

Chichester District Council would like to provide the following Statement of Case (SoC) for appeal reference **APP/L3815/W/22/3298478**, made under Section 78 of the Town and Country Planning Act 1990, by **Casa Coevo Group Ltd** against the REFUSAL BY CHICHESTER DISTRICT COUNCIL FOR **9 no. new dwelling houses and 9 no. carports/studios with associated access, infrastructure, parking, and landscaping**, under application reference **21/02428/FUL** at **Land North Of 1 To 16 Sturt Avenue Camelsdale Linchmere West Sussex GU27 3SJ**

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1.0 Introduction

1.1 This appeal has been 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. GU273SJ, planning application reference: LM/21/02428/FUL

1.2 The planning application was submitted to the Council on 9th August 2021, validated on 2nd September 2021 and the consultation period starting thereafter. The proposal attracted 106 letters of objection, including an objection for the Linchmere Parish Council. The scheme received no letters of support.

1.3 The Council refused the application on 18th February 2022 (**Appendix 1**) for the following reasons:

- 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 structure, 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.

2.0 Location and Description of Appeal Site

- 2.1 The application site is located to the north of Sturt Avenue within the Parish of Linchmere. The site comprises a back land (wooded plot) of land comprising approximately 0.6ha (1.5 acres) in total area; with two storey residential properties to the south, which back onto the site and front Sturt Avenue. There is a water pumping station situated to the east and north-east, with further woodlands to the west and north-east.
- 2.2 The site is heavily screened from public and private views due to natural tree and vegetative coverage. A blanket Tree Preservation Order (TPO), Woodland, W1 was placed on the site in 1993 - 93/00478/TPO consisting of various species of trees which includes Silver Birch, Rowan, Willow, Sycamore. The dense woodland planning contributes heavily to the rural character and quality of surroundings area.
- 2.3 The site is accessed via a private road (leading north from Sturt Avenue), which is owned by Thames Water (TW). The private road which serves a TW pumping station has a width of approximately 6.6m close to Sturt Avenue and then narrows to approximately 3.1m, before widening again. The appellants have a right of access over this private road to facilitate access to the site. The private road lies outside of the application site boundary.
- 2.4 The southern boundary of the site adjoins the northern settlement boundary of Camelsdale and Hammer, although no part of the site is within the identified settlement. The site also adjoins the boundary between the Chichester and Waverly Districts.

3.0 Planning History

- 3.1 The potential for housing development on this site has been considered at various stages over the last 12 years, though the Council Strategic Housing Land Availability Assessments (SHLAA), subsequently renamed Housing and Economic Land Availability Assessment (HELAA). There have been no previous planning applications on this site.
- 3.2 The site known as 'Land at Sturt Avenue' was assessed by the 2010 SHLAA (ID CH0820) as having no potential for development, due to the ecological and flood constraints. In the 2014 SHLAA the site had not been promoted since the call for sites in 2010 and was considered unavailable, and therefore excluded.
- 3.3 As a result of additional information, not available at the time of assessing the site under the SHLAA, the deliverability of the site was reconsidered, and it was proposed to identify the site for housing. A statement of common ground between TW and Casa Coevo Group was provided to clarify the appellants right of access over the TW access road. **(Appendix 2)** The site was subsequently allocated for housing within the Site Allocation: Proposed Submission DPD, under Policy LY1 (Land to the rear of Sturt Avenue, Linchmere). **(Appendix 3)**
- 3.4 During the examination hearing, the inspector concluded the allocation of this site could not be justified for the following reasons:
- This site includes a heavily wooded area at the rear of Sturt Avenue. Following its proposed allocation, the Council now raises concerns regarding its deliverability, such that it considers that its proposed allocation should be removed. Its concerns include access, which would be likely to include the replacement of a bridge over the river Wey, owned by Thames Water, potential effect on the operation of Thames Water substation close by and uncertainty regarding both ground water and fluvial flooding. I share those concerns as together those matters raise considerable uncertainty regarding the delivery of this site. **(Appendix 4)***
- 3.5 The site was subsequently reassessed by the 2018 HELLA and was discounted for flooding and access constraints. It has been further assessed by both the 2020 and 2021 HELLAs, and each time it was discounted because of issues with the Natural Environment, Access, Flood Constraints, and the site fully comprising of a woodland protected by an area TPO. It was also noted the site lies outside of the settlement boundary area.
- 3.6 Ultimately, a clear theme runs throughout the previous assessments of the suitability for this site for housing, with both the Council and previous Inspector (R Barrett) raising notable concerns with the deliverability of this site. The application was

refused on Ecology, Access and Flood Risk grounds, which had not been adequately addressed in the application submission, despite being key issues identified and maintained for the 11 years leading up to the submission of the application.

4.0 Planning Policy

4.1 The relevant legislation and planning policy documents in respect of this appeal are The National Planning Policy Framework 2021 and the policies within the Chichester Local Plan Key Policies 2014-2029.

4.2 The policies which are considered relevant in this case are:

Chichester Local Plan: Key Policies 2014-2029

- Policy 1: Presumption in Favour of Sustainable Development
- Policy 2: Development Strategy and Settlement Hierarchy
- Policy 4: Housing Provision
- Policy 6: Neighbourhood Development Plans
- Policy 8: Transport and Accessibility
- Policy 9: Development and Infrastructure Provision
- Policy 25: Development in the North of the Plan area
- Policy 33: New Residential Development
- Policy 34: Affordable Housing
- Policy 39: Transport, Accessibility and Parking
- Policy 40: Sustainable Design and Construction
- Policy 42: Flood Risk and Water Management
- Policy 47: Heritage and Design
- Policy 48: Natural Environment
- Policy 49: Biodiversity

National Planning Policy Framework

4.3 Government planning policy now comprises the revised National Planning Policy Framework (NPPF, 2021), which took effect from 20th July 2021.

4.4 Paragraph 11 of the revised Framework states that plans and decisions should apply a presumption in favour of sustainable development, and for decision making this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. *the application of policies in this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

4.5 Consideration should also be given to the following sections of the NPPF.

- Section 2: Achieving sustainable development
- Section 3: Plan-making
- Section 4: Decision-making
- Section 5: Delivering a sufficient supply of homes
- Section 8: Promoting healthy and safe communities
- Section 9: Promoting sustainable transport
- Section 11: Making effective use of land
- Section 12: Achieving well-designed places
- Section 14: Meeting the challenge of climate change, flooding and coastal change
- Section 15: Conserving and enhancing the natural environment.

4.6 Also relevant are the various sections of the Planning Practice Guidance (PPG) that support the above sections including the National Design Guide (NDG).

Chichester Local Plan Review

4.7 The Inspector who examined the CLP in 2015 concluded that because the Council could not meet its OAN of 505 dwellings per annum ‘...the Plan should be adopted now subject to a commitment to a review to be completed within five years [i.e., before July 2020].’ The Inspector did this to ‘... ensure that housing delivery after the first five years of the Plan period can be updated to take account of emerging evidence on highway infrastructure and rigorous testing of the impacts of providing housing up to the OAN or any updated OAN.’ (para. 56).

4.8 The Inspector added at paragraph 60 of her report that, subject to setting a target of reaching 435 dwellings per annum in the interim period, she was “satisfied that the Plan demonstrates a positive approach to maximising the delivery of new housing”. The aim of the CLP review will be to provide the policy framework for planning in the areas of the District outside the South Downs National Park for the period through to 2035 and identify further sites to meet the unmet housing need.

4.9 Consultation on a Preferred Approach Local Plan has taken place and following detailed consideration of all responses to the consultation, it is intended that the Council will publish a Submission Local Plan under Regulation 19 in late 2022/early

2023. The weight which can be afforded to the emerging Plan at this stage is therefore limited, consistent with paragraph 48(a) of the NPPF.

4.10 Other relevant policy/guidance is listed below:

- Site Allocation Development Plan Document 2014 - 2029
- Surface Water and Foul Drainage SPD (2016)
- CDC Waste Storage and Collection Guidance (2017)
- The CDC Design Protocol (December 2013)
- CDC PGN3: Design Guidelines for Alterations to Dwellings and Extensions (2009)
- Chichester Landscape Capacity Study (2019)
- Interim Position Statement on housing (IPS)

5.0 Five Year Housing Land Supply

5.1 At the recent Public Inquiry for up to 100 dwellings on Land South of Clappers Lane in Earnley (E/20/03125/OUT), the Council revised its figure of 5.3 years down to 5.01 years, a surplus of 6 dwellings. The Inspector in that appeal found that the Council's supply following further necessary adjustment was at 4.8 years. The Council has accepted in the statement of common ground submitted for the appeal at Chas Wood (CH/20/01854/OUT) that it now has a supply of 4.82 years. That appeal has subsequently been determined, with the Inspector concluding:

'The Council's housing supply is hovering just below five years (at around 4.8yrs) so the shortfall is not acute. However, this may be because the Council is approving schemes contrary to the LP via the IPS'.

5.2 The Council therefore accepts it cannot demonstrate a five-year supply of housing, with the tilted balance of Paragraph 11 now engaged. To proactively deliver what the Council considered to be appropriate housing development, it resolved to start using the Interim Position Statement on housing (IPS) to support the delivery of sustainable new housing development outside of settlement boundaries, which would otherwise be contrary to Local Plan policies. The appeal scheme was assessed against the IPS within the case officers report (**Appendix 5**), but it failed to comply with several key criteria, which were referenced within the RFRs.

6.0 Case for The Local Planning Authority

Reason for Refusal 1: Backland Development & Design/Layout

- 6.1 It is the appellants assertion that the attempted allocation of this site for housing, demonstrates the acceptance of the backland development on this site. It is the Council view that the exploration of the site within the SHLAA and HELAA, which are strategic documents that assess the potential deliverability of all sites within the district, and the subsequent attempt to allocate the site within the draft DPD, does not mean backland development has been accepted in this location. The DPD doesn't seek to prescribe the detailed design or layout of potential sites, with this remaining a fundamental consideration of any subsequent planning application, as was the case for this appeal.
- 6.2 In contextual terms, most of the surrounding streets are linear in form, providing a distinct character to the surrounding area. There are a few examples of cul-de-sac developments, but these are the exception rather than the rule. The proposal would result in a backland development of nine detached dwellings, each with a detached studio building, with associated works, arranged in a cul de sac formation. The introduction of backland development would be out of character, because of its layout and form. The layout of the properties would contrast with the surrounding area, resulting in an incongruous residential development in comparison 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.
- 6.3 The resultant layout of the site is heavily influenced by the wooded nature of the site, with the retention of many trees, despite a total of 50 trees required to be removed to facilitate the development. The layout is representative of an unacceptable overdevelopment of the site, due to the quantum of development proposed, the dominance of the studio/car port buildings within the streetscene, particularly on plots 1, 2 and 3 which have much narrower frontages, 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 the plots.
- 6.4 The density of the development would be approximately 14.5dph, which is below the 35dph set out within the local plan, and the surrounding character of Sturt Avenue, which is typically high-density terrace housing. However, the low density is a direct result of the highly constrained site, not least the need to retain as many TPO'd trees as possible. The fact that the scheme results in an overdevelopment of the site, with dominating outbuildings, and significantly reduced 'usable garden space' only serves to highlight the unsuitability of this site for development, the

inappropriateness of the design and layout chosen, and the quantum of development sought.

- 6.5 The principle of contemporary style dwellinghouses is acceptable; however, this approach further differentiates the proposal from the traditional character and appearance of the surrounding grain of development, and the Victorian style housing which makes up a significant proportion of the traditional housing stock in the area. It has been indicated the properties have been designed as 'villas' set amongst the trees, and whilst undoubtedly the first floor of these properties will be set within the tree canopies, the overall approach is unconvincing.
- 6.6 The form of the properties would read as incongruous within their surroundings, as their detailed design results in significantly bulky, top-heavy structures which appear unbalanced and poorly conceived. There is little to break up their large, rectangular form, particularly at first floor and the prominent siting of the PV panels is disappointing. These concerns are particularly evident on the east elevations of Plots 6-9 and the east and west elevations of Plots 1-5, each the side elevation of the corresponding plots, and all are entirely blank elevations which emphasis the significant scale, mass, and bulk of these dwellings. The use of sedum roofs within the single-storey elements does help to soften the appearance of the properties to an extent, but this does not address the primary concern of the design of the main two-storey elements.
- 6.7 The materials are typical of the contemporary architectural approach proposed and include brickwork to the ground floor elevations and a rendered finish, with elements of timber details to the first-floor elevations. The use of white render increases the stark appearance of the properties, particularly as they would be set against a muted, heavily wooded backdrop where the use of a more muted colour pallet would likely allow the properties to better assimilate with their natural surroundings. It is appreciated that there are a limited number of properties within the immediate area which incorporate white painted rough render/brickwork. However, the overriding context is one of a more traditional material pallet, which utilises muted tones. The use of a light render is also likely to be highly susceptible to staining, particularly from the biological matters from the numerous trees within the site. As such, the proposed use of white render is considered to contribute to the incongruous visual appearance of the dwellinghouses, which would be of detriment to their character and appearance, and would further detract from the character and quality of the locality.
- 6.8 Consequently, the introduction of this proposed backland development would be out of character, resulting in an incongruous residential development in comparison 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 of development within this edge of settlement location. Moreover, the layout is representative of an unacceptable overdevelopment of the site, due to the quantum of development proposed, the dominance of the studio/car port buildings within the streetscene, particularly on plots 1, 2 and 3, which have much narrower frontages, 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.

- 6.9 Finally, the dwellings, by reason of their significant scale, mass, and bulk, result in 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 subsequently result in a form of development out of character with the area, failing to consider local distinctiveness and causing harm to the visual amenity of the streetscape.

Reason for Refusal 2: Proposed Housing Mix & Affordable Housing

- 6.10 Policy 34 of the Chichester Local Plan requires an affordable housing financial contribution on sites delivering a net increase of 6 and 10 units in designated rural parishes under section 157 of the Housing Act 1985. The Parish of Linchmere is designated as rural under this legislation and therefore a financial contribution, in accordance with the rates set out within the Planning Obligations and Affordable Housing SPD will be required.
- 6.11 It was noted within the planning statement that the applicants are aware of this contribution and are prepared to make the necessary payments; however, as the scheme was recommended for refusal there was no requirement to secure this requirement via a S106 agreement. The Council agree, in principle, that this matter could be adequately agreed via a S106 agreement; however, the onus would be on the appellant to draft an appropriate agreement for the Council's consideration, ahead of its submission to the Inspector. This would not however, overcome the Council's ongoing concerns relating to the mix of housing proposed.
- 6.12 The appellant acknowledges the scheme proposes a highly unbalanced housing mix, in that it seeks 9 x 4-bed dwellings only. The scheme therefore fails to accord with the Chichester Housing and Economic Development Needs Assessment (HEDNA) 2020 market mix requirements (5-15% 1 bed, 35-45% 2 bed, 30-40% 3 bed, 10-20% 4 bed) (**Appendix 6**) in that it provides a single 'size' large unit of accommodation and does not make provision for smaller units within the site.
- 6.13 The appellants argue this is acceptable as the scheme would contribute towards the 10-20% demand for 4-bed housing within the district; however, the clear purpose of the HEDNA is to identify the required distribution of housing types required across

the district, which are to be provided in any one development. If every scheme failed to deliver an appropriate mix of housing, and developers chose to provide only one type of housing, this would arguably lead to a failure to provide housing for the *'different groups of people'*, as required by Paragraph 62 of the NPPF, and likely the over-delivery of larger houses, as schemes would likely seek to deliver the larger dwellings, as is the case for the appeal scheme.

- 6.14 Therefore, whilst the delivery of houses is acknowledged, it does not outweigh the harm of failing to comply with the housing mix required within the HEDNA, which is produced to ensure the approximate mix and size of dwellings are delivered, to meet the identified housing needs of the district. In addition, in the absence of a draft S106 agreement, the proposal therefore remains contrary to Policy 34, CDC Planning Obligations and Affordable Housing SPD, criterion 7 of the interim position statement for housing delivery and Paragraph 64 of the NPPF.

Reason for Refusal 3: Flood Risk Assessment (FRA)

- 6.15 The application was accompanied by a FRA, but it failed to comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 30 to 32 of the Flood Risk and Coastal Change section of the planning practice guidance. The FRA failed to adequately assess the flood risks posed by the development. In particular, the FRA failed to provide any details pertaining to the proposed bridge or to assess the impact of climate change using appropriate climate change allowances. The Council therefore maintains its position in relation to this reason for refusal.
- 6.16 The appellants have submitted an updated FRA following further advice from the Environment Agency (EA) who have confirmed, in their letter dated March 2022 that they would raise no objection to the revised FRA. The applicants have subsequently submitted, as part of the FRA the detailed design of the bridge, which the EA consider to be appropriate, which has been further corroborated by the EAs consultee comment provided on the current bridge application (**Appendix 7**). It would therefore appear the appellants have overcome the issues raised by the EA in respects of the site-specific FRA.
- 6.17 The EA note within their March 2022 response that whilst they would raise no objection to the proposal, they would raise the waterlogging issues which would be for the Lead Local Flood Authority (West Sussex County Council) to consider further.
- 6.18 The waterlogging issues are evident throughout the site, as observed both by the Council during various visits to the site, as well as many of the residents within their third-party representations. In addition, the Council received a consultee reply from WSCC which raised concerns that the flood risk mapping for the site did not accurately reflect the situation on the ground, and the suitability of this site for

development given the prolonged high ground water levels. Accordingly, the suitability of this site for development should be robustly considered, taking on board the local advice provided by WSCC.

- 6.19 It remains necessary to undertake a sequential test for this site, with the appellants briefly covering this in paragraph 1.2 of the FRA. The conclusion reached was that as the development lies within 'More Vulnerable' category, under Table 2 of the NPPF it is suitable for FZ 2 and therefore on this basis the proposal complies with sequential test. Unfortunately, the Council do not share this view and maintain that a sequential test should be carried out for this site, as it lies within FZ 2 and 3.
- 6.20 The purpose of the sequential test is to direct development away from areas at risk of flooding, where possible, by considering whether there are any sequentially preferable available sites within the district for housing. The appellants have not sought to provide the necessary information to demonstrate there are no sequentially preferable sites, and in the absence of this information, the proposal remains contrary to Paragraphs 161, 162, 163, 164, 165, and 167 of the NPPF and Policy 42 of the CDC Local Plan, despite having addressed some of the issues raised.

Reason for Refusal 4: Private Way and Bridge Access

- 6.21 It is advised within the Development Management Procedure Order (DMPO) and in Paragraph 024 of the Governments Guidance to Making a Planning Application, that the red line boundary should include **all land necessary** to carry out the proposed development (e.g., land required for access to the site from a public highway). The red line for the proposed development failed to include the private way which connected the edge of the site to the public highway (Sturt Avenue). Therefore, whilst access via this private way is the only accessible route into the site, it wasn't possible to have regard to this during the assessment of the planning application, as it was excluded from the proposal.
- 6.22 The appellants assert the decision to refuse this planning application was premature; however, it is the Council's view that adequate time was allowed for negotiations with the Environment Agency in respects of the bridge detailing, which should have been completed ahead of the submission of the planning application. The failure to address this prior to submission only serves to indicate the submission of the planning application was premature, as fundamental issues including vehicular access had yet to be adequately investigated or incorporated into the detailed design/layout of the scheme.
- 6.23 The appellants note in Paragraph 7.40 of their statement that no works are required to the surface of the private way, but works are required at the site entrance to provide for visibility spays. It is assumed the site entrance is referring to the bridged

entrance into the site, rather than at the junction between the private way and Sturt Avenue, as the exclusion of the private way from the application site prevents the Council from considering any necessary upgrades to this road or the ability to impose condition to secure adequate visibility splays.

- 6.24 The appellants allude to the use of a Grampian Condition to secure details of the proposed bridge. As this is a fundamental aspect of the scheme, necessary to afford safe access into the site, it should have formed part of the assessment at the planning application stage, and the Council would be strongly opposed to the use of such a condition in this instance. Notwithstanding this, the appellants have submitted a separate planning application for the bridge (reference 22/01593/FUL) which is currently under consideration by the Council and the Environment Agency. The Council maintain this reason for refusal pending the outcome of the current application for the bridge, which includes the updated works to be carried out in consultation with the Environment Agency.
- 6.25 The appellants reference ‘a number of managements provisions for the private lane to ensure there is no impediment to the free flow of traffic’. Unfortunately, as the private lane lies outside of the red line (and control of this application), the Council has no mechanism of securing any such management provisions, to ensure the free flow of traffic, which is a particularly key issue for Thames Water.
- 6.26 In light of the above, the Council do not consider these issues to have been adequately resolved, but it will proactively seek to determine the bridge planning application, which could potentially resolve the access issue (if approved). The exclusion of the private way from the red line means the proposal has failed to comply with the relevance guidance in relation to the submission of accurate plans, and it ultimately means the Council/Planning Inspectorate has no controls over this private way as part of this application/appeal.

Reason for Refusal 5: Biodiversity

- 6.27 The appellants have provided an updated Ecological Impact Assessment (Nov 21) to replace the report initially provided during the consideration of the application. The reports calculate the proposed development would result in the loss of 1.62 Biodiversity Units, which sees a reduction from the 2.05 units previously advised, but nevertheless, results in a significant loss of biodiversity within the appeal site.
- 6.28 In order to compensate for the direct habitat loss on site, and not simply to result in a biodiversity net gain, the EIA clearly identifies the requirement for off-site mitigation, comprising, in part, of woodland to compensate for the loss of woodland habitat to support bats. However, the EIA does not seek to identify the size, scale or type of habitat which should be created, with it being clear that further surveys

regarding the nature of the habitat creation, would be fundamental to demonstrate that the compensation and enhancement of biodiversity would be deliverable. In the absence of a detailed habitat creation, it is unclear how this would be suitably mitigated against.

- 6.29 The appellant has provided an informal agreement with Henry Adams, obtained via email, which indicated the potential to utilise 2ha of land at Chilgrove Farm as the location for delivering the off-site biodiversity compensation and enhancement. It is appreciated there is scope to provide off-site mitigation, potentially at Chilgrove Farm; however, there is no certainty as to if and how this would be delivered.
- 6.30 The Council are aware of Chilgrove Farm as a mitigation site. Several large parcels of agricultural land have been removed from production, to create an area of woodland and meadow to provide offsetting mitigation for increases in nitrogen, which effect other areas of the Chichester District. As Chilgrove Farm lies within the South Downs National Park (SDNP), the SDNP Authority (SDNPA) have been heavily involved in the design of the woodland and meadow, to achieve a mitigation scheme which would be compatible with the protected landscapes of the SDNP. The concerns have arisen mainly with the large-scale tree planting, which have the potential to dramatically change landscapes, despite their clear ecological benefits. Therefore, whilst this site has been identified as suitable for habitat enhancement, the type of enhancement necessary to mitigate against the proposed development, may not be achievable on this site, and in the absence of any information to the contrary, it is not possible to conclude this site could adequately provide the necessary mitigation.
- 6.31 It is the Council's view that this fundamental issue cannot be adequately addressed via a planning condition, given the uncertainties around the appropriateness of this site to deliver the off-site mitigation, and the lack of any information or reports to demonstrate the type of habitat to be created. In addition, given the mitigation site lies outside of the application site, it would be necessary to secure the mitigation by way of a S106 legal agreement, rather than a condition, and no draft agreement has been provided for consideration. In any event, the Council has recently received confirmation that the SDNPA will not be entering into any further S106 agreement to secure off-site mitigation until such time as it has calculated the correct monitoring fee, which they have advised would need to be 'significantly larger' than the current fee of £11,500.
- 6.32 In light of the above, the Council maintains its reason for refusal and do not consider this issue to have been adequately addressed. Notwithstanding this, the on-site mitigation appears to be satisfactory, despite the need to significantly bolster this off-site and could be adequately secured in accordance with the updated EIA.

- 6.33 The appellants have also provided an invasive species management plan, including biosecurity protocols, which appears to have satisfactorily addressed this aspect of RFR 5 and could be adequately secured via condition.

Reason for Refusal 6: Capacity of the Existing Water Network

- 6.34 It has been confirmed to the Council that the site sits on the boundary of Thames Water (TW) and South East Water (SEW), with SEW the current provider of fresh water to properties within Sturt Avenue. However, the site is covered by TW flow monitoring zone and the development could connect to TW network if easier to do so. TW maintain it is unable to adequately provide this site with fresh water. Therefore, TW have maintained its position that the existing infrastructure cannot accommodate the needs of this development. They have suggested the following condition:

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" The developer can request information to support the discharge of this condition by visiting the Thames Water website at [thameswater.co.uk/preplanning](https://www.thameswater.co.uk/preplanning).

- 6.35 However, the Council would raise concerns with the imposition of such a condition, given that Thames Water have not identified what networks upgrades are required, nor the likely timescales for any upgrades. The suggestion that a phasing plan could be agreed is considered unlikely to be a suitable option, given this application seeks full planning permission, at a scale capable of being built out reasonably quickly and unlikely to be undertaken in phases.
- 6.36 It is the Council's view that this condition would fail to meet the strict test for conditions in that it is imprecise in that it fails to detail the necessary off-site works required. It is also unlikely to be enforceable, given the obligations of the condition lie with a third party (i.e., TW) and could result in a position where the Council is having to prevent occupancy of the dwellings, potentially for an indefinite period,

until such time that an appropriate connection to fresh water could be provided. It is the Council's view that •this would prove to be very difficult to enforce, and therefore this condition would not be appropriate to impose.

- 6.37 Notwithstanding the above, the subsequent conformation by SEW that the site falls within their supply zone, it would appear the issues raised by TW can be adequately addressed by a connection with SEW.

Reason for Refusal 7: Source Protection Zone

- 6.38 The eastern part of the site, and private way is located within Source Protection Zones 1, 2 and 3 for groundwater abstraction. In accordance with the consultee comments provided by Thames Water, it is necessary to receive 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.
- 6.39 In its consultee response, TW suggested the wording of a condition, which it considered would be appropriate to secure a 'Source Protection Strategy'. Whilst the Council would typically expect to see such information upfront, given the additional information concerning the low risk of contamination from residential development, it is considered, on balance that the suggested condition would be appropriate in this instance, to adequately secure this information, prior to the commencement of development on site. The pre-commencement condition is considered necessary to ensure the proposal complies with Paragraph 185 of the NPPF.

7.0 Thames Water Statement of Case

- 7.1 Thames Water have provided a separate Statement of Case, **(Appendix 8)** concerning issues which were not all previously raised during their initial consultee reply. The Council has not sought to address the points raised individually; however, as a key stakeholder, consideration should be given to the issues they have raised, not least in respects of the shared access road, which is fundamental in providing access to the appeal site.

8.0 Conclusion

8.1 The conclusions for the Local Planning Authority on this appeal are:

(a) The Local Planning Authority considers that the reasons for which the application would have been refused as stated above are appropriate having had regard to National Planning Policy Framework, the Development Plan, and all other material considerations.

(b) The Council remains of the view the appeal scheme should be dismissed for the following reasons:

- 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 structure, 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 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, 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 1.62 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. 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 Council is not satisfied the suggested condition would be appropriate to address this issue, or that there is a suitable solution to this problem. The proposal is, therefore, contrary to Criterion 7 of the IPS. Notwithstanding this, a connection to SEW could adequately address this issue.*
- 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.*

- 8.2 Section 38(6) of the Planning and Compulsory Purchase Act, 2004 states ‘If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.’ It is considered that the Local Planning Authority has clearly demonstrated where the development proposal has failed to satisfy the policies of the Development Plan and, as such, contend that if allowed, the proposal would cause demonstrable harm to interests of acknowledged importance.
- 8.3 In coming to this view, the Council has carefully considered the benefits of the scheme, including the provision of new housing and the positive economic impacts of their construction. However, it is considered that the benefits of the scheme do not outweigh by the harm likely to result from the development.
- 8.4 The Council also considers it is notable that the scheme has attracted objections from the local community, including the Parish Council.
- 8.5 For the reasons set out above the Inspector is respectfully requested to dismiss this appeal.

8.0 Suggested Conditions

4.1 In the event the Inspector is minded to allow this appeal and without prejudice to the outcome, the Council would like to suggest the following conditions:

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2) The development hereby permitted shall be carried out in accordance with the following decided plans:

Reason: For the avoidance of doubt and in the interests of proper planning.

3) **Notwithstanding any details submitted, no development/works shall commence** until a full schedule of all materials and finishes to be used for external walls and roofs of the building(s) have been submitted to and approved in writing by the Local Planning Authority. Upon submission of the details to the Local Planning Authority samples of the proposed materials and finishes shall be made available for inspection on site, unless otherwise agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved schedule of materials and finishes unless any alternatives are agreed in writing via a discharge of condition application.

Reason: To enable the Local Planning Authority to control the development in detail in the interest of amenity and to ensure a development of visual quality. It is considered necessary for this to be a pre-commencement condition as such details need to be taken into account in the construction of the development and thus go to the heart of the planning permission.

4) **No development shall commence, including any works of demolition,** until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved CEMP shall be implemented and adhered to throughout the entire construction period unless any alternative is agreed in writing by the Local Planning Authority. The CEMP shall provide details of the following:

- a) the anticipated number, frequency and types of vehicles used during construction,
- b) the provision made for the parking of vehicles by contractors, site operatives and visitors,
- c) the loading and unloading of plant, materials and waste,
- d) the storage of plant and materials used in construction of the development,
- e) the erection and maintenance of security hoarding,
- f) the provision of road sweepers and/or wheel washing facilities to mitigate the impact of construction upon the public highway
- g) measures to control the emission of dust and dirt during construction, to include where relevant sheeting of loads, covering and dampening down stockpiles
- h) measures to control the emission of noise during construction,
- i) details of all proposed external lighting to be used during construction and measures used to limit the disturbance of any lighting required. Lighting shall be used only for security and safety,
- j) appropriate storage of fuel and chemicals, in bunded tanks or suitably paved areas, and
- k) waste management including prohibiting burning.

Reason: These details are necessary pre-commencement to ensure the development proceeds in the interests of highway safety and in the interests of protecting nearby residents from nuisance during all stages of development and to ensure the use of the site does not have a harmful environmental effect.

5) **No development shall commence** until details of the proposed overall site-wide surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal as set out in Approved Document H of the Building Regulations and the SUDS Manual produced by CIRIA. Winter ground water monitoring to establish highest annual ground water levels and Percolation testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage. The surface water drainage scheme shall be implemented as approved unless any variation is agreed in writing by the Local Planning Authority. No building shall be occupied until the complete surface water drainage system serving that property has been implemented in accordance with the approved surface water drainage scheme.

Reason: The details are required pre-commencement to ensure that the proposed development is satisfactorily drained with all necessary infrastructure installed during the groundworks phase.

7) **No development shall commence** until a strategy outlining details of the sustainable design and construction for all new buildings, including water use, building for life standards, sustainable building techniques and technology, energy consumption maximising renewable resources, and how a reduction in the impacts associated with traffic or pollution will be achieved, including, but not limited to, charging electric vehicles, have been submitted to and approved in writing by the Local Planning Authority. This strategy shall reflect the objectives in Policy 40 of the Chichester Local Plan: Key Policies 2014-2029. The approved strategy shall be implemented as approved prior to first occupation unless any variation is agreed in writing by the Local Planning Authority.

Reason: To minimise the impact of the development upon climate change. These details need to be agreed prior to the construction of the development and thus go to the heart of the planning permission.

6) **No development shall 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 in writing 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) As the Phase 1 report submitted identifies potential contaminant linkages that require further investigation, **no development shall commence** until a Phase 2 intrusive investigation report has been submitted to and approved in writing by the LPA detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011+A1:2013 - Investigation of Potentially Contaminated Sites - Code of Practice. The findings shall include a risk assessment for any identified contaminants in line with relevant guidance.

Reason: In the interests of amenity and to protect the health of future occupiers of the site from any possible effects of land contamination in accordance with local and national planning policy.

8) If the Phase 2 report submitted identifies that site remediation is required, then **no development shall commence** until a Remediation Scheme has been submitted to and approved in writing to the Local Planning Authority detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. Any ongoing monitoring shall also be specified. A competent person shall

be nominated by the developer to oversee the implementation of the Remediation Scheme. The report shall be undertaken in accordance with national guidance as set out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11. Thereafter the approved remediation scheme shall be fully implemented in accordance with the approved details.

Reason: In the interests of amenity and to protect the health of future occupiers of the site from any possible effects of contaminated land in accordance with local and national planning policy.

9) The development hereby permitted shall not be first occupied until a verification report for the approved contaminated land remediation has been submitted in writing to the Local Planning Authority. The report should be undertaken in accordance with national guidance as set out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11.

Reason: In the interests of amenity and to protect the health of future occupiers of the site from any possible effects of land contamination in accordance with local and national planning policy.

10) The development hereby permitted shall not be first brought into use until a scheme detailing hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include plans showing the proposed finished levels or contours; means of enclosure; car parking layouts; other vehicles and pedestrian access and circulation areas; details and samples of the hard surfacing materials; and a planting plan and schedule of plants noting species, plant sizes and proposed numbers/densities and a programme for the provision of the hard and soft landscaping. Thereafter the scheme shall be carried out in accordance with the approved details and once provided, the works shall be retained in perpetuity.

Reason: In the interests of amenity and of the environment of the development.

11) **No part of the development hereby permitted shall be first occupied** until the vehicle parking and turning spaces have been constructed in accordance with the approved plan. These spaces shall thereafter be retained for their designated use.

Reason: To provide adequate on-site car parking and turning space for the development.

12) **No part of the development hereby permitted shall be occupied** until refuse and recycling storage facilities have been provided in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning

Authority. Thereafter the refuse and recycling storage facilities shall be maintained as approved and kept available for their approved purposes in perpetuity.

Reason: To ensure the adequate provision of onsite facilities in the interests of general amenity and encouraging sustainable management of waste.

13) **No part of the development hereby permitted shall be first occupied** until covered and secure cycle parking spaces have been provided in accordance with plans and details that shall first have been submitted to and approved by the Local Planning Authority. Thereafter the cycle parking shall be retained for their purpose in perpetuity.

Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies.

14) The development hereby permitted shall be carried out with strict accordance with the methodology and mitigation set out within the Arboricultural Impact Assessment & Method Statement, ref jwmb/rpt1/sturtavenue/AIAAMS (21.07.2021), unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of the health and protection of the trees within the site.

15) The development hereby permitted shall be carried out in strict accordance with the methodology and mitigation set out within the Invasive Species Management Plan, ref P3782 (22.03.2022) unless otherwise agreed in writing by the authority.

Reason: In the interests of protecting and enhancing biodiversity and wildlife.

16) The development hereby permitted shall be carried out in accordance with the submitted Flood Risk Assessment and Drainage Strategy, project number 303383 Rev 6 (June 2021) the mitigation measures it details. Thereafter, the measures shall be retained and maintained thereafter throughout the lifetime of the development, unless otherwise agreed in writing by the local planning authority.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

17) The development hereby permitted shall be carried out in strict accordance with the methodology and mitigation set out within the Phase I Geo-Environmental Risk Assessment, reference 21-171.01 (May 2021), unless otherwise agreed in writing by the authority.

Reason: In the interests of protecting and enhancing biodiversity and wildlife.

18) The following ecological mitigation measures shall be adhered to at all times during construction;

- a) If any works need to take place to the trees or for vegetation clearance on the site, they should only be undertaken outside of the bird breeding season which takes place between 1st March - 1st October. If works are required within this time an ecologist will need to check the site before any works take place (within 24 hours of any work).
- b) The removal of any existing structures should take place outside of the bird breeding season which takes place between 1st March - 1st October. If works are required within this time an ecologist will need to check the site before any works take place (within 24 hours of any work. If nesting birds are found, works in the area will need to be avoided and the nest protected until after the young have fledged.
- c) Due to the potential for hedgehogs and or reptiles hibernating or sheltering within the brush pile, compost and debris piles noted on site, this shall not be removed between mid-October to mid-March inclusive and shall undergo a soft demolition.
- d) During construction, any trenches deeper than 1.0m, or drainage pipework greater than 200mm diameter, shall be covered or capped overnight to prevent badgers or other mammals becoming trapped. All excavations should be checked each morning for the presence of any mammals or other species.

Reason: In the interests of protecting biodiversity and wildlife.

19) The construction of the development and associated works shall not take place on Sundays or Public Holidays or any time otherwise than between the hours of 0700 hours and 1800 hours Mondays to Fridays and 0800 hours and 1300 hours on Saturdays.

Reason: In the interests of residential amenity.

20) Prior to first occupation of the dwellings hereby permitted, the associated boundary treatments shall be provided in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include.

- a. scaled plans showing the location of the boundary treatments and elevations, and
- b. details of the materials and finishes.

Thereafter the boundary treatments shall be maintained as approved in perpetuity.

Reason: In the interests of protecting the amenity of neighbours.

20) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or

modifying that Order) no building, structure or other alteration permitted by Class A-E of Part 1 Schedule 2 shall be erected or made on the application site without a grant of planning permission.

Reason: In the interests of protecting the amenity of neighbours and the surrounding area.

21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order) no external illumination shall be provided on the site other than in accordance with a scheme that shall first have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the proposed location, level of luminance and design of the light including measures proposed to reduce light spill. Thereafter the lighting shall be maintained in accordance with the approved lighting scheme in perpetuity.

Reason: In the interests of protecting wildlife and the character of the area.