

SITE PLAN

RR/2022/2376/P

BURWASH

Strand Meadow – Land to south west of



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Not to Scale

## Rother District Council

Report to	-	Planning Committee
Date	-	12 January 2023
Report of the	-	Director – Place and Climate Change
Subject	-	Application RR/2022/2376/P
Address	-	Strand Meadow – Land to the south west of, Burwash
Proposal	-	Application to modify or discharge a Planning Obligation (Sec. 106A) relating to RR/2017/582/P to include Park Lane Homes as a party to the planning obligation. Replacement of affordable housing with an early and late stage review mechanism in relation to viability. Remove offer of Parish Land to Burwash Parish Council. Amend route of footpath link. Amend timing of submission of Landscape area specification and include the updated Ecological report September 2020.

[View application/correspondence](#)

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**RECOMMENDATION:** It be **RESOLVED** to **APPROVE MODIFICATION OF THE SECTION 106 PLANNING OBLIGATION**

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**Director: Ben Hook**

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<b>Applicant:</b>	<b>Park Lane Homes (South East) Ltd</b>
<b>Agent:</b>	<b>Park Lane Homes (South East) Ltd</b>
<b>Case Officer:</b>	<b>Mrs S. Shepherd</b> (Email: <a href="mailto:sarah.shepherd@rother.gov.uk">sarah.shepherd@rother.gov.uk</a> )

<b>Parish:</b>	<b>BURWASH</b>
<b>Ward Members:</b>	<b>Councillors J. Barnes and Mrs E.M. Kirby-Green</b>

**Reason for Committee consideration: Director – Place and Climate Change referral: Modification of Planning Obligation with financial implications.**

**Statutory 13 week date: 28/12/22**  
**Extension of time agreed to: 20/1/23**

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### 1.0 SUMMARY

1.1 This application is reported to the Planning Committee as it proposes changes to the previously agreed Section 106 planning obligation with potential financial implications. The majority of the listed changes are of a more minor nature and update the parties in the Section 106 and evolving site situation with regards to landscaping, amenity space and ecology. The proposed loss of on-site affordable housing and its replacement with a two-stage review mechanism to

reconsider affordable housing provisions or monetary contributions based on actual costs is also sought. A change to full market housing would result in a loss of affordable housing provisions on site with a consequent increase in Community Infrastructure Levy (CIL) payments due. A review mechanism within any Section 106 would allow the affordable housing provisions/contributions to be revisited as the development started on site and progressed.

- 1.2 The proposed changes are accompanied by a Viability Report which concludes that the proposals cannot support the provision of affordable housing on site. The Council has sought an independent Viability Assessment and this, even with some adjustment of a couple of figures, also concludes that the scheme could not viably provide any affordable housing or off-site affordable housing contribution. It recommends that the Council applies the viability review mechanisms at early and late stages of development in line with the National Planning Policy Guidance for Viability document.

1.3 **PROPOSAL DETAILS**

<b>PROVISION</b>	
No of houses	30
No of affordable houses	0
Other developer contributions 1	Landscape ecological area
Other developer contributions 2	Recreational open space
Other developer contributions 3	Footpath link
CIL (approx.)	£624,390
New Homes Bonus (approx.)	£0 (approved at appeal)

**2.0 SITE**

- 2.1 The site, as is the whole village of Burwash and much of the District, is situated within the High Weald Area of Outstanding Natural Beauty (AONB). The majority of the site, excepting the amenity space, lies within the development boundary for Burwash village with an existing field access from the southern end of Strand Meadow. Tree Preservation Order 267 preserves the larger trees on site.
- 2.2 The site adjoins Strand Meadow to the north, and the gardens of properties at a higher level in Beechwood Close to the north-east and Rother View to the south-east. The recreation ground is set at a higher level and adjoins the southern boundary of the site, with rising fields to the west. Public paths run along the northern boundary between Beechwood Close and Strand Meadow with public rights of way via Ham Lane to the south-west and through the fields to the west.

**3.0 PROPOSAL**

- 3.1 The proposed modifications of the Section 106 as set out by the Applicant comprise:
- Inclusion of Park Lane Homes (South East) Limited (the Developer) as a party to the Planning Obligation.

- Removal of Affordable Housing contribution, both on and off site, as the approved development is not viable, or deliverable, to provide the Affordable Housing provision included in the existing Section 106. The application is accompanied by a detailed Viability Assessment produced by Turner Morum dated 14 September 2022 which includes appraisals for policy compliant 40% Affordable Housing, 20% Affordable Housing and wholly Open Market scenarios.
- Inclusion of new clauses to provide for both early and late stage review mechanisms in relation to viability to ensure the development is brought forward within an agreed timescale (early stage review). A review of actual costs and revenues prior to the occupation of the 15th dwelling (late stage review) and in the event of a “surplus” arising a method for calculating an off-site Affordable Housing contribution. It is proposed the review mechanisms will follow the principals set out in the previous Section 106 agreed with the Council in relation to Application RR/2018/1787/P, which was the subject of Appeal Ref: APP/U1430/W/19/3223824.
- Removal of the definition of “Parish Land” and the obligation to offer the “Parish Land” to Burwash Parish Council (Schedule 3 Part 4 and Schedule 10) as the Parish Council has previously advised they have no need for the “Parish Land”.
- Amendment to the Section 106 Plan to remove the identification of the “Parish Land” and amend the route of the Footpath Link to accord with the approved drawings.
- Timing for the submission of the Specification relating to the Landscape Area and Recreation Land (Schedule 3 Part 2) to be amended to require submission prior to any above ground works being carried out.
- Inclusion of the updated Ecological Report dated September 2020 and submitted with the Reserved Matters Application RR/2020/1822/P (Schedule 9).

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## 4.0 HISTORY

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|-----|----------------|--|
| 4.1 | RR/2022/2426/P | Variation of Conditions 1-4 imposed on RR/2020/1822/P to amend approved drawings of Plots 1 and 2. TO BE DETERMINED  |
| 4.2 | RR/2022/1942/P | Variation of Conditions 1-4 imposed on RR/2020/1822/P – to revise some of the highway details in the layout. APPROVED CONDITIONAL  |
| 4.3 | RR/2020/1822/P | Reserved matters relating to residential development of 30 dwellings (outline permission RR/2017/582/P), Conditions 1, 2 and 3 together with the discharge of Conditions 7 (foul and surface water drainage), 8 (parking and turning of vehicles), 9 and 10 (archaeology), 13 (levels) and 19 (landscaping). Refused. APPEAL ALLOWED |
| 4.4 | RR/2018/1787/P | Full application. Erection of 30 market dwellings together with access, parking, open space and recreational land. Refused on design only and lack of Section 106 agreement which was subsequently completed. APPEAL DISMISSED   |

- 4.5 RR/2017/586/P Outline: Proposed residential development with access from Strand Meadow. APPROVED SUBJECT TO CONDITIONS AND SECTION 106
- 4.6 RR/2011/2206/P Use of land for informal recreation and creation of footpath link. APPROVED SUBJECT TO SECTION 106 AGREEMENT AND CONDITIONS
- 4.7 RR/2011/2205/P Outline: proposed residential development with access from Strand Meadow. APPROVED SUBJECT TO SECTION 106 AGREEMENT AND CONDITIONS
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## 5.0 POLICIES

- 5.1 The following policies of the [Rother Local Plan Core Strategy 2014](#) are relevant to the proposal:
- EN1: Landscape stewardship
  - EN5: Biodiversity and green space
- 5.2 The following policies of the [Development and Site Allocations Local Plan](#) are relevant to the proposal:
- DHG1: Affordable Housing
  - DEN1: Maintaining Landscape Character
  - DEN2: The High Weald AONB
  - DEN4: Biodiversity and Green Space
- 5.3 The following policies of the Burwash [Neighbourhood Plan](#) are relevant to the proposal:
- GP01: Protection of the Area of Outstanding Natural Beauty landscape
  - EN02: Natural Environment Protection
  - EN06: Integration of landscaping
- 5.4 The National Planning Policy Framework and Planning Policy Guidance are also material considerations.
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## 6.0 CONSULTATIONS

### 6.1 Housing Enabling & Development Officer – **NO OBJECTION**

6.1.1 Comments that: *While it is unfortunate that on-site affordable housing is not able to be provided as part of this scheme the Financial Viability Appraisal supplied by the Applicant and subsequently independently reviewed is accepted. The proposed review mechanism constitutes a reasonable outcome that allows the development to viably proceed and secure the possibility of a financial contribution towards affordable housing provision in Rother. As such I have no objection to the proposed modifications.*

### 6.2 Planning Notice

6.2.1 Three letters of objection have been received. The comments are summarised as follows:

- Highway safety issues.
- Don't need a viability study to identify various issues other than affordable housing that combine to make the scheme unprofitable, including steep site, lack of garages, earthmoving required, landscaping and piling.
- S106 requirements should be honoured.
- Residents objections have been ignored.
- Insufficient parking.
- Site is unsuitable for development.

### 6.3 Burwash Parish Council – **OBJECTION**

6.3.1 The Parish Council objection is summarised as follows:

- Affordable housing is needed, and permission was granted with great weight placed on the affordable housing element.
- Rother District Council (RDC) should not accept a developer's viability study without a counter study by an independent company.
- Object to the timing of this in the absence of RDC's own viability study.
- RDC is urged to work with the developer to secure the affordable housing
- If the development isn't viable, don't build it.
- Loss of affordable is contrary to policy for mixed and balanced communities in rural sites, provision of affordable housing and mixed tenures.
- The Parish Council confirms that the land denoted as 'Parish Land' is not required by them.

## 7.0 **LOCAL FINANCE CONSIDERATIONS**

7.1 The proposal is for a type of development that is CIL liable. The total amount of CIL money to be received is subject to change. As a full market housing scheme, the development could generate around £624,390. With exemption for affordable housing this would be reduced to around £377,876.

7.2 If the development had been granted approval by the local council, the proposal would have provided New Homes Bonus (subject to review by the Government). If New Homes Bonus were paid it could, assuming a Band D property, be approximately £200,520 over four years. However, the scheme was granted permission at appeal and as such no New Homes Bonus will be provided.

## 8.0 **APPRAISAL**

8.1 This application relates to modifications of the Section 106 and as such does not change the principle of residential development which is not for reconsideration. The detailed plans and other matters approved at outline and via the reserved matters Application RR/2020/1822/P still stand, except where an amendment is proposed to the designation of the footpath link route and removal of the annotation of Parish Land.

8.2 In considering the proposed modifications to the Section 106 regard must be had to whether the proposed changes are necessary and/or serve a planning purpose and meet any policy requirements. Each item listed in the proposals at paragraph 3.1 above will be considered in turn.

Inclusion of Park Lane Homes (South East) Limited (the Developer) as a party to the Planning Obligation.

- 8.3 Although not a land owner, the request to add the developer to be a party to the Section 106 has been made and there is no reason to object to this. The same land owners already included in the Section 106 remain.

Removal of Affordable Housing contribution and Inclusion of new clauses to provide for both early and late stage review mechanisms in relation to viability

- 8.4 As referenced by the Applicant, this matter was previously explored as part of Application RR/2018/1787/P, which was a full application proposing 30 market dwellings. While that application was refused and subsequently dismissed at appeal on design grounds, a new Section 106 obligation was completed at that time having fully explored the viability issues. Following an independent review by the District Valuation Office, this resulted in removal of affordable housing on-site and the insertion in the Section 106 of a two-stage review mechanism at that time.
- 8.5 Now four years later, the Applicant has again submitted a new Viability Report based on current predicted costings and sales values. The Council has also undertaken, at the Applicant's cost, an independent Viability Assessment which has also reviewed the Applicant's submitted report. The independent assessment concludes in the summary:

*"8.1 Rother District Council, via the rother Local Plan, requires this development to provide 40% of all units as affordable housing, subject to the financial viability of the project.*

*8.2 The Applicant has supplied a viability assessment for the scheme which concludes that it is not viable for them to provide any affordable housing contributions. We reviewed the submitted viability assessment which has drawn conclusions upon the accuracy of the Applicant's assumptions.*

*8.3 In performing this assessment, we have considered what assumptions have been used within the Applicant's residual land value calculation and how they compare to the industry benchmarks along with current economic factors and evidence. We have made appropriate adjustments and conclude the scheme cannot viably provide any affordable housing.*

*8.4 Section 7 demonstrates that the scheme could not viably provide any affordable housing in the form of an off-site affordable housing contribution as the Residual; land Value of the scheme is less than the Benchmark Land Value by £400,332.*

*8.5 We recommend that the Council applies the viability review mechanisms at early and late stages of development in line with the National Planning Policy Guidance for Viability document (Paragraph: 009 Reference ID: 10-009-20190509) where local policy allows."*

- 8.6 While the local policy does not currently include reference to a review mechanism, (as per the updated national guidance), the Applicant has offered inclusion of the review mechanism in modification of the Section 106. The provision of affordable housing on site or a contribution for offsite is not currently

viable and hence the inclusion of a review mechanism to allow this situation to be monitored and to allow the possibility for a contribution to be sought in the future, should finances allow, should thus be included as a modification of the Section 106.

Removal of the definition of “Parish Land” and the obligation to offer the “Parish Land” to Burwash Parish Council (Schedule 3 Part 4 and Schedule 10)

- 8.7 As confirmed by Burwash Parish Council in its comments noted at 6.3.1 above, they do not require the “Parish Land” and reference to their taking ownership should thus be removed from the Section 106, i.e. removal of Part 4 (Parish Land) of Schedule 3 and Schedule 10 (transfer of registered titles). The land would however remain an area of public recreation land, to be maintained by the freeholder/management company of the site, in accordance with Part 2 of Schedule 3.

Amendment to the Section 106 Plan

- 8.8 To reflect the proposed amendments within the body of the Section 106, the plan also requires amendment to remove the identification of the “Parish Land” and amend the route of the Footpath Link. It will be noted that the footpath now comprises a circular route through the recreation land with the spur to the boundary retained, should a link into the recreation field adjacent be forthcoming. The revised route complies with the approved drawings, as varied in Application RR/2022/1942/P.

Timing for the submission of the Specification relating to the Landscape Area and Recreation Land (Schedule 3 Part 2)

- 8.9 Paragraph 1 of Part 2, Schedule 3 currently requires the ‘Specification’ of works to be submitted as pre-commencement, which ties in with various conditions. The Applicant is seeking to amend the submission to “prior to any above ground works being carried out” in relation to the contractor’s details. Such a variation does not impact the nature or submission of the ‘specification’ itself and as such there is no objection to this minor alteration.

Inclusion of the updated Ecological Report dated September 2020

- 8.10 The Ecological Assessment Report was updated and submitted with the Reserved Matters application reference RR/2020/1822/P in 2020. The County Ecologist had no objection to the updated report. While the application was refused, that report is more recent and should correctly replace the earlier report from 2017 at Schedule 9 of the Section 106.

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**9.0 PLANNING BALANCE AND CONCLUSION**

- 9.1 The development has been found by an independent assessor to be unviable in terms of the provisions for affordable housing on or off site. However, to enable this situation to be monitored the inclusion of a review mechanism should be incorporated into the Section 106 instead. If costs or income from sales subsequently changes during development, then this would allow the possibility for affordable contributions to be sought.



- 9.2 Omission of 'Parish Land' is regrettable but the Parish have made it clear that they do not want the land. The land would however remain as public recreation land.
- 9.3 The proposed modifications are of an acceptable nature, reflect the current site and associated situations and remain pertinent to planning.
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**RECOMMENDATION: APPROVE MODIFICATION OF THE SECTION 106 PLANNING OBLIGATION (as set out in the report).**

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**NATIONAL PLANNING POLICY FRAMEWORK:** In accordance with the requirements of the National Planning Policy Framework (paragraph 38) and with the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.