

<b>Application Number</b>	21/0553/FH
<b>Location</b>	Land Opposite 24, Station Road, Hythe
<b>Application Description</b>	Outline planning permission for the erection of 40 no. dwellings with associated access, parking and open space (matters of landscaping reserved for future consideration)
<b>Applicant</b>	Kingston Homes
<b>Agent</b>	Lee-Evans Partnership LLP, St John's Lane, Canterbury, CT1 2QQ
<b>Officer Contact:</b>	Alex Stafford

### **Recommendation**

**That planning permission be granted subject to the conditions set out at the end of the report and the applicant entering into a S106 legal agreement securing obligations as set out in Table 1 and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and the legal agreement and add/remove any other conditions that he considers necessary.**

#### **1. Reason for consideration by the Committee**

1.1. This application was previously considered by the Planning and Licensing Committee on the 7th January 2025. Members of the committee deferred the decision instructing officers to seek additional information and to discuss potential amendments with the applicant. The resolution of the committee was recorded as follows:

- 1. Provide further information clarifying how the overshadowing and overlooking of Holly Bank has been assessed.*
- 2. Provide further details of the viability assessment and how it was appraised*
- 3. Provide further information relating to the how the proposed clawback mechanism for affordable housing in the S106 would work and what the potential clawback could be.*
- 4. Request that the applicant considers removing or reducing the size of the flat block.*

1.2. In line with this resolution and following the receipt of amended plans the application is reported back to the Planning Committee for determination.

## 2. Site and Surroundings

- 2.1. Refer to 7th January 2025 Planning Committee Report (which is appended as annexe 2 to this report).

## 3. Proposal

- 3.1. Outline planning permission comprising 40 dwellings with associated access, parking and open space. The application seeks detailed approval for layout, scale, appearance and access. Matters relating to landscaping are reserved for future consideration.
- 3.2. In the main the development remains the same as the proposals previously considered at the 7th January 2025 with the exception of changes to the apartment block in respect of the design and scale. The amendments are as follows:
- Eaves height reduced by 0.5m;
  - Ridge height reduced by 0.5m;
  - Second gable replaced with flat roof to further reduce visual impact on street scene with additional solar PVs provided; and
  - Second floor stepped back to further reduce scale of apartment block.
- 3.3. The number of 2 bedroom apartments (12) within the block would remain unchanged.
- 3.4. **Figures 1 and 2** below highlight the differences between the amended plans and the previous proposal showing as a side by side comparison of the design of the apartment block from the south and the east elevation where the design changes would be most apparent.

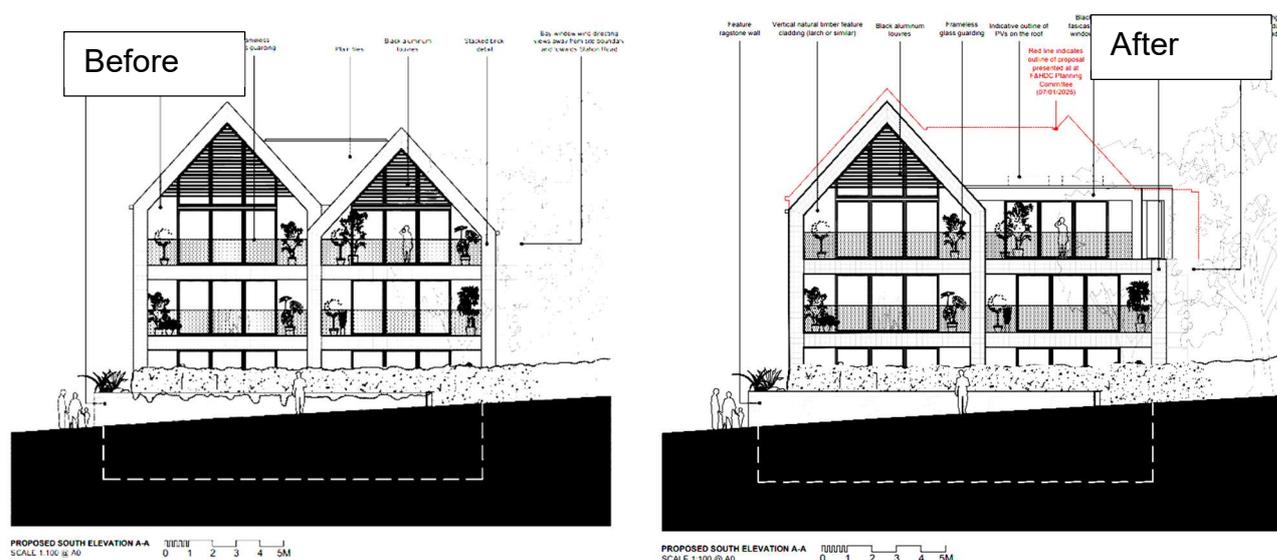


Figure 1: Previously proposed and amended south elevation

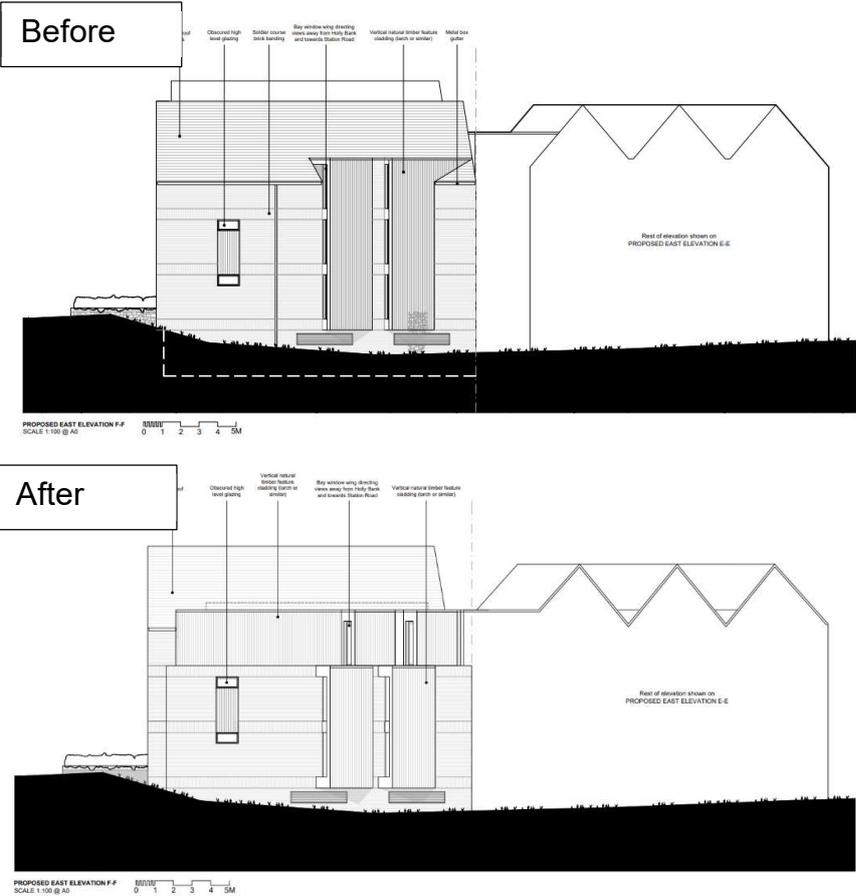


Figure 2: Previously proposed and amended east elevation

3.5. **Figures 3 and 4**, provide a comparison between the previously proposed and subsequently amended second floor plan. These drawings show the set back now proposed.

Submitted design presented at Planning Committee on 07/01/2025

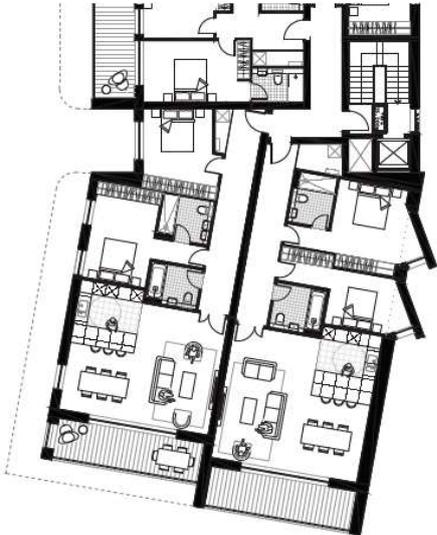


Figure 3: Previously proposed second floor plan

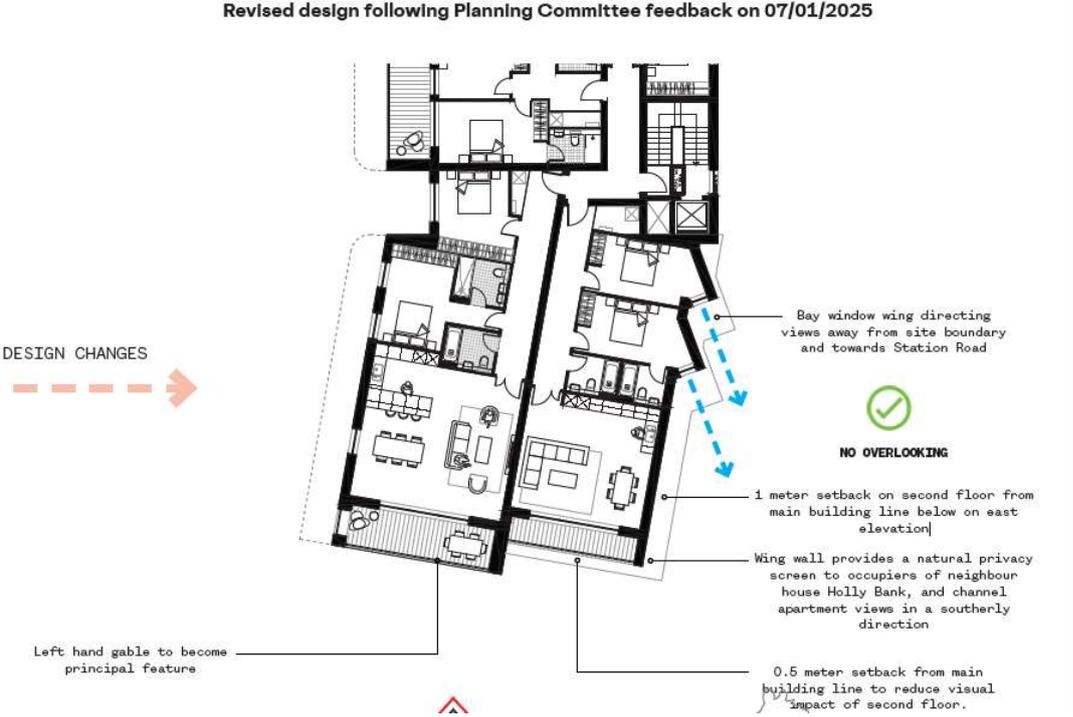


Figure 4: Proposed amended second floor plan with setback

3.6. **Figure 5** shows the proposed amended layout of the development and **Figure 6** shows an image of how the apartment block would be located in terms of its relationship with the existing dwelling ‘Holly Bank’ to the east.

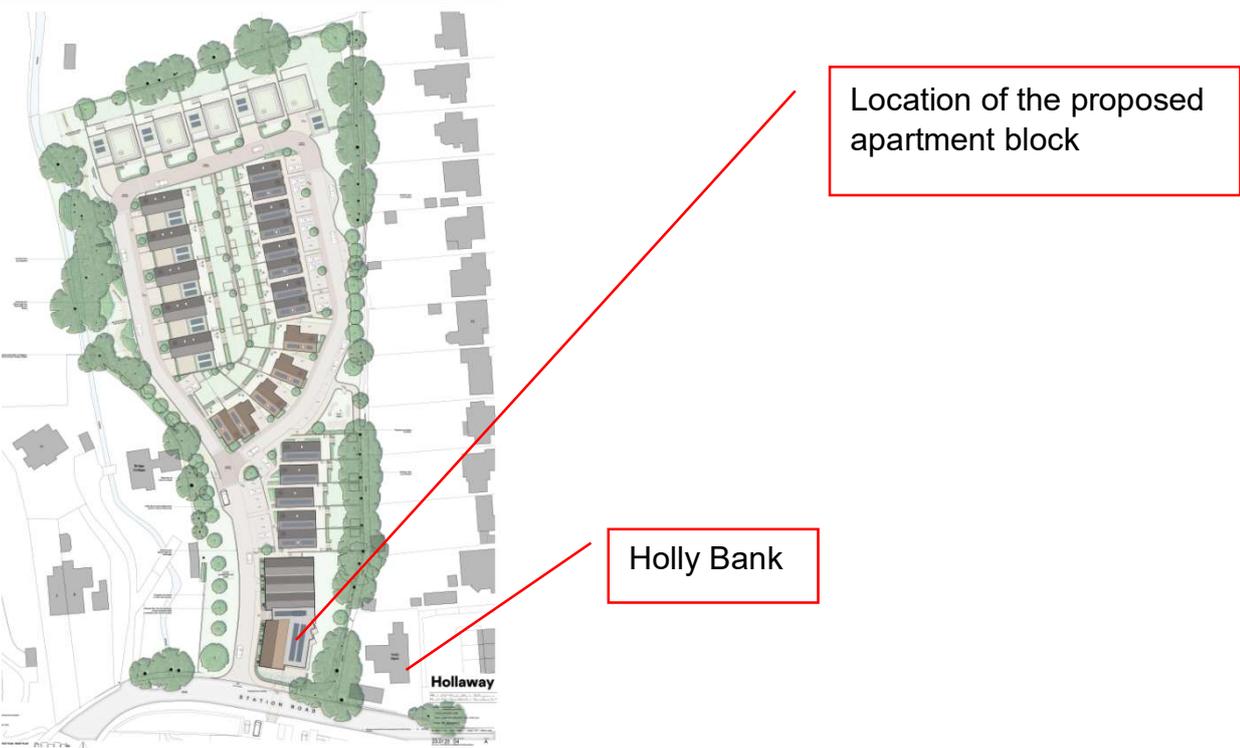


Figure 5: Proposed site layout and relationship of apartment block with Holly Bank



Figure 6: Proposed location of apartment block and relationship with Holly Bank

3.7. The applicant has submitted an amended street scene plan showing the proposed changes from Station Road to the south. **Figure 7** below shows the amended proposal whilst **Figure 8** shows the original proposal from the same viewpoint.

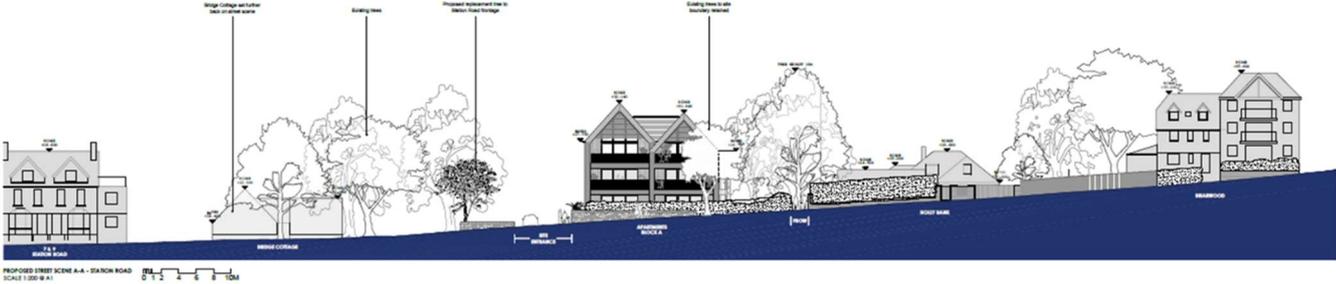


Figure 7: Proposed streetscene view from Station Road – previously proposed

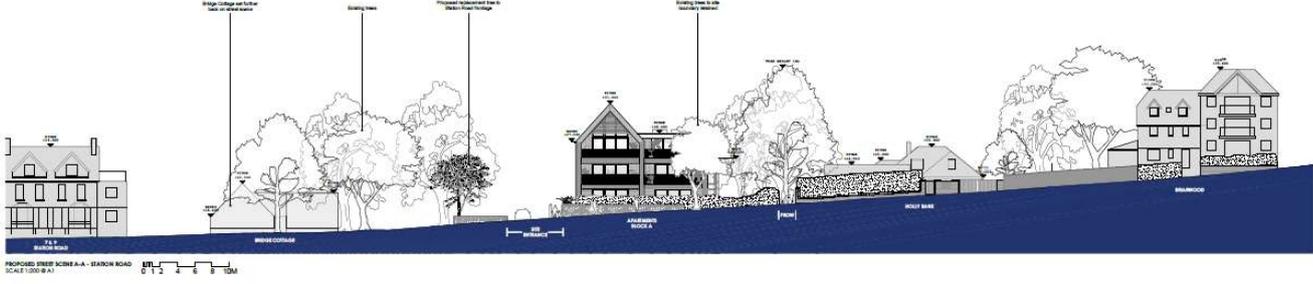


Figure 8: Proposed streetscene view from Station Road - amended proposal

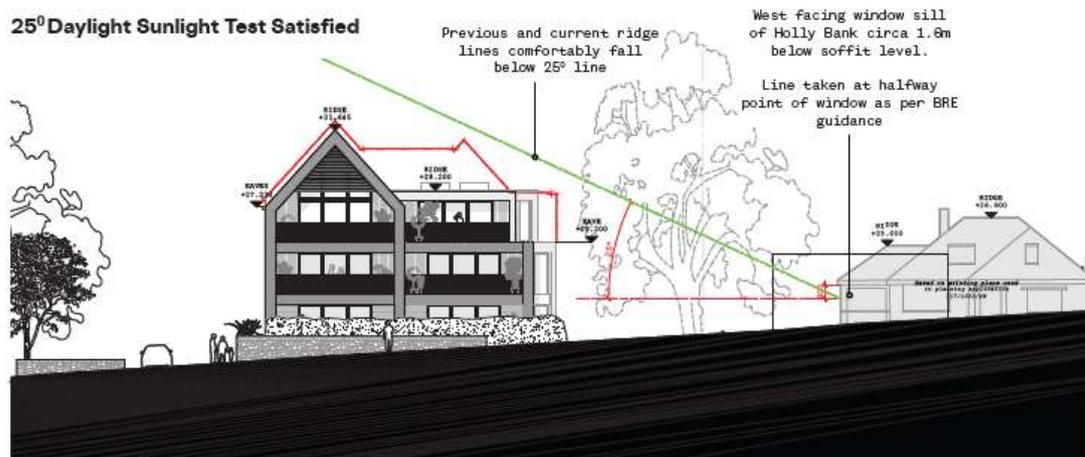


Figure 9: CGI showing the proposed entrance into the site and the amended apartment block from Station Road

- 3.8. In support of the amended proposal and in response to both the discussion between Members that took place at the 7<sup>th</sup> January 2025 Planning Committee as well as the reasons for the deferral as set out in section 1 of this report, the applicant has submitted an addendum to the Design and Access Statement. This is summarised as follows:

Design an Access Statement Addendum (2025)

- 3.9. The design of the apartment block has been amended in order to reduce the overall scale of the building. The design changes include a reduction in ridge and eaves height, a replacement of one of the gables roof forms with a flat roof and a stepped back second floor from the main façade.
- 3.10. Daylight/Sunlight - In line with the requirements of the PPLP which requires the development to be tested against the 25 degree test, the development would pass. The applicant has submitted the drawing below to illustrate this point:



The above diagrams clearly illustrate that the proposed design passes the '25 Degree' rule set out in the BRE's document.

Figure 10: Daylight/Sunlight - applicants 25 degree test

- 3.11. In relation to the number of dwellings proposed the applicant states that whilst policy UA14 states that the site could accommodate an estimated 30 dwellings, the supporting text sets out that a density of 30 dwellings per hectare (dph) would be appropriate and that this was agreed by the Local Plan Inspector during the examination. Based on the site area of 1.43 hectares this guideline of 30 dph would equate to 43 units. As such the applicant considers that the proposed density would be in line with the approximate policy expectations.
- 3.12. Whilst policy UA14 states the dwellings should be mostly family sized dwellings, this does not preclude the inclusion of flats which could accommodate smaller families. In addition, the applicant states that the local area includes a mix of housing types, including flats and that it is best practice to include a mix of property types and sizes within new housing schemes, which is supported by policy CSD2.
- 3.13. The majority of the TPO trees are proposed to be retained, including along the boundary, between the apartments and Holly Bank. The TPO trees to be lost are almost all confined to the access point which is the only practical place for it to be located, as agreed with Kent Highways. Therefore, the applicant considers that as an allocated housing site, the loss of these trees is considered unavoidable.
- 3.14. The landscape masterplan shows that substantial new tree planting would augment the retained trees, providing a significant net gain.
- 3.15. Measures to promote biodiversity net gain are also proposed by the ecologist which are proposed to be secured by condition. These measures would include:

- The provision of a range of bird and bat boxes;
- The provision of log piles for invertebrates;
- The provision of bumble bee nest boxes and pollinator resources;
- Provision for some of the species on the Kent BAP species list where applicable to the site and conditions; and
- A scheme of native species landscaping and similar measures.

3.16. The development would make a significant contribution in s106 payments and so provide a positive contribution towards the provision of local services and infrastructure. This would total £1,108,552 and would include:

- CIL = £891,430;
- Education = £182,562;
- NHS = £34,560.

**[CPO Comment:** The applicants CIL figure does not take account of the year 9 CIL charging schedule adopted in January 2025 and as such this figure may be higher. For clarity the level of CIL payment has not influenced officer assessment of this scheme].

3.17. The applicant states that although it was not possible to make all the changes suggested by neighbours, significant amendments have been made, including a reduction in the number of flats from 15 to 12 and following the planning committee, further revisions have been made, including a significant reduction in the roof height.

3.18. Other objections relate to an objection to the principle of development, or to highways matters however the applicant emphasises that this is an allocated site and that all criteria in the allocation policy have been considered and detailed in the submission.

3.19. In response to concerns raised by residents during the meeting concerning the applicability to the traffic survey given it was carried out during Covid, the applicant states that the purpose of the survey was to measure vehicle speeds rather than volumes and there is no evidence to suggest that vehicles travelled slower at this time.

3.20. The applicant states that the survey is considered valid by the technical consultee (Kent Highways & Transportation) who have been consulted throughout the allocation process and the planning application. The applicant highlights that KCCH&T have raised no objection.

#### **4. Relevant Planning History**

4.1. Refer to 7 January 2025 Planning Committee Report (which is appended as annexe 2 to this report).

## **5. Consultation**

5.1 The councils Statement of Community Involvement (2022) states that if there are any significant amendments to a planning application before a decision is made, any relevant consultees will be notified. In this case it is considered that the amendments submitted are minor and as such there is no requirement for a full reconsultation to take place. Notwithstanding this, the Town Council and the residential properties located close to the proposed apartment block have been notified of the amended plans.

5.2 Additional comments received since the application was deferred are summarised below:

### **Consultees**

**Hythe Town Council:** Object, comments summarised below:

- Planning application is in excess of the local plan.
- The height of the dwellings remains out of keeping with the street scene and there remains a loss of privacy.
- The development would be over development and oppressive.
- Highway safety concerns.
- Loss of trees.
- Not enough attention has been paid to biodiversity.
- The development provides no affordable housing.
- The development will put increased demands on the local infrastructure.

### **KCC Developer Contributions (updated request):**

The following financial contributions should be secured by S106 agreement:

Secondary Education: £165,207.40; and  
Special Education Needs & Disabilities (SEND): £17,354.76.

FHDC assigns 35% of its CIL receipts from the strategic pot towards KCC (non-education) infrastructure as listed below:

- Community Learning and Skills;
- Libraries;
- Registration and Archives Service;
- Adult Social Care; and
- Waste.

### **Public/Neighbour Notification**

- 5.3 15 letters of objection received at the time of writing this report, since the Planning Committee meeting of the 7<sup>th</sup> January 2025.
- 5.4 I have read all of the letters received. No new issues have been raised. For the ease of readers, I have summarised the key issues below:

### **Objections**

- Loss of privacy.
- Number and height of dwellings is unacceptable.
- Concerns of noise from pumping station.
- Impact on trees.
- Traffic survey is put of date.
- Noise and disruption during construction.
- Impact on ecology/questions the validity of the Ecology Survey results.
- New housing should be built on brownfield sites.
- Concerns relating to land stability.
- Concerns related to road safety/history of accidents.
- Apartment building is unacceptable in principle.
- Impact on visual amenity.
- Dwellings are too big.
- The applicants consultation event was exclusively online which meant that some residents were excluded.
- The local plan allocation for this site should be reviewed.
- Flood risk.
- The development would not address housing need.
- Impact on schools and infrastructure.
- Loss of open space.
- Loss of on street parking.
- Contamination of the stream.
- The apartment block should be removed.
- Apartment block would fail the 25 degree test. Detailed daylight and sunlight assessment by a firm of qualified surveyors/consultants should be commissioned, to include sun-path analysis and shadow plan.
- There are limited trees along the boundary between the apartment block and Holly Bank.
- The proposed changes do not go far enough and make the apartment block look uglier.
- Residents have commissioned a traffic survey (February 2025). Over the course of 7 days in excess of 34,000 vehicles passed along this stretch of road with 14.8% travelling over the speed limit. This is over 5,000 potential accidents over the course of a week. The developer has conducted their own traffic survey following the residents survey; however, residents

consider that the cables have been laid out incorrectly and therefore speed data collected will be inaccurate.

- Trees to be removed are located on Council land.
- The development would devalue neighbouring dwellings.

5.5 Responses are available in full on the planning file on the Council's website:

[Planning Register](#)

## 6. Planning Policy

6.1 Refer to 7 January 2025 Planning Committee Report (which is appended as annexe 2 to this report).

## 7. Appraisal

7.1 The application was deferred by the Planning Committee on the 7<sup>th</sup> January 2025 to seek further information and for clarification on a number of points. As such the only matters for consideration are as follows:

- a) Provide further information clarifying how the overshadowing and overlooking of Holly Bank has been assessed.
- b) Provide further details of the viability assessment and how it was appraised.
- c) Provide further information relating to the how the proposed clawback mechanism for affordable housing in the S106 would work and what the potential clawback could be.
- d) Request that the applicant considers removing or reducing the size of the flat block.

7.2 Deferral reasons a) and d) relate specifically to the impact of the proposed southern apartment block and therefore these reasons are considered together below.

- a) Provide further information clarifying how the overshadowing and overlooking of Holly Bank has been assessed and request that the applicant considers removing or reducing the size of the flat block.**

7.3 Policy HB1 of the PPLP seeks to ensure high quality design and to ensure that it would not lead to an adverse impact on the amenity of future users as well as neighbours. It states that in relation to assessing the potential impact

of new build development on neighbouring dwellings, the same guidelines will apply as those relating to alterations and extensions as set out in Policy HB8.

- 7.4 Policy HB8 whilst seeking to ensure development would not be detrimental to the street scene also aims to protect the residential amenity of the occupants of neighbouring properties by ensuring that development would not result in unacceptable overlooking and inter-looking.
- 7.5 As set out on page 234 of the PPLP the Building Research Establishment's (BRE's) document '*Site Layout Planning for Daylight and Sunlight: A guide to good practice*' (2011) sets out two tests for determining the acceptability of development in terms of its potential impact on neighbouring dwellings. These are known as the 25 and 45 degree tests. The purpose of these tests is to establish the impact of proposed development on existing properties with regards to obstructing daylight to existing windows/rooms.
- 7.6 The 25 degree test is used where development is opposite a window according to the diagram below.

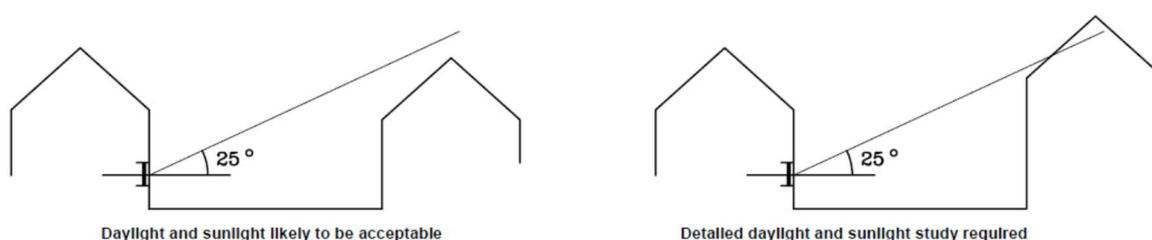


Figure 11: 25 degree test

- 7.7 In applying the 25 degree test, the centre of the lowest habitable room window is used as the reference for the test. If the whole of the proposed development falls beneath a line drawn at 25 degrees from the horizontal, then there is unlikely to be a substantial effect on daylight and sunlight.
- 7.8 The 45 degree test is used for extensions or new development proposals that are perpendicular to a window and is not therefore relevant in this case.
- 7.9 The councils adopted local validation checklist sets out when a daylight/sunlight assessment is required to be submitted with a planning application stating that it is required for planning applications of new residential development or new build development adjacent to existing residential properties which fail the basic BRE tests as set out in policy HB8 of the PPLP (45 degree and 25 degree tests).
- 7.10 Based on professional experience and site visits, officers were satisfied that the development given its height, the land levels and the separation distances, would not breach the 25 degree line.

- 7.11 As set out above, in response to member debate the applicant has submitted an assessment of the 25 degree test in line with the aforementioned BRE guidance. This assessment is attached as annex 3 to this report.
- 7.12 The submitted assessment demonstrates that the proposed apartment block in both its previously proposed and subsequently amended form would pass the 25 degree test when considering its relationship to Holly Bank and therefore no further assessment is required.
- 7.13 Members should note that the proposed apartment block would be located due west of Holly Bank and therefore Holly Bank will continue to benefit from high levels of daylight.
- 7.14 There are two habitable rooms facing the development. The living room is served by an external glazed double door facing south. It also has additional windows facing north. The second room is a dining room with an additional window facing south.
- 7.15 These glazed openings provide these rooms with open outlook to the north and to the south.
- 7.16 In light of the above there are no reasonable grounds to conclude that the development would result in an unacceptable loss of residential amenity to the occupiers of Holly Bank as a result of overbearing development.
- 7.17 The proposed apartment block would be located approximately 16.9 metres from Holly Bank with the PROW and existing and proposed landscaping in between. The distance between Holly Bank and the proposed apartment block would be the equivalent of more than the width of a typical street and it is noted that design guidance within the government's 'Manual for Streets' states that the distance between frontages in residential streets typically ranges from 12 to 18 metres. The apartment block would also be located at a lower level given the topography of the site which would further reduce the impact on Holly Bank.
- 7.18 Following initial concerns raised about the relationship of the development with Holly Bank, during the original consideration of the application, the apartment block was significantly amended in terms of its size and scale, and it was located further away from the eastern boundary.
- 7.19 Following the deferral of the application by the Planning Committee, the design on the apartment block has been further amended which has seen a reduction in the overall eaves and ridge height of the building by 0.5 metres and the removal the gable roof form closest to the eastern boundary of the site. The gable has been replaced with a flat roof that would further reduce the overall scale and massing of the building. In addition, the applicant has

- proposed setting part of the southern building line back by an additional 0.5 metres and the second floor is also proposed to be set back an additional 1 metre on the eastern elevation.
- 7.20 The eastern elevation of the apartment block would incorporate angled windows ensuring that views out would only be possible in a southerly direction towards Station Road. There would be no harmful overlooking as a result towards Holly Bank.
- 7.21 Architecturally, I consider that the design quality of the apartment building when considered in the context of a landmark building would be diluted as a result of the proposed changes by removing the double gabled roof design which was a key element of the design rationale. Notwithstanding this, the overall contemporary design approach to the development of the site includes flat roof elements so the proposed approach to the amendments would not be out of keeping with the overall character and design. In addition, the proposed materials and external detailing would remain of a high quality which is supported. As a result, I consider that the proposed apartment building in its amended form would represent an acceptable high quality design and would not be harmful to the visual amenity of the street scene.
- 7.22 As a result of the above, the impact of the proposed apartment block has been fully considered in light of the impact on the residential amenity of Holly Bank in respect of overlooking and overshadowing and the design changes would ensure that the development would comfortably pass the 25 degree test in accordance with the BRE guidance and planning policies HB1 and HB8 of the PPLP.

**b) Provide further details of the viability assessment and how it was appraised.**

- 7.23 The proposed development would make financial contributions of £165,207.40 towards secondary education and £17,354.76 towards special education needs & disabilities (SEND). A further £34,560.00 would be secured for the provision of healthcare improvements. These contributions which are the full amount requested by KCC and the NHS would be secured through a S106 legal agreement. In addition to this, the development would be liable for CIL at a rate of £138.65 per sqm which would equate to a CIL payment of £913,467.80.
- 7.24 Policy CSD1 of the Core Strategy requires the provision of 22% affordable housing. Based on this proposed development of 40 dwellings, 9 affordable dwellings are required for the scheme to be policy compliant. Notwithstanding this, the policy does state that this is required wherever practicable and subject to viability.

- 7.25 The economic viability of development is important in terms of supporting delivery in both plan making and when determining planning applications. The council has accounted for the cumulative impact of its policy requirements on development viability as part of the evidence base supporting the Local Plan however this tested the viability of key allocated sites which would deliver 50 or more dwellings only.
- 7.26 National Planning Policy Guidance (NPPG) advises that where up to date policies have set out the contributions expected from development, planning applications that fully comply with them should be assumed to be viable. The guidance states that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.
- 7.27 As such, proposals should be designed in a way that accords with planning policies, including for the provision of affordable housing. Notwithstanding this, in some exceptional circumstances, a proposal may generate insufficient value to support the full range of developer contributions. In instances where, in the opinion of the applicant, a scheme cannot meet policy requirements, applicants are required to robustly demonstrate that the site is unviable by submitting a Viability Assessment.
- 7.28 Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. Any viability assessment should follow the government's recommended approach to assessing viability as set out in the National Planning Policy Guidance (NPPG).
- 7.29 In such cases that a Viability Assessment is submitted with a planning application, the council will scrutinise the evidence with advice from a suitably qualified external consultant. This process considers whether the approach adopted, and inputs used are appropriate and adequately justified by evidence and will determine whether the level of planning obligations and other development plan requirements proposed by the applicant are the maximum that can be viably supported or whether further obligations and/or a greater level of policy compliance can be achieved.
- 7.30 In terms of methodology, the Residual Land Value methodology is a tool to determine whether a scheme will proceed or not. It determines the 'residual' value that is left available to pay a landowner for their land, once the costs of development (and a reasonable profit for the developer) are deducted from the gross development value (GDV) generated by the development. If a proposal generates sufficient positive land value after also supporting a suitable level of profit as well as necessary development costs and planning obligations, it will generally be capable of implementation from a viability point of view.

- 7.31 Any additional land value provided by a development over and above the value of the site in its existing use, is dependent on the grant of planning permission, the basis of which is compliance with the Development Plan.
- 7.32 The Residual Land Value methodology is the most appropriate to use in this context and is consistent with the longstanding principle that policy requirements associated with securing planning permission are development costs that influence the level of any uplift in land value from the grant of planning permission. Applied properly this approach is therefore appropriate for assessing viability as part of the planning process given that the purpose of the planning system is to achieve sustainable development.
- 7.33 The NPPG confirms that current (or existing) use value provides an appropriate basis for comparison with a residual land value to determine whether this incentivises a land owner to release a site and achieves a competitive return.
- 7.34 Benchmark land values (BLV), based on the existing use value or alternative use value of sites, are key considerations in the assessment of development viability as they indicate the threshold for determining whether a scheme is viable or not. A development is deemed to be viable if the residual land value is equal to, or higher than the benchmark land value.
- 7.35 Following the submission of an amended Development Viability Report (DVR) dated March 2024 (Bespoke Property Consultants), the council commissioned Dixon Searle Partnership (DSP) to carry out an independent review.
- 7.36 The applicants position as set out in the submitted development appraisal has been run in a way which takes account of the benchmark land value of the site and assesses the level of additional residual potentially available in excess of that after allowing for a fixed developer's profit (placed at 20% of gross development value on the market housing). Therefore, an approach has been taken that sets out to consider, in the applicant's view, the maximum supportable contribution for affordable housing. The 100% market housing appraisal as presented produces a negative residual land value of -£2,650,889. When compared to the submitted BLV this indicates a deficit of -£3,000,889. The DVR concludes that: 'the development does not generate a surplus over the BLV to fund affordable housing on site. However, it is estimated to make a profit of 9% which the applicant advises they will seek to improve by value engineering.'
- 7.37 Having reviewed the submitted DVR, DSP raised no concerns with the approach taken in terms of the applicants viability review methodology. DSP provided advice to the council in July 2024 within which it queried the gross development value (GDV) and the submitted build costs and carried out sensitivity testing based on assuming a more typical profit level of 17.5% GDV

(compared to the stated target of 20% GDV). DSP noted that the scheme, as submitted only returned a developer profit of around 9% of GDV.

- 7.38 In respect of the build costs, DSP's view was that the submitted cost estimate was high when benchmarked against the Build Cost Information Service (BCIS) data. DSP therefore tested the viability of the scheme against the BCIS Upper Quartile rate for the relevant housing types. When doing so, the scheme produced a surplus of c. £1.8m when also assuming a target profit of 17.5% GDV. DSP therefore concluded that the submitted build costs were impacting the scheme's viability and recommended a cost consultant review of the submitted build costs.
- 7.39 Following DSP's advice, ERMC were commissioned on behalf of the council to undertake an independent review of the RIBA Stage 2 Cost Plan, dated March 2024, which forms part of the submitted financial viability assessment. The submitted cost estimate prepared for the applicant indicated a total build cost for the scheme of £20,874,000 including contingency. ERMC have reviewed the submitted costs and concludes that the submitted costs have been overstated. This second opinion results in a reduced total construction cost of £20,476,000 including contingency or a difference of £380,000.
- 7.40 DSP having taken account of EMRC's cost review analysis have subsequently provided the council with further expert advice and state that when applying EMRC's cost estimate into their trial appraisal, the scheme produces a deficit of -£1,614,908. When the scheme deficit is deducted from the target profit, the scheme produces an actual profit equivalent to around 12% GDV. In conclusion therefore, DSP state that having taken the appropriate viability in planning review to its conclusion, the scheme is unable to support a contribution towards affordable housing.
- 7.41 In light of the above, following the independent review of both the applicants Development Viability Review and the associated build cost assessment, I am content that the applicant has satisfied both the requirements of the National Planning Policy Guidance (NPPG) in respect of the approach to the viability appraisal and planning policy CSD1 which acknowledges that the requirement to provide policy compliant affordable housing is subject to viability considerations. The applicants approach to viability has been interrogated by the councils expert consultants and the view that the development cannot support contributions towards affordable housing as a result is accepted.
- c) Provide further information relating to the how the proposed clawback mechanism for affordable housing in the S106 would work and what the potential clawback could be.**
- 7.42 Property markets have experienced significant changes in recent years and the viability of a scheme may therefore be notably different by the time of implementation due to changes in market conditions. As such, the practice of

- viability review to ensure that proposals are based on an accurate assessment of viability at the point of delivery has become increasingly well established.
- 7.43 Whilst the council has no specific local plan policy requiring developers to agree to further viability reviews being carried out for schemes that have demonstrated that they are unviable at the time permission is granted, the applicant has agreed to the provision of a claw back mechanism to be included within the S106 agreement, that would take into account future higher than expected sales values. I consider this approach to be an appropriate way forward in this case, as an alternative to considering refusal of the scheme because it cannot meet full policy compliance.
- 7.44 As stated in the previous committee report, there remains a strong expectation, particularly at Central Government level, that housing development should continue. This particular site is allocated for residential development. It is in a sustainable location and its development would benefit Hythe through increased footfall and spend. In addition, if planning permission is granted, the development would be liable for CIL and would provide financial contributions towards education, SEND and healthcare. Therefore, there is a strong strategic case to allow its development.
- 7.45 The proposed claw back mechanism would require the applicant to undertake a further viability assessment which would be secured through the planning obligations set out within the S106 legal agreement. This review would determine whether the development is capable of providing affordable housing contributions deemed unviable at the planning application stage, the purpose being to determine whether greater or full compliance with the Development Plan can be achieved to accord with the councils duty to deliver and implement its plan. Therefore, any additional obligations would be capped based on the terms of the Local Plan with the aim of securing the provision of policy requirements that were previously determined not to be deliverable. If and after any outstanding policy requirements are met, any additional surplus would be retained by the developer as additional profit.
- 7.46 It is proposed that the claw back mechanism would secure 50% of any additional profit to be paid to the council towards off site affordable housing delivery, up to the equivalent contribution value of 22% off site affordable housing (plus indexation). This approach to securing deferred contributions has been previously accepted by the council at other sites within the district and is considered to be a fair and reasonable approach.
- 7.47 It is proposed that the viability review would be completed at an advanced stage of the construction of the development which would enable the assessment to be based on up to date, accurate information.
- 7.48 Based on the proposed development, the Councils Housing Manager has confirmed that in order to meet the councils planning policy requirements of

22% affordable housing, an offsite commuted sum of £1,195,350.00 would need to be secured. This would be the maximum amount that could be clawed back and would be used to provide additional affordable housing elsewhere within the local area.

- 7.49 The clawback provisions will allow both the council and the developer to benefit from uplifts in sales values, if these accrue, yet allowing development to proceed in the meantime.

### **Environmental Impact Assessment**

- 7.1 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

### **Local Finance Considerations**

- 7.2 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. The CIL levy in the application area is charged at £138.65 per square metre for new residential floor space.

### **Human Rights**

- 7.3 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

### **Public Sector Equality Duty**

- 7.4 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
  - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

7.5 It is considered that the application proposals would not conflict with objectives of the Duty.

### **Working with the applicant**

7.6 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

## **8. CONCLUSION**

8.1. The site is allocated for development by Policy UA14 of the PPLP. The site is located within the settlement boundary of Hythe, identified as a strategic town by the adopted Core Strategy.

8.2. This application seeks planning permission for 40 dwellings. Whilst this exceeds the estimated capacity of 30 dwellings identified by Policy UA14, the uplift in housing numbers is supported by national policy whereby LPA's are required to give great weight to the benefits of using suitable sites within existing settlements for homes.

8.3. The council can currently demonstrate a 5-year supply of housing; however, this application would make a valuable contribution towards the council's housing supply.

8.4. The application site is in a sustainable location and is not isolated in terms of its location, benefitting from good access to public services. Further, the amount of development is not considered to be disproportionate to the scale of the existing town.

8.5. The layout, design and appearance of the proposed development has been significantly amended and is considered to be acceptable. The additional dwellings can be accommodated without having a detrimental impact upon the visual amenity of the wider locality or the setting of the NL.

8.6. The development would provide a good level of amenity for existing and future residents and would comply with internal and external residential space standards. The design of the apartment block has been further amended to reduce the impact upon the neighbouring dwelling and would pass the 25 degree test in respect of daylight/sunlight. Parking provision would be acceptable to serve residents and visitors to the development.

- 8.7. Whilst detailed landscaping is a reserved matter, the layout shows that the amount of public open space and recreation facilities would be acceptable.
- 8.8. The proposed development would provide for offsite highway improvements with the provision of a new crossing point and the impacts on the road network would not be severe. The development would not be harmful to highway safety.
- 8.9. Matters relating to surface and foul water drainage are considered to be acceptable.
- 8.10. Matters relating to ecology, contamination and archaeology are considered to be acceptably mitigated.
- 8.11. The applicant has demonstrated through the provision of a viability appraisal and cost assessment that a contribution towards affordable housing cannot be provided. The viability appraisal and costs assessment has been independently reviewed by external consultants on behalf of the council. The applicant has agreed to a clawback mechanism to be secured by a S106 legal agreement which would allow all parties to benefit from uplifts in sales values, if these accrue, yet allowing development to proceed in the meantime. This is considered to be acceptable and is in accordance with both planning policy and the NPPG.
- 8.12. Overall, it is considered that the proposed residential development of the site would be acceptable and that any residual impact can be mitigated through the imposition of suitable planning conditions. In balancing the environmental, social and economic impacts arising from the proposal, I conclude that it would present a sustainable form of development, which is at the heart of the NPPF. It is therefore recommended that planning permission be granted subject to conditions and completion of a s106 legal agreement.

## **9. BACKGROUND DOCUMENTS**

- 9.1. All papers referred to in this report including the consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended), are published on the Folkestone & Hythe District Council ([www.folkestone-hythe.gov.uk](http://www.folkestone-hythe.gov.uk)). Those papers relating specifically to this application may be found on the View applications on line pages under planning application reference 21/0553/FH.

## **10. RECOMMENDATIONS**

**That planning permission be granted subject to the conditions set out below and the applicant entering into a S106 legal agreement securing the details set out in Table 1; and that delegated authority be given to**

**the Chief Planning Officer to agree and finalise the wording of the conditions and the legal agreement and add any other conditions that he considers necessary:**

Conditions:

1. Details relating to the landscaping (reserved matters) of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced and the development shall be carried out as approved.

Reason: To comply with the provisions of Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4. The development shall be carried out in accordance with the following plans and documents:

23.0125 01 Site location plan  
23.0125 02 A Existing and proposed block plan  
23.0125 03 Existing site layout plan  
23.0125.04 Roof plan  
23.0125 05 Ground floor plan  
23.0125 06 A Apartments floor plan  
23.0125 07 A Apartments elevations and sections  
23.0125 08 Plots 13 & 14 floor plans and elevations  
23.0125 09 Plots 15 & 16 floor plans and elevations  
23.0125 10 Plot 17 floor plans and elevations  
23.0125 11 Plots 18 & 19 floor plans and elevations  
23.0125 12 Plots 20 - 22 floor plans and elevations  
23.0125 13 Plots 23 - 30 floor plans and elevations  
23.0125 14 Plot 31 floor plans and elevations  
23.0125 15 Plots 32 - 34 floor plans and elevations  
23.0125 16 Plot 35 floor plans and elevations  
23.0125 17 Plot 36 floor plans and elevations

23.0125 18 Plots 37 - 39 floor plans and elevations  
23.0125 19 Plots 40 floor plans and elevations  
23.0125 20 proposed bike stores  
23.0125 21 A Proposed street scenes 01  
23.0125 22 Proposed street scenes and site sections  
23.0125 23 A Proposed phasing plan  
5588-LLB-XX-XX-DR-L-0001 P08 Landscape masterplan  
5588-LLB-XX-XX-DR-Ab-0002 P03 Tree protection plan  
0001 P01 - Site access visibility splay  
0002 P01 – Refuse tracking (access)  
0002 P01 – Refuse tracking (loop)  
0003 P01 – Fire tender tracking (access)  
0003 P01 – Fire tender tracking (loop)  
Planning Statement – Lee Evans Partnership, March 2024  
Design and Access Statement – Holloway Architects, March 2024  
5588- LLB-R P- L -0003 LVA Addendum  
5588-LLB-SH-L-0001 Landscape Management Strategy  
5588-LLB-RP-AB-0001Arboricultural Impact Assessment  
Viability Report – Bespoke, March 2024  
Cost Plan Rev C, BM, Mach 2024  
Flood Risk Assessment and Drainage Strategy Report Rev C  
Transport Statement, Stantec, March 2021  
Transport Technical Note, Stantec, March 2024  
Phase 1 Geo-Environmental Assessment  
Ecological Survey, Newcombe, M. (August 2023)  
Ecological Scoping Survey, Newcombe, M. (July 2020)

Reason: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

5. No construction above slab level shall take place in any identified phase or subphase until samples of the external materials to be used in the construction of the external surfaces of the building(s) hereby approved and within that phase or subphase, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure the satisfactory appearance of the completed development.

6. No development beyond the construction of foundations shall take place in any identified phase or subphase, (unless specified to the contrary), until the relevant details set out below have been submitted to and approved in writing by the Local Planning Authority for that phase or sub-phase. Development of the relevant plot shall only be carried out in accordance with the approved details unless agreed otherwise by the Local Planning Authority in writing. Where relevant, the following details should be provided on drawings at an

appropriate scale of 1:50 (where detail needs to be considered contextually related to a façade) and at 1:20 in other cases:

(a) full details of glazing and external doors, including all external joinery and framing methods and external colour (1:20),

(b) 1:20 horizontal and vertical cross sections through typical sections of each of the facades sufficient to show the relationship between the façade and those elements of detail to be embedded within the façade as well projecting from it (such as the extent of recessing of glazing and doors in openings created in the façade, the consequential treatment of window reveals, the details of cills and the extent of projecting elements from the façade),

(c) prior to installation - Details of rainwater goods, eaves, fascia and entrance canopies (including materials and finish, details of any supporting posts and related brick plinths and roofing materials),

(d) prior to installation - details of vents, louvres, extractor vents, external pipes, meters etc (these should not be located as far practicable on prominent elevations).

(e) prior to installation - Details of balconies/terraces including balustrades

(f) mortar colour(s)

Reason: Further details are required to ensure that the external appearance and fine detailing are of an appropriate high quality.

7. Before the development (including site clearance) is begun on any identified phase or subphase, all tree protection measures as set out in the approved Arboricultural Method Statement 5588-LLB-RP-AB-0001 Rev P04 dated 27/03/24 (Lloyd-Bore) shall be undertaken and installed. At least five days' written notice shall be given to the Local Planning authority of the tree protection measures being installed on site.

The hereby approved tree protection measures shall be retained in position at all times until the completion of individual plots, and the land so enclosed shall be kept clear of all contractors' materials and machinery. The existing soil levels around the boles of the trees shall not be altered.

Reason: To ensure that the trees are not damaged during the period of construction.

8. The trees shown on the plans hereby approved as "existing trees to be retained" shall be retained and maintained. Any trees removed, dying, being severely damaged or becoming seriously diseased within five years of the date of this permission shall be replaced with trees or shrubs of such size and species as may be agreed with the Local Planning Authority.

Reason: In the interests of visual amenity.

9. The details submitted pursuant to condition 1 shall include the following:
- i) A Play Space Strategy for the site, providing details of the provision of all play space and equipment on the site.

Reason: In order to ensure appropriate mitigation against the effects of the development.

10. Prior to the installation of any lighting on site, a detailed lighting scheme and assessment of impacts shall be submitted to the Local Planning Authority which includes details of:
1. How the lighting follow's the Bat Conservation Trust's 'Guidance Note 8 Bats and Artificial Lighting'
  2. Light spill plans to demonstrate any impact on neighbouring sites.
  3. The proposed hours of use including timers, so they are dimmed/not operational when not in use.

Details should include: - A statement of the proposed frequency of the use and the hours of illumination demonstrating that the lights are on timers so they are; dimmed/not operational when not in use; A site plan showing the area to be lit relative to the surrounding area, demonstrating that light spill to the adjacent cliffs would be minimal; Follows the Bat Conservation Trust's 'Guidance Note 8 Bats and Artificial Lighting' (or subsequent updates); The type, number, mounting height and alignment of the luminaries; An Isolux diagram showing the predicted illuminance levels at critical locations on the boundary.

The lighting must be used, maintained and managed in accordance with the approved details.

Reason: To ensure the satisfactory appearance of the completed development and in the interests of ecological protection and amenity

11. Prior to works commencing on site (including site/vegetation clearance), a precautionary ecological mitigation strategy will be submitted to the local planning authority and approved in writing. The strategy will detail how the vegetation within the site will be cleared to avoid killing and/or injuring protected and priority species. The strategy must be implemented as approved.

Reason: In the interests of ecological protection.

12. Within three months of works commencing on site a detailed ecological enhancement plan will be submitted to the local planning authority and approved in writing. The plan will detail how the landscaping will be designed and managed to enhance and benefit biodiversity and include details of ecological enhancement features to be incorporated into the dwellings (e.g., bird and bat boxes aimed at species of conservation concern). The plan must be implemented as approved.

Reason: In the interests of biodiversity.

13. Construction of the development shall not commence until details of the proposed means of foul sewerage have been submitted to and approved in writing by the Local Planning Authority in consultation with Southern Water.

Reason: To ensure adequate provision of foul drainage to serve the development.

14. Development shall not begin in any phase until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the Flood Risk Assessment and Drainage Strategy Report Revision D by the Alan Baxter Partnership and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of [within the curtilage of the site] without increase to flood risk on or off-site. [The detailed drainage scheme will also be required to demonstrate that any existing surface water flow paths can be accommodated and disposed of without increase to flood risk on or off site]. The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of

which cannot be disaggregated from the carrying out of the rest of the development.

15. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 175 of the National Planning Policy Framework.

16. The development shall be carried out in accordance with the submitted flood risk assessment (by: Alan Baxter Partnership LLP; ref: K838 / September 2020; updated: 27 March 2024) and the document titled "Response from applicant to EA comments (R)" (by: Alan Baxter Partnership LLP; dated: 3 April 2024) and the following mitigation measures it details:
  - Finished floor levels shall be set no lower than 17.700 metres above Ordnance Datum (AOD)
  - The bund shall be formed by the proposed excavations. There shall be no land raising within the floodplain.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

17. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced in the next planting season with trees or shrubs of the same species/size as approved within the landscaping scheme unless any variation has been agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity

18. If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority, details of how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land, together with those to controlled waters, property and ecological systems, are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors.

19. No development shall take place, including any works or demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction. The statement shall provide for:
- (a) Routing of construction and delivery vehicles to / from site
  - (b) The parking and turning for the vehicles of site operatives and visitors
  - (c) Loading and unloading of plant and materials
  - (d) Storage of plant and materials used in constructing the development
  - (e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
  - (f) Wheel washing facilities
  - (g) Measures to control the emission of dust and dirt during construction
  - (h) A scheme for recycling or disposal of waste resulting from construction works
  - (i) Timing of deliveries
  - (j) Temporary traffic management and signage
  - (k) Confirmation that the developer has signed up to the Considerate Constructors Scheme

Reason: In the interests of the amenities of the area and highway safety and convenience.

20. Prior to the commencement of the development and following completion of the development highway condition surveys for highway access routes should be undertaken and submitted to the Local Planning Authority along with a commitment provided to fund the repair of any damage caused by vehicles related to the development in consultation with Kent County Council Highways and Transportation.

Reason: In the interests of the amenities of the area and highway safety and convenience.

21. The approved vehicle parking spaces as shown on the submitted plan (23.0125.04) shall be provided prior to the first occupation of each dwelling as to which the parking spaces serve. Thereafter the parking spaces shall not be used for any purpose other than for the parking of private motor vehicles associated with the residential occupation of the property.

Reason: To ensure adequate provision for vehicle parking in the interest of highway safety, and in the interest of visual amenity.

22. Prior to the first occupation of each individual dwelling hereby approved, an electric vehicle charging point shall be fully installed within that plot /parking space and shall be retained and maintained as such thereafter. All Electric Vehicle chargers provided for homeowners in residential developments must be provided to Mode 3 standard (providing up to 7kw) and SMART (enabling Wi-Fi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list:

<https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>

Reason: In the interests of promoting sustainable methods of transport.

23. Prior to the first occupation of each dwelling the cycle parking facilities as shown of submitted plan (23.0125.04) shall be provided.

Reason: To secure a sustainable form of development and to reduce reliance upon the private motor vehicle.

24. No dwelling shall be occupied until the access identified on drawing (23.0125.04) has been provided in accordance with these approved details. The access shall thereafter be permanently maintained.

Reason: In the interest of highway safety.

25. Prior to the first use of the access the visibility splays identified on drawing (49402\_5501\_001 Revision B) (with no obstructions over 0.6 metres above carriageway level within the splays) shall be provided in accordance with the approved details. The visibility splays shall thereafter be retained in accordance with the approved plans and the area within the visibility splays shall be permanently maintained.

Reason: In the interest of highway safety.

26. Prior to the first occupation, the following works shall be laid out and constructed in accordance with the approved details:

- (a) Footways and/or footpaths, with the exception of the wearing course;
- (b) Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).

Reason: In the interests of highway safety and convenience.

27. The carports (plots 31-40) hereby approved shall be kept available in its entirety for the parking of vehicles at all times, and notwithstanding the provisions of Class E, Part 1 of schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) no doors, shutters nor any other means of enclosing the carports shall be erected or constructed on site and no development whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the site, in such a manner or in such a position as to preclude vehicular access to the garages/carports.

Reason: In the interests of highway safety and convenience.

28. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of

- i) archaeological field evaluation works in accordance with a Written Scheme of Investigation and timetable which has been submitted to and approved in writing by the Local Planning Authority; and
- ii) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a Written Scheme of Investigation and timetable which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record.

29. Prior to the commencement of dwellings within each phase, details of the design of boundary treatments, to include gates, boundary walls, retaining walls and fences, shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be provided prior to the first occupation of any part of the development to which they relate in accordance with the approved details.

Reason: In the interests of visual amenity and the amenity of residents.

30. Construction above slab level shall not commence within any phase of the development hereby permitted until written documentary evidence has been submitted to, and approved in writing by, the local planning authority proving that all the dwellings in the phase will achieve a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a design stage water efficiency calculator. No phase of the development hereby permitted shall be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that all in the dwellings in that phase have achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a post-construction stage water efficiency calculator.

Water efficiency calculations should be carried out using 'the water efficiency calculator for new dwellings'

<https://www.gov.uk/government/publications/the-water-efficiencycalculator-for-new-dwellings>

Reason: In accordance with the requirements of policies CSD5 and SS3 of the Core Strategy Local Plan 2013 which identify the district as a water scarcity area and require all new dwellings to incorporate water efficiency measures.

31. No development beyond the construction of foundations shall take place within any phase until details demonstrating the development within that phase or subphase as a whole will reduce carbon emissions by a minimum of 10 percent above the Target Emission Rate, as defined in the Building Regulation for England approved document L1A: Conservation of Fuel and Power in Dwellings, (or any document which supersedes or updates that document) have been submitted to and approved in writing by the Local Planning Authority. Upon approval the measures shall be implemented as agreed and thereafter retained and maintained in perpetuity.

Reason: To support the transition to a low carbon future through the use of on-site renewable and low-carbon energy technologies.

32. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0800 – 1900 hours  
Saturdays 0800 – 1300 hours

unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

33. No work above slab level on the construction of the buildings in a phase hereby permitted shall take place until a copy of formal confirmation has been supplied to the Local Planning Authority confirming that High Speed Fibre Optic that meets the Department for Culture, Media and Sport requirement that 'fibre to the premise' broadband connections are available to all premises of gigabit capacity will be provided to all dwellings within that phase or sub-phase. Prior to the first occupation of any of the dwellings hereby approved, confirmation shall be submitted to the Local Planning Authority that the infrastructure to allow 'fibre to the premise' broadband connections are available to all premises of gigabit capacity has been laid out in the site.

Reason: In order to ensure the future provision of superfast fibre optic broadband for occupants in accordance with policy E8 of the Places and Policies Local Plan.

34. Prior to the occupation of the apartment block, the windows to the east elevation identified on drawing number 23.0125 07 as being obscure glazed shall be obscure glazed to not less than the equivalent of Pilkington Glass Privacy Level 3, and these windows shall be incapable of being opened except for a high level opening of at least 1.7m above inside floor level and shall subsequently be maintained as such.

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of neighbouring occupiers.

35. Prior to the first occupation of plot 40, details of the privacy screen shown on drawing number 23.0125 19 shall be submitted to and approved in writing by the local planning authority. The privacy screen shall be implemented in accordance with the approved details prior to first occupation, and thereafter be maintained in position in perpetuity.

Reason: In the interests of residential amenity.

36. Land Stability:  
(a) Prior to commencement of the development the applicant shall obtain, from a suitably qualified engineer, a written slope stability report advising on the effect the development will have on the stability of the site and all adjoining land and properties. The report is to include, but need not be limited to, the types of proposed foundations, the effect that any excavations into sloping ground will have, types of retaining structures necessary, surface and foul drainage, the effect of any increase/decrease of site loadings, the possible effect to the stability of any adjoining properties, and any other factors needed

to ensure the stability of the site and all adjoining land, properties and associated services.

The report should also include a method statement which indicates measures to be adopted during the construction phase to ensure that development does not cause instability to adjoining retaining walls, land and buildings. No development shall take place until this report has been submitted to and approved in writing by the Local Planning Authority.

(b) No works other than those approved shall be carried out unless details of these have first been submitted to and approved by the Local Planning Authority.

(c) All works recommended in the approved slope stability report and method statement (and any alternative works approved) shall be carried out as set out in the approved documents and upon completion confirmation from a suitably qualified engineer that the approved works have been carried out in full shall be submitted to the Local Planning Authority prior to the building being occupied.

Reason: The site lies within, or within the influence of an area identified as being subject to soil instability as detailed on the Ordnance Survey Geological Survey and it is necessary to ensure that appropriate works are carried out in order to ensure the stability of the site and the development and the adjoining land and buildings.

#### Informatives:

1. The applicants attention is drawn to the informatives included within the consultation response of Kent Highways and Transportation dated 10 July 2024.
2. The applicants attention is drawn to the information set out in the consultation response of Southern Water dated 06 May 2024.
3. Any feature capable of conveying water can be considered to fall under the definition of an 'ordinary watercourse' and the applicant is urged to contact the LLFA prior to undertaking any works that may affect any watercourse/ditch/stream or any other feature which has a drainage or water conveyance function. Any works that have the potential to affect the watercourse or ditch's ability to convey water will require formal flood defence consent (including culvert removal, access culverts and outfall structures). Please contact [flood@kent.gov.uk](mailto:flood@kent.gov.uk) for further information.
4. Public Rights of Way:

- No furniture may be erected on or across Public Rights of Way without the express consent of the Highway Authority
- There must be no disturbance of the surface of the right of way, or obstruction of its use, either during or following any approved development.
- Planning consent does not confer consent or a right to disturb or unofficially divert any Public Right of Way at any time without the express permission of the Highway Authority.
- No trees or shrubs should be planted within 1.5 metres of the public right of way.

**Table 1 – s106 Obligations**

Draft s106 obligations

Obligation No.	Planning Obligation			Regulation 122 Assessment
	Detail	Amounts(s)	Trigger Points(s)	
1.	<p>Affordable Housing:</p> <p>22% of the total dwellings.</p> <p>Off-site commuted sum to the value of 1,195,350.00</p>	<p>Contributions for the cost of provision of the units not being supplied, to be deferred and paid only as lump sums following any increase in sales values.</p> <p>Deferred contribution to the value of 1,195,350.00</p>	<p>Payable if sale values rise in accordance with the deferred contributions mechanism below.</p>	<p><b>Necessary</b> as would provide housing for those who are not able to rent or buy on the open market pursuant to CSD1 of the Core Strategy Review (2022) and guidance in the NPPF.</p> <p><b>Directly related</b> as the affordable housing would be provided on-site in conjunction with open market housing.</p> <p><b>Fairly and reasonably</b> related in scale and kind as based on a proportion of the total number of housing units to be provided.</p>
2.	<p>Open Space:</p> <p>On site open space to be delivered in 2 phases.</p> <p>To be managed and maintained by a management company</p>	<p>On site</p>	<p>Phase 1 open space to be provided prior to the occupation of 85% of all dwellings located within phase 1.</p> <p>Phase 2 open space to be provided prior to the occupation of the final dwelling.</p>	<p><b>Necessary</b> as open space is required to meet the demand that would be generated and must be maintained in order to continue to meet that demand pursuant to policy C3 of the PPLP and guidance in the NPPF.</p> <p><b>Directly related</b> as occupiers will use open space and the facilities to be provided would be available to them.</p> <p><b>Fairly and reasonably</b> related in scale and kind considering the extent of the development and the number of occupiers and the extent of the facilities to be provided and maintained.</p>
3.	<p>Play Space:</p>	<p>On site</p>	<p>Prior to the commencement of Phase 2</p>	<p><b>Necessary</b> as open space is required to meet the demand that would be generated and must be maintained in order to continue to meet that demand</p>

**Table 1 – s106 Obligations**

Obligation No.	Planning Obligation			Regulation 122 Assessment
	Detail	Amounts(s)	Trigger Points(s)	
	<p>On site provision</p> <p>To be maintained and managed by a management company</p>			<p>Pursuant to policy C3 of the PPLP and guidance in the NPPF.</p> <p><b>Directly related</b> as occupiers will use open space and the facilities to be provided would be available to them.</p> <p><b>Fairly and reasonably</b> related in scale and kind considering the extent of the development and the number of occupiers and the extent of the facilities to be provided and maintained.</p>
4.	<p>Secondary Education</p> <p>SEND:</p> <p>Project: Towards the expansion of selective and non-selective secondary schools in FHDC</p> <p>Project: Towards the provision of additional SEND places and/or additional SEND facilities to serve this development within FHDC.</p>	<p>£165,207.40</p> <p>£17,354.76</p>	<p>Half the contribution upon occupation of 25% of the dwellings and balance on occupation of 75% of the dwellings</p>	<p><b>Necessary</b> as there is a significant deficit of secondary education places when all proposed and consented developments are taken into account and pursuant to policy SS5 of the Core Strategy Review and KCC's 'Development and Infrastructure – Creating Quality Places' and guidance in the NPPF.</p> <p><b>Directly related</b> as children of occupiers will attend primary school and the facilities to be funded would be available to them.</p> <p><b>Fairly and reasonably</b> related in scale and kind considering the extent of the development and because the amount has taken into account the estimated number of pupils and is based on the number of dwellings.</p>
5.	<p>Healthcare:</p> <p>Towards refurbishment,</p>	<p>£34,560.00</p>	<p>Half the contribution upon occupation of 25% of the dwellings and balance on occupation of 50% of the dwellings.</p>	<p><b>Necessary</b> to increase capacity to meet the demand that would be generated by the development pursuant to policy SS5 of the Core Strategy Review and guidance in the NPPF.</p>

**Table 1 – s106 Obligations**

Obligation No.	Planning Obligation			Regulation 122 Assessment
	Detail	Amounts(s)	Trigger Points(s)	
	reconfiguration and/or extension of existing general practice and other healthcare premises covering the area of development or new premises for general practice or healthcare services provided in the community in line with the healthcare infrastructure strategy for the area.			<p><b>Directly related</b> as occupiers will use healthcare facilities and the facilities to be funded will be available to them.</p> <p><b>Fairly and reasonably related in scale and kind</b> considering the extent of the development and because the amount has been calculated based on the estimated number of occupiers.</p>
6.	<p>Deferred payments mechanism:</p> <p>Mechanism to monitor sales values to ensure that 50% of any rise in values is paid to the Council towards those contributions above that are deferred, in accordance with a scheme to be agreed.</p> <p>The developer is to pay the council's</p>	Up to the value of all deferred contributions (indexed).	To be paid if the circumstances prevail.	As above

**Table 1 – s106 Obligations**

Obligation No.	Planning Obligation			Regulation 122 Assessment
	Detail	Amounts(s)	Trigger Points(s)	
	costs for viability review.			
7.	Monitoring Fee:  Contribution towards the Council's costs of monitoring compliance with the agreement or undertaking	£1,000	Commencement of development	<p><b>Necessary</b> in order to ensure the planning obligations are complied with.</p> <p><b>Directly related</b> as only costs arising in connection with the monitoring of the development and these planning obligations are covered.</p> <p><b>Fairly and reasonably related in scale and kind</b> considering the extent of the development and the obligations to be monitored.</p>
<p>Notices must be given to the Council at various stages in order to aid monitoring. All contributions are index linked in order to maintain their value. The Council's legal costs in connection with the deed must be paid by the applicant.</p> <p><b>If an acceptable deed is not completed within 6 months of the committee's resolution, the application may be refused.</b></p>				

