring no unacceptable detriment to the flow of vehicular and pedestrian traffic on the access road. Whilst actual out of hours journeys to the site by Thames Water are minimal and usually managed, it is considered that provision of this area provides certainty regarding the free flow of traffic and responsible management of Thames Water's operations.
- 3.12 Within the development site, three allocated parking spaces, these being predominantly off-street and within carports, are proposed for each dwelling. 27 spaces have been proposed in total for the development. Secure cycle parking is provided in the carport areas of each property as shown on the ground floor layout drawings accompanying the application package and each of the properties has space on-site for installation of EV charging points.

Private Amenity Space and Landscaping

- 3.13 Each of the units is proposed to be provided with private amenity space in the form of a rear garden and first floor balconies. This not only provides for the amenity of future occupants, but also ensures that there is adequate spacing and screening between the proposed dwellings and the existing dwellings on Sturt Avenue.
- 3.14 A significant landscape buffer is retained on the northern and eastern sides of the site. This ensures the retention and protection of the existing trees, and additional landscaping works in this area will improve the setting of the proposed development.
- 3.15 The intent is that the landscape and ecological buffer will fall outside of the domain of future occupants to ensure longevity and control over the upkeep of this space. The appellant is willing to accept a planning condition in this regard.

4. Planning History

- 4.1 The only planning history found for the site on the Chichester District Council (CDC) online system at the time of the planning application related to coppicing works to various tree species and associated works (ref: LM/15/03043/TPA), which were actioned by the appellant as a woodland management exercise for treatment and removal of invasive non-native species that occupy significant areas of the site.

5. Pre-Application Consultation

- 5.1 A pre-application submission was made to CDC in February 2021 seeking advice as to the principle of residential development of the site. A site visit took place with the council on 20th July 2021, but no formal response was provided until 21st February 2022, after determination had been made on the planning application, ref: LM/21/00457/PRESM. The Council's Pre-Application advice forms **Appendix 2** to this submission.
- 5.2 It is considered that the lack of engagement from the Council, which continued in terms of provision of meaningful planning guidance during the application process, is a very unfortunate position as it precluded the client from responding positively to some of the matters subsequently raised, with particular reference to RfR3 which had been submitted and could have been discussed and RfR4 which was in the process of being resolved with the Environment Agency at the point of determination; this being before the end of the agreed extended determination period and further to a number of update emails being sent to the Council explaining the nature of ongoing discussions relating to detail that was outstanding and due for submission.
- 5.3 Further assessment of relevant issues, including a response to the belated pre-application advice, is set out in Section 7, Case against the Reasons for Refusal.

6. Relevant Planning Policy

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations, such as those in the National Planning Policy Framework, indicate otherwise.
- 6.2 Within their reasons for refusal, the Council refer to Policies 25, 33, 34, 42, 48, 49, and 52 of the Chichester Local Plan (CLP), Criterion 7 of the Interim Position Statement for Housing Delivery (IPSHD), Policy H12 of the Haslemere Neighbourhood Plan and Paragraphs 124, 127 (a), (b), (c), (d) and (f), 130, 161, 162, 163, 164, 167, 174, 183 (a) and 185 of the National Planning Policy Framework (as amended, 2021).

Chichester Local Plan 2014 - 2029

- 6.3 The Chichester Local Plan 2014 – 2029 (CLP), adopted in 2015, provides the broad policy framework and a long-term strategy to manage development, protect the environment, deliver infrastructure and promote sustainable communities within Chichester District, excluding the area within the South Downs National Park. The plan period extends to 2029. Until such time that the Chichester Local Plan Review (LPR) is sufficiently progressed to carry material weight, it will form the core basis of decision-making in the District.
- 6.4 The CLP will continue to form part of the statutory development plan until the LPR is adopted, however Planning Practice Guidance makes clear that where local plans have been adopted more than 5 years ago, as is the case with the CLP, the housing target against which the housing supply and delivery will be assessed should be derived from the Government’s standard methodology for assessing housing need. From the 15 July 2020 (five years from the date of adoption of the CLP), the Council’s housing supply and housing delivery is assessed against a calculation of Local Housing Need, as set out in national policy and guidance, rather than the previously adopted housing target of 435 dwellings per annum. It is considered that the Council’s 5YHLS position and assumptions made in this regard should be afforded weight in decision-making.

6.5 Policy 25 governs 'Development in the north of the Plan Area' and advocates the following:

"Provision will be made for small scale development in the North of the Plan area through Neighbourhood Plans and/or the Site Allocation DPD, in accordance with Policies 2 and 5. The Council will encourage and support development proposals and other initiatives that:

Conserve and enhance the rural character of the area, the quality of its landscape and the natural and historic environment;

Safeguard existing local facilities and expand the range of local facilities; and

Improve accessibility to facilities in nearby centres outside the North of the Plan area".

6.6 Policy 33 advises on relevant criteria for new residential development, stating:

"Planning permission will be granted for new residential development and replacement dwellings, where it can be demonstrated that all the following criteria have been met:

1. Proposals meet the highest standards of design;

2. Adequate infrastructure and provision for its future maintenance is provided;

3. Proposals provide for high quality linkage direct from the development to the broadband network;

4. The proposal provides a high quality living environment in keeping with the character of the surrounding area and its setting in the landscape;

5. The scheme provides an appropriate density of development. This will be determined by its immediate context, on-site constraints, the type of development proposed and the need to provide an appropriate mix of dwellings;

6. The proposal respects and where possible enhances the character of the surrounding area and site, its setting in terms of its proportion, form, massing,

siting, layout, density, height, size, scale, neighbouring and public amenity and detailed design; and

7. The proposal has taken into account the need to promote public safety and deter crime and disorder through careful layout, design and the use of Secured by Design principles and standards”.

6.7 Policy 34 sets out the Council’s expectations in terms of affordable housing delivery. Relevant parts of the policy are as set out below:

“A 30% affordable housing contribution will to be sought as part of residential development where there is a net increase of dwellings.

2. On sites of 6 to 10 dwellings in areas designated as rural areas under section 157 (1) of the Housing Act 1985 the Council will seek a financial contribution for the provision of affordable dwellings as a commuted sum unless the developer makes onsite provision.

3. Where the affordable housing calculation results in fractions of homes, the fraction will be sought as a commuted sum;

5. Where a commuted sum is accepted, the payment should reflect the cost of providing the number, type and size of affordable dwellings which would have been provided on-site.

The affordable housing to be provided on site will be required to be affordable tenures, as defined in the National Planning Policy Framework”.

6.8 Policy 34 of the CLP governs affordable housing of which criterion 2 applies to the appeal site:

“2. On sites of 6 to 10 dwellings in areas designated as rural areas under section 157 (1) of the Housing Act 1985 the Council will seek a financial contribution for the provision of affordable dwellings as a commuted sum unless the developer makes onsite provision”.

6.9 Policy 42 of the CLP advises on Flood Risk and Water Management, setting a series of criteria for planning applications, as follows:

"Flood and erosion risk will be taken into account at all stages in the planning process to avoid inappropriate development in areas at current or future risk, and to direct development away from areas of highest risk.

Development in areas at risk of flooding as identified by the Environment Agency flood risk maps will be granted where all the following criteria are met:

- 1. The proposal meets the sequential and exception test (where required) in relation to the National Planning Policy Framework; (Our emphasis)*
- 2. A site-specific flood risk assessment demonstrates that the development will be safe, including the access and egress, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall;*
- 3. The proposal incorporates specific requirements of the site, and protection, resilience and resistance measures appropriate to the character and biodiversity of the area;*
- 4. Development would not result/exacerbate coastal squeeze of any European sites or prevent managed realignment that may be required to ensure no adverse effect on European sites as a result of coastal squeeze;*
- 5. The scheme identifies adaptation and mitigation measures;*
- 6. Appropriate flood warning and evacuation plans are in place; and*
- 7. New site drainage systems are designed taking account of events which exceed the normal design standard i.e. consideration of flood flow routing and utilising temporary storage areas.*

All development will be required to ensure that, as a minimum, there is no net increase in surface water run-off. Priority should be given to incorporating Sustainable Drainage Systems (SuDS) to manage surface water drainage, unless it is proven that SuDS are not appropriate. Where SuDS are provided arrangements must be put in place for their whole life management and maintenance.

In locations where strategic flood defence or adaptation measures are necessary within the site itself, proposals will be required to demonstrate how measures have

been incorporated as an intrinsic part of the scheme in a manner which meets the requirements to manage flood risk.

All development proposals must take account of relevant Surface Water Management Plans, South East River Basin Management Plan and Catchment Flood Management Plans and related flood defence plans and strategies. Financial contributions may be required from development on sites where measures to address flood risk or to improve the environmental quality of watercourses have been identified by these plans and strategies and in accordance with the overall objective of the Water Framework Directive.

The reports prepared as part of the criteria above must demonstrate that the development is safe and will not increase flood risk elsewhere; will reduce overall flood risk and take into account contingency allowances, addressing climate change as set out in the NPPF Technical Guidance and the relevant Shoreline Management Plans and Coastal Defence Strategy”.

6.10 Policy 48, Natural Environment, similarly sets out guidance for development proposals:

Planning permission will be granted where it can be demonstrated that all the following criteria have been met:

1. There is no adverse impact on: - The openness of the views in and around the coast, designated environmental areas and the setting of the South Downs National Park; and - The tranquil and rural character of the area.

2. Development recognises distinctive local landscape character and sensitively contributes to its setting and quality;

3. Proposals respect and enhance the landscape character of the surrounding area and site, and public amenity through detailed design;

4. Development of poorer quality agricultural land has been fully considered in preference to best and most versatile land; and

5. The individual identity of settlements, actual or perceived, is maintained and the integrity of predominantly open and undeveloped land between settlements is not undermined.

6.11 Policy 49 dictates the Council's approach to biodiversity, citing:

"Planning permission will be granted for development where it can be demonstrated that all the following criteria have been met:

- 1. The biodiversity value of the site is safeguarded;*
- 2. Demonstrable harm to habitats or species which are protected or which are of importance to biodiversity is avoided or mitigated;*
- 3. The proposal has incorporated features that enhance biodiversity as part of good design and sustainable development;*
- 4. The proposal protects, manages and enhances the District's network of ecology, biodiversity and geological sites, including the international, national and local designated sites (statutory and non-statutory), priority habitats, wildlife corridors and stepping stones that connect them;*
- 5. Any individual or cumulative adverse impacts on sites are avoided;*
- 6. The benefits of development outweigh any adverse impact on the biodiversity on the site.*

Exceptions will only be made where no reasonable alternatives are available; and planning conditions and/or planning obligations may be imposed to mitigate or compensate for the harmful effects of the development".

6.12 Policy 52 of the CLP considers Green Infrastructure, noting:

"Development will be expected to contribute towards the provision of additional green infrastructure and protect and enhance existing green infrastructure. Planning permission will be granted where it can be demonstrated that all the following criteria have been met:

1. *The proposals maintain and where appropriate contribute to the network of green infrastructure i.e. public and private playing fields, recreational open spaces, parklands, allotments and water environments;*
2. *The proposals contribute to improving the health and well-being of the local and wider community;*
3. *Where appropriate, the proposals incorporate either improvements to existing green infrastructure or the restoration, enhancement or creation of additional provision/areas;*
4. *Where appropriate, the proposals incorporate either improvements to existing ecology and biodiversity or the restoration, enhancement or creation of additional habitat and habitat networks;*
5. *Where appropriate, the proposals incorporate either improvements to existing trees, woodland, landscape features and hedges or the restoration, enhancement or creation of additional provision/areas;*
6. *Where appropriate, the proposals create new green infrastructure either through on site provision or financial contributions. Where on-site provision is not possible financial contributions will be required and be negotiated on a site by site basis; and*
7. *The proposals do not lead to the dissection of the linear network of cycleways, public rights of way, bridleways and ecological corridors such as ancient woodlands, hedgerows, ditches and water environments.*

Such provision will be required in accordance with adopted policies and strategies relating to green infrastructure and biodiversity network provision. Development that will harm the green infrastructure network will only be granted if it can incorporate measures that avoid the harm arising or sufficiently mitigate its effects”.

Interim Position Statement on Housing Delivery, 2020

- 6.13 *Criterion 7 of the IPSHD identifies that "Development proposals should set out how necessary infrastructure will be secured, including, for example: wastewater*

conveyance and treatment, flood mitigation and defence, affordable housing, open space, and highways improvements.

Relevant policies include:

CLPKP Policy 9 Development and Infrastructure Provision

CLPKP Policy 12 Water Management in the Apuldram Wastewater Treatment Catchment

CLPKP Policy 34 Affordable Housing

CLPKP Policy 54 Open Space, Sport and Recreation

LPR Policy S6 Affordable Housing

LPR Policy S12 Infrastructure Provision

LPR Policy S31 Wastewater Management and Water Quality”

Planning (Listed Buildings and Conservation Areas) Act 1990

- 6.14 Section 66 concerns general duty as respects listed buildings in exercise of planning functions and states:

"In considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

National Planning Policy Framework (NPPF)

- 6.15 The NPPF sets out the government's planning policies for England and how these should be applied. The sections of the Framework of most relevance in this case are summarised below.
- 6.16 Paragraph 8 explains the purpose of the planning system is to contribute to the achievement of sustainable development. This means that the planning system has

- three overarching objectives which are interdependent and need to be pursued in mutually supportive ways. These comprise economic, social and environmental objectives.
- 6.17 Paragraph 11 confirms that planning policies and decisions should achieve sustainable development and should be approved without delay if in accordance with an up-to-date development plan. Where there are no up-to-date plan policies, as is in the case in Chichester District, Paragraph 11(d) confirms that permission should be granted unless the policies in the framework provide clear reasons for refusal or the adverse impacts will significantly and demonstrably outweigh the benefits.
- 6.18 Paragraph 38 relates to decision making and states that: *"Local Planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available...and work proactively with appellants to secure developments that will improve the economic, social and environmental conditions of the area"*. (Our Emphasis)
- 6.19 Paragraph 60 confirms the Government's objective of significantly boosting the supply of homes. Paragraphs 74 to 77 confirm the obligations on LPAs to ensure a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing, including buffer, against their housing requirement set out in adopted strategic policies. In addition, LPAs should maintain the supply of housing through the Housing Delivery Test.
- 6.20 Paragraph 69 recognises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities are requested to *inter alia* identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; and support the development of windfall sites, such as this, through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes.
- 6.21 Paragraph 105 seeks to focus significant development on locations which are or can be made sustainable.

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- 6.22 Paragraph 119 of the NPPF encourages planning policies and decisions to promote an effective use of land in meeting the need for homes. Following paragraph 120(d) outlines the need for planning policies and decisions to promote and support the development of under-utilised land, especially if this would help to meet identified needs for housing where land supply is constrained, as is the case in Chichester District.
- 6.23 Section 12 of the NPPF recognises that the importance of high quality buildings and places is fundamental to what the planning and development process should achieve.
- 6.24 Section 15 of the NPPF focuses on conserving and enhancing the natural environment. Within this, paragraph 174 states that *inter alia* "Planning policies and decisions should contribute to and enhance the natural and local environment by:
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate. (Our emphasis)*
- 6.25 Paragraph 175 also seeks to delineate land to support development where appropriate and to conserve the most precious environmental land, stating that "Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries".

7. Case Against the Reasons for Refusal

Presumption in favour of Sustainable Development

- 7.1 The relevant part of the Development Plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029, as adopted in 2015. The plan did not address the housing needs for the area and was only found sound on the basis that it would be subject to the Council immediately starting a review. Whilst this review has indeed started, it is notable that the Council has a number of constraints within the District and that the process has become significantly delayed, leading to the publication of the IPSHD and more recent calls within the Council to challenge the standard methodology and seek to deliver a lower quantum of housing than has been identified.
- 7.2 Appeal submissions made by Welbeck Land and Berkeley Strategic strongly question the Council's ability to demonstrate a five-year housing land supply (5YHLS) and in respect of the former of the above two sites, the Inspector recently concluded that the Council only has a 4.6 year housing land supply. Relevant extracts from the appeal submissions and the Welbeck Land Appeal Decision are set out in **Appendix 3** of this submission, which clearly identify that the required housing supply is not intact and that there are also wider concerns regarding deliverability of part or all of certain sites within the District alongside errors in the housing requirement figure for the 5YHLS calculation, which is considered to be 689 dpa and not the 634 dpa upon which the Council's figures are based.
- 7.3 In light of submissions and the recent appeal decision made, it is evident that the 'titled balance' will apply in decision-making.
- 7.4 Through the various submissions made, both during the application process and subsequently as part of this appeal; the latter being caused by the Council refusing the application ahead of the expiration of the agreed period for determination (and in knowledge that further information was in the process of being supplied – this detail forms **Appendix 4** to this submission), it will be demonstrated in following paragraphs that there are no technical or environmental constraints to the development of the site, which cannot otherwise be dealt with via agreed mitigation.

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- 7.5 The Appeal Scheme will deliver a small, but high-quality development of 9 new homes including a contribution to affordable housing in line with policy, which is considered to form a significant and substantial benefit given acute affordable housing need and the shortfall in market housing identified in the District at a time of national housing crisis. It is important to note that in the 'Bulk and Scaling' section of its pre-application advice, the Council states the proposed development would likely be appropriate for 15-24 unit scheme, in this regard it is clear that a 9 unit scheme could not be regarded as 'over development' on this basis.
- 7.6 As noted above, the Council's Local Plan review is significantly behind the envisaged timetable such that the current housing policies are now out of date and do not meet current housing need.
- 7.7 Whilst it is acknowledged that there will be some limited localised harm associated with the development of a greenfield site, the adopted and emerging Local Plans do make assumptions for greenfield development to come forward to meet both current and future housing need; indeed this is a site that was initially allocated within the Site Allocations Proposed Submission Development Plan Document for this very purpose. It is also important to note that the site is occupied to a significant extent by Invasive Non Native Species, which the proposals will help eradicate.
- 7.8 The appellant does not need to rely on the absence of a 5YHLS to make the case for planning to be granted, but in light of the evidence supplied in Appendix 3, it is a strong material consideration and it is therefore important that weight is given within decision-making to the benefits of granting permission.
- 7.9 The following paragraphs, dealing with the reasons for refusal (RfR) will respond to Local Plan policy as cited by the Council in its refusal. Should the Inspector's assessment of the proposals find some conflict with the Development Plan, not outweighed by material considerations, as noted above there is still need for consideration of the scheme against the application of the tilted balance, which applies as the most important policies of the Development Plan are out of date and in absence of a 5YHLS.

Reason for Refusal 1: Backland Development, Layout and Character of the Area

- 7.10 Taking the first part of the reason for refusal, the introduction of significant backland development, resulting in an incongruous form of residential development, it is notable that the Council itself allocated this site for residential development, this being progressed to a relatively mature stage of consideration. As noted in the Planning Officer's Report "*The site was previously proposed for allocation in the Regulation 19 Site Allocations Proposed Submission Development Plan Document, however the Main Modifications to the DPD proposed to remove the site due to the unresolved issues with flooding and access.*". The Inspector concurred with the Council's view, but importantly the site was not removed from the DPD on the basis that it formed an unacceptable location for residential development.
- 7.11 The Council has significant problems in terms of identifying sites for housing, as noted in its most recent Local Plan Review newsletter, attached as **Appendix 5** to this document; this also citing the lower 638dpa 5YHLS figure, rather than the higher 689dpa target suggested in both Berkeley Strategic and Welbeck Land's appeal documents.
- 7.12 Whilst it is recognised that the Council is subject to very significant international, national and local designations that restrict development in much of the District, in line with Paragraph 175 of the NPPF the Council should distinguish between such areas and other sites potentially considered to hold environmental value in order to allocate land with the least environmental or amenity value. The Council in allocating this site within the SAPSPD for residential development and progressing it to Reg 19 stage clearly did consider such matters and our later response to the other reasons for refusal will identify that an agreed technical response has been found in respect of the flooding and access matters that led to removal of the site from this document. In this regard, it is considered that consistency in decision-making should be applied and the site recognised as a location where the principle of residential development is accepted.
- 7.13 Turning to character of the area, as set out in the Design and Access Statement submitted with the planning application, there are a variety of housing styles evident in the local area; the heterogeneity of this even in Sturt Avenue is evident as Figure 1, overleaf, highlights. The designs chosen for the site were therefore so

done to be more reflective of the immediate location, as well as to provide for a high-quality development that will more than complement its surroundings.

- 7.14 It is understood that design is subjective. Certain decisions also had to be made by the Project Team given the lack of pre-application or post-submission advice by the Council throughout the planning process. Notwithstanding this, the design and layout chosen was done to provide for a lower-impact, more sustainable and sensitive built form, reflecting immediate surroundings, rather than Sturt Avenue in general.



Figure 1: Sturt Avenue, featuring a variety of design styles, colours and finishes

- 7.15 In this regard, it is important to note the contrast between Sturt Avenue and the appeal site. The site is accessed by a private lane and it is apparent that at the point of entry there is a change in character, as Figure 2, overleaf, demonstrates. Houses that abut the site boundary to the north and east are more individual in character and also larger in size than that typical of Sturt Avenue.

- 7.16 The length of private lane to the site access is also dominated by a large residential property of a white render appearance, sat in a sylvan environment. The proposed development has taken some cues from this building and has sought to deliberately express itself differently, but appropriately.

7.17 Taking the above into account, it is clear that the site is separate and the design and layout seeks self-containment. The low density, landscape-led approach is appropriate to this edge of settlement location. It is considered inappropriate to seek to reinforce the pattern of estate development that exists to the south and a small development of 9 houses responds well in terms of context.

7.18 The layout of the site has been designed not only to reflect the surroundings, but to provide sensible buffers to existing housing, to provide ecological mitigation, allow for a waiting area for Thames Water vehicles and to retain the most important trees on site. The density of development at 9 dwellings on a 0.62ha site is 14.5dph, which is substantially lower than that on Sturt Avenue and which is considered appropriate to the site and the philosophy of providing a high-quality, self-contained scheme.



Figure 2 – Private Lane access to the site from the end of Sturt Avenue

7.19 The decision to provide studio space was so done in response to changing living habits seen during and post-pandemic, allowing an external space for work and leisure. It is considered that such space forms part of the amenity space for each of the dwellings. There is a variety of external spaces available to each property, some larger, some smaller, but all form effective and usable spaces for the enjoyment of occupants.

- 7.20 The elevations provided clearly demonstrate that dwellings are neither top-heavy nor feature stark, blank elevations within the streetscene. Blank elevations are provided between houses, as is the case with most modern development to ensure privacy and amenity. The form of dwellings has been chosen to provide for a lower overall roof height, helping the scheme to bed into surrounds in a more respectful and sensitive manner. The flat roof also allows for PV panels and green roofs to be provided to each dwelling and studio, enhancing the environmental credentials of the development.
- 7.21 To conclude, the development is not intended to be a carbon copy of its surroundings, but a self-contained, intentionally modern and energy-efficient scheme, taking cues from more immediate and relevant surroundings in terms of colour palette. Whilst submitted in detail, planning conditions could be used to provide more control over materiality to help define the exact look and feel of dwellings should this be considered appropriate; for instance, the use of more wood on facades to recognise the sylvan context in which the development is set.

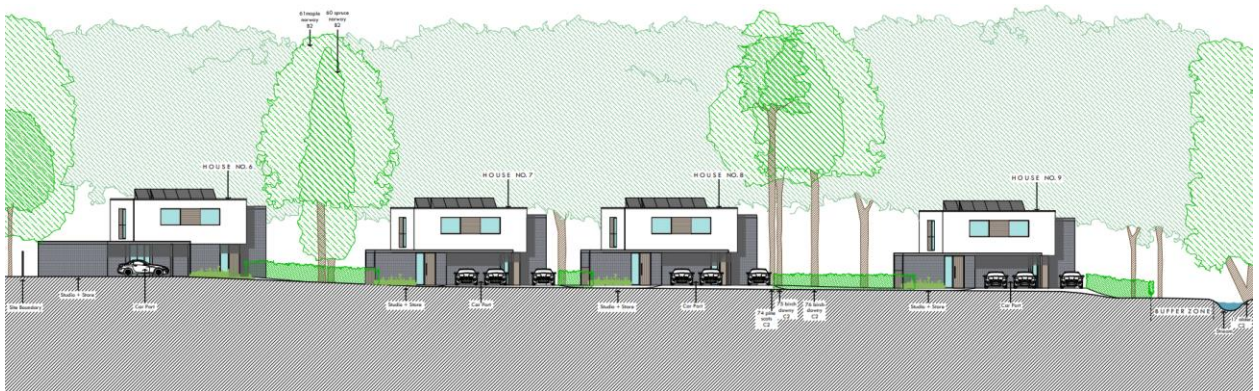


Figure 3 – Extract from drawing number STU002 P2 showing north-west street scene elevation

Reason for Refusal 2: Proposed Housing Mix and Affordable Housing

- 7.22 It is recognised that the scheme does not bring forward a significant diversity in housing mix. This in itself is not unacceptable. Planning policy on housing mix and the HEDNA that supports it identifies the mix of units required across the District. How this is delivered on a site by site basis will vary according to the local context; some locations will lend themselves to higher density, smaller units and perhaps

flatted accommodation, whilst edge of settlement sites will generally lend themselves to forms of family accommodation. Paragraph 4.9 of the IPSHD acknowledges this, stating inter alia that "*Sites should also be acceptable in all other respects...and should reflect the needs of local communities, in relation to the amount, size, type and mix of housing tenures proposed*".

- 7.23 It is notable that the Council is considered not to have a 5YHLS and has by its own admittance difficulties in delivering on the housing need identified by the standard methodology. In this regard, the scheme does meet requirements in that it is providing much-needed housing, meeting the 10 – 20% requirement for 4-bedroom properties across the District.
- 7.24 The allowance for windfall sites assumed in the District is also optimistic. The Lambert Smith Hampton Critical Friend Report 2021 identifies that provision should be made within the housing supply figures for 71 dwellings per annum to be delivered via this source. Whilst submissions made by Berkeley Strategic and Welbeck Land advise that a significant number of dwellings should be removed from the windfall allowance because the Council has not provided the compelling evidence to justify a windfall allowance of 422 dwellings in the 5YHLS, it is also clear that sites such as the appeal site would also count towards the windfall allowance and are therefore necessary for the Council to fulfil its 5YHLS requirements, irrespective of mix.
- 7.25 Looking further at housing requirements across the District, it is notable within Table 10 of the Council's Annual Monitoring Report, reproduced in full as **Appendix 6** for reference, that in terms of net additional dwellings completed there is a shortfall across the period from 2012 – 2021 of 67 dwellings. Similarly, on a Parish basis net completions from 2012 – 2021 identifies an outstanding commitment of 10 houses for Lynchmere Parish. It is contended that the appeal site will help work towards meeting both of these identified requirements for the District and Parish.
- 7.26 In terms of this site, and in line with paragraph 4.9 of the IPSHD, the chosen quantum and mix reflects the surrounding environment, allowing for a low-density, sensitively located development to come forward. Whilst responses from the Highway's Authorities have identified that the access to the appeal site can more than accommodate identified pedestrian and vehicular movements associated with

the scheme, it was determined to provide a lower number of overall units in recognition of the use of the lane by Thames Water and to bring forward a low impact development in terms of traffic movement and footfall. Reconciling the on-site constraints and responding to pre-application discussions with Thames Water, these enabling a Statement of Common Ground to come forward between parties were the primary determinants in terms of setting the design and layout, including mix, which for the reasons given above are considered appropriate to the location and sufficiently compliant with relevant planning policy.

7.27 Looking at the second part of RfR2, it is clear that discussions with the Council leading to agreement on S106 Heads of Terms would have been sufficient to resolve this matter. The appellant has made it clear in submissions that it is willing to provide a financial contribution for the provision of affordable dwellings as a commuted sum in line with criterion 2 of Policy 34 of the CLP which governs delivery on sites of 6 to 10 dwellings in areas designated as rural areas under section 157 (1) of the Housing Act 1985, as is the case for the appeal site.

7.28 It is clear that the scheme meets housing need in the District; need which is acute and unfulfilled on a District and Parish level in terms of both quantum and mix. It is further considered that the appellant has sought to provide a policy-compliant approach to the provision of affordable housing and that agreement on S106 matters as part of the appeal would be sufficient to satisfactorily resolve this matter. Taking this into consideration, it is contended that the proposed scheme satisfactorily meeting the broad requirements set out in the updated HEDNA (2020) and Policy 34 of the CLP in respect of affordable housing whilst also working towards meeting currently missed housing targets as identified in the Council's most recent AMR.

Reason for Refusal 3: Absence of a site-specific FRA

7.29 A site-specific FRA was submitted with the initial planning application. In this regard, it is not understood why the Council sought to apply RfR3. Nevertheless, for completeness the following paragraphs set out the work undertaken and conclusions reached, which clearly identify that the sequential and exceptions tests are applied and passed as appropriate and that relevant detailed consideration of flooding and drainage matters has been incorporated into scheme design.

7.30 The flood zone in the vicinity of the site has been relatively recently remodelled and the flood zones updated on the Environment Agency's (EA) website. As identified in the Appendix 2 of the Planning Statement submitted with the application, the developable area of the site is within Flood Zone 1. A small area within Flood Zone 2 is located within the ecological buffer proposed around the site perimeter and the on-site drainage and increased capacity associated with this provide required mitigation. Discussions with the EA have been undertaken to ensure that the approach to flooding and drainage accords with requirements and a further, detailed report has been prepared.

7.31 As notified to the Council during the determination process (one of the main reasons for seeking an extension of time for decision-making), the discussions with the EA were protracted and were sadly not able to be completed prior to determination of the application. Following subsequent completion of the discussions with the EA, the following is pertinent to the appeal:

- The development is indicated as being predominantly in Flood Zone 1 on the EA Flood Maps, other than one very small area to the north of the site which is indicated in Flood Zone 3. Therefore, the site is not considered to be at risk of fluvial or tidal flooding and will not require mitigation against these sources of flooding.
- The proposed development will result in an increase in the impermeable area of the post-developed site. The surface water runoff from the proposed development will discharge into the existing River Wey, located on the northern boundary of the site at a maximum rate of 18.2 l/sec. This flow will be controlled by an attenuation tank and hydrobrake.
- The attenuation tank will be 120m² x 0.6m deep to achieve the storage for the flow control.
- Based on flood level modelling data from the EA, the highest likely level of flooding at the site access bridge location is 123.660m. Further downstream adjacent to the main site, this level will be lower as the site falls away.

- The site is at low risk of surface water flooding. Plot 9 boundary will be positioned to be completely within Flood Zone 1.
- The site will significantly benefit from the attenuation measures put in place to control the discharge and flows of waters in a storm event. This will not only provide benefit to the site, but also to the wider surface water catchment.

7.32 Further detail in support of the scheme is submitted within the updated FRA and Drainage Strategy document, March 2022, which alongside the additional detail requested by the Council forms part of **Appendix 7** to this submission. Appendix K of this document lists outstanding matters requiring discussion and agreement with the EA. These are listed as:

- Agreeing the flood level at the proposed bridge position
- Agreeing the allowable freeboard from flood level to soffit of proposed bridge.
- FFL levels above general site level due to concerns over wet and waterlogged sections
- Finalised Bridge Details and bridge approaches

7.33 As set out in the EA's response of 27th January 2022 and 10th March 2022 to the detail submitted by Scott White and Hookins on behalf of the appellant, all matters have been satisfactorily dealt with and the EA, in principle, does not have an objection from a fluvial flood risk perspective to the proposals. The above advice from the EA is set out within **Appendix 8** to this submission.

7.34 The EA commented in its final letter of 10th March 2022 that due to potential wet and waterlogged areas noted on site that the proposed finished floor levels of the properties should be raised to avoid any potential flooding of properties. On Page 3 of the FRA Addendum it is confirmed that this has been incorporated where required into the design as already submitted, with reference to a site plan identifying a level difference of a minimum of approximately 450mm above existing ground levels. It was further noted that the on-site situation was also benefitted significantly by formally providing a drainage network to the site, allowing any surface water to drain away via the installed SUDS network.

- 7.35 Comments provided by the Council's Coastal and Drainage Engineer highlight a number of planning conditions to satisfactorily manage surface water drainage associated with the appeal site.
- 7.36 In light of the detailed work undertaken to identify a detailed surface water drainage solution, provision of on-site drainage including SuDS attenuation, it is clear that an appropriate technical solution has been arrived at; one that will be subject to further control via means of planning condition. Not only will the site solution enable development to come forward in a satisfactory manner, the provision of additional flood storage will have quantifiable benefits to downstream locations, which have been subject to historic flooding.
- 7.37 It is therefore considered that the scheme is fully compliant with NPPF policy governing this matter and that the significant, detailed due diligence undertaken allows much-needed housing to come forward whilst also rectifying existing flooding issues in the locality. On this basis, RfR3 is considered to be overcome.

Reason for Refusal 4: Exclusion of the private way from within the application site and lack of information concerning the proposed bridge

- 7.38 The private way is within the control of the appellant in that rights of pass and repass exist, as well as a Statement of Common Ground with Thames Water that covers agreement between parties in respect of the planning application and proposed methods of access to the site from the private lane, i.e. that pertaining to the bridge.
- 7.39 In line with that discussed as part of RfR3, discussions with the EA were not completed until March 2022, these also covering that related to the bridge location and design and so the decision made by the Council was again premature, not allowing such matters to be satisfactorily dealt with prior to appeal.
- 7.40 No works are required to the private road to provide passing places, these being already in situ. Likewise, no changes are proposed to the surfacing of the road. As such, only a minor widening at the site entrance to provide for a visibility splay is required, which will mainly comprise trimming of the existing hedgerow.

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- 7.41 As is notable from Page 3 of the updated FRA, bridge maintenance will be to standard highway details but will be managed via a Maintenance contract as part of the overall site upkeep and maintenance. The SoCG also puts in place a number of management provisions for the private lane to ensure that there is no impediment to the free flow of traffic.
- 7.42 To resolve matters related to works sat outside of the red line, two options are appropriate:
1. A Grampian condition is applied to any consent to provide adequate control to the scheme, for instance by preventing the start of a development until off-site works have been completed on land not controlled by the applicant. This would allow the applicant to apply for permission to cover the bridge and access works between its site and the private lane. The appellant will shortly a planning application to the Council in this regard (Planning Portal ref: PP-11235298) and would anticipate that the matter will receive approval given that no objections have been raised during the application in respect of the access proposals by either the local Highways Authorities or the EA – the later detail pertaining to the bridge related to ensuring certain clearances and flood requirements were met, rather than this affecting the point of access, swept paths etc. As such, there is no material change to the detail commented upon by the Highways Authorities, the appellant would, however, be willing to accept a planning condition to allow further review of the bridge and access in the event that consent is given.
 2. The appellant has submitted a planning application, as referenced above, to cover the bridge and access works between its site and the private lane. It would therefore be possible to link this scheme to that subject to the appeal by means of S106 Agreement, tying the two together and precluding development from commencing until both permissions are in place and relevant pre-commencement conditions have been discharged.
- 7.43 It is considered that information to set out the access proposals has been submitted and that this has been assessed and considered to be acceptable by the Highways Authorities consulted, as set out in the Transport Response to the decision which is submitted with this appeal.

7.44 The EA has also confirmed that the bridge proposals meet with required standards. As such, there is no impediment to the acceptable resolution of this matter and as part of this appeal options have now been able to be provided to reconcile land within the red line with that sitting outside of the site, allowing adequate control to all parts of the scheme as submitted.

Reason for Refusal 5: Net loss of Biodiversity, ecological surveys and on-site mitigation and management of Invasive Non-Native Species

7.45 The RfR states a net loss of 2.05 units – this is taken from an earlier iteration of the report which utilise the 2.0 Metric - The EcIA Rev 1.3 (dated 03/11/21) which utilises 3.0 shows a net loss of 1.62 habitat units. This formed part of the application package due to be submitted to the Council to respond fully to comments raised and is therefore submitted to support this appeal; reproduced in **Appendix 9**.

7.46 Off-site compensation has been identified and brought forward by the applicants, the details of which are provided at **Appendix 10** and is able to be secured by legal agreement. The mitigation land enables suitable offsetting potentially anywhere within the farm boundary, potentially on low distinctiveness cereal land or pasture (if required). It is understood that c.2ha of land may be required for this purpose, which has been confirmed as available.

7.47 The technical note produced by Ecology Co-Op, dated 3rd November 2021, states the required parameters for planting on the offsite compensation site in order to achieve a 10% net gain. Whilst this level of mitigation is not yet required by legislation, it is offered as part of the scheme in line with the appellant's commitment to biodiversity and ecological enhancement. It is considered that a pre-commencement condition to require the off-site compensation to be secured by legal agreement and delivered prior to development would provide adequate control over this matter.

7.48 In respect of bats, the EcIA states a likely absence of roosting bats from the site, this conclusion is the result of a Ground Level Tree Assessment which identified 5

trees with roosting potential and a subsequent climbing survey which downgraded each of those 5 specimens to 'negligible' potential.

- 7.49 Leisler's bat activity was recorded at Low – Moderate levels as analysed by ECOBAT software, if a roost were present within the local surroundings, one would expect significantly higher levels of activity to be detected. Whilst the species does employ its aerial hawking feeding behaviour above the woodland canopy it is not considered to be "predominantly a woodland species" (as in the case of Bechstein's). The following is taken from the Vincent Wildlife trust:

"Radio-telemetry studies have revealed that Leisler's bat forages over a range of habitat types including over cattle/sheep pasture, rivers, lakes, canals and forestry." - <https://www.vincentwildlife.ie/species/leislars-bat>

- 7.50 Furthermore, Leisler's bat (along with its close relative the noctule) demonstrates a high level of wing loading, that is that their long wings are designed for fast sustained flight over considerable distances. See below from the Vincent Wildlife Trust:

"Leisler's bats have long narrow wings and display high-speed agility but limited manoeuvrability. This wing shape enables fast, energetically-economical flight, suitable for rapid dispersal to distant feeding grounds"

- 7.51 This again supports the idea that it is unlikely the species is roosting within the site but it is easily capable of commuting through the landscape and foraging/commuting within/through the site at low-moderate activity levels.

- 7.52 CDC also make reference to Bechstein's bat which is an Annex II listed species under the Conservation of Habitat and Species Regulations. It should be stated that no records of this species are held by SxBRC or SBIC from within 1km of the site. Furthermore, whilst the bat activity surveys recorded low – moderate levels of Myotis activity within the site, this cannot be used as evidence for the presence of Bechstein's bat roosting or foraging within the site. Myotis calls cannot be accurately assigned to species levels due to significant overlap by all species of Myotis including Natterer's bat, Daubenton's bat and Whiskered/Brandt's bat all of which are far

more common than Bechsteins bat and are more likely to be foraging within the site.

- 7.53 The assessment of impacts on bats within the submitted EcIA are considered accurate and in-line with best practice guidance. As stated, the proposed development will not have any foreseeable impacts on roosting bats however impacts on foraging/commuting activity is considered significant at the local level in the absence of appropriate compensation.
- 7.54 Replacement woodland habitat creation is required to address this shortfall and this is stated within the EcIA. The applicant acknowledges this and has confirmed their intention to secure off-site habitat creation.
- 7.55 The response to invasive Non-Native Species (INNS) has been ongoing and consistent; a report setting out works undertaken on site in July 2021 is provided at **Appendix 11** for information. The appellant takes its responsibility in terms of management of INNS very seriously and in line with the Council's request an Invasive Species Management report was produced and was due for submission when the decision notice was prematurely issued. The INNS Mitigation Strategy has been produced and is reproduced at **Appendix 12** to set out the approach to on-site treatment of invasive species and long-term monitoring and management.
- 7.56 The reference within RfR5 to reptile mitigation appears to contradict the comments from the Council's Environment Officer, dated 24th December 2021 which state "*the mitigation detailed in section 5.7 of the PEA is suitable for this site. The loss of habitat should be compensated as per the PEA*"
- 7.57 Finally, the residual impact on nesting birds is acknowledged in the EcIA; this will be compensated through off-site woodland creation, the Council's Environment Officer's comments dated 24th December 2021 make reference to financial contributions which would be best dealt with through S106 and an appropriate condition. Notwithstanding this, it is considered that a Construction Environmental Management Plan (CEMP) could be put in place via planning condition to ensure that the recommendations made by Ecology Co-Op (and agreed by the Council) are subject to rigorous overview during the construction phase of any consented scheme.

- 7.58 Taking the above into account, it is clear that provisions have been put in place to ensure a net biodiversity gain associated with this project. The site, whilst green, is subject to very significant impact by INNS, requiring ongoing and consistent management. In this regard, the development represents an opportunity to deliver much-needed housing whilst enabling the appellant to eradicate the presence of on-site INNS through this project. Required details on bats, reptiles and birds has been provided to the Council and proposed mitigation strategies agreed, where appropriate, by the Council. To conclude, the proposals have been assessed as required and provide the necessary mitigation to allow development to progress. In this regard, it is strongly contended that RfR5 can be satisfactorily overcome and that the development can comply with stated local and national policy.

Reason for Refusal 6: Capacity of the Existing Water Network

- 7.59 This reason for refusal would usually form matters within a Statement of Common Ground between the appellant and Council ahead of the Inspector's determination. We would therefore ask the Council to review the advice provided below, dated 11th February 2022, from Thames Water, which clearly identifies the measures necessary to satisfactorily resolve the issue:

"Following initial investigations, Thames Water has identified an inability of the existing water network infrastructure to accommodate the needs of this development proposal. Thames Water have contacted the developer in an attempt to agree a position on water networks but have been unable to do so in the time available and as such Thames Water request that the following condition be added to any planning permission. No development shall be occupied until confirmation has been provided that either:- all water network upgrades required to accommodate the additional demand to serve the development have been completed; or - a development and infrastructure phasing plan has been agreed 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. Reason - The development may lead to no / low water pressure and network reinforcement works are anticipated to be necessary to ensure that sufficient capacity is made

available to accommodate additional demand anticipated from the new development”.

- 7.60 Whilst it is questioned whether this site is serviced by Thames Water (it is the appellant’s belief that the site is within SE Water’s remit), the advice given above nevertheless is universal in terms of applicability to the appeal site. In this regard, the appellant is willing to accept the above specified conditions, in doing so removing RFR6.

Reason for Refusal 7: Location within a Source Protection Zone

- 7.61 Similar to the reason given above, it is considered that, had sufficient time been provided by the Council to allow review of comments provided and submission to deal with matters (there was less than a week between Thames Water’s comments being made and the decision being issued ahead of the agreed extension deadline), then it would have been entirely possible to submit detail or agree appropriate conditions to resolve the issue.

- 7.62 Thames Water’s email of 11th February 2022 sets out an appropriate strategy for being with the matter:

“Following initial investigations Thames Water has identified that, the proposed development is located within Source Protection Zone of a groundwater abstraction source. These zones are used for potable water sources for public water supply for which Thames Water has a statutory duty to protect. Thames Water request that the following condition be added to any planning permission. “Development here by approved shall not commence until a Source Protection Strategy detailing, how the developer intends to ensure the water abstraction source is not detrimentally affected by the proposed development both during and after its construction has been submitted to and approved by, the local planning authority in consultation with the water undertaker. The development shall be constructed in line with the recommendations of the strategy. Reason - To ensure that the water resource is not detrimentally affected by the development”.

7.63 Paragraphs 4.5 and 4.6 of the updated FRA, submitted as Appendix 5, identify that relevant pollution indices and an initial mitigation strategy to deal with this matter, identifying the site being at a low risk of flooding from all sources. It is considered that further submissions and discussions could be held during any post-consent process to satisfactorily meet the requirements set out by Thames Water and that RfR7 can be overcome.

8. Planning Balance and Conclusion

- 8.1 It is our first contention that the proposals comply with relevant local and national policies and guidance. It is also important to note that there are no objections from statutory consultees; our engagement work during the application process has led to earlier concerns being fully responded to and detail provided to satisfy decision-makers on technical details. The location, land use and amount of development are also acceptable taking into consideration salient planning policy.
- 8.2 The first refusal reason concerns the location, layout and character of the area for which it is considered that rational arguments in support of the scheme have been made. The Council itself allocated the site for residential development and the need for this housing is not in dispute if reviewing the Council's recent publications, AMR reporting and housing need detail. The proposed layout is low-density and appropriate for the locality, providing a low-impact, reduced height, sustainable form of development that is more attuned to post-pandemic working requirements. There are myriad designs evident in the locality, each reflective of the era in which it is built. The proposals therefore reflect a more modern, contemporary approach that is sensitive to its surroundings.
- 8.3 The second reason for refusal relates to housing mix for which it is contended that the proposals meet with Council requirements. There is no hard and fast rule for what should be provided on a site by site basis and the IPSHD recognises that individual circumstances should dictate that appropriate. Taking into account the location and the desire to provide a low-impact, low traffic solution along the private lane, a decision was made to progress with the mix proposed, this in absence of any meaningful correspondence from the Council. Notwithstanding this, the proposals are considered to be appropriate to the locality and, perhaps more importantly, help the Council deliver on key housing delivery objectives, helping to tackle identified shortfall within the District and the Parish.
- 8.4 The third reason for refusal is partly moot in that a site-specific FRA was submitted with the initial planning application. This has subsequently been updated further to detailed and lengthy discussion with the EA. Responses from statutory consultees identify no objection to the proposals on flooding or drainage matters.

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- 8.5 Details relating to the bridge access to the site have been resolved subsequent to the planning decision being made and it is contended that both the EA and Highways Authorities are accepting of the details submitted. A number of mechanisms to appropriately reconcile works sitting outside of the red line have been suggested, alongside planning conditions to deal with later detailed design matters. As such, it is considered that the fourth reason for refusal can be satisfactorily overcome.
- 8.6 The fifth reason for refusal can be overcome through the on and off-site mitigation proposed, in particular, the Council's Ecologist has identified general acceptance of the approaches taken, whilst off-site mitigation to ensure biodiversity net gain has been identified and can be secured to meet requirements. Progression of the site for residential development will also provide the necessary means to eradicate significant invasive non-native species (INNS) on site.
- 8.7 The sixth and seventh reasons for refusal contradict advice provided by Thames Water that stipulates the appropriately worded planning conditions can be put in place to adequately control these aspects of the development.
- 8.8 Taking the above into account, it is clear that full and proper engagement between parties could have resolved the reasons given for refusal, allowing much-needed housing to come forward in a District that is subject to significant planning protection. The site allows housing shortfalls in the District and Parish to be satisfied.
- 8.9 Notwithstanding our above conclusions, Paragraph 11d of the NPPF sets out that where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, permission should be granted unless the policies in the framework that protect areas or assets of particular importance provide clear reasons for refusal or the adverse impacts will significantly and demonstrably outweigh the benefits. As such, the remainder of this statement considers the 'planning balance'.
- 8.10 Chichester District Council cannot demonstrate a five year supply of deliverable housing sites, and as such the development plan policies that were most important for the determination of the planning application are out of date – specifically the CLP Policies identified in the reasons for refusal.

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- 8.11 As such, the weight given to these policies should be significantly reduced. Given that the first reason for refusal is partly based on the location of the development, which is edge of settlement and in light of the previous allocation (the principle of which was not disputed, rather it was some of the technical considerations which have now been overcome), it is not considered that any perceived harm that should be given any significant weight.
- 8.12 The harm identified within the second reason for refusal carries limited weight as it fails to recognise the housing shortages at both District and Parish level, alongside its own advice regarding how decisions on mix should be applied in relation to site-specific circumstances.
- 8.13 The third and fourth reasons for refusal are technical matters for which solutions have been clearly identified and mechanisms suggested to ensure delivery. Similarly, the sixth and seventh reasons for refusal are moot and should not form part of decision-making on this planning appeal. The fifth reason for refusal fails to recognise the importance of containing the spread of INNS and the reality of what the site is in ecological terms. Against this, positive, beneficial mitigation has been identified and can be secured.
- 8.14 Against each of these reasons, it is considered that the out of date nature of the CLP and clear absence of a 5YHLS provides greater weight to the housing delivery that will be brought forward through the appeal scheme.
- 8.15 No further harm has been identified within the refusal of the application, and it is not considered that there are any further aspects that should be apportioned weight within the planning balance.
- 8.16 As such, if the Inspector is minded to agree that there are aspects of the proposals that have elements of unacceptability, it is important to identify that this harm would be significantly and demonstrably outweighed by the benefits of the Development, specifically the social benefits of contributing to the Council's five year housing land supply but also the economic and environmental benefits identified in this Statement and associated with the construction, occupation and management of the residential scheme.

8.17 Taking all of the above into account, it is therefore respectfully requested that the Inspector **allows** the appeal and grants permission in principle for the proposed development.

Appendix 1 - Statement of Common Ground with Thames Water, February 2022

Appendix 2 – Council’s Pre-Application Advice, February 2022

Appendix 3 - Relevant Appeal Extracts and 5YHLS Detail

Appendix 4 – Further information to respond to comments made during application process. Prepared, but not submitted, February 2022

Appendix 5 - Local Plan Review Newsletter, April 2022

**Appendix 6 – Chichester District Council, Annual Monitoring Report 2020 –
2021**

Appendix 7 - Updated FRA and Drainage Strategy document, March 2022

Appendix 8 – Environment Agency responses, January and March 2022

Appendix 9 – Revised Ecological Impact Assessment, November 2021

Appendix 10 – Proposed Biodiversity Net Gain, off-site mitigation

Appendix 11 – INNS Report, July 2021

Appendix 12 – INNS Mitigation Strategy, March 2022