

MEETING:	PLANNING COMMITTEE
DATE:	20 NOVEMBER 2013
TITLE OF REPORT:	132598/F - PROVISION OF 14 NO. AFFORDABLE HOMES AND ASSOCIATED ANCILLARY USES AT LAND OFF KITCHEN HILL, ORLETON, LUDLOW, SHROPSHIRE For: South Shropshire Housing Group per The Old Library, Hagley Road, Stourbridge, West Midlands, DY8 1QH
WEBSITE LINK:	https://www.herefordshire.gov.uk/planningapplicationsearch/details/?id=132598

Date Received: 19 September 2013 **Ward: Bircher** **Grid Ref: 348834,266972**
Expiry Date: 27 December 2013
 Local Member: Councillor WLS Bowen

1. Site Description and Proposal

- 1.1 The site is located outside, but adjacent to the recognised settlement boundary for Orleton, a main village in accordance with Policy H4 of the Herefordshire Unitary Development Plan. The site is located within the Orleton Conservation Area but is not subject to any landscape designations.
- 1.2 The site is situated on an approach road to Orleton, alongside the C1047, which is located on the southern side of the site from which it is separated by a native species hedgerow. The site forms part of a sloping field facing north. Adjoining the eastern side of the site is the western fringe of Orleton, which comprises of a range of detached two-storey and single storey dwellings.
- 1.3 The application proposes the construction of 14 affordable houses, (4 for shared ownership and 10 for rent) and an associated access to provide access and car parking for the dwellings on site. The dwellings would be traditional in design and consist of 12 semi-detached two-storey dwellings and two single-storey dwellings, all of brick construction under steep pitched roofs. The application also proposes extensive landscaping and tree and hedgerow planting.
- 1.4 A draft legal agreement drawn up in accordance with Section 106 of the Town and Country Planning Act 1990 has been submitted in support of the application in order to ensure that the dwellings remain affordable in perpetuity. This is attached as an appendix to the report.

2. Policies

2.1 The National Planning Policy Framework (NPPF)

It is considered that the following sections are of particular relevance to the proposal:

Achieving sustainable development
 Chapter 6 - Delivering a wide choice of high quality homes

Further information on the subject of this report is available from Mr P Mullineux on 01432 261808

- Chapter 7 - Requiring good design
- Chapter 11 - Conserving and enhancing the natural environment
- Chapter 12 - Conserving and enhancing the historic environment

2.2 Herefordshire Unitary Development Plan. (HUDP).

- S1 - Sustainable development
- S2 - Development requirements
- S3 - Housing
- S7 - Natural and historic heritage
- DR1 - Design
- DR2 - Land use and activity
- DR3 - Movement
- DR4 - Environment
- DR5 - Planning Obligations
- H4 - Main villages
- H7 - Housing in the countryside outside settlements
- H9 - Affordable housing
- H10 - Rural exception housing
- H13 - Sustainable residential design
- H15 - Density
- H16 - Car parking
- T6 - Walking
- T8 - Road hierarchy
- T11 - Parking provision
- LA2 - Landscape character and areas least resilient to change
- LA3 - Setting of settlements
- LA5 - Protection of trees, woodlands and hedgerows
- LA6 - Landscaping schemes
- NC1 - Biodiversity and development
- NC6 - Biodiversity Action Plan priority habitats and species
- NC7 - Compensation for loss of biodiversity
- NC8 - Habitat creation, restoration and enhancement
- NC9 - Management of features of the landscape important for fauna and flora
- CF2 - Foul Drainage
- HBA4 - Setting of listed buildings
- HBA6 - New development in Conservation Areas

2.3 Supplementary Planning Guidance

- Provision of affordable housing, (updated November 2004) and subsequent technical updates
- Planning Obligations

2.4 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-

<http://www.herefordshire.gov.uk/housing/planning/29815.aspp>

3. Planning History

3.1 132067/F – Provision of 14 no. affordable homes and associated ancillary uses. Withdrawn on September 18th 2013. (Due to cumulative amount of requested amendments to the application in order to submit application that is the subject to this report).

4. Consultation Summary

Statutory consultees.

- 4.1 Severn Trent Water raises no objections subject to the inclusion of a condition to any approval notice issued with regards to the disposal of surface water and foul sewage prior to the commencement of development on site.

Internal consultations

- 4.2 The Conservation Manager (Landscapes) has indicated that the site is very close to the edge of the village, which gives it a good setting for new housing, and although part of the designated Conservation Area, there are no significant historic features within the site. The response indicates that there are two major landscape constraints which are the treatment of the western boundary and taking account of the existing sloping topography, the site being open in nature with long distance views into and out of the site. Concerns are raised about whether housing will successfully integrate with the existing village and in particular with regards to the proposed vehicular access into and out of the site. The response concludes that this is not an ideal site in landscape terms, however in the long term the proposed planting will help to mitigate the visual impact of housing, as well as creating the other benefits associated with green infrastructure. The response indicating that the application as presented with consideration to the landscape assessment does comply with Policies LA2 and LA6 of the HUDP.
- 4.3 The Transportation Manager raises no objections indicating the internal site layout is considered acceptable. The response recommends the attachment of informative notes with regards to necessary works within the public highway.
- 4.4 The Housing Manager has responded to the application indicating:

'The Housing Needs Survey (2008) identified a need for 23 affordable housing units in the parish with a further 5 households being identified as having a possible need for affordable housing. Housing Needs surveys have been proven to provide good evidence of need in rural areas even where the reported outcome is not matched by numbers on the housing register. There has been no affordable housing development in the parish since then and recent consultation events have indicated that there remains a need for affordable housing in the parish.

At an information and consultation event in February 2013 12 households with a local connection to the parish indicated their interest in and need for affordable housing.

There are 22 affordable housing units in the parish. Of these, 9 are restricted to older people, leaving only 6 x 2 bed and 7 x 3 bed for other households in a parish of over 380. These were built some time ago and when they become vacant local residents have no greater priority than other households in the county. The proposed development will give priority to those with a need for affordable housing and with a local connection to the parish e.g. residence, close family living in the parish or employment locally. Currently there are at least 10 households on the Home Point register who have a local connection to Orleton and a need for affordable housing. This has increased from 3 at the time of a further event in the village in June 2013. Generally, as residents become aware of a proposed scheme and recognise that there is a possibility of securing affordable housing in the parish the number of eligible applicants on the Home Point register increases, hence the difference between the numbers in June and October.

Therefore the Housing Needs and Development team supports the provision of 14 affordable units on this site.

The unit sizes correspond to the identified need. The tenure mix of 10 affordable rent and 4 shared ownership also addresses the need.

The units need to meet the HCA's Design and Quality Standards, Lifetime Homes Standards and at least level 3 of the Code for Sustainable Homes.

The development will be subject to a section 106 agreement ensuring that the homes remain affordable in perpetuity and are subject to local connection criteria.'

- 4.5 The Land Drainage Manager has responded to the application raising no objections indicating the development as proposed is acceptable from a drainage and flooding point of view. It is recommended that a planning condition be attached to any approval notice issued for a review/check of detailed drainage plans including sizing of the proposed attenuation pond, means of conveyance and the outfall prior to works starting on site. The proposed maintenance of the attenuation pond needs to be stated and approved.
- 4.6 The Planning Ecologist raises no objections recommending a condition to be attached to any approval notice issued, in order to ensure the recommendations as set out in the ecology report are carried out.

5. Representations

- 5.1 Orleton Parish Council has responded to the application stating:

'Orleton Parish Council is unable to support the proposal because of ongoing problems with the sewage infrastructure in the village. For many years there have been regular discharges of effluent and Severn Trent recently started jetting quarterly to try and manage the problem. Other concerns are the absence of a footpath into the village for pedestrian access and need for traffic management measures in Kitchen Hill Road for vehicles going into and out of the village'

- 5.2 Sixteen letters of objection have been received and the key issues raised can be summarised as follows:

- Impact on the landscape character of the site and the surrounding historic area, as well as visual impact.
- Infrastructure issues in relationship to drainage and flooding issues.
- Public highway access.
- Design of the proposed dwellings and site layout.
- Need for affordable housing in Orleton.

- 5.3 Eight letters in support of the application have been received. The key issue raised can be summarised as follows:

- Need for affordable housing in Orleton in order that local young people can remain in the village.
- Site layout is considered attractive in relationship to the surrounding environment.
- Consideration has been shown by the applicant to flooding and drainage issues.

- 5.4 The consultation responses can be viewed on the Council's website by using the following link:-

<http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

Internet access is available at the Council's Customer Service Centres:-

www.herefordshire.gov.uk/government-citizens-and-rights/complaints-and-compliments/contact-details/?q=contact%20centre&type=suggestedpage

6. Officer's Appraisal

6.1 The key issues in relationship to this application are :

- Principle of the development.
- Need for affordable housing at Orleton.
- Highway safety issues.
- Landscape and biodiversity issues.
- Drainage issues.

Principle of the development.

6.2 The site is located immediately adjacent to, but outside of the recognised development boundary for Orleton, which is classed as a 'Main Village' in accordance with Policy H4 of the Herefordshire Unitary Development Plan (HUDP). Policy H7 of the HUDP sets out a number of exceptions that can be made in relation to housing development outside established settlement boundaries. One such exception relates to the delivery of affordable housing in accordance with Policy H10 where such a scheme contributes to meeting a proven genuine and quantifiable local need for affordable housing as ascertained from an up-to-date local affordable housing needs survey. The policy further states that it must be evident that local housing conditions could not otherwise satisfy the need, that the scheme respects both the character and size of the settlement concerned, arrangements are made to ensure that the benefits of affordable housing will be enjoyed in perpetuity and that the site's location affords reasonable access to facilities and where possible public transport.

Need for affordable housing in Orleton.

6.3 The application proposes 14 local needs affordable dwellings, 10 for social rental and 4 for shared ownership.

The breakdown in bedroom numbers per dwelling is as follows:

- 2 no. 1 bedroomed dwellings
- 7 no. 2 bedroomed dwellings
- 5 no. 3 bedroom dwelling

6.4 In accordance with comments from the Housing Manager, the Housing Needs Survey (2008) identified a need for 23 affordable housing units in the parish with a further 5 households being identified as having a possible need for affordable housing. There are currently 11 residents of Orleton registered with Home Point as requiring affordable housing. The need relates to a full range of dwelling sizes such as are proposed by this application. This need is further substantiated by the 2013 Housing Needs consultation event for Orleton. Accordingly whilst the views of those local residents who have objected are acknowledged, the evidence provided by the Housing Manager indicates an identified need that this proposal would meet.

6.5 Accordingly, officers are satisfied that there is a demonstrated need for affordable housing in Orleton and the development subject to this application will contribute towards easing the shortage of affordable housing in Orleton and the surrounding parishes.

Highway safety issues

6.6 Concerns have been raised by the Parish Council and members of the public with regards to the means of access leading to the site from the direction of the village and the lack of provision of a footway alongside the public highway to the village.

- 6.7 The site is situated within close proximity to the village of Orleton and is also within a reasonable walking distance of the services and facilities available in Orleton. As such the site is considered to be in a sustainable location for housing development.

In this respect whilst local concerns are noted, it is not considered that these concerns would warrant the refusal of planning permission. In recognition of this, it should be noted that the Transportation Manager raises no objections to the proposed development.

Landscape and biodiversity issues

- 6.8 The Conservation Manager (Landscapes) although not objecting to the proposed development does comment that *'this is not an ideal site in landscape terms, however in the long term the proposed planting will help to mitigate the visual impact of housing as well as creating the other benefits associated with green infrastructure'*.
- 6.9 These comments are noted, however the requirement and provision of affordable housing together with the limited impact on the village's built environment is considered to outweigh the harm in respect of the identified landscape impact. This issue has been given careful consideration and officers are conscious with regards to the landscape impact. This has resulted in the applicants submitting a detailed landscape and visual impact assessment which the Conservation Manager (Landscape) advises does demonstrate that landscape character and visual impact have been thoroughly considered and respected as far as possible, in accordance with HUDP Policy LA2. Furthermore the landscape masterplan, section drawing and planting plan submitted in support of the application clearly follow on from the findings of the landscape assessment, being clearly presented, integrated with the ecology recommendations and well detailed in accordance with the requirements of Policy LA6 and relevant ecological policies of the HUDP.
- 6.10 The balanced conclusion reached is that any development scheme for affordable housing must not only contribute towards meeting the needs of affordable housing within a locality, but also be of a scale and size that is reflective of the settlement and location concerned. It is considered that 14 dwellings in the layout as proposed is the most appropriate response in this location.
- 6.11 Whilst the proposal will result in the loss of some roadside hedgerow, in order to achieve the necessary roadside entrance visibility splays, the application does propose suitable mitigation in order to replace the hedgerow lost as a result of the proposal.
- 6.12 In conclusion with regards to landscape and biodiversity issues, it is considered that the proposed development represents an acceptable compromise. Whilst it is accepted that the proposal will have a landscape impact in relationship to its integration with the surrounding landscape and built environment, it is considered that the identified and unmet need for the provision of affordable housing in Orleton outweighs the harm to the surrounding landscape. Furthermore whilst forming part of the Orleton Conservation Area, the site is not subject to any specific landscape designation and whilst there will be some erosion of character, the applicants have offered adequate mitigation proposals in order to integrate the development into the surrounding environment.

Drainage issues

- 6.13 The applicants have submitted a detailed report on flood risk, drainage and highway matters and propose a sustainable drainage system (SuDS) in the form of a dry balancing area, acknowledging that parts of Orleton suffer with existing flooding problems.
- 6.14 Letters of objection received have raised concerns about drainage issues. The application site does not form part of a flood risk area in accordance with the Environment Agency flood risk data maps. It is noted that neither the Land Drainage Manager or Severn Trent raise any objections

with regards to drainage issues, both recommending the attachment of conditions with regards to drainage plans for the disposal of surface and foul sewage and with regards to management of the proposed on site SuDS, which is in the form of a storage basin to retain/restrict water flows.

- 6.15. Whilst it is acknowledged that drainage and flooding issues are a key matter of concern in Orleton, in the context of this site, it is not considered that there is a basis to object to the application with consideration to the detailed drainage information submitted for the site in support of this application which has the conditional support of both Severn Trent and the Land Drainage Manager.

Other matters

- 6.16 Concerns have been raised about the overall site layout and design of the proposed dwellings on the site. It is considered that the site layout takes into consideration the topography. The design and scale of the dwellings is also considered acceptable and will meet the building requirements as set out by Design and Quality Standards, Lifetime Homes Standards and will be to at least level 3 of the Code for Sustainable Homes, as required by Buildings Regulations. It is noted that development on site will have a visual impact and in view of its prominent location within the Conservation Area it is recommended that a condition is attached to any approval notice issued with regards to external roofing material, as it is noted that the information in support of the application does not indicate the type of roof tile.
- 6.17 Concerns have also been raised about the impact of the proposed development on the surrounding historic environment, the site forming part of the Orleton Conservation Area. It is considered that the proposed development is reflective of the surrounding built environment and will not have any significant detrimental impact on the character of the surrounding built and historic environment.

Conclusion

- 6.18 The provision of affordable housing that contributes towards the identified and genuine long term need for affordable housing is supported by policies of the Herefordshire Unitary Development Plan. The proposal on this account is in accordance with the NPPF and the relevant local policies relating to the provision of affordable housing. It is also considered that the location on the edge of Orleton will represent a sustainable form of development providing occupants with a choice of transport modes and easily walkable and safe access to the services and facilities available in the village.
- 6.19 Drainage and flooding issues have been a key area of concern as indicated in responses to the application from members of the public and Orleton Parish Council. It is noted that the applicants (who are aware of local concerns on this issue), have submitted detailed information on this issue to which Severn Trent Water and the Council's Land Drainage Manager raise no objections to the proposed development with the attachment of conditions to any approval notice issued with regards to drainage plans for the disposal of surface water and foul sewage.
- 6.20 Whilst it is acknowledged that the proposed development will have an impact on the rural landscape setting within the recognised Conservation Area of Orleton, it is also recognised that the site does not have any specific landscape designation. The application offers suitable landscape mitigation which is considered acceptable as indicated in the response to the application from the Conservation Manager(Landscape). On balance it is therefore considered that the need for affordable housing outweighs the residual impact on the landscape character of the locality and the proposal is therefore recommended for approval.

RECOMMENDATION

That subject to the completion of a S106 Agreement planning permission be granted subject to the following conditions:

1. **A01 Time limit for commencement (full permission)**
2. **B01 Development in accordance with the approved plans**
3. **C01 Samples of external materials**
4. **The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.**

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution and to comply with Policy DR4 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.

5. **F14 Removal of permitted development rights**
6. **G09 Details of Boundary treatments**
7. **G12 Hedgerow planting**
8. **Prior to commencement of the development, a full working landscaping method statement must be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.**

Reason: In order to ensure that the development integrates into the surrounding landscape with adequate mitigation and to comply with Policies LA2 and LA6 of the Herefordshire Unitary Development Plan.

9. **Prior to commencement of the development, an ecological habitat enhancement scheme must be submitted to and be approved in writing by the local planning authority, and the work shall be implemented as approved.**

Reason: To ensure that all species are protected having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010 and Policies NC1, NC6, NC7, NC8 and NC9 of the Herefordshire Unitary Development Plan, in relation to Nature Conservation and Biodiversity and to meet the requirements of the National Planning Policy Framework and the NERC Act 2006.

10. **I16 Restriction of hours during construction**

INFORMATIVES:

1. **The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations. Negotiations in respect of matters of concern with the**

application (as originally submitted) have resulted in amendments to the proposal. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

2. **HN04 Private apparatus within highway**

3. **HN05 Works within the highway**

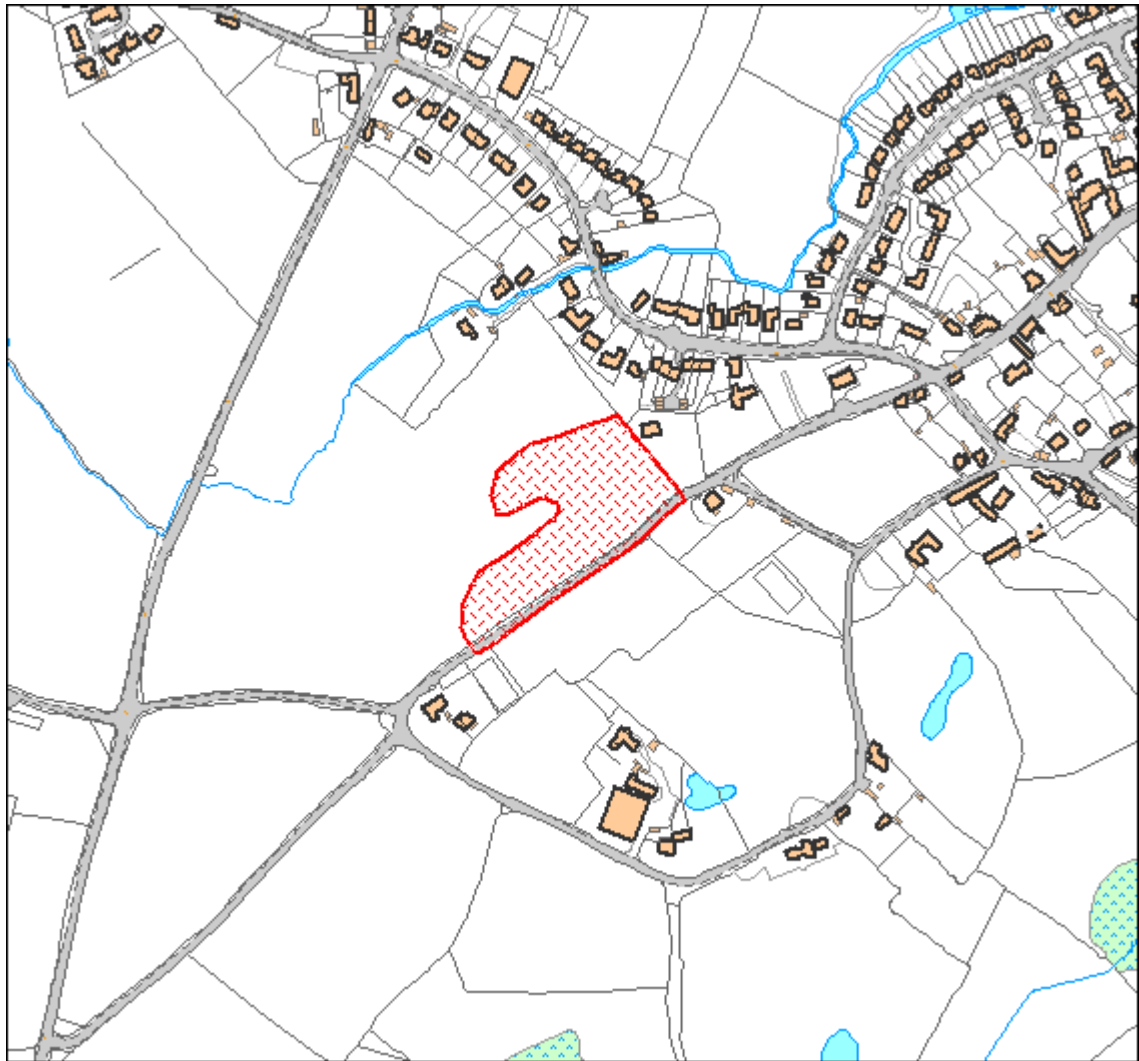
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: 132598/F

SITE ADDRESS : LAND OFF KITCHEN HILL, ORLETON, LUDLOW, SHROPSHIRE

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Further information on the subject of this report is available from Mr P Mullineux on 01432 261808

Dated

2013

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

- and -

MARTIN RICHARD HARRIS

- and -

BARCLAYS BANK PLC

DEED OF PLANNING OBLIGATION

made under the provisions of
Section 106 Town and Country Planning Act 1990 (as amended)
relating to
Land at Townsend Farm Orleton, Herefordshire

2 Colmore Square
38 Colmore Circus
Queensway
Birmingham
B4 6SH
Tel 03700 864000
Ref: TDW.177325.55

THIS DEED dated

2013 is made

BETWEEN:-

1. **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Brockington 35 Hafod Road Hereford HR1 1SH ("the **Council**")
2. **MARTIN RICHARD HARRIS** of Townsend Farm, Orleton, Herefordshire SY8 4JA ("the **Owner**")
3. **BARCLAYS BANK PLC** (company registration number 1026167) of Brclays Loan Servicing Centre, P O Box 299, Birmingham B1 3PF ("the **Mortgagee**")

WHEREAS:-

- (A) The Council is empowered by Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") to enter into an agreement with any person interested in land in its area for the purpose of restricting or regulating the development or use of that land.
- (B) The Owner is the registered proprietor with title absolute free from encumbrances of land described in the First Schedule to this deed ("the Land").
- (C) South Shropshire Housing Association has by its agent submitted to the Council the application for planning permission described in the Second Schedule to this deed ("the Application").
- (D) On the 20 November 2013 the Council's Planning Committee resolved to delegate authority to its officers for the grant of the Permission (subject to conditions) pursuant to the Application.
- (E) The Council is the local planning authority by whom the restrictions and obligations contained in this deed are enforceable.
- (F) The Mortgagee is the registered proprietor of a charge on the Land and has consented to the Owner entering into this Agreement.

THIS DEED is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and all other enabling powers and enactments which may be relevant for the purposes of giving validity hereto or facilitating the enforcement of the obligations herein contained with the intent to bind the Land and WITNESSES as follows:-

1 WORDS AND EXPRESSIONS

In this Deed the following words and expressions shall where the context so admits have the following meanings:-

- 1.1 The expressions "the Owner" the "the Council" and "the Mortgagee" shall include their respective successors in title and assigns.
- 1.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.3 Words of the masculine gender include the feminine and neuter genders and all references in this Deed to a person or persons shall include corporations and unincorporated associations and all other legal entities.
- 1.4 Where there are two or more persons included in the expression "the Owner" covenants expressed or implied to be made by Owner shall be deemed to be made by such persons jointly and severally.

Further information on the subject of this report is available from Mr P Mullineux on 01432 261808

- 1.5 Words denoting an obligation on a party to do any act include an obligation to procure that it be done.
- 1.6 Words placing a party under a restriction include an obligation not to permit infringement of that restriction.
- 1.7 References to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force.
- 1.8 “Affordable Housing” is housing provided to eligible households whose needs are not met by the open market. Eligibility is determined with regard to local incomes and local house prices. Affordable Housing should remain at an affordable price for future eligible households. The definitions for all types of Affordable Housing in Herefordshire are contained in the technical data which supports the Council’s ‘Planning Obligations Supplementary Planning Document’ published in April 2008 and where applicable set out in this Deed.
- 1.9 “Affordable Housing Units” means (unless otherwise agreed in writing by the Council) the 14 residential units and ancillary areas comprised within the Development and comprising 4 (four) Shared Ownership units and 10 (ten) Affordable Rented Housing units (unless otherwise agreed with the Council).
- 1.10 “Affordable Rented Housing” is let by local authorities or Registered Providers to persons who are eligible for social rented housing. Affordable Rented Housing is subject to rent controls that require a rent of no more than 80% of open market rent (including service charges, where applicable).
- 1.11 “Application” means the full planning application made to and registered by the Council under Council Reference Number: 132598/F
- 1.12 “Code for Sustainable Homes” means the national standard for the sustainable design and construction of new homes as defined by the Department of Communities and Local Government.
- 1.13 “Commence Development” and “Commencement of Development” mean to commence the Development pursuant to the Permission by the carrying out of a Material Operation.
- 1.14 “Design and Quality Standards” means the requirements and recommendations for all new homes as defined by the Homes and Communities Agency ‘design and quality standards April 2007’.
- 1.15 “Development” shall mean the development of the Land disclosed by the Application.
- 1.16 “Herefordshire Allocations Policy” shall mean the Council’s Policy for the allocation of Affordable Housing in the administrative area of the Council which under the Housing Act 1996 as amended by the Homelessness Act 2002 and the Localism Act 2011 the Council has a duty to provide.
- 1.17 “Home Point” means the agency or body (or any successor agency or body) that on behalf of the Council holds the common housing register and operates a choice based lettings system (or any subsequent lettings system) through which Affordable Housing in the administrative area of the Council is advertised.
- 1.18 “Lifetime Homes Standard” means the principles developed by the Joseph Rowntree Foundation establishing 16 design criteria (revised July 2010) intended to maximise good housing design and make homes adaptable for lifetime use.
- 1.19 “Material Operation” has the meaning given by Section 56 (4) of the Act.
- 1.20 “Occupy” “Occupied” and “Occupation” means the first occupation of the Development for residential purposes but excluding occupation for the purposes of construction and fitting out.
- 1.21 “Permission” shall mean the planning permission subject to conditions to be issued by the Council permitting the Development pursuant to the Application a draft copy of which is annexed to this Deed as Appendix 1.

- 1.22 "Plan 1 " means the plan attached to this deed marked "Plan 1" and which identifies the Land as edged red
- 1.23 "Plan 2" means the drawing number [] dated [] 2013 attached to this deed marked "Plan 2" and which identifies the Affordable Housing Units
- 1.24 "Registered Provider" means either South Shropshire Housing Association or the Shropshire Housing Group or alternatively any other registered provider of Affordable Housing under Part 2 of the Housing and Regeneration Act 2008 who is a preferred development partner listed (or intended for listing) in the Council's 'provision of affordable housing technical data' which supports the supplementary planning document Planning Obligations April 2008 (or any subsequent or updated document), or any such other Registered Provider as may previously be agreed with the Council in writing such agreement not to be reasonably withheld.
- 1.25 "Shared Ownership" means ownership under the terms of a lease by which a lessee may (subject to the restriction in paragraph 1.9 of the Third Schedule to this Deed) acquire a share or shares of the equity in an Affordable Housing Unit from the Registered Provider who retains the remainder and may charge a rent.

2 COVENANT

- 2.1 The Owner for the purposes of Section 106 of the Act with the intention of binding the Land agrees and covenants with the Council to observe the restrictions and perform the obligations set out in the Third Schedule to this Deed.
- 2.2 The Council covenants with the Owner and the Mortgagee that the Council will comply with the obligations and covenants on its part set out in this Deed

3 AGREEMENT AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED that

- 3.1 The restrictions and obligations in the Third Schedule to this Deed are planning obligations enforceable by the Council in accordance with the provisions of Section 106(3) of the Act against the Owner and his successors in title to the Land.
- 3.2 With the exception of this Clause 3.2 and Clauses 5, 6, 7, 9 and 13, delivery and any other relevant paragraphs of this Deed which have effect on the date of this Deed none of the terms or provisions of this Deed will have operative effect unless and until the date that there has been Commencement of Development on the Land.
- 3.3 If the Permission shall expire before Commencement of Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect insofar only as it has not already been complied with and without prejudice to the validity of anything done or payments or contributions made or expended whilst this Deed is in force.
- 3.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Deed.
- 3.5 If any provision or part provision of this Deed:
- 3.5.1 shall be held by any court or competent authority to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions shall not in any way be deemed to be affected or impaired; and
- 3.5.2 if any invalid illegal or unenforceable provision or part provision of this Deed would be valid legal and enforceable if some part or parts of it were amended the parties shall amend such provision(s) so that as amended it is legal valid and enforceable and so far as possible achieves the original intentions of the parties.

Further information on the subject of this report is available from Mr P Mullineux on 01432 261808

- 3.6 The Owner shall not be entitled to any costs or compensation whatsoever from the Council arising from the agreement restrictions and obligations contained in this Deed.
- 3.7 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from such act.
- 3.8 No person shall be liable for a breach of a covenant contained in this Deed after parting with all interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 3.9 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation thereof.
- 3.10 The obligations contained in this Deed shall not be binding upon any and all statutory undertakers who have as part of their statutory undertaking any interest in the Land;

4 RESERVATIONS

For the avoidance of doubt nothing in this Deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Land.

5 LOCAL LAND CHARGE PROVISIONS

- 5.1 this Deed is a local land charge and shall be registered by the Council as such.
- 5.2 on the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge;
- 5.3 following the performance and full satisfaction of all the terms of this Agreement or if this deed is determined pursuant to clause 3.3 the Council will on the written request of the Owner record such performance or determination in the Local Land Charges Register in respect of this deed.

6 COSTS

On or before the date of this Deed the Owner shall pay to the Council its reasonable and proper costs of £[] in the preparation and completion of this Deed towards the cost to the Council of monitoring the obligations in this Deed.

7 NOTICES AND NOTICE OF COMMENCEMENT OF DEVELOPMENT

- 7.1 A notice under this Deed is valid only if it is given by hand sent by recorded delivery or document exchange or sent by fax provided that a confirmatory copy is given by hand or sent by recorded delivery or document exchange on the same day and it is served at the address shown in this Deed for the receiving party or at any address specified in a notice given by that party to the other parties.
- 7.2 A notice sent to the Council:
- 7.2.1 in relation to any matters arising from the Third Schedule of this Deed shall be addressed to the Housing Manager (Development) Homes and Community Services, Herefordshire Council, PO Box 4, Plough Lane, Hereford HR4 0XH ; or
- 7.2.2 in relation to any matters arising from all other obligations in this Deed shall be addressed to the 'Planning Obligations Manager,' Planning Management Team, Herefordshire Council, Blue School House, Blue School Street, Hereford HR1 2ZB quoting reference N122878/F
- 7.3 A notice:
- 7.3.1 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post or on the third working day after posting if sent by second class post;

7.3.2 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient;

7.3.3 sent by fax is to be treated as served on the day on which it is successfully sent or the next working day where the fax is sent successfully after 1600 hours or on a day that is not a working day whenever and whether or not the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail or the document exchange undelivered

7.4 The Council's Planning Obligations Manager shall be given 14 days prior notice of Commencement of Development.

8 **WAIVER**

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the obligations or other terms of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the obligations or other terms of this Deed or from acting upon any subsequent breach or default by the Owner.

9 **DISPUTES**

9.1 In the event of there being any dispute between the parties hereto in respect of any of the terms of this Deed such dispute shall be determined in accordance with this Clause and either party to the dispute may at any time require by notice in writing to the other party to the dispute an independent expert to be appointed to resolve the dispute

9.2 The expert (who shall be an appropriately qualified person to resolve the dispute in question) may be agreed upon by the parties to the dispute and in default of such agreement within one month of a requirement being made pursuant to this Clause shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either party to the dispute made at any time after the said period of one month

9.3 Notice in writing of his appointment shall be given by the expert to the parties to the dispute and he shall invite each to submit within a specified period (which will not exceed four weeks) any written representations each wishes to make to him

9.4 The expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgment

9.5 The expert shall give notice in writing of his decision to the parties to the dispute within two months of his appointment or within such extended period as the parties may together allow

9.6 The decision of the expert shall be final on all matters referred to him

9.7 If for any reason the expert shall fail to make a decision and give notice thereof within the time and in the manner herein before provided either party to the dispute may apply to the President of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place which procedure may be repeated as many times as necessary

9.8 Each party to the dispute shall bear its own costs save that the fees of the expert and of the Royal Institution of Chartered Surveyors shall be in the expert's determination

9.9 Nothing in this Clause shall be construed as ousting the jurisdiction of the courts to enforce the provisions of this Deed

10 **WARRANTY AS TO TITLE**

The Owner warrants to the Council that the title details referred to in recital 2 and the First Schedule are complete and accurate in every respect and that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Land.

11 **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12 **INTEREST**

If any payment due under the terms of this Deed is paid late interest calculated at the rate of 4% above the National Westminster Bank plc base rate from time to time will be payable from the date payment is due to the date payment is made.

13 **JURISDICTION**

This Deed is governed by and in accordance with the law of England.

14 **MORTGAGEE'S CONSENT AND ACKNOWLEDGEMENT**

The Mortgagee hereby consents to the Owner entering into this Agreement and acknowledges that the Land shall be bound by the terms and obligations contained in this Agreement, and should the Mortgagee become a Mortgagee in possession of the Land or any part the Mortgagee agrees to be bound by the provisions of this Agreement, and the Mortgagee further agrees that it will not carry out or procure the Development or any part of the Development without performing and observing the terms and obligations contained in this Agreement.

IN WITNESS of which this instrument has been duly executed as a deed by the parties and delivered on the date set out above