

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

REBUTTAL OF COUNCIL'S STATEMENT
OF CASE

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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Appendix 1 – Correspondence regarding position of proposed BNG Land



1. Introduction

- 1.1 This document is submitted to respond to the Council's recently submitted Statement of Case in respect of the appeal against the Chichester District Council's (the Council) decision 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 Due to the movement of key personnel during the course of this appeal, Opus Works is now representing Casa Coevo.
- 1.3 The purpose of this document is to provide a succinct, but robust response to areas of disagreement and as such a response is provided against specific paragraphs, rather than focussing on responding to all matters set out in the wider reasons for refusal (RfR). For the purposes of structure, however, this document will respond to matters raised as follows:

Response to the Council's Statement of Case

Response to Thames Water's Statement of Case

Comments on Suggested Conditions



2. Response to the Council's Statement of Case

- 2.1 The Council's Statement of Case (SoC) is set out within paragraphs 6.1 to 6.39, with these covering the seven reasons for refusal given. Our rebuttal focusses on areas of disagreement with the SoC.
- 2.2 Paragraph 6.1 – The Council refutes the appellant's assertion that the attempted allocation of this site for housing demonstrates the acceptance of backland development. In providing its response, the Council fails to separate the principle of development from that relating to submitted detail. It is strongly contended that the Council considered that the principle of development on site was acceptable; the Council allocated the site in the Draft DPD. The site was later omitted on grounds of flooding and access, which at the time had not been satisfactorily overcome. It is agreed that the DPD doesn't seek to prescribe the detailed design or layout of potential sites, simply the principle, for which the Council initially considered the scheme as acceptable.
- 2.3 Paragraph 6.1. – The assertion that the site comprises backland development is challenged. The site is located to the rear of existing properties, but at significant distance. The site is also accessed by a separate lane which does not break the existing line of development in order to provide housing behind. In essence, the proposed development is no different to that at Orchard Close (which is situated behind properties on Sturt Avenue), Wey Gardens (which is situated between properties on Camelsdale Road and Sturt Avenue) and Hill Farm Close (which is situated between properties on Camelsdale Road and Orchard Close). The map overleaf demonstrates these relationships.
- 2.4 Paragraph 6.2 – The proposed layout responds appropriately to the immediate locality in which it is set. There is no policy precluding a development that is different in style; indeed, providing carbon copy streets and housing would lead to blandness in built form and lack of progression in design terms. It is contended that the design proposals are appropriate for the plot and the relatively self-contained nature of the development allows for a bespoke, highly sustainable approach to be progressed and it is noted that the Council in their response at paragraph 6.5 accept that a non-traditional approach could be acceptable. In this regard, it is considered that the development appropriately



challenges the mediocrity of the surrounding pattern of streets and presents a much-needed uplift to its character and appearance.

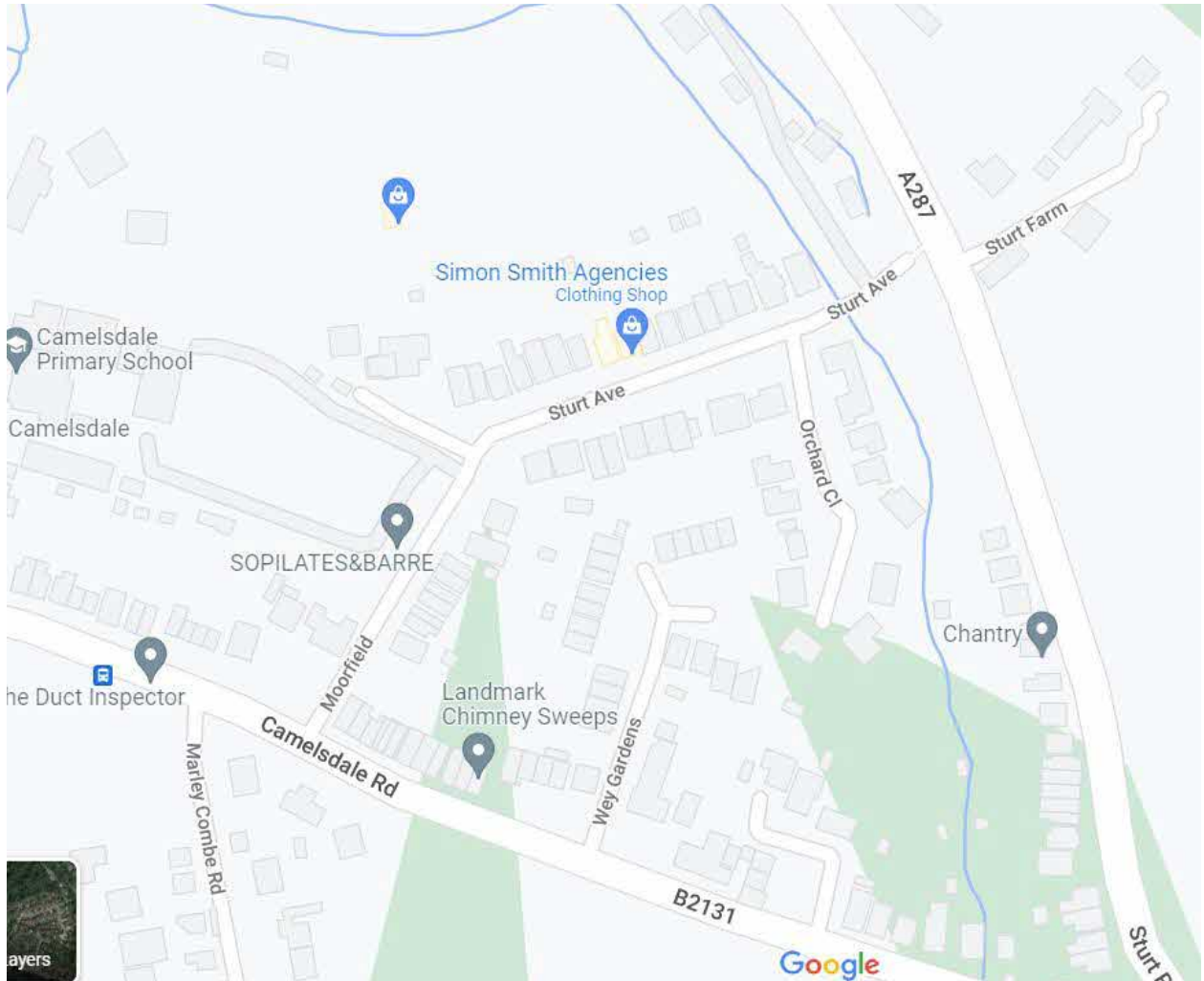


Figure 1: 'Backland' development at Orchard Close, Wey Gardens and Hill Farm Close

2.5 Paragraphs 6.3 and 6.4 - The Local Plan sets out a district-wide policy on development density. It is expected that in more urbanised locations that this density will be exceeded. Conversely in more sensitive locations, the density of development should reflect surroundings and design and layout should provide the necessary flexibility. In terms of the application site, a low-density, highly sustainable, modern approach has been taken, with the studio elements providing much-needed home working accommodation. This is a deliberate step-change in design and layout, providing the accommodation for today's working needs alongside spacious but manageable open



spaces without comprising bedroom space, as is the case for many families up and down the country who are adapting to a post-Covid working environment.

- 2.6 Paragraphs 6.5 and 6.6 – the applicant has sought to provide modern-looking, highly-sustainable villas in a sylvan setting. The proposed properties are low in overall height, being flat-roofed and photovoltaics (PV's) are well hidden behind a parapet wall. It may be possible to either reduce the pitch of the PV's, to slightly increase the parapet height or use a combination of both to ensure that this element is hidden from view if considered necessary and an appropriately worded condition could be applied to any consent to enable submission of this detail. It is evident from the sketch below that the properties are neither bulky nor top-heavy and poorly conceived. Additionally, existing screening at the site boundary, which is proposed to be strengthened with new planting will ensure that the properties are largely obscured from adjacent properties.



Figure 2: Sketch impression of properties at the appeal site

- 2.7 Paragraph 6.7 – the chosen palette is considered to be appropriate for the design and location and it is entirely possible to provide a form of white render that is protected from staining or indeed other cladding or composite options as an alternative. In this regard, the applicant is willing to consider alternative use of materials to meet with the Council's requirements and would be willing to accept a planning condition to control matters appropriately.



2.8 Paragraphs 6.8 and 6.9 – for the reasons given above, the applicant rebuts the Council's argument regarding design and layout. The scale of development is appropriate for the location, does not form backland development and represents well-considered and designed, modern accommodation pertinent for the needs of a post-covid workforce. Use of planning conditions as proposed can ensure that the Council has sufficient control over materiality should this be considered necessary.

2.9 It is further noted that significant variety in design aesthetic exists within close proximity of the site. The following photos evidence properties recently developed in Haslemere.



Figure 3: examples of contemporary properties within Haslemere

2.10 Paragraph 6.10 and 6.11 – The applicant agreed to providing the necessary financial contributions towards affordable housing via S106 Agreement and commits to agreeing matters, as appropriate, post-decision. The applicant is a small-sized



housebuilder with limited funds and it is considered inappropriate to progress an Appropriate Agreement or Draft S106 until such time that more certainty is provided regarding the appeal. Agreement in this manner provides the Council with the certainty that the consent can be subject to the appropriate legal control, with this certainty achieved through application of a negatively worded condition in line with Paragraph: 010 Reference ID: 21a-010-20190723 of National Planning Policy Guidance

- 2.11 It is important to recognise that whilst the Council (at para 6.22) considers that sufficient time was provided for such matters to be dealt with, no meaningful dialogue or discussion was progressed by the Council during either the pre-application or determination period (over a 12 month time period), which precluded such matters from being resolved. The applicant sought to extend the time period for determination a number of times, this primarily being to enable discussions with the Environment Agency to be concluded, following which the intent would have been to deal with planning conditions and S106 obligations. The Council was aware of the work being undertaken and yet sought to determine the application ahead of expiry of the time extended period, rather than seek further detail from the applicant regarding progress. At this time, the S106 had not been progressed as wider technical issues, such as that relating to flooding, required attention and until such time that agreement had been reached it was premature to progress other matters. The Council's inaction on the S106 also identifies this point.
- 2.12 Paragraph 6.12 and 6.13 – as noted above, the Council failed to discuss any pertinent detail during either pre-application or determination phases. Matters relating to mix could have been adequately resolved had discussions been held. Notwithstanding this, it is entirely appropriate to provide family accommodation in what is an area populated by houses of similar size. Delivery across the District needs to broadly comply with the HEDNA identified mix, which will naturally mean that brownfield and town centre sites will deliver smaller, typically flatted 1 and 2 bedroom development, whilst at suburban sites it would be expected to provide more 3 and 4 bedroomed family accommodation, as is proposed in this instance. The benefit provided through the delivery of housing is acknowledged, which is light of the Council's ongoing 5YHLS situation, is pertinent to the determination of the application and should be given positive weight.



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- 2.13 Paragraph 6.15 – The detail requested by the LPA was in the process of being developed in concert with the EA to achieve a satisfactory outcome and the planners were aware of this, hence our initial response regarding the prematurity of the decision made. Paragraph 6.16 seems to confirm that the issue has been subsequently and appropriately overcome.
- 2.14 Paragraphs 6.17 and 6.18 – The waterlogging issues on the site are known. The site levels appear to have been pushed and pulled over time through different people using the plot of land. As a result, due to the expected clay based ground, waterlogging does occur where the hollows and dips have been created on the site. The waterlogging issue is addressed in 5.2.10 of the FRA. This is achieved by raising the finished floor levels (FFL's) and putting in a formal SUDS system to manage and control the surface water on the site.
- 2.15 It is recognised that photographs have been submitted by third parties in respect of this appeal and that they show flooding in the locality. This is an existing phenomenon, caused by inadequate drainage, which development of the site will help ameliorate. As such, provision of a formal SUDS system represents a significant, local benefit that should be afforded weight in decision-making.
- 2.16 Paragraphs 6.19 and 6.20 – Sequential Test - The site is almost wholly within flood zone 1. There is a small, localised area in the north-east corner that is identified as Flood Zone 2/3, but which is not subject to development. This is highlighted in the FRA paragraph 4.1. Our consultants have identified this within the report and addressed this issue. The LPA refers to our paragraph 1.2 in the FRA, which sets out criteria for the sequential test, rather than specifics for the site.
- 2.17 In paragraph 5.2.9 of the FRA, our consultants identify the issue with the localised flood zone 2/3 issue and propose that the boundary is repositioned outside this area.
- 2.18 This means that developed areas of the site, including the access road and bridge all are positioned above the proposed flood levels as indicated by the EA in their product 5/6/7 information.
- 2.19 Paragraph 6.21 – the Council highlights non-adherence to Paragraph 024 of the DMPO, citing that the red line boundary should include all land necessary to carry out the



proposed development. In this regard, it is noted that all land either sits within the control of the applicant including all parts of the bridge access, or within that relating to Thames Water's ownership, for which the applicant has established rights of pass and repass. No parts of the land or access roads are within the control of the Local Highway Authority and so it was not necessary to extend the red line as requested; indeed all parts of the works and operation of the access road were subject to the SoCG between the applicant and Thames Water (we deal with this point further in the following section). In order to provide sufficient control/certainty over what is essentially a civil matter between the applicant and Thames Water, it is entirely possible to require a management plan to be approved prior via condition to commencement of the development. The management plan would be subject to a separate legal agreement with Thames Water, the details of which the applicant has committed to discussing and agreeing as an extension to the SoCG between parties.

- 2.20 Paragraph 6.22 – The assertion made by the Council is incorrect. At the time of submission it was considered that the bridge met with highways requirements and indeed both West Sussex and Surrey County Council Highways had no objections to that proposed. The change to the bridge arose as a consequence of discussions with the Environment Agency, this being unable to be concluded prior to determination being made by the Council.
- 2.21 Paragraph 6.23 – for clarity, works at the site entrance relate to that associated with the bridged access and the interface with the access road owned by Thames Water. Further improvements to the road, whilst not considered necessary given the short length of the road but considered to be a benefit to both residents of the development and Thames Water's operations, including PIR lighting and resurfacing have been discussed separately with Thames Water and could form part of any Management Plan agreed between parties and subject to submission and agreed as required by planning condition prior to commencement of development.
- 2.22 Paragraph 6.24 – the Grampian Condition was proposed as a means of overcoming what is considered to have been the premature determination of the application by the Council. The applicant has sought to reconcile matters through submission of a separate planning application for the bridge as noted by the Council and it was anticipated that the application would have been determined prior to submission of



final details to the Planning Inspectorate. The Council notes in its response that it is awaiting the outcome of consultation with the Environment Agency. Attention is drawn to the responses from the Environment Agency identifying no objection to the development, submitted as Appendix 8 in the Appellant's SoC.

- 2.23 Paragraph 6.25 – prior to submission of the planning application, a SoCG was agreed with Thames Water to ensure the free flow of traffic along the private access road. Further discussions have been held further to the unexpected recent response from Thames Water as set out in the next section. It is also drawn to the Inspector's attention that the applicant has rights of pass and repass along the road (as set out in Appendices 2 and 3 of the SoCG) and, in this regard, the onus on ensuring no impediment to two way travel lies equally on the applicant and Thames Water. The management provisions along the access road, as set out in Appendix 1 of the Planning Statement, would be expected to be agreed in detail and formalised as part of the wider Management Plan alluded to above.
- 2.24 Paragraph 6.26 – the desire to deal with the Bridge application proactively is welcomed, which it is considered would resolve the access issue. As part of the application made, it has been expressly noted that the bridge will not be implemented should the residential scheme not come forward.
- 2.25 Paragraphs 6.29 to 6.31 – it is considered that it is entirely possible to require a planning condition to cover a Biodiversity and Environmental Management Plan (BEMP) to provide full details of both the on-site and off-site ecological and biodiversity solutions. Allied to this, the client commits to entering a Planning Obligation to tie down both the location and quantum of land needed to meet the offsetting requirements, which can be achieved through application of a negatively worded condition in line with Paragraph: 010 Reference ID: 21a-010-20190723 of National Planning Policy Guidance.
- 2.26 It is noted that it is difficult to ascertain such land due to changing requirements relating to nutrient neutrality and the competition for land for ecological/environmental offset use in the locality. Nevertheless, significant discussions have taken place with the landowner's agent to help confirm the current position, the detail of which is set out in Appendix 1 to this document and which provides greater certainty regarding the ability to move forward.



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- 2.27 At this current time, and as identified by recent appeal decisions, only a net gain is required to meet policy. However, the applicant also commits to meeting a 10% net gain in biodiversity as a benefit to the proposed scheme; attention is drawn to the fact that the site is covered in invasive non-native species, which are included in the DEFRA Metric calculation despite the clear fact that they have a derogatory effect on the land. To reiterate that set out in paragraph 2.9, the applicant is a small-sized housebuilder with limited funds and it is considered inappropriate to progress an Appropriate Agreement or Draft S106 until such time that more certainty is provided regarding the appeal.
- 2.28 Paragraph 6.32 – the Council's acknowledgement that the on-site mitigation is satisfactory and the Invasive Species Management Plan meets requirements is welcomed.
- 2.29 Paragraphs 6.34 – 6.37 – the Council acknowledges that the issues raised by TW can be adequately addressed by a connection with SEW, who is the statutory fresh water supplier to the site.
- 2.30 In respect of the Council's comments regarding the Source Protection Zone in paragraphs 6.38 to 6.39, our consultants address this matter within the FRA at paragraph 4.5. It is also worth stating that the FRA highlights that there is Atherfield clay formation underlying the site which will provide a cap over any aquifers for any potential contaminant. As discussed in the FRA, the site in use, is low risk.
- 2.31 The Contractor would be expected to provide a Construction and Environmental Management Plan (CEMP) to outline how he will manage his site and stop the risk of pollution during construction and the Council's suggestion of a pre-commencement condition is therefore agreed.



3. Thames Water Statement of Case

3.1 It is worth noting at the outset that the SoCG was previously agreed with Thames Water (TW), but due to internal personnel changes, the agreement had to be revisited, this having without notice to the appellant prior to submission of comments in respect of the appeal scheme. Notwithstanding this, discussions have now taken place with Thames Water which have identified how to reconcile matters between parties; minutes between parties which evidence this have been drafted, but not yet fully agreed and therefore cannot be included in the rebuttal documentation (although TW Planning has responded). Following on from this, our response to matters raised is set out below.

3.2 Second paragraph – Details regarding how unrestricted access could be achieved along the access road were submitted to TW as part of the SoCG process. The management provisions are as set out in Appendix 1 of the Planning Statement, whilst the tracking and parking details are as set out in the Transport Statement (which also form part of approved plans in the SoCG). Notwithstanding this, TW's recent response, identifies that further work is required. To this end, a site visit was held on 1st November 2022 with TW site management and planning officials to discuss how to satisfactorily manage a number of matters, including the need to maintain access to TW's operations. It was noted that the use of adjacent land for residential development would provide benefit to TW in this regard, not only enabling vehicles to park away from the front gates if ultimately necessary, but by providing a better used thoroughfare less likely to be used for nefarious activity or subject to dumping of cars and other paraphernalia. Improvements to the road, as set out earlier in this report, were also discussed and it is the applicant's intent to formalise this within a Management and Maintenance Plan, which would need to be legally agreed between parties and then subsequently submitted to the Council for approval prior to commencement of development. Whilst the Council is concerned with control over the access road, this is a civil matter between the applicant and TW, both of whom stand to jointly benefit or suffer should the road become blocked. It is therefore inherent that both parties work together to resolve matters and TW's suggestion of an appropriately worded planning condition identifies a workable solution. Again, this can be achieved through application of a negatively worded condition in line with



Paragraph: 010 Reference ID: 21a-010-20190723 of National Planning Policy Guidance.

- 3.3 Third and fourth paragraphs – it is understood that the houses will be built in relatively close proximity to a working water treatment works (WTW). It is not unusual for dwellings to be erected near to less neighbourly uses and the properties in Sturt Avenue, on the access road and to the north will no doubt from time to time suffered from minor disturbance caused by proximity to the WTW. The applicant considers that residents moving into properties will be aware of their location and neighbouring uses, but to provide certainty to Thames Water, it is proposed to build into the Management and Maintenance Plan provisions (to be conditioned, as set out above) to make incoming residents aware of the position (within sales packs) and for this detail to be followed through to details within the title, so that future residents are also aware of the adjacent WTW. Whilst it is not considered necessary given that everyday WTW operations do not give rise to unsatisfactory and prolonged nuisance, the applicant nevertheless commits to an explicit covenant within sales packs and the title documentation to preclude objections from noise and disturbance relating to TW's operations. Such provisions exist and have been utilised in proximity to noise-generating activities, for instance residential development erected adjacent to the Ministry of Sound in London was subject to similar control. It is brought to the Inspector's attention that the above provisions are not considered wholly necessary and there are several examples of housing and TW operations living side-by-side across the South East. Notably, at Westbrook Mills in Godalming, where an appeal for 67 independent living and assisted care units is currently being progressed, TW has commented without providing similar regarding proximity to what is a significant infrastructure site and noise-generating location, ref: APP/R3650/W/21/3282091.
- 3.4 Sixth and seventh paragraphs – the comments made regarding the bridge are noted. As part of SoCG discussions both the bridge and vehicle tracking were designed to accommodate TW's largest delivery vehicles. Appendices 5 to 7 of the SoCG identify this detail. Subsequently the detail of the bridge was amended to align with EA requirements, this being as submitted for the ongoing bridge application currently under determination. The requirement to accommodate TW's largest delivery vehicles has been maintained in this regard. It is also considered that the requirement to maintain 24/7 access during construction can form part of the wider Management and



Maintenance Plan to be agreed with TW, controlled via planning condition. A Construction and Environmental Management Plan is also proposed by the Council as part of suggested conditions within Section 8 of their SoC.



4. Comments on Suggested Conditions

4.1 The appellant agrees to the wording of proposed conditions. In addition, and in line with that set out in this document, it is proposed that the following conditions are attached to any consent given to provide the requisite certainty to the Local Planning Authority regarding control over the development:

22. No development shall commence, including any works of demolition, until a Management and Maintenance Plan (MMP) has been submitted to and approved in writing by the Local Planning Authority. The MMP will require the agreement of Thames Water prior to submission to the Local Planning Authority. Thereafter the approved MMP shall be implemented and adhered to in perpetuity unless any alternative is agreed in writing by the Local Planning Authority. The MMP shall provide details of the following:

a) 24 hour management provisions on the access road

b) Proposed improvements to the access road, including, but not limited to lighting and resurfacing

c) Provisions to preclude complaints arising from occupiers of the residential development, in perpetuity, regarding TW's operations

23. Prior to any agreement being entered for a new occupation of the residential unit(s) hereby approved, the prospective occupier shall be informed of the accommodation's proximity to nearby noise-generating premises. All material used for advertising or marketing the residential unit(s) for letting or sale shall make it clear to prospective tenants and occupiers of these existing uses.

24. No development shall take place (including demolition, ground works, vegetation clearance) until a scheme ("the scheme") to ensure that there is a net gain of 10% in Habitat Biodiversity Units and Hedgerow Biodiversity Units as a result of the development has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be based on an accurate DEFRA Biodiversity Impact Assessment Calculator and associated accurate maps and shall include:

a) Proposals for on-site mitigation and/or for off-site offsetting;



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- b) A methodology for the identification of any receptor site(s) for offsetting measures;
 - c) The identification of any such receptor site(s);
 - d) The provision of arrangements to secure the delivery of any offsetting measures (including a timetable for their delivery) in perpetuity; and
 - e) A management and monitoring plan (to include for the provision and maintenance of any on-site and offsite offsetting measures in perpetuity).

The written approval of the Local Planning Authority shall not be issued before the arrangements necessary to secure the delivery of any offsetting measures in perpetuity been executed. The scheme shall be implemented in full accordance with the requirements of the scheme or any variation so approved.

25. In line with the provision of Policy 34 of the Chichester Local Plan, no development shall take place until a financial contribution and associated payment mechanism has been agreed in writing with the Local Planning Authority. The financial contribution will be in accordance with the rates set out within the Planning Obligations and Affordable Housing SPD.



5. Conclusions

- 5.1 The appellant has sought to respond to previously unresolved technical constraints on the proposed development site, these being the sole reasons for the site being deselected from the housing allocations process.
- 5.2 Subsequent discussions with the EA have evidenced that the site can be brought forward in an acceptable manner and, indeed, provision of a drainage solution on site can provide a wider local benefit to an existing flooding problem.
- 5.3 The appellant has rights of pass and repass along the access road and therefore it is implicit that both the appellant and TW maintain an open thoroughfare. The appellant has suggested a number of improvements to the access road that will benefit TW and its operations and discussions with TW have been ongoing to ensure that separate, civil matters can be resolved should a planning consent be forthcoming. TW's suggestion of a number of appropriately worded conditions is welcomed in this regard.
- 5.4 The site is also home to very significant invasive non-native species that the proposed development will eradicate, replacing this with native, more locally relevant, long-lasting species, as well as ensuring an overall biodiversity net gain.
- 5.5 Given consideration of the above factors that weigh in support of the application, the weight that should be applied to the Council's lack of dialogue during the pre-application and determination processes and premature determination, which would have allowed the majority of reasons for refusal to have been adequately dealt with, and in the absence of a five year housing supply meaning that a tilted balance applies in favour of sustainable development, it is respectfully requested that the appeal is allowed.



Appendix 1 – Correspondence regarding position of proposed BNG Land



Jonathan Walton [REDACTED]

Fwd: BNG

Kevin Soobadoo [REDACTED]
To: Jonathan Walton [REDACTED]

16 November 2022 at 13:05

Kind Regards

Kevin Soobadoo

Begin forwarded message:

From: [REDACTED]
Date: [REDACTED] Detail redacted to protect confidentiality. Can be provided upon request.
To: Kevin Soobadoo [REDACTED]
Cc: Kevin Soobadoo [REDACTED]
Subject: BNG

Dear Kevin

I understand that CDC have written to you, to seek clarification whether it's acceptable to undertake BNG at [REDACTED]. I'm fairly certain that this is a reaction to a sudden policy change at [REDACTED] whereby they are seeking to control how and where such mitigation measures take place.

I've had extensive conversations with [REDACTED] over the past 2-weeks. I can confirm that they are now content with [REDACTED] being used as a mitigation site. At their request, we are putting together a report that contain our proposals to create a wildlife corridor, which results in the connection of multiple SSSI's from [REDACTED] to [REDACTED]. The plan will have input from local officers at Natural England and [REDACTED] themselves. We are now moving forward, with a master (overarching) s106 agreement, that helps to cement these proposals and allow [REDACTED] to continue trading nitrate credits.

I had a long and detailed phone call with [REDACTED], who leads the [REDACTED] major projects and we specially discussed BNG. At the moment, there is no official guidance on BNG and therefore the [REDACTED] is not in a position to confirm how BNG will work. Furthermore, we're uncertain whether BNG can be used on nitrate land (i.e stacking), or whether it must be sited elsewhere.

I can confirm however, that [REDACTED] are very excited about BNG and how it can used to maximise the amount of land primarily used for nature. [REDACTED] has suitable land, either within or outside of areas identified for nitrate mitigation purposes and the [REDACTED] are supportive of the environmental corridor the landowner wishes to create, regardless of which mechanism is used to fund and create this.

Whilst you will not find, or be able to obtain, any formal confirmation that [REDACTED] can be used for BNG, because it too premature to obtain a statement or guidance from them, I hope the above will demonstrate that this is looking promising and is perhaps as far advanced as is it can be, bearing in mind the uncertainty around this policy at the current time.

[REDACTED]