

DATED 13th January 2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) HAMPSHIRE COUNTY COUNCIL

and

(3) DOREEN ANN HANN & BERNICE AYRES

and

(4) PERSIMMON HOMES LIMITED

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land lying to the east of Castle Avenue, Havant

Ref: RB/012434

HCC ref: 128079/CHJ

THIS AGREEMENT is made on

13th January

2020

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**);
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ (**County Council**);
3. **DOREEN ANN HANN & BERNICE AYRES** of Rectory Cottage, Pook Lane, Havant, PO9 2TJ (**Owner**); and
4. **PERSIMMON HOMES LIMITED** incorporated and registered in England and Wales with company number 04108747 whose registered office is at Persimmon House, Fulford York, YO19 4FE (**Developer**).

BACKGROUND

- (A) For the purposes of the Act, the Council and the County Council are the local planning authorities for the area within which the Land is situated.
- (B) The County Council is also the Local Highway Authority for Hampshire (save for trunk roads and special roads) and the Transport Authority for Hampshire for the purpose of the Transport Act 1985 and 2000.
- (C) The Owner is the freehold owner of the whole of the Land.
- (D) The Developer is the beneficiary of a unilateral notice in respect of a contract for the purchase of the Land dated 9 July 2018 with the Owner, which is made subject to the grant of Planning Permission.
- (E) The Owner and Developer have submitted the Application to the Council for permission to develop the Land in accordance with the Planning Permission.
- (F) The Owner and Developer enter into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owner and the Developer entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (G) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council as local planning authorities and local highway authority (in respect of the County Council only) against the Owner and the Developer and their successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply:

"Act"	the Town and Country Planning Act 1990.
"Acoustic Fence"	means the 2.5 metre acoustic screen fence to be erected along the eastern boundaries to plots 37 and plots 41 to plot 48 (inclusive) on the Land and a 3 metre acoustic screen fence erected on the southern boundary to plot 48 on the Land and provided to mitigate against the noise arising from the A27 and shown on drawing number 507-01-A-02-012-BT Rev J at Appendix 3.
"Affordable Dwellings"	means 20 Dwellings constructed on the Land to be provided as units of Affordable Housing as part of the Development and in accordance with the Affordable Housing Mix and the Affordable Housing Plan.
"Affordable Housing"	means Dwellings that: (a) meets the needs of Eligible Persons including availability at a cost low enough for them to afford determined with regard to the local incomes local house prices and local rents; and (b) includes provisions for the housing to remain at an affordable cost for future Eligible Persons.
"Affordable Housing Contribution"	means the sum of £22,460, payable in lieu of the provision of 0.7 of a unit of an Affordable Housing to be applied towards the provision of off-site affordable housing in accordance with Policies CS9 and CS21 of the Havant Borough Local Plan (Core Strategy).
"Affordable Housing Mix"	means the mix of Affordable Dwellings, in terms of the number, size and tenure and set out at paragraph 1 of Schedule 1 or such other number, size and tenure as agreed in writing with the Council.
"Affordable Housing Plan"	means drawing with reference 507-01-A-02-010-TP Rev J attached at Appendix 2 to this Agreement identifying the location and tenure of the Affordable Dwellings.
"Affordable Housing Provider"	means either one or a combination of: (a) a body registered as a provider of social housing with the Regulator of Social Housing under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by the Council as may be constituted under any legislation replacing that provision; or (b) such other body eligible to receive grant monies from the Council or Homes England and able lawfully to own or manage housing for Eligible Persons and approved by the Council; or (c) any company or organisation specialising in the delivery of Affordable Housing and approved by the Council.

"Affordable Rent"

means rent inclusive of service charge which does not exceed:

- a) 80% of the local gross open market rent; and
- b) the local housing allowance rates, unless otherwise agreed in writing with the Council;

and shall only be increased annually in accordance with arrangements made for such rent increases established by Homes England or any other relevant successor authority or body responsible for such matters.

"Affordable Rented Dwellings"

means any Affordable Dwellings let on a fixed term tenancy agreement at an Affordable Rent.

"Agreement"

this deed of Agreement.

"Application"

the application submitted by the Owner and Developer to the Council for planning permission to carry out the Development and given the Council's reference number APP/18/01033.

"Cash Deposit"

means a lump sum payment of £9583.27 in cash being 10% of the open book construction costs for the Land SuDs as approved in accordance with Schedule 2.

"Commencement of Development"

means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of, site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, and "Commence", "Commencement" and similar expressions shall be construed accordingly.

"Common Parts"

means the parts of the Land shown edged and hatched red on drawing number 507-01-A-02-0300-MA Revision C at Appendix 4 to this Agreement which are intended to benefit the occupiers of the Dwellings as a whole or to enhance their occupation and shall without prejudice to the generality thereof include the Acoustic Fence, Permissive Paths, Open Space Land, LAP, communal parking areas, landscaped areas, street lighting and amenity spaces but do not comprise a Dwelling or the curtilage of a Dwelling.

"Community Project Worker Contribution"

means the sum of £17,250 as a contribution towards the provision of a suitably qualified and experienced person employed by or on behalf of the Council to assist in the establishment of a successful and cohesive local community within the Development and to promote integration with existing communities in the vicinity of the Development.

"CPI"	means the consumer prices index published by the Office for National Statistics.
"Development"	the residential development comprising 69 Dwellings together with access from St. George's Avenue, car parking, landscaping, electrical substation and associated works in accordance with the Planning Permission.
"Director"	the Director of Economy Transport and Environment at the County Council or his appointed representative for the time being or successor.
"Disposal"	in relation to each Dwelling means: (a) the first Occupation by anyone permitted or suffered to Occupy the Dwelling whether by: I. a person who has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling, or II. who otherwise Occupies the Dwelling; (b) the creation of a legal term of years in respect of the Dwelling; or (c) the transfer of a freehold interest in respect of the Dwelling; or (d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002; and/or whichever shall first occur; and "Dispose" and "Disposed of" shall be construed accordingly.
"Dwelling"	means a self-contained unit of residential accommodation (including houses, flats and maisonettes) constructed on the Land pursuant to the Planning Permission and "Dwellings" shall be construed accordingly.
"Ecology Report"	means the document titled Land at Castle Avenue, Havant Hampshire Ecological Assessment undertaken by ECOSA dated August 2019 together with an addendum report dated 21 August 2019 authored by Richard Chilcott, ECOSA.
"Eligible Persons"	means persons who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and the expression "Eligible Person" shall be construed accordingly or as otherwise agreed from time to time in writing by the Council.
"Expert"	means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience in the area of expertise relevant to the dispute and appointed in

accordance with the provisions of clause 10 to determine a dispute.

"First Occupier"

means the person or persons who first Occupies any Dwelling following its construction.

"Geese and Waders Contribution"

means the sum of £39,171 payable to the Council as a contribution towards enhancing, managing and monitoring the wider Solent Waders and Brent geese ecological network in accordance with the Solent Waders and Brent Goose Strategy: Guidance on Mitigation and Offsetting Requirements.

"Health Contribution"

means the sum of £11,040 payable to the Council as a contribution towards increasing the capacity of existing health care facilities in the vicinity of the Land, including Emsworth Surgery, Homewell Practice and Staunton Surgery in order to accommodate the increased demand for such services as a result of the Development.

"Help to Buy Agent"

means the body nominated by the Homes England to be responsible for Low Cost Home Ownership nominations within the administrative area of the Council or in the event that nobody has been nominated such other body or organisation as the Council shall first approve in writing.

"Highway Works Contribution"

means the sum of £150,000 (Index Linked) payable by the Owner and/or Developer to the County Council towards highway improvement works to the Emsworth Road and Castle Avenue junction in accordance with the provisions of Schedule 5 paragraph 3.

"Homes England"

means the non-departmental public body that funds new affordable housing in England (including within the Council's administrative area) and established under the Housing and Regeneration Act 2008 or if such body ceases to exist or is superseded then any relevant successor or replacement body or organisation.

"Index"

means:

- (a) CPI in respect of all contributions payable to the Council (except for the SRMS Contribution where RPI shall apply); and
- (b) RPI (All Items) in respect of the Highway Works Contribution.

and where no index is specified by this Agreement CPI shall apply.

"Index Linked"

means increased in accordance with the following formula:

Amount payable = the payment specified in this Agreement x (A/B) where:

A = the last figure published for the Index that applied immediately preceding the date that payment was due

B = the last figure published for the Index that applied immediately prior to the date of this Agreement.

For the purposes of the Highway Works Contribution index linked means adjusted in accordance with RPI (All Items).

"Interest"	means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time.
"Land"	means the freehold property being land lying to the east of Castle Avenue, Havant shown edged red on the Plan and registered at the Land Registry with title number SH44136 but excluding the land edged blue on the Plan
"LAP"	means the local area of play to be provided as part of the Development having an area of 100m ² and shown on drawing number A-02-020-SP Rev D at Appendix 5 to this Agreement.
"Local Connection"	means a connection to the administrative area of the Council by virtue of: (a) existing or previous residence; (b) employment; (c) close family links through parents, siblings or offspring; - or (d) any other connection as agreed with the Affordable Housing Provider and the Council.
"Low Cost Home Ownership Dwellings"	means Help to Buy products as defined by Homes England including Shared Ownership Dwellings
"Management Agreement"	means an agreement made between the Owner and the Management Company setting out the terms of appointment of the Management Company with respect to the Development, including the Management Company's responsibilities in implementing and performing the obligations as contained within the Management Plan.
"Management Company"	means a company limited by guarantee or by shares and established in accordance with the provisions of Schedule 2 to be charged with the management of the Common Parts and SuDs
"Management Plan"	means a plan for the maintenance and management of the Common Parts and SuDs for the lifetime of the Development including details of how the costs of maintenance and management shall be met by owner-occupiers of the Dwellings to be proposed by the Owner and approved by the Council in accordance with the provisions of Schedule 2.

"Monitoring Fee"	means the sum of £10,000 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person whose function is to monitor, coordinate and enforce the obligations contained within this Agreement.
"Nutrient Mitigation Contribution"	means the sum of £72,517.50 payable to the Council towards the costs to be incurred by the Council in providing measures to offset the nutrient load of the Development as mitigation against the water quality impacts arising from the Development on the Solent European Protected Sites.
"Occupation"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be similarly construed.
"Open Market Dwellings"	means Dwellings which are not Affordable Dwellings.
"Open Space Land"	means the public open space land to be provided as part of the Development having an area of 2062m2 and shown on drawing number 507-01-A-02-020-SP Rev F at Appendix 5 to this Agreement.
"Plan"	means the site location plan attached at Appendix 1 to this Agreement with drawing number CP01 Rev C.
"Planning Permission"	means the conditional planning permission that may be granted in pursuance of the Application.
"Permissive Paths"	means any road, footpath or footway constructed as part of the Development on the Land and intended to serve the Development and the public.
"Receptor Site"	means the land show edged red on drawing number LOC1 revision D at Appendix 6 to this Agreement provided as a new receptor site to mitigate against the impact of the Development or other such receptor site to be agreed with the Council.
"Regulator of Social Housing"	means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Council's administrative area by any Affordable Housing Provider or if such body ceases to exist or is superseded then any such successor or replacement body or organisation.
"Residents' Welcome Pack"	means the package of information detailing the travel options to and from the Development together with the following:

- (a) redeemable vouchers for bus travel (up to a total value of £50);
- (b) redeemable vouchers towards the cost of purchasing a bicycle (up to a total value of £150);
- (c) Map(s) of local walking and cycling routes including local amenities within the administrative area of the Council;
- (d) Contact details for Hampshire County Council's traffic, transport and rights of way departments; and

such other information as the Council may reasonably require to be included.

"RPI"	means the retail price index published by the Office for National Statistics
"RPI (All Items)"	means the All Items Index of Retail Prices published by the Office of National Statistics or any amendment/replacement thereof.
"Shared Ownership Dwellings"	means Affordable Housing leased to Eligible Persons who purchase a percentage of the equity of the Affordable Dwelling and who pay a rent in relation to the share of the equity retained by the Affordable Housing Provider.
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy.
"Solent Recreation Mitigation Strategy (SRMS)"	means the framework to mitigate potential impacts on the Solent Special Protection Area from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017.
"Solent Special Protection Areas"	means the Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy.
"SRMS Contribution"	means the sum of £45,670.70 as a contribution towards measures to mitigate against the impact of the Development to the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy.
"SuDs"	means a sustainable drainage system for the Development in accordance with the specification agreed in writing by the Council.
"Travel Plan"	means the travel plan dated April 2019 submitted by the Owner to the Council and attached at Appendix 7 to this Agreement
"TRO"	means a traffic regulation order made pursuant to the Road Traffic Regulation Act 1984

"TRO Contribution"

means the sum of £5000 payable to the Council to be applied towards the implementation (which reference shall include all connected administration, supervision and the carrying out) of a road traffic regulation order(s) imposing parking restrictions St George's Avenue and Castle Avenue and other adjoining roads and the immediate vicinity as necessary to allow the safe operation of the local highway network.

"Working Day"

a day other than a Saturday, Sunday or public holiday in England

2 INTERPRETATION

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council and County Council include any successor local planning authority exercising planning powers under the Act and any successor local highway authority in respect of the County Council.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owner and the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.
- 2.13 Whenever this Agreement requires the agreement approval confirmation or consent of the parties such approval or consent is not to be unreasonably withheld or delayed and the parties shall take a reasonable approach.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of those sections of the Act and are enforceable by the Council and the County Council as local planning authorities and by the County Council as local highway authority.
- 3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT

This Agreement shall have effect from the date hereof.

5 OWNER COVENANTS

The Owner and the Developer covenant with the Council and the County Council to comply, observe and perform the obligations as set out in this Agreement.

6 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

7 RELEASE

- 7.1 No party shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Land except in respect of any breach subsisting prior to parting with such interest.

- 7.2 No planning obligation contained in this Agreement shall be binding on any land held by any of the statutory utilities for their statutory functions.

- ~~7.3 No planning obligations contained in this Agreement shall be binding on any land held by an Affordable Housing Provider for the provision of Affordable Housing.~~

- ~~7.4 No obligation contained in this Agreement shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings, constructed pursuant to the Planning Permission (or their respective mortgagees) or their successors in title save for, in relation to the Affordable Dwellings, paragraphs 3, 4, and 5 of Schedule 1 to this Agreement.~~

8 NOTICES

- 8.1 The Owner and the Developer agree to give the Council and the County Council written notice within ten Working Days of any change in Ownership of any of its interests in the Land excluding the disposals of the Dwellings occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

8.1.1 registered office where the transferee Owner is a company

8.1.2 usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan.

8.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

8.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council and the County Council shall be marked for the attention of the Head of Legal.

8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery; or

8.4.2 if sent by recorded delivery, at the time delivery was signed for.

8.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Developer shall pay to the Council and the County Council their reasonable and proper legal costs, in connection with the preparation, negotiation and completion of this Agreement together with the County Council's development control costs of £2350.

10 DETERMINATION OF DISPUTES

10.1 Subject to clause 10.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than ten Working Days written notice requiring the dispute to be determined under this clause 10. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

10.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.

10.3 The Expert shall act as an independent expert and:

- 10.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
- 10.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 10.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 10.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
- 10.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and
- 10.3.6 the Expert shall use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.
- 10.4 Responsibility for the costs of referring a dispute to an Expert under this clause 10, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.
- 10.5 This clause 10 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.
- 10.6 The provisions of this clause 10 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.
- 11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.
- 12 INDEXATION**

12.1 Except for the Monitoring Fee and the redeemable bus and bicycle vouchers forming part of the Resident's Welcome Pack all sums payable pursuant to this Agreement shall be Index Linked.
- 12.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council or the County Council (as appropriate) shall advise the Owner in writing.
- 13 INTEREST**

If any financial contribution due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.
- 14 VAT**

The parties to this Agreement acknowledge and agree the financial contributions in this Agreement are not subject to VAT and no VAT should be charged or recoverable in addition to the amount of the financial contributions specified in the Agreement.

15 WAIVER

No failure or delay by the Council or County Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 TERMINATION

- 16.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permission:

16.1.1 expires;

16.1.2 is varied or revoked other than at the request of the Owner; or

16.1.3 is quashed following a successful legal challenge.

17 FUTURE PERMISSIONS

- 17.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land except in accordance with the Planning Permission granted (whether or not on appeal) after the date of this Agreement.

- 17.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission or subsequent permission granted under such powers (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 16.1.2 arise.

18 JURISDICTION

- 18.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

- 18.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

19 SPEND IN ADVANCE

The Owner and Developer hereby agree that if prior to the receipt of the Highway Works Contribution the County Council incurs any expenditure in providing facilities to which it was intended to apply any such Highway Works Contribution (or in consequence of arranging for the provision thereof) by the letting of a contract or otherwise including any design costs whether in anticipation of or as a result of the Development then the County Council may immediately following receipt of such Highway Works Contribution deduct therefrom a sum equivalent to such expenditure incurred and for the avoidance of doubt it is hereby further agreed that such proportion of any such Highway Works Contribution shall not be the subject of any requirement to repay or account for it or any interest accrued thereon pursuant to the terms of this Agreement and that such monies shall be and shall remain the property of the County Council and shall not be bound by the terms of this Agreement.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE 1

Affordable Housing

The Owner and the Developer covenant with the Council as follows:

1. AFFORDABLE HOUSING MIX

- 1.1 To provide the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Mix.
- 1.2 That the Affordable Housing Mix shall consist of:
 - 1.2.1 14 Affordable Rented Dwellings; and
 - 1.2.2 6 Shared Ownership Dwellings; or
 - 1.2.3 such other mix of type, tenure and numbers as may be agreed in writing with the Council at its absolute discretion.

2. PROVISION OF AFFORDABLE DWELLINGS

- 2.1 To ensure that the Affordable Dwellings within the Development will be compatible with the design of the Open Market Dwellings.
- 2.2 Not to Dispose nor permit Disposal of more than 44 Open Market Dwellings until the Affordable Dwellings:
 - 2.2.1 are completed and are ready for Occupation; and
 - 2.2.2 have been transferred to an Affordable Housing Provider;by either a transfer or transfers of the freehold interest or the creation of a long leasehold interest or long leasehold interests with a term of not less than 125 years.
- 2.3 The deed of transfer or lease (as applicable) to the Affordable Housing Provider of the Affordable Dwellings shall contain the following (or such other alternative provisions as the Council may agree in writing):
 - 2.3.1 a covenant not to use the Affordable Dwellings otherwise than for the provision of Affordable Housing; and
 - 2.3.2 a covenant not to Dispose of any of the Affordable Dwellings other than for the purpose of providing Affordable Housing to Eligible Persons; and
 - 2.3.3 a covenant requiring the Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100% of the Occupiers of the Affordable Rented Dwellings when initially let and all subsequent true voids,

and such covenants to be expressed to be subject always to the provisions of this Agreement and in particular any exclusions set out therein and to only remain binding and enforceable against the relevant Affordable Dwellings for so long as the corresponding requirements and

obligations set out in this Agreement remain binding and enforceable against the relevant Affordable Dwellings.

3. OCCUPATION OF AFFORDABLE RENTED DWELLINGS

3.1 Subject always to the provisions of this Agreement not to permit or otherwise allow any Affordable Rented Dwellings to be let or Occupied for any purpose other than:

3.1.1 as Affordable Housing; and

3.1.2 as the sole private residence of the occupier; and

2.1.3 by Eligible Persons with a Local Connection; and

2.1.4 at a sum not exceeding the Affordable Rent; and

2.1.5 to persons other than persons nominated by the Council in accordance with the Hampshire Home Choice Allocations Framework as amended from time to time or any other policy and/or agreement that may replace these.

4. OCCUPATION OF SHARED OWNERSHIP DWELLINGS

Subject always to the provisions of this Agreement, not to let nor transfer any Shared Ownership Dwellings (or other Low Cost Home Ownership Dwellings) to persons other than Eligible Persons nominated by the Help to Buy Agent.

5. 100% EQUITY SHARE

The provisions in paragraphs 2, 3 and 4 of Schedule 1 (where applicable) shall cease to have effect in respect of any Affordable Dwelling where a leaseholder of an Affordable Dwelling (or its mortgagee) held under Low Cost Home Ownership has purchased 100% of the equity in the Dwelling or in respect of any Dwelling where the Occupier has exercised a statutory right to buy or a right to acquire in respect of such Dwelling.

6. CHARGE IN POSSESSION

6.1 For the purpose of this clause Chargee means:

6.1.1 any mortgagee or chargee;

6.1.2 any receiver, administrative receiver or administrator, appointed under the Law of Property Act 1925 or other statutory provision; or

6.1.3 any housing administrator appointed under the Housing and Planning Act 2016; or

6.1.4 any other person appointed under any security document to enable a chargee to realise its security;

of the Affordable Housing Provider and the whole or any one or more of the Affordable Dwellings

- 6.2 The provisions of this Agreement relating to Affordable Dwellings shall not be binding on a Chargee (or any person or bodies deriving title through such Chargee) PROVIDED THAT the Chargee will have:
- 6.2.1 given written notice to the Council of its intention to exercise its powers of sale to Dispose of any of the Affordable Dwelling(s) ("**Notice**"); and
 - 6.2.2 used reasonable endeavours over a period of three months from the date the Notice is served to complete a Disposal of the relevant Affordable Dwelling(s) to either;
 - 6.2.2.1 another Affordable Housing Provider; or
 - 6.2.2.2 to the Council.
- 6.3 Any Disposal referred to in paragraph 6.2.2 shall be for a consideration not less than the amount properly due and outstanding under the terms of the Chargee's relevant security documentation. This sum shall include all accrued principal monies, interest and the Chargee's reasonable costs and expenses properly incurred.
- 6.4 In the event that a Disposal referred to in paragraph 6.2.2 shall not have been completed within the period of three months referred to in paragraph 6.2.2, the Chargee will be entitled to Dispose of the relevant Affordable Dwelling(s) free from the provisions of this Agreement relating to Affordable Housing which shall determine absolutely.
- 6.5 For the avoidance of doubt in respect of the Affordable Dwelling(s) disposed of in accordance with paragraph 6.4 above the purchaser shall not be subject to the obligations of this Schedule 1 to this Agreement.

SCHEDULE 2

MANAGEMENT COMPANY AND MANAGEMENT PLAN

The Owner and the Developer (and the Council where relevant) covenant as follows:

- 1.1 Not to Commence nor permit Commencement of Development until the Council has approved in writing the Owner's proposal for the formation of the Management Company and such proposal shall include full details of the proposed structure and voting rights of the Management Company.
- 1.2 The Council covenants that it will notify the Owner that it either approves or rejects the proposal referred to in paragraph 1.1 of Schedule 2 within one month of receipt. If notification is not received within that time, the proposal/s will be deemed to be approved. If notification of a refusal is received by the Owner within the aforementioned time period, the Owner shall continue to comply with the obligation at paragraph 1.1 of Schedule 2 until such time as the Council approves the proposal or deemed approval applies.
- 1.3 Not later than three months following Commencement of Development to submit to the Council in writing the Owner's proposal for the Management Plan.
- 1.4 The Council covenants that it will notify the Owner that it either approves or rejects the proposal referred to in paragraph 1.3 of Schedule 2 within one month of receipt. If notification is not received within that time, the proposal/s will be deemed to be approved. If notification of a refusal is received by the Owner within the aforementioned time period, the Owner shall submit a further proposal or proposals until such time as the Council approves the proposal or deemed approval applies.
- 1.5 No later than six months from the later of the Council's approval or deemed approval in accordance with clause 1.2 or Commencement of the Development the Owner shall take all necessary steps to secure the formation and registration of the Management Company at Companies House (taking into account any modifications reasonably required by the Council) and to notify the Council accordingly within fourteen days of the completion of the registration of the Management Company.
- 1.6 Not to allow or permit Disposal of any Dwelling until:
 - 1.6.1 the Management Company has been formed in accordance with the approved or deemed approved proposal; and
 - 1.6.2 the Management Plan has been approved in writing or deemed approved by the Council.
- 1.7 To secure the proper maintenance of the Common Parts and SuDs to the reasonable satisfaction of the Council until such time as:
 - 1.7.1 the Management Company is registered and the Management Plan has been approved or deemed approved by the Council; and
 - 1.7.2 in respect of the Common Parts:
 - (a) the maintenance arrangements for the Common Parts in accordance with the Management Plan have been implemented; and

- (b) the transfer or the granting of a long leasehold interest of the Common Parts to the Management Company is completed; and

1.7.3 in respect of the SuDs:

- (a) the transfer or the granting of a long leasehold interest of the SuDs to the Management Company; or
- (b) the SuDs are adopted by a statutory undertaker; or
- (c) the maintenance responsibility is vested to a statutory undertaker, local authority or other statutory body

1.8 That if the Management Company ceases to exist as a company or if the Management Company at any time defaults in the performance of any of its covenants or obligations on its part as contained in the Management Plan and/or Management Agreement then the Owner shall (without prejudice to any other right or remedy of the Owner against the Management Company or any other person) perform the said covenants and obligations until the appointment by the Owner of a successor to the Management Company.

2. SUDS

- 2.1 Where reasonable amendments to the approved open book construction costs for the SuDs are proposed by the Council, the Owner shall not more than ten Working Days after receiving the Council's proposed amendments revise the bill of quantities for the SuDs in accordance with the proposed amendments.
- 2.2 On or before Commencement of Development to pay the Cash Deposit
- 2.3 The Cash Deposit shall be retained by the Council until the earlier of:
 - 2.3.1 the SuDS are adopted by a statutory undertaker; or
 - 2.3.2 the maintenance responsibility vests in a statutory undertaker, local authority or statutory body; or
 - 2.3.2 the date of completion of construction of the SuDS to the reasonable satisfaction of the Council
- 2.4 The Cash Deposit (or the unexpended amount where part of the Cash Deposit has been realised in accordance with paragraph 2.5) shall be returned within 20 Working Days of the events in paragraph 2.3 occurring 2.3.3
- 2.5 If:
 - i) the Owner fails to construct the SuDs in accordance with the details as approved by the Council in writing; or
 - ii) prior to completion of the SuDs the Owner is adjudicated bankrupt or goes into liquidation voluntarily or otherwise; or
 - iii) has executed a deed of assignment for the benefit of or otherwise compound with its creditors (except for the purpose of reconstruction or amalgamation)

the Council may (without prejudice to the Council's other rights remedies and powers against the Owner) apply the Cash Deposit to any reasonable and proper expenditure (including legal costs) which the Council may incur in carrying out the construction of the SuDs to its own design or the Owner's design to return the Land to the level of hydrological response as existed before the Commencement of the Development.

SCHEDULE 3

Travel Plan

The Owner covenants with the Council as follows:

1 RESIDENTS WELCOME PACK

- 1.1 Not to Dispose nor permit Disposal of any Dwelling until the details of the Residents' Welcome Pack in accordance with the Travel Plan has been submitted to and approved in writing by the Council.
- 1.2 Not to Occupy nor permit Occupation of any Dwelling until the First Occupier of each Dwelling has been provided with a Residents' Welcome Pack. For the avoidance of doubt, this obligation requires the provision of no more than one Residents' Welcome Pack per Dwelling.

SCHEDULE 4

Contributions

The Owner and the Developer covenant with the Council as follows:

1 MONITORING FEE

Not to Commence nor permit Commencement of Development until the Monitoring Fee has been paid.

2 SRMS CONTRIBUTION

Not to Commence nor permit Commencement of Development until the SRMS Contribution has been paid.

3 TRO CONTRIBUTION

3.1 To pay the TRO Contribution on demand by the Council but not before Commencement of Development.

3.2 During the period beginning with the date of Commencement of Development and ending 3 years from Practical Completion of the Development to pay to the Council such sum as the Council shall notify the Owner in writing as being reasonably required for the purpose of implementing or amending (which expression shall include all connected administration, supervision and the carrying out of) such traffic management measures as the Council considers appropriate to ensure that any overspill parking from the Development or operation of any existing parking restrictions does not interfere with the capacity, operation or safety of the adjoining local highway network PROVIDING THAT such sum shall not exceed £2,000.

3.3 The Council covenants to use the TRO contributions for the purposes specified in this Agreement or such other purposes for the benefit of the Development as the Owner and the Council shall agree in writing.

3.4 The Council covenants that following receipt of a written request to do so to repay to the person who paid the TRO Contribution such amount of the TRO Contribution which remains unspent or is not committed for expenditure (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) on the fifth anniversary of the date of receipt by the Council of the TRO Contribution.

4 HEALTH CONTRIBUTION

Not to Dispose nor permit Disposal of more than 34 Dwellings until the Health Contribution has been paid.

5 GEESE AND WADERS MITIGATION CONTRIBUTION

Not to Commence or permit Commencement of Development until the Geese and Waders Mitigation Contribution has been paid to the Council.

6 COMMUNITY PROJECT WORKER CONTRIBUTION

6.1 Not to Occupy nor permit Occupation of the Development until 50% of the Community Project Worker Contribution has been paid.

- 6.2 Not to Occupy nor permit Occupation of more than 34 Dwellings until the balance of the Community Project Worker Contribution has been paid.

7 NUTRIENT MITIGATION CONTRIBUTION

Not to Commence or permit Commencement of Development until the Nutrient Mitigation Contribution has been paid to the Council.

8 AFFORDABLE HOUSING CONTRIBUTION

Not to Dispose or permit Disposal of any Dwelling until the Affordable Housing Contribution has been paid to the Council.

SCHEDULE 5

Miscellaneous covenants

The Owner and the Developer covenants with the Council (and the County Council in respect of paragraph 3.3) as follows:

1 COMMENCEMENT

To give to the Council not less than ten Working Days written notice of their intention to Commence Development

2 SUBMISSION OF DOCUMENTS

To provide when submitting documents or details to the Council and/or County Council pursuant to the Schedules of this Agreement a reference to the Planning Permission, the date and parties to this Agreement, and the paragraph and Schedule under which approval is sought, together with a statement of the date by which a decision must be given by the Council and/or the County Council.

3 HIGHWAY WORKS CONTRIBUTION

3.1 To pay to the County Council the Highway Works Contribution prior to the Occupation of any Dwelling.

3.2 Not to Occupy nor permit Occupation of any Dwelling unless and until the Highway Works Contribution has been paid to the County Council in full.

3.3 To the extent that the Highway Works Contribution or any part thereof remains unspent or is not unconditionally committed to be spent at the end of the period of ten (10) years from the date of receipt of the Highway Works Contribution and upon written request of the person who made the payment the County Council shall as soon as reasonably practicable of such written request refund to the person who made the payment any part of the Highway Works Contribution which has not been spent or is not unconditionally committed to be spent together with interest on the unexpended part.

4 OPEN SPACE AND LAP

4.1 Not to Occupy nor permit Occupation of more than 45 Dwellings until the LAP and Open Space shall have been completed in accordance with the details approved in writing by the Council.

4.2 To include in any transfer or lease of the LAP and Open Space Land covenants to restrict the use of the LAP and Open Space Land for the purposes of public recreation by the owners-occupiers of the Dwellings and by the public at large and to ensure future access for the public to the Open Space Land.

5 PERMISSIVE PATHS

5.1 Not to Dispose nor permit Disposal of more than 44 Open Market Dwellings until the Permissive Paths have been laid out, constructed and are available for use in accordance with the details approved by the Council in writing.

5.2 To ensure that the Permissive Paths are available for use by owner-occupiers of the Dwellings and the public at large and to include in any transfer or lease of the Permissive Paths covenants requiring the Permissive Paths to be made and kept available for use by the public in perpetuity.

- 5.3 To ensure that access from the Land to the eastern boundary of the Land is kept and made available for any future development proposals and to ensure that access from the Land to the eastern boundary of the Land is not obstructed

6 ACQUAUSTIC FENCE

- 6.1 Not to Occupy nor permit Occupation of more than 44 Dwellings until the Acoustic Fence has been erected in accordance with the details approved by the Council in writing.

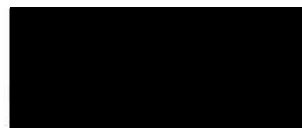
7 RECEPTOR SITE

- 7.1 Not to Dispose nor permit Disposal of more than 34 Open Market Dwellings until the Receptor Site has been laid and constructed in accordance with the Ecology Report.

- 7.2 Following the laying out and construction of the Receptor Site in accordance with paragraph 7.1 the Receptor Site shall thereafter be kept and maintained in accordance with the Ecology Report.

EXECUTED as a DEED by affixing
THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT

in the presence of:

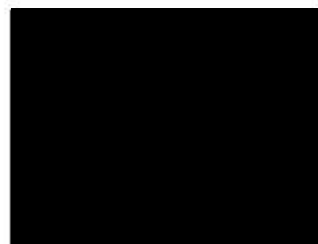


Authorised Signatory

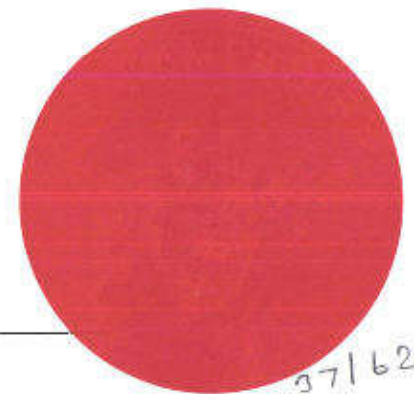


13587

EXECUTED as a DEED by affixing
THE COMMON SEAL of
HAMPSHIRE COUNTY COUNCIL
in the presence of



Authorised Signatory



3716203

Name

Position

Executed as a Deed by **DOREEN**

ANN HANN in the presence of :

)
)
)
)

[Redacted Signature]

OWNER

Witness

WITNESS

Name:

Address:

Occupation:

[Redacted Witness Information]

Executed as a Deed by **& BERNICE**

AYRES in the presence of :

)
)
)
)

[Redacted Signature]

OWNER

Witness

Name:

Address:

Occupation:

[Redacted Witness Information]

Executed as a Deed by)
)
as attorney for **PERSIMMON HOMES**)
)
LIMITED in the presence of:)
)

[Redacted Signature]

ATTORNEY

Witness

[Redacted Signature]

[Redacted Signature]

WITNESS

Executed as a Deed by)
)
as attorney for **PERSIMMON HOMES**)
)
LIMITED in the presence of:)
)

[Redacted Signature]

ATTORNEY

Witness

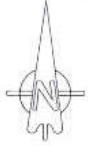
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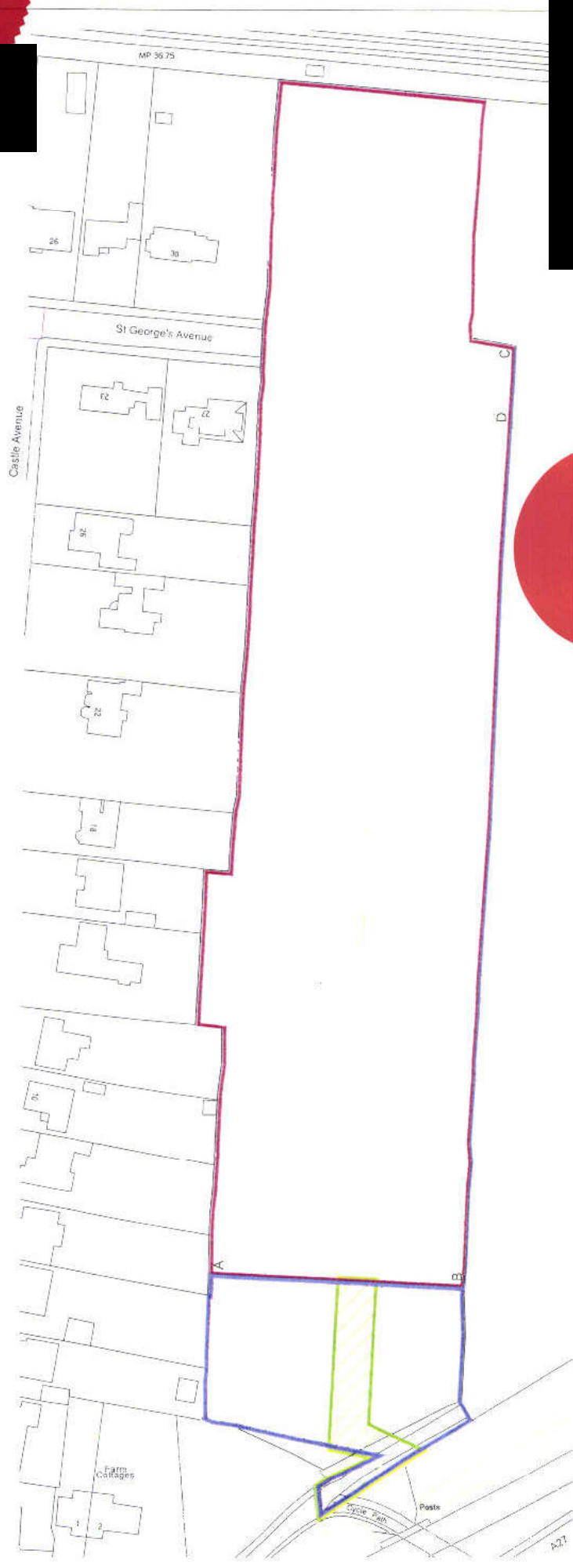
WITNESS

APPENDIX 1

Site Location Plan – CP01 Rev C



135531



Sewer and services easement

37/6203

Contract Plan		Drawn by BR	Checked by TW	Drawn on CP-01	Rev C	Date 22.03.17	Revision Details
Land East of Castle Avenue, Havant		Scale 1:1000 @ A3		Persimmon Together, we make a home		INFORMATION	
File Location: S:\Technical\Current status\havant - castle avenue drawings\structural\planning\drawings		Scale 1:1000 @ A3		Persimmon Together, we make a home		INFORMATION	

APPENDIX 2

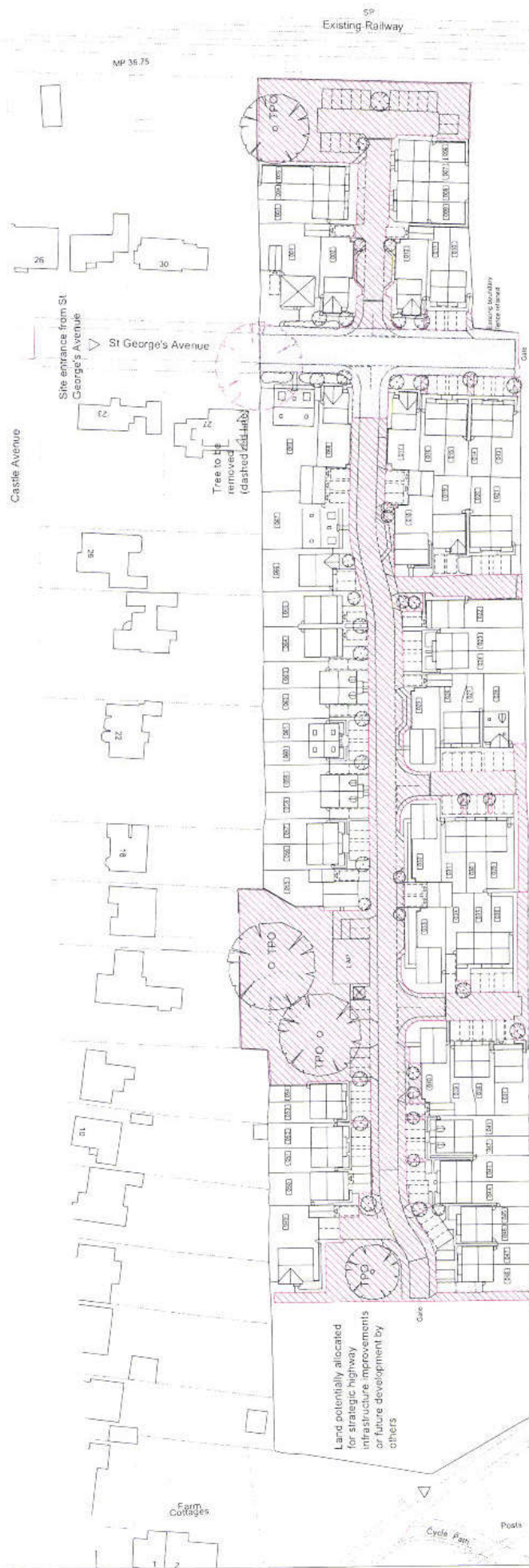
Affordable Housing Plan 507-01- A-02-010-TP Rev J

APPENDIX 3

Acoustic Fence 507-01- A-02-012-BT Rev J

APPENDIX 4

Common Parts - 507-01-A-02-0300-MA Revision C



Run	Date	Recovery Details	Cr	Co
C	09/02/90	Water column animals	20	04
B	01/02/91	Seawater that were carried to 12m	20	04
A	05/02/91	Portion of shipboard haul, deep-sea	20	04



PERSIMMON

Avenue, Havant
 Training Unit

Alt No	Group No	Sex	Age
507	A-02-300 MA	C	30
br	br	br	br
508	br	br	03.04.19

1500 @ A1 / 11000 @ A3

PLANING

APPENDIX 5

LAP and Open Space Land 507-01 - A-02-020-SP Rev F



Drawn by: [Redacted]
 Checked by: [Redacted]
 Date: [Redacted]
 Scale: 1:500 @ A1 / 1:1000 @ A3
 Project: [Redacted]

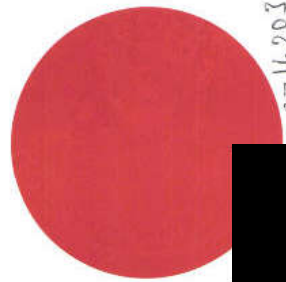
PERSIMMON
 LAND EAST OF CASTLE AVENUE, HAVANT

Land East of Castle Avenue, Havant
 Drawing title: Site Plan

Rev	Date	Description	By	Check
1	22.06.18	Issue for planning	[Redacted]	[Redacted]
2	22.06.18	Issue for planning	[Redacted]	[Redacted]
3	22.06.18	Issue for planning	[Redacted]	[Redacted]
4	22.06.18	Issue for planning	[Redacted]	[Redacted]
5	22.06.18	Issue for planning	[Redacted]	[Redacted]
6	22.06.18	Issue for planning	[Redacted]	[Redacted]
7	22.06.18	Issue for planning	[Redacted]	[Redacted]
8	22.06.18	Issue for planning	[Redacted]	[Redacted]
9	22.06.18	Issue for planning	[Redacted]	[Redacted]
10	22.06.18	Issue for planning	[Redacted]	[Redacted]

Scale: 1:500 @ A1 / 1:1000 @ A3
 Sheet: 1 of 1
 Date: 22.06.18

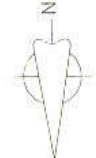
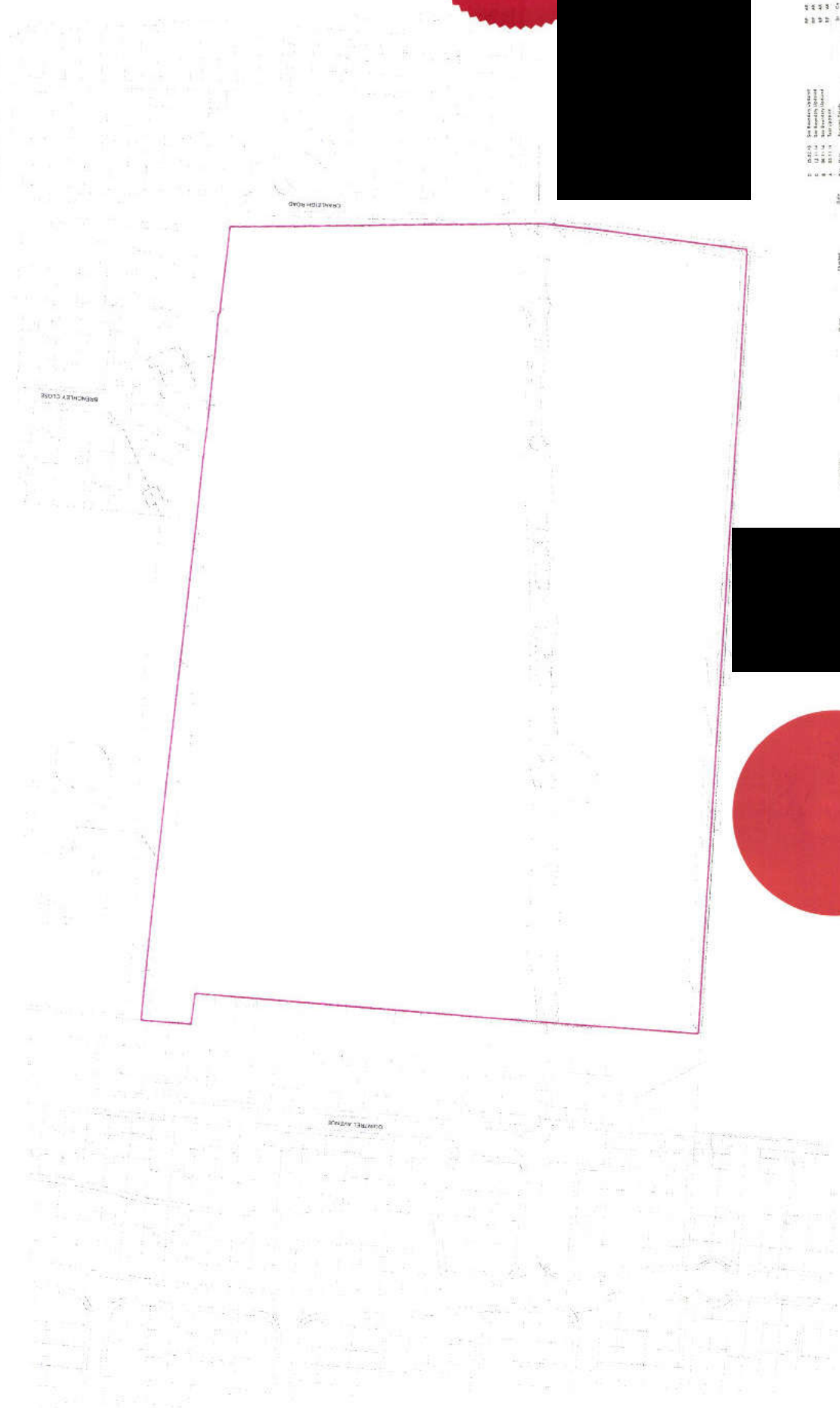
PLANNING



APPENDIX 6

Receptor Site – LOC1 Revision D

CDM 2007 Health & Safety Information:
The information on this sheet is provided as a guide only and is not intended to be used as a basis for any legal proceedings.



Plot No.

Land at Cranleigh Road,
Ponchester

Scale

1:1250 @ A3

Plot No.

9132

Plot No.

27 10 14

APPROVAL

Plot No.

AK

Plot No.

27 10 14

ECE Architecture

Plot No.

27 10 14

ECE Architecture

3716203

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APPENDIX 7

Travel Plan

Travel Plan:

Land East of Castle Avenue, Havant

Persimmon Homes Ltd

April 2019



1. Introduction

1.1 This Travel Plan has been prepared by Persimmon Homes Ltd to accompany this application for full planning permission for:

"Residential development comprising 69 no. dwellings with access from St George's Avenue together with access, car parking, landscaping, electrical substation and associated works."

1.2 This statement sets out the measures proposed to promote and support sustainable travel to and from the site and reduce reliance on private motor vehicles

1.3 Although the site proposes 69 units and, as such, does not meet the 100 unit threshold for a Travel Plan under current HCC guidance, Havant Borough Council have indicated that a TP is required in this instance.

1.4 The document has been prepared in light of the relevant Hampshire County Council guidance

2. Planning Policy Context

2.1 Consideration has been given to the 'Havant Borough Local Plan (Allocations)', 'Havant Borough Core Strategy Local Development Framework', 'Havant Borough Residential Parking and Cycle Provision Supplementary Planning Document March 2010, and the 'Hampshire Local Transport Plan 2011-2031' together with the draft 'Havant Local Plan 2036' and supporting 'Havant Local Plan Transport Assessment' – all of which are written with a view to promoting a transport vision for South Hampshire, and create "...a resilient, cost effective fully-integrated sub-regional transport network, enabling economic growth while protecting and enhancing health, quality of life and environment"

2.2 Central Government Guidance within the National Planning Policy Framework (NPPF) with regard to the sustainability of the site in regard to reducing the reliance to travel by the private car has also been taken into account.

3. The Proposal

3.1 The site is considered to be sustainably located in terms of services, with Warblington station located a short walk to the north west along with Warblington School. There are also bus stops in close proximity on Southleigh Road (west) and Emsworth Road (south west) providing transport links to Havant Town Centre and beyond. The Town Centre, with its range of shops and other facilities is located less than a mile to the west of the site.

3.2 The development proposes 69 residential units comprising 2, 3 and 4-bedroom homes and would provide a total of 161 car parking spaces (142 allocated to the dwellings and 19 visitor spaces). Each dwelling has a minimum of two spaces each, with the three and four bedroomed properties having at least three spaces each. The level of parking is in full accordance with the adopted Car Parking SPD.

3.3 The application is supported by a full Transport Assessment which concludes that the impact upon the local road network resulting from the development will be acceptable. Discussions are on going between the Company and the Borough and County Councils as to whether additional, off site, highway works are required to improve the local road network and mitigate any impact of the development.

3.4 It is acknowledged, however, that opportunities for the effective promotion and delivery of sustainable transport initiatives (eg walking, cycling and public transport), should be explored in order reduce the demand for travel by less sustainable modes.

4. Objectives & Measures

4.1 The Travel plan seeks to actively promote sustainable transport options for the prospective occupiers of the proposed dwellings; to enhance safe, efficient and sustainable movement modes; and establish long-term sustainable and active travel patterns associated with the site.

4.2 The first occupier of each household will be provided with a Welcome Pack, which will include:

- Details of redeemable vouchers for Bus Travel (up to a total value of £50)
- Details of redeemable vouchers toward to cost of purchasing a cycle (up to a total value of £150)
- Map of local walking and cycling routes including local amenities within the Havant area
- Contact details of HCC for more additional information

5. Conclusion

5.1 It is considered that proposed measures will serve to appropriately enhance the sustainable location of the site and will and support sustainable travel to and from the site in order to reduce reliance on private motor vehicles, to the benefit of the residents and the wider locality.