

**Application Number: 17/11770** Variation / Removal of Condition

**Site:** LAND ADJACENT TO FOREST LODGE FARM, FAWLEY ROAD, HYTHE SO45 3NJ

**Development:** Variation of condition 21 of Planning Permission 15/10751 to allow revised drainage proposal (retrospective)

**Applicant:** Vivid Build

**Target Date:** 11/04/2018

**Extension Date:** 18/10/2019

**1 UPDATE REPORT**

**Introduction**

Members will recall that this application was previously considered at the October 2019 Committee. The application relates to a development of 45 dwellings on land adjacent to Forest Lodge Farm and specifically seeks approval of an alternative drainage scheme to the one that was originally granted planning permission in November 2015.

The original October Committee report, which is set out in full at the end of this Update Report, describes all of the key issues and concerns. In summary, there is one main issue for Members to consider, which is whether or not the alternative drainage scheme that is proposed would provide a satisfactory arrangement to deal with surface water drainage, which includes a consideration of whether or not the proposal would increase flood risk to adjacent properties.

**Pre-October Committee Update**

After the original October Committee report had been written, but before the Committee meeting itself, the Local Planning Authority received three additional Statutory Declarations, one being from the owner of Forest Lodge Farm, and the other 2 being from regular visitors to the farm. The Statutory Declarations all confirmed that prior to 2017, the buildings at Forest Lodge Farm were dry underfoot and that the only surface water was from rainwater running down the road into the property after heavy rainfall. No groundwater emergence was noted prior to 2017. Since 2017, however, (after the new estate had been built into the ground), water has been noted coming out of the ground behind the main domestic habitation unit at Forest Lodge Farm and through the expansion joints of one of the workshops on that site. It was also noted that a steep bank behind the main dwellings has also partially collapsed.

3 further letters of objection from existing objectors were also submitted immediately prior to the October Committee, reiterating concerns previously raised.

A Section 106 legal agreement in respect of habitat mitigation contributions (See Section 11.27 of the original report) was completed before October Committee.

## **October 2019 Committee**

There was a lengthy debate of this application at the October 2019 Committee. Members noted the objections to the application, particularly the concerns of the owner of Forest Lodge Farm in relation to water ingress, despite the professional advice made available.

Members agreed that the application should be deferred to enable the applicant to undertake further investigations into the reasons why water is flowing / infiltrating into the adjacent property at Forest Lodge Farm; and on the basis of the information gathered from these further investigations to then demonstrate what additional measures are needed to ensure that the situation is managed and the impact appropriately mitigated.

It was recognised by Members that it would be necessary for all parties to meet with planning officers to determine how to resolve the matters of concern.

## **Post October 2019 Committee actions and developments**

On 1st November 2019, a meeting was held at Appletree Court, involving officers from the Council, representatives from the applicant (Vivid), and the main objectors. It was agreed at that meeting that the developer would have a further meeting with the objectors on site at Forest Lodge Farm to consider the development's drainage impact and to discuss possible ways forward in the light of the Committee resolution. It was acknowledged at the meeting that there may be matters that the 2 land owners may wish to discuss that there were not planning matters, and for that reason the Council were not party to the subsequent meeting that took place.

On 29th November 2019, the developer advised the Local Planning Authority that they had held a further meeting with the objector at Forest Lodge Farm. Alongside this, they confirmed that they had asked a separate firm of engineers to review the implementation of both the proposed and consented scheme, along with any required or beneficial changes to both.

On 23rd December 2019, the developer advised the Local Planning Authority that they had a further report undertaken on the suitability of their proposed system, as well as detailing measures that could be added to further deal with water at times of peak rainfall. They indicated that they had asked to have a further meeting with the objector at Forest Lodge Farm in January 2020.

Since that time, the Local Planning Authority have not received any further written update from the developer.

Five months have now elapsed since the previous Committee resolution. Officers do not feel it is appropriate for a determination on this application to be delayed any longer, when the development is largely complete, and given the pressing need to deliver homes within the District to meet the needs of the area. It is clearly regrettable that better progress has not been made in addressing Members' previous concerns, but this is largely outside of officers' control.

Officers have carefully considered the concerns raised by Members at the October Committee. Whilst these concerns are fully understood, ultimately the Committee's decision is one based on a technical matter relating to drainage. The Committee must therefore give significant weight to the professional advice received from the relevant drainage consultees, as well as its own independently appointed drainage consultant. Officers continue to maintain that the proposed

drainage scheme is acceptable and can therefore see no good reason to amend the original recommendation, which is to grant planning permission subject to conditions, as set out in the previous October Committee report. As such, the original recommendation still stands, without amendment.

### **Further Third Party representations**

Since October's Committee, 2 local residents who had objected previously have submitted further written comments, reiterating previous concerns, and expressing concern at the timescales it has taken to deal with this application and to address the concerns raised.

## **2 RECOMMENDATION**

**Grant the proposed Variation of Condition subject to conditions** as set out at the end of this report.

### **ORIGINAL REPORT TO OCTOBER 2019 COMMITTEE**

## **1 SUMMARY OF THE MAIN ISSUES**

The main issue to be taken into account when determining this application is whether or not the drainage scheme proposed in connection with the residential development of the application site would be appropriate. In particular, it is necessary to consider whether the proposed drainage scheme would increase flood risk elsewhere.

This, and all other relevant considerations, are set out and considered in Section 11 of this report, after which a conclusion on the planning balance is reached.

This matter is being considered by Committee due to a Member request and because the officer recommendation is contrary to the views of the Parish Council.

## **2 THE SITE**

2.1 The application site is a former area of farmland between Forest Lodge Farm and Fawley Road. Following the granting of planning permission for 45 affordable dwellings in November 2015, the site has been developed for housing, with supporting infrastructure including public open space and allotments. What has been built, at least in terms of what is above ground, largely reflects what was approved in November 2015. Apart from a 3-storey block of 8 flats, all of the dwellings approved in November 2015 have been built, so that there are now 37 completed dwellings on the application site. However, due to issues that will be discussed in detail below, none of the dwellings are currently occupied. Areas of the site have also been laid out for allotments and public open space, although there are still outstanding works that would need to be implemented before these areas could be used for their intended purposes.

2.2 The development site is bounded by the Seadown Veterinary Surgery on its northern side, while to the north-east is an area of mature broad-leaved woodland. To the east side of the site is the residential dwelling at Forest Lodge Farm and a small paddock, which are visually separated from the site by mature trees and vegetation alongside the site's eastern boundary. There are also mature trees and vegetation

along the site's southern boundary, beyond which is a gravel track that serves Forest Lodge Farm and a small number of dwellings to the south. The western half of the site is either flat or gently sloping. However, there are some pronounced slopes to the eastern half of the site. A saddle of higher ground does extend across to the eastern boundary of the site, but either side of this the land drops away sharply. The site's topography is particularly relevant to this application proposal.

### **3 THE PROPOSED DEVELOPMENT**

- 3.1 The application that has been submitted seeks to vary Condition 21 of Planning Permission 15/10751 (as described in the planning history below). That condition states that:-

*"The surface water drainage layout shall be built fully in accordance with Drainage Strategy Drawing BPV-sk1 rev G, the Andrew Malcolm Associates Ltd Micro Drainage Calculations dated 28/08/15, and porous paving detail BPV-sk2. Development shall additionally be carried out in accordance with Geo-Environmental's letter of 10th September 2015."*

The stated reason for this condition was:-

*"In order to ensure that the drainage arrangements are appropriate and in accordance with Policies CS2 and CS6 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks."*

- 3.2 In effect, the development that is now proposed seeks approval of an alternative drainage scheme to that which was approved in November 2015.
- 3.3 The drainage scheme approved in November 2015 was based on shallow soakaways. To address specific drainage concerns associated with the topography of the site, the approved scheme also included the provision of a swale in the northern corner of the site, which was designed to ensure that, during times when the design storm rates are exceeded, any surface water runoff would be contained within the site. The scheme also proposed a gravel drain along the site's boundary with Forest Lodge Farm. With this very specific drainage scheme, it was concluded that the approved development would have an acceptable drainage system that would not result in adjacent properties being at increased risk of flooding.
- 3.4 The drainage scheme that is now proposed no longer includes the previously proposed swale feature. Instead, the proposed drainage strategy looks to utilise multiple shallow soakaways to collect surface water flows. The soakaways have been redesigned and would be deeper than previously approved. The gravel drain adjacent to Forest Lodge Farm has been omitted.

### **4 PLANNING HISTORY**

- 4.1 Development of 45 affordable dwellings comprised: 1 three-storey block of 8 flats; 3 terrace of 4 houses; 1 terrace of 3 houses; 9 pairs of semi-detached houses; 4 detached houses; access, roadways & footpaths; parking; public open space; allotments; landscaping and associated works (15/10751) - granted 12/11/15

## 5 THE DEVELOPMENT PLAN AND OTHER NFDC GUIDANCE

### **Core Strategy**

#### Objectives

1. Special qualities, local distinctiveness and a high quality living environment
3. Housing
6. Towns, villages and built environment quality

#### Policies

- CS1: Sustainable development principles
- CS2: Design quality
- CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)
- CS5: Safe and healthy communities
- CS7: Open spaces, sport and recreation
- CS10: The spatial strategy
- CS12: Possible additional housing development to meet a local housing need
- CS15: Affordable housing contribution requirements from developments
- CS24: Transport considerations
- CS25: Developers contributions

### **Local Plan Part 2 Sites and Development Management Development Plan Document**

- DM2: Nature conservation, biodiversity and geodiversity
- DM3: Mitigation of impacts on European nature conservation sites
- DM5: Contaminated Land
- HYD1: Land at Forest Lodge Farm

### **Saved New Forest District Local Plan First Alteration**

- DW - E12: Protection of landscaped features.

### **Supplementary Planning Documents**

- SPD - Housing Design, Density and Character
- SPD - Mitigation Strategy for European Sites

### **New Forest District Local Plan Review 2016-2036 Part 1: Planning Strategy Submission Document**

- Policy 1: Achieving Sustainable Development
- Policy 5: Meeting our Housing Needs
- Policy 10: Mitigating the impacts of development on International Nature Conservation sites
- Policy 13: Design Quality and Local Distinctiveness
- Policy 14: Landscape Character and Quality
- Policy 15: Open Spaces, sport and recreation
- Policy 16: Housing type, sizes and choice

### **Hythe & Dibden Neighbourhood Plan**

## 6 RELEVANT LEGISLATION AND GOVERNMENT ADVICE

- Section 38 Development Plan
- Planning and Compulsory Purchase Act 2004
- National Planning Policy Framework (NPPF) (See Para 11.5 below for details)

## **7 PARISH / TOWN COUNCIL COMMENTS**

Hythe & Dibden Parish Council - Recommend refusal - the plans presented do not resolve the significant flooding concerns and the impact on nearby residents. The current proposal does not satisfy the Council that the drainage issues have been resolved effectively; are concerned by conflicting and inaccurate information - for example, boreholes are shown in different places on various documents.

## **8 COUNCILLOR COMMENTS**

Cllr Crisell:- requests Committee consideration - has received representations from local residents who want to be convinced that there will be no detriment to their properties, which for the most part are sited on lower ground.

## **9 CONSULTEE COMMENTS**

The following comments are summarised, with the full comments being available to read online.

9.1 Hampshire County Council (Flood Water Management):- No objection - the information submitted with the application addresses their requirements; however, cannot comment on ground water flooding issues as would require pre and post winter groundwater monitoring to determine if soakaways have had any input on groundwater; confirm soakaways SK6 and SK7 should be removed from made ground and reconstructed at a greater depth within the natural sub-strata.

9.2 Southern Water:- Have no objections to the use of soakaways to dispose of surface water; had initially raised an issue with the proximity of the soakaways to the foul sewer, but confirm that this matter has since been resolved and agreed with Southern Water Services.

9.3 NFDC (Land Drainage):- Both HCC's Flood & Water Management team & Southern Water should be satisfied prior to any approval being granted.

9.4 Natural England:- Concur with the conclusions of the Local Planning Authority's Appropriate Assessment, provided that all mitigation measures are appropriately secured in any permission given.

9.5 Environmental Health (Contaminated Land):- No comment

9.6 Southern Gas Networks:- advise of site's proximity to gas main

## **10 REPRESENTATIONS RECEIVED**

The following comments are summarised, with the full comments being available to read online.

10.1 Letters of objection have been received from 8 local residents. Objections have been raised on the following grounds:- The proposed drainage scheme is inadequate and would not have adequate exceedance overflow capacity; it would not comply with SUDS Guidance; it would result in an increased risk of flooding to neighbouring properties; the drainage scheme would be less effective than the previously approved scheme; the topography and geology of the site would mean that the proposed drainage scheme would pose a particular flood risk to Forest Lodge Farm;

there is a lack of information and investigative evidence to support the drainage scheme that is proposed; the drainage maintenance arrangements are inadequate and do not comply with the NPPF; the scheme since it has been implemented has discharged significant low level volumes of water onto Forest Lodge Farm, with water erupting through the ground; Soakaways SK6, SK7 and SK10 pose a particular problem due to their location at the top of a steep slope and in land where levels have been raised; the proposal could impact on slope stability; concerns about the development's retrospective nature; concerns about construction traffic; concerns about asbestos; Consider that Southern Water do not support the proposals.

10.2 A Statutory Declaration has been submitted (dated July 2018 & supplemented in July 2019) by a local resident, declaring that since development commenced there have been various instances of ingress of water onto Forest Lodge Farm from the application site, causing flooding. This water ingress was not seen to occur before development commenced, at least going back to 2009.

10.3 The owner of Forest Lodge Farm has commissioned an independent drainage report that has been submitted by Herrington Consulting Ltd (in August 2019). This drainage report concludes that the developer has failed to quantify the pre-development (baseline) conditions of the site accurately, with no seasonal groundwater monitoring having been undertaken, meaning that it is not possible to make an accurate assessment as to whether the development would have an adverse impact off-site. The applicant's drainage proposal would potentially enable water to reach the groundwater table at a faster rate than it would otherwise do naturally, which could lead to elevated groundwater levels at this location, resulting in an increased risk of flooding to Forest Lodge Farm. The developer has not provided sufficient evidence to confirm what the impact would be if additional water was drained to the ground; and nor has sufficient evidence been provided to validate their assumption that the risk of flooding has not been increased by the introduction of soakaways at the site. Therefore, it is considered that the proposal is not compliant with the fundamental requirements of the NPPF.

## **11 OFFICER COMMENTS**

### **Introduction**

11.1 As set out above, the main consideration is whether or not the alternative drainage scheme that is proposed to serve the approved development of 45 dwellings on land adjacent to Forest Lodge Farm, would be of an acceptable design, thereby ensuring the development would not increase the risk of flooding elsewhere.

### **Application Context**

11.2 Before considering the impact of the proposed drainage scheme, it is important to provide some context to this application. As set out above, planning permission 15/10751 was granted in November 2015. The site was then sold on to First Wessex Homes (who are now known as Vivid Homes). They sought to discharge a large number of pre-commencement conditions from July 2016 onwards. Development duly commenced in November 2016. As development proceeded, it became evident during the course of 2017 that the

developer was seeking to develop the site in a manner that would not accord with Condition 21 of Planning Permission 15/10751 (as described in Paragraph 3.1 above) - i.e. they were looking to build out an alternative drainage scheme to what had been approved. The developer were therefore asked to submit a fresh planning application to reflect the drainage scheme they were actually intending building.

- 11.3 The current planning application was submitted in January 2018, by which time the development was already well advanced. Much (but not all) of the proposed drainage infrastructure had already been implemented by this stage, meaning the application was to a large extent retrospective. During the initial consultation process, concerns were raised by both Hampshire County Council's Flood Water Management team and Southern Water, so that in April 2018, when the Local Planning Authority became aware that properties were starting to be marketed for sale, it became necessary to write to the applicants to advise them that no properties on the development should be occupied until planning permission had been granted for this current application / the implemented scheme as proposed to be amended.
- 11.4 Since April 2018, the applicants have proceeded to build out the development to a largely completed state, except for the previously approved block of 8 flats and some of the public open space areas / landscape infrastructure. In accordance with the Local Planning Authority's request, none of the dwellings have been occupied. Meanwhile, the Local Planning Authority has worked closely with the applicants and the key consultees to seek to address the valid concerns that the consultees have raised. In addition, because of third party concerns about how the alternative drainage scheme is affecting the neighbouring property Forest Lodge Farm (which is set at a much lower level than the application site), the Local Planning Authority has sought expert independent advice from Such Salinger Peters, who are an experienced firm of engineering consultants, with a particular specialism in drainage matters. This process has taken a long time to resolve, partly because the issues needing to be addressed have required the submission of additional detailed technical responses.
- 11.5 Clearly, the situation of a largely completed development without a valid planning permission is far from ideal. However, in considering this application and the implemented works, officers have been mindful of the need to deliver homes to meet housing need within the District, particularly the high level of need for affordable homes, but in a way that does not have an adverse impact on the environment.

### **Policy Context**

- 11.6 The National Planning Policy Framework (NPPF) provides the most relevant and up-to-date policy guidance. The guidance is fairly straightforward, with it being clearly stated that "When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere". With respect to major developments, the NPPF goes on to say that they should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The NPPF then suggests that the systems used should take account of advice from the lead local flood authority, should have appropriate proposed minimum operational standards, and should have maintenance arrangements in place to ensure an acceptable standard of operation for



the lifetime of the development.

## **Drainage and Flood Risk Impacts associated with the Proposed scheme**

### Overview

- 11.7 Firstly, it needs to be made clear that the application site is in Flood Zone 1 - i.e. land with a low probability of flooding from rivers or the sea. Neither the site itself nor immediately adjacent land should therefore be considered to be at risk of flooding from fluvial sources.
- 11.8 It also needs to be made clear that there can be no objection, in principle, to the developer seeking to provide an alternative drainage scheme to that which was granted planning permission in 2015. The drainage scheme approved in 2015 was the subject of careful consideration by the Local Planning Authority, with a conclusion being reached that the proposed drainage scheme would not result in adjacent properties being placed at increased risk of flooding. However, the positive conclusion reached on the 2015 drainage scheme does not alter the fact that alternative drainage proposals may be equally acceptable.

### Consultation with the Lead Local Flood Authority

- 11.9 When the application was initially submitted, Hampshire County Council, as the Lead Local Flood Authority, were of the view that inadequate information had been submitted to demonstrate that the proposed alternative drainage scheme would be fit for purpose. They highlighted a number of areas where they felt additional information was needed. This included a request for an independent Geotechnical Report to be undertaken, detailing any impact the soakaways may have on the steep bank on the eastern side of the development.
- 11.10 In response to the concerns raised by Hampshire County Council, the applicants submitted a Surface Water Drainage Design Report, which was subsequently followed by a Surface Water Drainage Supplementary Design Report and a Geotechnical Interpretive Report. Collectively, these reports set out why the applicants consider their proposed soakaway design (comprising 21 soakaways in total) would be appropriate and would not result in an increased flood risk elsewhere. On the basis of the information contained within these reports, Hampshire County Council were able to conclude that all of their concerns had been addressed, meaning that in their professional view, the drainage scheme was of an acceptable design and would not result in surface water flooding elsewhere.
- 11.11 Subsequently, Hampshire County Council have reviewed the Herrington Consulting Report (referred to in Paragraph 10.3 above) and have advised that they are unable to comment on whether the proposal would lead to an increased risk of ground water flooding (as opposed to flooding from surface water), as there is not the information on pre and post winter groundwater monitoring to be able to reach a definitive conclusion on this point. However, this does not change their basic position that the applicant's drainage proposal is compliant with best practice.

## Independent Expert Drainage Advice

- 11.12 Usually, Officers would be happy to rely solely on the advice of the Lead Local Flood Authority when determining whether or not a proposed drainage scheme is acceptable. However, in this case, representations have been submitted questioning the veracity of the information presented by the applicants, with it being stated that the developing scheme has been discharging significant low level volumes of water onto land at Forest Lodge Farm. Given these representations, and having regard to the steepness of the slopes on the site's eastern boundary and the fact that Forest Lodge Farm is set so much lower than the application site, Officers felt that further expert advice needed to be sought before reaching a conclusion on the acceptability of the applicant's drainage scheme. Hence, the reason Such Salinger Peters (SSP) were appointed to review the case.
- 11.13 SSP's initial review of the applicant's drainage proposals noted that because flow routes from the proposed development are similar to the existing site, there are no problems when it comes to the direction of potential overland surface water flow routes.
- 11.14 SSP's initial review compared the approved 2015 scheme with the proposed alternative scheme. In SSP's view the loss of the swale, and the change to highway soakaways is not considered to cause any detrimental issues with regards to flooding. Indeed, their conclusion is that soakaways are preferable to the originally proposed swale because they enable flows to discharge locally, which more accurately represents the original greenfield drainage mechanism. Therefore, SSP's conclusion is that the drainage strategy now proposed is an acceptable one.
- 11.15 SSP have compared the levels of the approved 2015 scheme against the current scheme, and whilst there are some differences in levels between the 2 schemes, SSP's conclusion is that the changes in levels is not seen as significant enough to incur issues with flooding.
- 11.16 SSP's initial review noted that the boreholes that have been undertaken do not show any evidence of clay strata that would be significant enough to direct water in such a way that would cause flooding issues to the areas surrounding the site. Therefore in terms of underlying ground conditions, SSP's conclusion is that there are not any issues that could create flooding of the development site or the surrounding area.
- 11.17 The one area where SSP's initial review did identify a concern was with the position of 3 of the soakaways (SK6, SK7 and SK10) lying within an area of filled ground. SSP's advice is that for these 3 soakaways, they need to be located within the underlying soils and not the made ground, because if located within made ground there is the possibility of creating a perched water table, which may in turn cause issues with ground instability.
- 11.18 In response to SSP's single point of concern, the applicants have submitted additional information that shows that whilst soakaway SK10 is located within the underlying soil, soakaways SK6 and SK7 have been laid into made ground. These 2 soakaways, therefore, if left as they are, have the potential to create a perched water table, leading to a potential unacceptable impact on the stability of the steep slopes on the eastern side of the development.

- 11.19 To address the concern raised by soakaways SK6 and SK7, the applicants have submitted a further plan which proposes that these 2 soakaways will be relaid to a lower depth that would be below the original ground level. These works will necessitate digging up part of the access road and associated car parking spaces and then making the area good after the soakaways have been laid to their new depth. SSP have confirmed that there should be no issues with the relocation of these 2 soakaways, and that if this work is done, then their concerns about a perched water table and slope stability would be addressed. As such, SSP's conclusion is that the applicant's drainage scheme would be acceptable if soakaways SK6 and SK7 were to be relocated, as is now proposed.
- 11.20 In response to the independent drainage report submitted by Herrington Consulting, SSP have carried out a further review. SSP note that the Herrington Consulting Report does not provide any substantive evidence as to what is causing observed flooding at Forest Lodge Farm. SSP have reviewed the applicant's borehole data, from which they have concluded that the groundwater beneath the development is at significant depth (albeit that it will be subject to seasonal variation), and also that it has a significant gradient across the slope, which is likely to continue into the adjacent property. SSP note that the catchment area of the impermeable areas of the development is very small compared to the total area of land feeding the Becton Sands Formation Aquifer (that extends beneath the application site). As such, their view is that it is 'hard to conceive' that the relatively small increase in direct connectivity of some 5000 square metres of impermeable area will have any significant impact on groundwater levels, given the extent of the Becton Sand Formation catchment. Furthermore, SSP note that the applicant's proposed infiltration system is located some 40 metres plus away from observed groundwater emergence and is 'unlikely to be directly resulting in the emergence of groundwater'. SSP accept that, as always, additional site investigation could have been done to investigate groundwater effects, but this may well not have yielded any further relevant information. SSP's conclusion remains that the applicant's drainage scheme is consistent with industry best practice and that there should be no adverse effects arising from the applicant's proposed drainage scheme.
- 11.21 Officers can see no reason to disagree with SSP's expert drainage advice. Whilst the representations in respect of the development's impact on Forest Lodge Farm are recognised, and whilst the professional views of Herrington Consulting are noted, there is no compelling evidence to show that any cited incidents of water ingress onto this site are a direct consequence of the development for which planning permission is now sought. Instead, the evidence that has been presented in support of the application and which has been assessed by professional drainage experts is felt to adequately demonstrate that the proposed drainage scheme should not increase flood risk elsewhere.

#### Consultation with Southern Water

- 11.22 Southern Water did initially indicate that they could not agree to the proposed surface water drainage layout as there were concerns that soakaways were to be located over foul drainage, which would not comply with their normal standards for adopting foul sewers. However, following discussions between Southern Water and the applicant, Southern Water

have confirmed that they would adopt the foul sewers, with the drainage scheme as proposed. Southern Water have made it clear that they have no objection to the use of soakaways to dispose of surface water from the development site.

- 11.23 SSP in their advice to the Local Planning Authority have also confirmed that the concerns initially raised by Southern Water are not such that the proposed drainage strategy would cause significant issues to the surrounding area.

#### Drainage Maintenance

- 11.24 With respect to maintenance of the proposed drainage assets, a statement has been submitted with the application setting out how the drainage assets will be managed and by whom. Hampshire County Council's Flood Water Management team have reviewed this statement and have confirmed that the proposed drainage maintenance arrangements are acceptable. By implication, therefore, it can be reasonably concluded that the maintenance arrangements are consistent with policy.

#### **Other Relevant Considerations**

- 11.25 Although drainage is the key consideration, it is still necessary to have regard to the wider impacts of the development. Because the above ground development does not differ from what has already been granted planning permission, the development would, in this respect, have no additional impact over and above the impact of the 2015 approved development. The proposal would remain consistent with policy, and would have no greater impact than what has already been granted planning permission.
- 11.26 There is considered to be a need to impose a number of the conditions that were applied to Planning Permission 15/10751 to ensure that relevant condition requirements are still satisfied. This includes a requirement to resolve some outstanding contamination concerns affecting the allotments, as well as some outstanding landscape concerns in respect of the public open space. Also, conditions are necessary to ensure that the 'unimplemented' above ground elements of the 2015 approved scheme are still satisfactorily implemented.
- 11.27 A Section 106 legal agreement has been completed, which ensures that a policy compliant level of affordable housing would be secured, which in this case is 70% of the dwellings. The Section 106 legal agreement also secures the on-site areas of public open space and allotments for their intended purposes, thereby ensuring the development provides the required amount of both these public areas to satisfy policy requirements. A separate Section 106 legal agreement is (at the time of writing) about to be completed, which will ensure that the already paid habitat mitigation contribution of £166,350 (that is needed to meet the requirements of Policy DM3) is secured in respect of this application as well.
- 11.28 Because the application is a Section 73 (variation of condition) application rather than a fresh full planning application, it is not considered necessary to consider 'new' issues such as nitrates, which would be relevant were the application for a completely new full planning permission.

11.29 The proposed development would deliver much needed affordable housing. Policy requires that 70% of the proposed dwellings be for affordable housing, although, as a Registered Social Landlord, the developer is seeking to deliver a scheme that would be 100% affordable housing. As such, the development would deliver significant social benefits that would weight strongly in favour of granting planning permission.

11.30 The LPA is not currently able to demonstrate a 5 year supply of housing land when assessed against its most recent calculation of Objectively Assessed Need. Relevant policies for the supply of housing are therefore out of date. In accordance with the advice at paragraph 11 of the NPPF, permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or specific policies in the NPPF indicate that development should be restricted.

#### 11.31 Habitat Mitigation

In accordance with the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations') an Appropriate Assessment has been carried out as to whether granting permission would adversely affect the integrity of the New Forest and Solent Coast European sites, in view of that site's conservation objectives. The Assessment concludes that the proposed development would, in combination with other developments, have an adverse effect due to the recreational impacts on the European sites, but that the adverse impacts would be avoided if the planning permission were to be conditional upon the approval of proposals for the mitigation of that impact in accordance with the Council's Mitigation Strategy or mitigation to at least an equivalent effect.

## 12 CONCLUSION ON THE PLANNING BALANCE

12.1 The proposed development differs from the scheme that was granted planning permission in 2015 only by virtue of the alternative drainage scheme that is proposed. This alternative drainage scheme has been the subject of extensive consultation. Whilst concerns about the development's impact have been raised by local residents, this must be balanced against the professional expert advice from the Lead Local Flood Authority and a firm of independent consultants (SSP), both of whom have advised that the proposed drainage scheme is an acceptable one that should not increase flood risk elsewhere - i.e. it would be policy compliant. In these circumstances, and given the scheme's significant benefits in providing much needed additional affordable housing, it is considered the balance weighs very much in favour of granting planning permission. As such, the recommendation is to grant planning permission subject to relevant conditions.

## 13 OTHER CONSIDERATIONS

### Crime and Disorder

There are no additional issues to those that were considered in respect of Planning Permission 15/10751.

### Local Finance

Under the New Homes Bonus, once all of the dwellings are built, the Council will receive £51,840 in each of the following six years from the dwellings' completion, and as a result, a total of £311,040 in government grant under the New Homes Bonus will be received.

### Human Rights

In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that there may be an interference with these rights and the rights of other third parties, such interference has to be balanced with the like rights of the applicant to develop the land in the way proposed. In this case it is considered that the protection of the rights and freedoms of the applicant outweigh any possible interference that may result to any third party.

### Equality

The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty *inter alia* when determining all planning applications. In particular the Committee must pay due regard to the need to:

- (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

## **14. RECOMMENDATION**

### **GRANT the VARIATION of CONDITION**

#### **Proposed Conditions:**

1. The development permitted shall be carried out in accordance with the following approved plans: HGP Site Location Plan 14.072.001, HGP Site Plan 16.031.034, Scott White & Hookins - B01130/115 rev C03 Proposed Drainage Sheet 1 of 5, Scott White & Hookins - B01130/116 rev C07 Proposed Drainage Sheet 2 of 5, Scott White & Hookins - B01130/117 rev C07 Proposed Drainage Sheet 3 of 5, Scott White & Hookins - B01130/118 rev C03 Proposed Drainage Sheet 4 of 5, Scott White & Hookins - B01130/119 rev C07 Proposed Drainage Sheet 5 of 5, Simon Jones-Parry - SW Drainage Summary Drawing No 100B, Scott White & Hookins - B01130/214 rev C04 Soakaway Detail, Scott White & Hookins - B01130/312 rev P04 Engineering Layout & Drainage, Scott White & Hookins

- B01130/126 rev P01 Flood Exceedance Flows, Scott White & Hookins - B01130/210 rev P09 Adoptable Drainage Section 104 Layout, Scott White & Hookins - B01130/315 rev P01 Surface finishes, Scott White & Hookins - B01130/309 rev P01 Section 278 Drainage and Contours, Scott White & Hookins - B01130/213 rev C03 Surface Water Manhole Schedule, Scott White & Hookins - B01130/212 rev C04 Foul Drainage Manhole Schedule, Scott White & Hookins - B01130/209 rev P05 Section 104 Rising Main Long Sections, Scott White & Hookins - B01130/203 rev C01 Private Drainage Standard Details, Scott White & Hookins - B01130/202 rev C02 Adoptable Drainage Construction Details, Simon Jones-Parry - Proposed Alterations to Soakaways SK6 & 7 – Drawing No 500A, Simon Jones-Parry - Surface Water Drainage Design Report dated 9 April 2018, Simon Jones-Parry - Surface Water Drainage Supplementary Design Report dated 5 July 2018, Simon Jones-Parry letter dated 11th January 2019 (Drainage maintenance details), Geo-Environmental Geotechnical Interpretive Report dated June 2018 Reference GE17281 - GIRv1LD180622.

Reason: To ensure satisfactory provision of the development.

2. The surface water drainage layout shall be built so as to be fully in accordance with the Simon Jones-Parry SW Drainage Summary Drawing No 100B, the Simon Jones-Parry Proposed Alterations to Soakaways SK6 & 7 Drawing No 500A, the Scott White & Hookins Proposed Drainage Sheets 1-5 (Drawings B01130/115 rev C03, B01130/116 rev C07, B01130/117 rev C07, B01130/118 rev C03 & B01130/119 rev C07), and the Scott White & Hookins B01130/214 rev C04 Soakaway Detail. The approved Soakaway details for SK6 and SK7 shall have been implemented before any dwelling on the approved development is first occupied and all of the approved drainage arrangements shall thereafter be maintained in accordance with the drainage maintenance details set out in Simon Jones-Parry's letter dated 11th January 2019.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with Policies CS2 and CS6 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.

3. The remediation scheme approved in connection with Condition 6 of Planning Permission 15/10751 must be carried out in accordance with its terms prior to the first occupation of the development, unless otherwise agreed in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason : To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy CS5 of the Local Plan for the New Forest District outside the National Park (Core

Strategy) and Policy DM4 of the Local Plan for the New Forest District outside the National Park. (Part 2: Sites and Development Management).

4. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3 of this planning permission.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy CS5 of the Local Plan for the New Forest District outside the National Park (Core Strategy) and Policy DM4 of the Local Plan for the New Forest District outside the National Park. (Part 2: Sites and Development Management).

5. The scheme for the protection of trees that was approved in connection with Planning Permission 15/10751 - the Barrell Tree Consultancy Arboricultural Impact Appraisal and Method Statement ref 14389-AIA-PB and Plan Ref: 14389-BT2 dated 20/05/15 - shall be implemented and maintained for the full duration of the construction of the development hereby approved.

Reason: To ensure the retention of existing trees and natural features and avoidance of damage during the construction phase in accordance with Policy CS2 of the Local Plan for the New Forest District outside of the National Park (Core Strategy).

6. The development hereby permitted shall not be occupied until the spaces shown on the approved site plan for the parking and garaging of motor vehicles have been provided. The spaces shown on the approved site plan for the parking and garaging of motor vehicles shall be retained and kept available for the parking and garaging of motor vehicles for the dwellings hereby approved at all times.

Reason: To ensure adequate parking provision is made in the interest of highway safety and in accordance with Policy CS2 and CS24 of the Local Plan for the New Forest outside of the National Park (Core Strategy).

7. The cycle storage / parking provision within the site that was approved in connection with Condition 12 of Planning Permission 15/10751 shall be carried out in accordance with the approved details before the use of the development is commenced and shall be permanently retained thereafter.



Reason To ensure adequate cycle parking provision within the site, in accordance with Policies CS1, CS2, and CS24 of the Core Strategy for New Forest District outside of the National Park.

8. The approved areas for the turning of vehicles on site shall be kept available for their intended purposes at all times.

Reason: In the interests of highway safety and to comply with Policy CS24 of the Core Strategy for New Forest District outside of the National Park.

9. The external lighting details that have been approved in connection with Condition 15 of Planning Permission 15/10751 shall be implemented in accordance with the approved details, and no external lighting shall be installed thereafter, outside of the residential curtilages of the approved dwellings, unless details have been first submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard ecological interests in accordance with Policy CS3 of the Core Strategy for New Forest District outside of the National Park.

10. The detailed ecological mitigation and biodiversity compensation and enhancement plan that has been approved in connection with Condition 16 of Planning Permission 15/10751 shall be implemented fully in accordance with the approved details.

Reason: To safeguard ecological interests in accordance with Policy CS3 of the Core Strategy for New Forest District outside of the National Park and Policy DM2 of the Local Plan Part 2: Sites and Development Management.

11. The facing and roofing materials to be used on those parts of the development that are still to be implemented / completed shall be in accordance with those details that were approved in connection with Condition 17 of Planning Permission 15/10751.

Reason: To ensure an acceptable appearance of the development in accordance with policy CS2 of the Core Strategy for the New Forest District outside the National Park.

12. The slab levels of the dwellings that are yet to be completed shall accord with those details that were approved in connection with Condition 18 of Planning Permission 15/10751.

Reason: To ensure that the development takes place in an appropriate way in accordance with policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

13. The detailed landscape scheme for the site shall be implemented in full accordance with the landscape details approved pursuant to Condition 19 of Planning Permission 15/10751.

Reason: To ensure that the development takes place in an appropriate way and to comply with Policy CS2 of the Local Plan for the New Forest District outside the National Park (Core Strategy).

14. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure the appearance and setting of the development is satisfactory and to comply with Policy CS2 of the Local Plan for New Forest District outside the National Park (Core Strategy).

**Further Information:**

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# New Forest DISTRICT COUNCIL

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Date 30/09/19 17/11/70

Item 2a

Land adjacent to Forest Lodge Farm  
Fawley Road, Hythe

Scale 1:1250

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