

Agenda Item No 5

Planning and Development Board

3 September 2018

**Report of the
Head of Development Control**

**Land on the North Side of Church
Lane, Corley**

1 Summary

- 1.1 This report seeks Member approval for a variation to the affordable housing provision at a site in Corley.

Recommendation to the Board

That the revisions to the provision of affordable housing be varied as set out in the report.

2 Report

- 2.1 Permission was granted in 2015 for 17 houses at the site of the former Corley Nursery. The report to this Board regarding that application is attached as Appendix 1 and the matter is again reported to this Board given its previous interest in the site.
- 2.2 40% of the properties are to be affordable housing and whilst a Registered Provider of social housing, Warwickshire Rural Housing Association, have acquired the rented accommodation (2, 2 bed bungalows) there has been no interest from any Provider in the low cost market housing units. This position is becoming increasingly common due to changes in the Registered Provider sector.
- 2.3 Changes within the National Planning Policy Framework (NPPF) have introduced a new option within the definition of affordable housing – Starter Homes.
- 2.4 Starter Homes are defined as a new dwelling, available for purchase by qualifying first-time buyers only (first time buyers and aged 23-39), sold at a discount of at least 20% of the market value and sold for less than the price cap (£250,000).
- 2.5 The applicant has requested therefore that the low cost market housing units be provided in the form of Starter Homes. In addition to the statutory requirements mentioned above, the applicant has offered a discount of 25% and that the affordable housing is occupied pursuant to nominations from the Council (subject to provisions if no-one is available from our nomination list).

- 2.6 The proposal has the support of the Council's Housing Division, and the Housing Strategy & Development Officer has been involved in the efforts to ensure the delivery of the affordable housing on this site.
- 2.7 Given the changes to the NPPF, the applicant could have requested this change in any event given that Starter Homes are now to be considered affordable housing. The background issues regarding Registered Providers makes the request even stronger and it is recommended that the section 106 agreement be varied accordingly.
- 2.8 A draft of the new Agreement is provided at Appendix 2 and includes provisions to, as far as possible, maintain the affordable housing in perpetuity.

The Contact Officer for this report is Jeff Brown (719310).

(6) Application No: PAP/2014/0008

Derwent House, Church Lane, Corley, Coventry, CV7 8BA

Residential development of 17 no. houses and bungalows with associated highways and landscaping plus new detached garage to serve the existing dwelling, for

Mrs S Cassidy

The Site

This is the site of the former Corley Nursery on the north side of Church Lane just over 200 metres west of its junction with the main Tamworth Road on the edge of Corley. It is a rectangular flat site of 0.74 hectares. A detached house – Derwent House – in the same ownership, fronts Church Lane to the immediate south east. The application site includes about half of that property's present rear garden and extends around the remainder to the rear. To the east is a detached house and former farm buildings known as Hill Top Farm with a large open paddock at the rear adjoining the rear of the application site. Further to the east is a detached dwelling, the village hall and its associated car park and a bowling green. There is open agricultural land to the west and north of the site. On the opposite side of the road is a covered reservoir some detached dwellings and the premises of the Corley School set back from the road. This is a residential special school. Beyond the houses to the east are Church Farm and the village church.

The site itself was a former nursery and aquatic centre and the associated structures and buildings both fronting the site and extending back into it along its eastern side. Other buildings to the west and rear are commercial in appearance and used to accommodate car repair uses. The site has a significant two metre tall hedge fronting the road and there are similar strongly demarcated boundaries along its other sides. There is an existing access from Church Lane into the site at its western end and a separate access now serves the adjoining Derwent House.

The Proposals

The proposals involve the demolition of all of the existing structures and buildings and the complete redevelopment of the site with seventeen dwellings. This includes the loss of about half of the garden of Derwent House so as to accommodate the housing and a new garage for that property is included in the proposals.

Derwent House would retain its existing own access but a new residential access for the site would be provided centrally within the Church Lane frontage. This would lead to a cul-de-sac extending northwards throughout the centre of the whole site thus providing access. A short cul-de-sac is proposed off this to the east so as to access some of the proposed dwellings.

Two larger five bedroom properties would front Church Lane with their own separate access arrangements to that lane. These would be two and a half storeys high. The layout shows eight four and five bedroom detached houses set around the central cul-de-sac with seven two bedroom properties off the shorter east cul-de-sac. These would include two bungalows. All of the proposed properties would have two car parking spaces, except the two larger frontage units which would have four spaces each. The proposal would have a site density of 21 units per hectare.

The seven two bed properties referred to above would be “affordable” houses – 40%. The bungalows would be a rented property and the five others would be for low cost ownership. The remaining ten units would be open market houses.

The application is accompanied by supporting documentation which includes the following.

A Bat Assessment Report recommends that there is no objection to the proposals provided that full bat surveys are undertaken on two of the existing buildings during May to August and that mitigation measures are provided on site proportionate to the findings of that survey.

A Desk Top Ground Conditions survey suggests that conventional foundations would be suitable; that soak-aways are likely to be suitable for drainage, and that there is some potential for soil contamination because of the former uses – pesticides at the nursery and oils and diesel for the car repairs. Further work would thus be necessary to identify the scale of this likely contamination and lead to a proportionate remediation strategy.

A Utilities Statement includes responses to the applicant as a consequence of pre-application enquiries with different agencies. Severn Trent Water Ltd’s reply suggests that there is adequate capacity in both foul and storm water drainage to service the development. The Highway Authority had no objection in principle subject to more detail being needed to assess the detailed geometry of junctions and turning areas etc. Western Power Distribution offer connections to existing supplies.

A Sustainability Statement concludes that the site is previously developed land and that it lies in a sustainable residential location. The proposed houses would meet Code Level 3 for Sustainable Homes; provide sustainable drainage systems, and meet local housing need.

A Design and Access Statement describes the site and its setting outlining how the design of the proposed layout and houses was conceived.

A Public Consultation Report describes the outcome of a public exhibition held in Corley in early December 2013 which set out the proposals described above. There were seventeen written replies to a questionnaire at the event – 82% of these preferred brown field over green field development; 100% preferred a residential redevelopment of the application site rather than an industrial re-use, 59% wanted to see more affordable housing on the site and 35% wanted more “executive” housing, 71% wanted to see traditional designs, and 60% said that they or their family might be interested in a home on the site.

The Corley Housing Needs Survey of 2013 is also attached to the application. This was undertaken by the Council. 360 forms were sent out and there was a 27% response rate. The conclusions show a requirement for fourteen units of affordable housing – all one or two bedroom accommodation with three expressing an interest for bungalows and nine looking for low cost home ownership options.

A Planning Statement provides the applicant's case in support of the proposals. This sets out the history of the site describing its current lawful commercial use and concluding that it is previously developed land. Development Plan policies and those in the National Planning Policy Framework ("the NPPF") are outlined. The statement concludes that the proposal is inappropriate development in the Green Belt but that there are very special circumstances here of sufficient weight to override a presumption of refusal. In essence these are the removal of previously developed land; the on-site provision of affordable housing and the lack of a five year housing supply.

A Supplementary Statement from the applicant provides his evidence to support the number of houses being proposed; the reasons for the 40% provision as opposed to 100% provision, and the proportion of market houses included so as to "enable" the site's redevelopment. The evidence includes a financial appraisal and reference to the housing needs survey and to the consultations undertaken with the Parish Council. In essence the evidence is said to confirm that the site has an existing current value as a lawful commercial site which cannot be ignored; that because of the type of affordable housing being promoted here – low cost home ownership – there is no grant aid available from the Homes and Communities Agency, that because of the need to reduce impact on openness the number of houses needs to be kept to a minimum, and that the local Parish Council supports the type of tenure and mix being proposed.

The applicant has been requested to provide a response to the requests for financial contributions as outlined in the consultation section below. He argues that the terms of any Section 106 Agreement will be to give priority to local people for occupation of the five affordable homes and thus there is unlikely to be "new" households here, just existing households relocating, and that the two bungalows will be for older people not for young families. He therefore argues that the full education contribution request is unreasonable and should only be calculated on the basis of the ten open market houses – around £50k. However he argues that even this would adversely impact on the viability of the whole scheme. The library contribution and that towards footpath improvements are not considered to be reasonable requirements.

Background

Without recounting the complete planning history of the site, it is confirmed that past lawful uses have included the former nursery and aquatic business; compost mixing, and car repairs. When the nursery closed a planning permission was granted in 2010 for the commercial redevelopment of the site through light industrial and office uses. Whilst this was not taken up, the lawful use reverts to the previous permissions as set out here. It is therefore confirmed that the site can be treated as previously developed land in that it has a lawful use for commercial purposes.

Development Plan

Saved Policies of the North Warwickshire Local Plan 2006 – Core Policy 2 (Development Distribution); Core Policy 8 (Affordable Housing), Core Policy 11 (Quality of Development), ENV2 (Green Belt), ENV6 (Land Resources), ENV8 (Water Resources), ENV11 (Neighbour Amenities), ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), HSG2 (Affordable Housing), HSG3 (Housing outside Development Boundaries) and TPT6 (Vehicle Parking).

Other Material Planning Considerations

The National Planning Policy Framework 2012

The Submitted Version of the Core Strategy – policies NW1 (Settlement Hierarchy), NW2 (Green Belt), NW3 (Housing Development), NW5 (Affordable Housing), NW8 (Sustainable Development), NW9 (Renewable Energy and Energy Efficiency) and NW10 (Quality of Development)

Consultations

Warwickshire County Council as Highway Authority – Originally submitted an objection based on the proposed design of the access and service road. This has now been overcome through the submission of amended plans and the County Council has withdrawn its objection subject to standard conditions.

Warwickshire Rights of Way – No objection but makes a request for £1200 to improve existing public footpaths around the site.

Severn Trent Water Ltd – No objection subject to a standard condition requiring full details of final drainage measures.

Environmental Health Officer – Agrees that further investigative work is needed but this can be conditioned.

Warwickshire Police – No objections but offers advice on reducing the potential for crime

Warwickshire Museum – No comments received

Environment Agency – No comments received

Warwickshire Library Services – They request a contribution of £2386.

Warwickshire County Council Education – They request a contribution of £87,285 towards

Assistant Director (Housing) NWBC – Confirms that the evidence provided by the applicant in his Supplementary Statement can be supported.

Representations

170 letters were circulated throughout Corley to local households. No objections have been received, but one letter of support has been submitted.

Corley Parish Council – The Council makes three comments: there should be some chimneys included in the design of the new houses; why is a garage now being proposed for Derwent House and there is concern about the capacity of the existing infrastructure.

Observations

a) Green Belt

The site is in the Green Belt. The Development Plan says that the control of development here should be in accordance with Government advice in its PPG2. This has been superseded by the National Planning Policy Framework and thus it now forms the proper guidance to follow. The construction of new buildings in the Green Belt is inappropriate development by definition according to the NPPF. As such the application carries a presumption of refusal because being inappropriate development it is, de facto, harmful development. However Members will be aware that there are exceptions defined in the NPPF in respect of the construction of new buildings and it will be necessary to see if the current proposal accords fully or in part with any of the exceptions.

There are two potential exceptions. The first is where the proposal is for, “limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan”. As can be seen there are in fact two “arms” to this exception – is the proposal “limited infilling”, and is it “limited affordable housing provision”? Whilst the site here has a frontage to Church Lane and there is a property on its eastern side it has open agricultural land to its rear and to the west. It is not therefore an infill site, not being surrounded by existing development, and in any event it is not considered by degree to be limited because of its size. The proposal does not accord with this exception. In the case of the second then the proposal would not deliver wholly affordable housing, this being 40% of the total provision. The exception requires the affordable provision to be in line with Local Plan policies. Here, saved policy HSG2 of the Local Plan would require 100% affordable housing provision on site. Policy NW5 of the emerging replacement Local Plan requires 40% throughout the Borough with a degree of flexibility depending on the viability of the scheme. The provision of affordable housing here is a matter for further discussion later in this report, but at the present time, it is possible to conclude that the current proposal only partially accords with this “arm” of the exception being considered. Taking the exception as a whole therefore, it is considered that the proposal when treated overall only partially accords with it, and thus the proposal remains as being inappropriate development.

The second exception is where a proposal comprises the “limited infilling or the partial or complete redevelopment of previously developed sites (brown field land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development”. The proposal is clearly the complete redevelopment of previously developed land and thus it accords with the first half of the exception. There are however two conditions. The first is that the proposed

development should not lead to loss of openness beyond that already experienced by the existing development. Here the foot print of the buildings presently on site amounts to some 1185 square metres. The proposal would provide 1638 square metres - a 37 % increase. Moreover the built form and layout of the proposal brings new development right up to the Church Lane frontage and would evenly spread it throughout the whole site. At present the buildings are confined to the western and northern boundaries. Overall it is considered that there would be a loss of openness here. The second condition relates to the impact of the proposal on the reasons for including land within the Green Belt. The proposal would not impact on the reason for the Green Belt in restricting the sprawl of large built-up areas as it does adjoin such areas. It would not affect the reason of preventing the merger of towns. It would not lead to the loss of countryside. The preservation of the special character of historic towns is not relevant here and the development would not prejudice urban regeneration. Hence it is considered that there is no impact on the reasons for including land within the Green Belt. This is hardly surprising as the proposal involves the redevelopment of existing brown field land. As a consequence therefore this second condition of the exception is met. But, as overall there is not complete accord with the terms of this exception, the proposal remains as inappropriate development.

In overall terms therefore when considering the two exceptions together it is concluded that the proposal remains as inappropriate development carrying the presumption of refusal.

In these circumstances the NPPF requires the Local Planning Authority to assess whether the applicant has forwarded any material planning considerations of such weight that they can be considered as being the “very special circumstances” of such weight to override that presumption. In looking at this matter the Board will have to assign a weight to the “inappropriateness” and a weight to the “material planning considerations” such that an assessment can be made as to where the balance lies.

b) The Weight to be given to the Inappropriateness

In attributing a weight to the inappropriateness here, it is acknowledged that there is “de facto” harm to the Green Belt by virtue of that inappropriateness. It is however also necessary to define the “actual” harm. The increase in footprint over the existing; the built form extending throughout the site and the loss of the frontage will have an impact on one’s perception of openness here and that will be one of new development and/or an extension of built development along the road. The resultant harm is therefore considered to be more than just limited. However as the proposal does not cause harm to the reasons for including land in the Green Belt, it is concluded overall that the actual harm here is moderate rather than significant.

c) The Weight to be given to the Applicant’s Case

There are several planning considerations put forward by the applicant. The first is that he points out that the Council does not have a five year supply of housing and that its shortfall is significant. In these circumstances he argues that the NPPF should take preference as it says that new housing should be allowed in these circumstances unless the harm or impacts caused are significant and demonstrable. It is acknowledged that the Council does not have a five year housing supply. Whether the shortfall is significant or not, it is clear from appeal decisions throughout the country that the Secretary of State considers that anything less than a full five year supply severely prejudices the possibility of a refusal unless there would be real harm or adverse impact. In these

circumstances, with the adoption of the replacement Plan and the Site Allocations Document a little way off, it is considered that the applicant's position here does carry significant weight.

The second consideration is that the development will deliver 40% affordable housing of a type and tenure evidenced in a very recent Housing Needs Survey and which is fully supported by the Parish Council. The proposal does accord with and match that Survey and the Parish Council has expressly indicated in the pre-application consultation work that it did not wish to see all of the affordable provision identified by the Survey all being on the same site. The applicant has been asked to evidence why 100% provision can not be delivered here thus meeting the requirements of the Survey. That evidence states that the submitted proposal has been reached balancing a number of factors; a financial appraisal based on the fact that the existing site has an existing commercial value, that the local housing need is different – low cost market housing, rather than socially rented – and that this does not attract Government funding, the need to retain openness thus reducing density, and the views of the Parish Council wanting to see a mix of tenure on the site. This evidence has the support of the Council's housing officers. As a consequence it is accepted that the proposal represents the best mix of housing in order to provide a significant amount of local affordable housing. Hence the provision of affordable housing with local support and matching local needs is a significant benefit of this proposal.

The third consideration is that the proposal involves the redevelopment of brown field land. This not only accords with Government policy but also with the Development Plan and its emerging replacement as well as with the local community's preference. This consideration therefore carries significant weight.

In conclusion therefore it can be seen that the applicant's material considerations cumulatively carry significant weight.

d) The Balance

From the above it can be deduced that an initial assessment of the balance between the harm caused by the inappropriateness and the applicant's material considerations lies in favour of greater weight being attached to the latter.

Before reaching a final conclusion though, it is necessary to explore any other policy issues which could affect this initial assessment. The matters to be looked at here are the weight to be given to the requests for financial contributions and secondly whether recent decisions in Corley have any impact.

Taking the latter of these two matters first then there have been two recent decisions in Corley that are pertinent here. A single house was approved at Tamworth Road. Whilst that site was also in the Green Belt it was considered that it did amount to "limited infilling" under the exception definition set out above and was thus appropriate development. The other was a refusal for five houses on the paddock at the rear of the neighbouring property to the current application site. That was deemed to be inappropriate development because it was not limited infilling thus carrying the presumption of refusal. In that case there were no very special circumstances sufficient to outweigh that presumption. As can be seen this is very much a question of each site being treated on its own merits. The key consideration is always to first establish whether the development is appropriate or not appropriate. In this case therefore the

conclusions reached above on the current application are not “at odds” with these other decisions, as they are site-specific.

The other issue is the weight that should be attributed to the requests for financial contributions. That from the Library and Footpaths services seeks them as revenue contributions to maintain existing facilities. This is not a reason compatible with the statutory requirements for Section 106 Agreements as these should be dealt with through the Community Infrastructure Levy and the Council is not yet a Charging Authority. Moreover they are not considerations of such weight as to amount to reasons for refusal if not paid. The Education service indicates that there is no spare capacity in the local catchment area for early years; secondary and post-16 children potentially arising from the proposed development. It seeks a contribution towards such provision. However as above, this would be a revenue contribution and not be for the physical extension of any school. Moreover the basis of the calculation is questionable and the applicant’s argument is acknowledged on this issue. The delivery of the affordable housing here is the overriding justification and thus priority for this proposal and its deliverability should not be prejudiced through other financial contributions which could affect the overall viability of the scheme. As such a refusal based on non-payment of this contribution would not be of any weight.

e) Other Matters

There are no technical objections to the proposal arising from consultation with the appropriate agencies, other than matters which can be dealt with through standard conditions. None of the utility agencies has objected despite the Parish Council concerns. The design of the houses has been altered to include chimneys on the two frontage properties at the request of the Parish Council. The new garage at Derwent House is to provide on-site garaging given the proposed layout.

Recommendation

That subject to the completion of a Section 106 Agreement on the terms as set out in this report relating to the provision of on-site affordable housing, planning permission be **GRANTED** subject to the following conditions:

1. Standard Three year condition
2. Standard Plan numbers condition – the location plan received on 24 January 2014; plan numbers 6693/14M Rev M, 25E and 27C received on 31 March 2014 and plan numbers 6693/15B, 16B, 17B, 18B, 18B, 20B, 21B, 22B, 23B, 24A Rev B, and 28A all received on 24 January 2014.

Pre-commencement Conditions

2. No development whatsoever, including the demolition of any building, shall commence on the site until such time as a bat survey is undertaken during the period May to September. That survey together with its findings shall be submitted to the Local Planning Authority.

REASON

In the interests of nature conservation.

3. No work shall commence on the demolition of any building on the site until such time as details of the mitigation measures to be installed within the development proportionate to the findings of the survey referred to in condition (3) above, have first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of nature conservation.

4. No work shall commence on site other than the demolition of existing buildings and structures together with site clearance, until full details of all of the facing, roofing and surface materials to be used on the development together with details of all boundary treatments, have first been submitted to and approved in writing by the Local Planning Authority. Only the approved materials and treatments shall then be implemented on site.

REASON

In the interests of the visual amenities of the area

5. No development shall commence on site other than the demolition of existing buildings and structures together with site clearance, until full details of the means to dispose of foul and surface water have first been submitted to and approved in writing by the Local Planning Authority. Only the approved measures shall then be implemented on site.

REASON

In order to reduce the risks of flooding and pollution.

6. No development shall commence on site other than the demolition of existing buildings and structures together with site clearance until such time as an intrusive Phase 2 ground conditions survey has first been undertaken in accordance with a brief that shall first have been agreed in writing by the Local Planning Authority.

REASON

In order to reduce the risk of pollution.

7. No development shall commence on the construction of any house or road hereby approved until such time as the results of the survey referred to in condition (7) have first been submitted in writing to the Local Planning Authority. This submission shall include remedial measures to remove any ground contamination found as a consequence of the survey.

REASON

In order to reduce the risk of pollution.

8. No development shall commence on the construction of any house or road hereby approved until such time as remedial measures for the removal of ground contamination have first been agreed in writing by the Local Planning Authority. Only the approved measures shall then be undertaken

REASON

In order to reduce the risk of pollution.

9. Following the completion of the measures agreed under condition (9) a Verification Report shall be submitted to the Local Planning Authority providing evidence of full completion of the remedial measures. Work may only start on the construction of the houses and roads hereby approved once this Report has been agreed in writing by the Local Planning Authority.

REASON

In order to reduce the risk of pollution.

10. No development shall commence on site other than the demolition of existing buildings and structures and site clearance operations, until full details of the construction of the road serving the development, including footways, street lighting, private drives and means of accessing individual plots, drainage including the outfalls, and levels of the car parking and manoeuvring areas all as shown on the approved plans, together with the same details for plots 16 and 17, have first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of highway safety and reducing the risk of flooding.

11. No development shall commence on site other than the demolition of existing buildings and structures and site clearance operations, until full details of the measures to be implemented to minimise the spread of extraneous material onto the public highway by wheels of vehicles accessing the site during construction and to clean the highway of such material, have first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of highway safety

12. No development shall commence on site other than the demolition of existing buildings and structures and site clearance operations until details of a parking and turning area for site construction traffic have first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of highway safety.

13. No development shall commence on the construction of any house or road hereby approved until such time as details of the landscaping scheme to be provided has first been submitted to and approved in writing by the Local Planning Authority.

REASON

In the interests of the visual amenities of the area.

Pre-Occupation Conditions

14. There shall be no occupation of any house hereby approved until such time as the whole of the measures approved under condition (6) above have been implemented in full to the written satisfaction of the Local Planning Authority.

REASON

In the interests of reducing the risks of flooding and pollution

15. There shall be no occupation of any house hereby approved until such time as all of the details approved under condition (xi) above have first been fully implemented to the written satisfaction of the Local Planning Authority.

REASON

In the interests of highway safety and to reduce the risk of flooding.

16. There shall be no occupation of any house hereby approved until such time as visibility splays have been provided to all of the vehicular accesses onto Church Lane measuring 2.4 by 25 metres to the near edge of the public highway carriageway.

REASON

In the interests of highway safety

17. There shall be no occupation of any house hereby approved until such time as all the landscaping details approved under condition (14) above have first been fully implemented to the written satisfaction of the Local Planning Authority.

REASON

In the interests of the visual amenities of the area

Other Conditions

18. There shall be no structure erected or tree or shrub planted or retained within 2.4 metres of the near edge of the public highway carriageway fronting Church Lane exceeding or likely to exceed at maturity, a height of 0.3 metres above the public highway carriageway.

REASON

In the interests of highway safety.

19. The existing vehicular accesses to the site and Derwent House shall be closed off and the public highway footway and verge reinstated to the written satisfaction of the Local Planning Authority within one month of the new approved accesses being completed.

REASON

In the interests of highway safety

NOTES

1. Your attention is drawn to Sections 38, 163 and 184 of the 1980 Highways Act; The New Roads and Street Works Act 1991 and the Traffic Management Act 2004.

2. Standard Coal Authority advice

3. The Local Planning Authority has worked positively in this case with the applicant in order to overcome planning issues arising from the case by engaging in pre-application discussions and resolving consultation responses through seeking amended plans, thus meeting the requirements of the National Planning Policy Framework 2012.

BACKGROUND PAPERS

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Planning Application No: PAP/2014/0008

Background Paper No	Author	Nature of Background Paper	Date
1	The Applicant or Agent	Application Forms, Plans and Statement(s)	4/2/14
2	Head of Development Control	Letter	10/2/14
3	WCC Highways	Consultation	17/2/14
4	Severn Trent Water Ltd	Consultation	19/2/14
5	J Macdonald	Support	19/2/14
6	Warwickshire Police	Consultation	20/2/14
7	WCC Rights of Way	Consultation	24/2/14
8	Environmental Health Officer	Consultation	26/2/14
9	Applicant	E-mail	26/2/14
10	Applicant	E-mail	26/2/14
11	Housing Officer	E-mail	26/2/14
12	County Library Service	Consultation	10/3/14
13	County Education Service	Consultation	11/3/14
14	Environmental Health Officer	Consultation	11/3/14
15	Corley Parish Council	Representation	12/3/14
16	Applicant	E-mail	13/3/14
17	Warwickshire County Council	Consultation	31/3/14

Note: This list of background papers excludes published documents which may be referred to in the report, such as The Development Plan and Planning Policy Guidance Notes.

A background paper will include any item which the Planning Officer has relied upon in preparing the report and formulating his recommendation. This may include correspondence, reports and documents such as Environmental Impact Assessments or Traffic Impact Assessments.



DATED

2018

- (1) NORTH WARWICKSHIRE BOROUGH COUNCIL
- (2) CASSIDY HOMES LIMITED
- (3) JAMES ARTHUR SEPHTON AND RICHARD JOHN PARKER

DEED

**Made pursuant to s.106 of the Town and
Country Planning Act 1990 (as amended by the
Planning and Compensation Act 1991)**

Relating to

Land on the North Side of Church Lane, Corley, Warwickshire, CV7 8AZ

“Affordable Dwelling(s)”	a Dwelling to be made available as Affordable Housing in accordance with the Affordable Housing Scheme
“Affordable Housing”	shall have the meaning given to it in Annex 2 of the National Planning Policy Framework 2018 or any successor provisions which may be introduced from time to time including for the avoidance of doubt change in policy to legislative provisions or changes thereto
“Affordable Housing Provider”	either:- <ul style="list-style-type: none"> (a) a provider of Affordable Housing who is registered with Homes England or such successor authority under the Housing and Regeneration Act 2008; or (b) any other housing provider approved in writing by the Council; or (c) any other company or body approved in writing by the Council
“Affordable Rented Housing”	those Affordable dwellings to be made available as affordable rented housing as defined in Annex 2 of the National Planning Policy Framework 2018 or any successor provisions which may be introduced from time to time including for the avoidance of doubt change in policy to legislative provisions or changes thereto
“Development”	the residential development of the Site in accordance with the Planning Permission
“Discounted Market Sales Housing”	those Affordable dwellings to be sold at a discount of 25% below the local market value
“Dwelling”	a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission or any reserved matters approval consequent thereto

“Expert”	means the independent expert appointed for the purposes of clause 8 below
“Head of Development Control”	the Council’s Head of Development Control or her appointed representative for the time being
“Homes England”	Homes England of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH or its statutory successors or agent in respect of the relevant function
“Market Housing Units”	that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing
“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
“Open Market Value”	the value that the Dwelling could be expected to achieve if sold freehold and not subject to the terms of this Deed by a willing seller to a willing buyer
“Plan”	the plan attached to this Deed and marked “Plan”
“Planning Permission”	the planning permission granted by the Council on the 5 th October 2015 under reference PAP/2014/0008.
“Practical Completion”	issue of a certificate of practical completion by the NHBC or other body nominated by the Owners to inspect the Development for the purposes of compliance with building regulations
“Site”	the land against which this Deed may be enforced as shown edged red on the Plan

2. CONSTRUCTION OF THIS DEED

- 2.1. Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.
- 2.7. References to the Owner shall include the owner for the time being of an Affordable Dwelling.

3. LEGAL BASIS

- 3.1. This Deed is made pursuant to Section 106 of the Act and in so far as any provision of this deed is not within the powers of S106, Section 111, 120 and 139 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and section 9 of the Open Spaces Act 1906.
- 3.2. The covenants, restrictions and requirements imposed upon the Owner by the Council under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4. THE OWNER'S COVENANTS

- 4.1. The Owner covenants with the Council as set out in the First Schedule.

5. MISCELLANEOUS

- 5.1. The Developer shall pay to the Council on completion of this Deed the sum of £500 being the reasonable legal costs of the Council incurred in the negotiation,

preparation and execution of this Deed and the Council hereby acknowledges receipt of the same.

- 5.2. No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 5.3. This Deed shall be registered as a local land charge by the Council.
- 5.4. Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Development Control.
- 5.5. The Owner agrees that they will notify the Council's Head of Development Control in writing of the date of the first Occupation of the first Dwelling comprised in the Development provided that such notification shall be unnecessary if the covenants and other provisions in this Deed shall have been performed or complied with and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 5.6. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 5.7. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 5.8. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that part of the Site in respect of which the breach takes place but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 5.9. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 5.10. This Deed shall not be enforceable against owners or occupiers of Dwellings nor those deriving title from them save in respect of the provisions affecting Affordable Housing Units in [] of the Schedule which shall bind owners or occupiers of Affordable Dwellings only.
- 5.11. The obligations in this Deed shall not be enforceable against any statutory undertaker whose apparatus may be situated within the Site or any other person

who acquires any part of the Site or interest therein for the purpose of the supply of electricity, gas, water, drainage, telecommunications services or public transport services.

6. DETERMINATION OF DISPUTES

- 6.1. Any dispute or difference relating to any matter or thing arising out of or in connection with this Deed shall be determined by an independent expert (who will act as an expert not an Arbitrator) in accordance with the following paragraphs 6.2 to 6.11.
- 6.2. If the parties do not make the appointment of the Expert by agreement within 14 days of service of the notice requiring reference of the dispute, the Expert shall be nominated upon the application of any party by the President or other officer to whom the making of such appointments is for the time being delegated by the Law Society and the Expert shall be an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than 10 years.
- 6.3. Unless the Expert shall direct to the contrary, not more than 28 days after his appointment the parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon.
- 6.4. The Expert shall be at liberty to visit the land relevant to the dispute unaccompanied and to call for such written evidence from the parties as he may require.
- 6.5. The Expert shall not, unless he directs to the contrary, hear oral representations from any party to the dispute.
- 6.6. The Expert shall fully consider all submissions and evidence when making his decision.
- 6.7. The Expert shall give his decision in writing and shall give reasons.
- 6.8. The Expert shall use all reasonable endeavours to give his decision and the reason for it as speedily as possible and in any event within 42 days of his appointment.
- 6.9. The Expert's decision including his decision as to costs shall be final and binding.
- 6.10. The Expert's fees shall be payable by the parties in such proportions as he shall determine and in default of such determination equally between them.
- 6.11. If it shall be impossible to procure the appointment of such an Expert or if the Expert so appointed shall fail or be unable to reach a determination of the matter referred to him then any party to the dispute shall be entitled to have the dispute referred to a single arbitrator who failing agreement shall be appointed by the President or a Vice-President of the Chartered Institute of Arbitrators and the arbitration shall be conducted in accordance with the Rules of the Chartered Institute of Arbitrators.

7. WAIVER

No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan provided that this obligation shall not apply to the sale of individual Dwellings or a transfer to a statutory undertaker.

9. JURISDICTION

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

10. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

THE SCHEDULE
Owners' covenants with the Council

The Owners covenant with the Council as follows:-

AFFORDABLE HOUSING

1. The Owner covenants with the Council to provide the Affordable Housing in accordance with this Schedule.
2. The Affordable Housing shall comprise of not less than 7 of the total number of 17 dwellings and shall comply with the Affordable Housing Mix outline in this Schedule 1.
3. Affordable Housing Mix
 - 3.1 2 of the Affordable Housing provision shall be Affordable Rented Housing, comprising two number two bed bungalows and shall only ever be occupied as such.
 - 3.2 5 of the Affordable Housing provision shall be Discounted Market Sales Housing, comprising two number 3 bed houses, two number 2 bed houses and one number 2 bed bungalows and shall only every be occupied as such.
4. Prior to the occupation of the final housing unit to be sold at Open Market Value, a contract shall have been exchanged for the transfer of the Affordable Rented Housing to an Affordable Housing Provider and written notification of such has been received by the Council.
5. Prior to the occupation of the final housing unit to be sold at Open Market Value the Affordable Rented Housing shall have been constructed in accordance with the Planning Permission and transferred to the Affordable Housing Provider and written notification of such has been received by the Council.
6.
 - 6.1. From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
 - 6.1.1. any person acquiring an interest in an Affordable Rented Dwelling pursuant to a statutory right to buy or acquire such Affordable Dwelling;
or
 - 6.1.2. any mortgagee provided that the mortgagee shall have first complied with the provisions of paragraph 6.3 below
 - 6.2. The mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than [2] months' prior notice to the Council of its intention to dispose and:

- 6.2.1. in the event that the Council responds within 2 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer
- 6.2.2. if the Council does not serve its response to the notice served under paragraph 6.2 within the 2 months then the mortgagee shall be entitled to dispose free of the restrictions set out in this Schedule

if the Council or any other person cannot within 1 month of the date of service of its response under paragraph 6.2.1 secure such transfer then provided that the mortgagee shall have complied with its obligations under paragraph 6.2 the mortgagee shall be entitled to dispose free of the restrictions set out in this Schedule 6.3 PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Mortgagee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Mortgagee in respect of moneys outstanding under the charge or mortgage

7. Prior to the Owner or the Affordable Housing Provider entering into a contract for the sale or letting of the Affordable Housing, they will ensure that the Affordable Housing will not be sold or let to any person other than to a person or persons chosen pursuant to a nomination agreement by the Council Provided that if no suitable person is nominated or can be chosen within [2] months of the owner for the time being of the relevant Affordable Dwelling giving notice to the Council of its intention to sell or let the Affordable Dwelling, then such owner shall be entitled to dispose of the Affordable Dwelling to any person of its choosing subject always to the Affordable Dwelling continuing to be either Affordable Rented Housing or Discounted Market Sale Housing as the case may be

IN WITNESS of which this Deed has been executed on the first day before written

THE COMMON SEAL of NORTH)

WARWICKSHIRE BOROUGH COUNCIL)

was hereunto affixed in the presence of:)

Designated Officer:

Executed as a deed by CASSIDY Homes) LIMITED
acting by a Director in the presence of:

.....

Director

Witness
Signature.....

Name.....

Address.....

.....

Occupation.....

EXECUTED AS A DEED by)

JAMES ARTHUR SEPHTON)

In the presence of:-

Witness Signature

EXECUTED AS A DEED by)

RICHARD JOHN PARKER)

In the presence of:-

Witness Signature