

## **OFFICER REPORT FOR COMMITTEE**

**DATE: 15/02/2023**

**Q/1777/22  
PERSIMMON HOMES (SOUTH  
COAST) LTD**

**STUBBINGTON  
AGENT: PERSIMMON HOMES**

DEED OF VARIATION TO A UNILATERAL UNDERTAKING PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 DATED 10 NOVEMBER 2021, RELATING TO APPLICATION P/20/0522/FP, ALLOWED ON APPEAL (AFFORDABLE HOUSING OBLIGATION)

LAND EAST OF CROFTON CEMETERY AND WEST OF PEAK LANE,  
STUBBINGTON, FAREHAM

### ***Report By***

Peter Kneen – direct dial 01329 824363

### ***1.0 Introduction***

- 1.1 In January 2022 planning permission was granted on appeal for 206 dwellings, access road from Peak Lane maintaining link to Oakcroft Lane, stopping up of a section of Oakcroft Lane (from Old Peak Lane to access road), with car parking, landscaping, substation, public open space and associated works (planning reference P/20/0522/FP- appeal reference APP/A1720/W/21/3275237).
- 1.2 The planning permission is subject to a Section 106 planning obligation which secures various obligations including 82 on-site affordable homes, together with a financial contribution of £23,060.00 towards off-site affordable housing.

### ***2.0 Description of Proposal***

- 2.1 Aster Group, the Registered Social Provider (RSP) looking to acquire the affordable units on this site, has requested that the mortgagee exclusion clause in the planning obligation be amended.
- 2.2 The mortgagee exclusion clause allows the mortgagee of a RSP to sell the affordable dwellings free of the affordable housing restrictions contained in the section 106 planning obligation in the event of a loan default by the RSP.
- 2.3 The wording in the current planning obligation states that, unless otherwise agreed in writing by the Council, the mortgagee of the RSP shall give not less than 1 month's prior written notice to the Council of its intention to dispose of any of the affordable housing units. If the Council responds within the 1 month period to indicate that the affordable housing properties can be

transferred in such a way as to safeguard them as affordable housing (for example by arranging for the properties to be transferred to another RSP or to the Council), then the mortgagee shall co-operate with such arrangements to secure the transfer.

- 2.4 If the Council does not serve its notice within 1 month or is unable to complete the transfer within 2 months of giving its notice in 2.3 above, the mortgagee would be entitled to dispose of the units free of the affordable housing obligations in the section 106 agreement (i.e. on the open market).
- 2.5 The proposed deed of variation amalgamates these 1 month and 2 month periods into a single 3 month block. The amended wording still requires that notice to be given to the Council of the chargee's intention to dispose of the affordable housing and requires the chargee to use reasonable endeavours over a three month period beginning with the date of the notice to complete a disposal of the affordable housing to another RSP or to the Council.

### **3.0 Consultations**

#### **Fareham Housing**

- 3.1 No objection raised. Officers acknowledge that the change in wording allows for slightly less time that a transfer can be completed and the housing will stay affordable, so the risk to the Council increases that they may be lost. However, the risk is small and it would be difficult to resist where it accords with National Housebuilders Federation (NHF) requirements.

### **4.0 Planning Considerations**

- 4.1 The change has been sought to bring the legal terminology in line with the agreed wording which is approved and published by the NHF and a Securitisation Working Group comprising the key valuers, funders and lawyers in the sector. Unless the mortgagee exclusion clause is in line with this NHF wording, the RSP will be unable to obtain optimum lending rates, affecting their funding arrangements to secure, deliver and retain affordable housing.
- 4.2 There would be no change to the amount of affordable housing secured, the triggers for delivery of the affordable housing or the amount and timing of the affordable housing contribution.
- 4.3 The purpose of the mortgagee exclusion clause is to allow some protection for mortgagees who wish to realise their security whilst balancing this against the aim of keeping all of the on-site affordable housing as affordable housing over the long term.

4.4 The principal consideration for Members is whether the obligation would continue to serve this purpose equally well if varied. In other words, whether the amended mortgagee exclusion clause still provides sufficient protection for the on-site affordable housing whilst recognising the need to offer flexibility to mortgagees of RSPs.

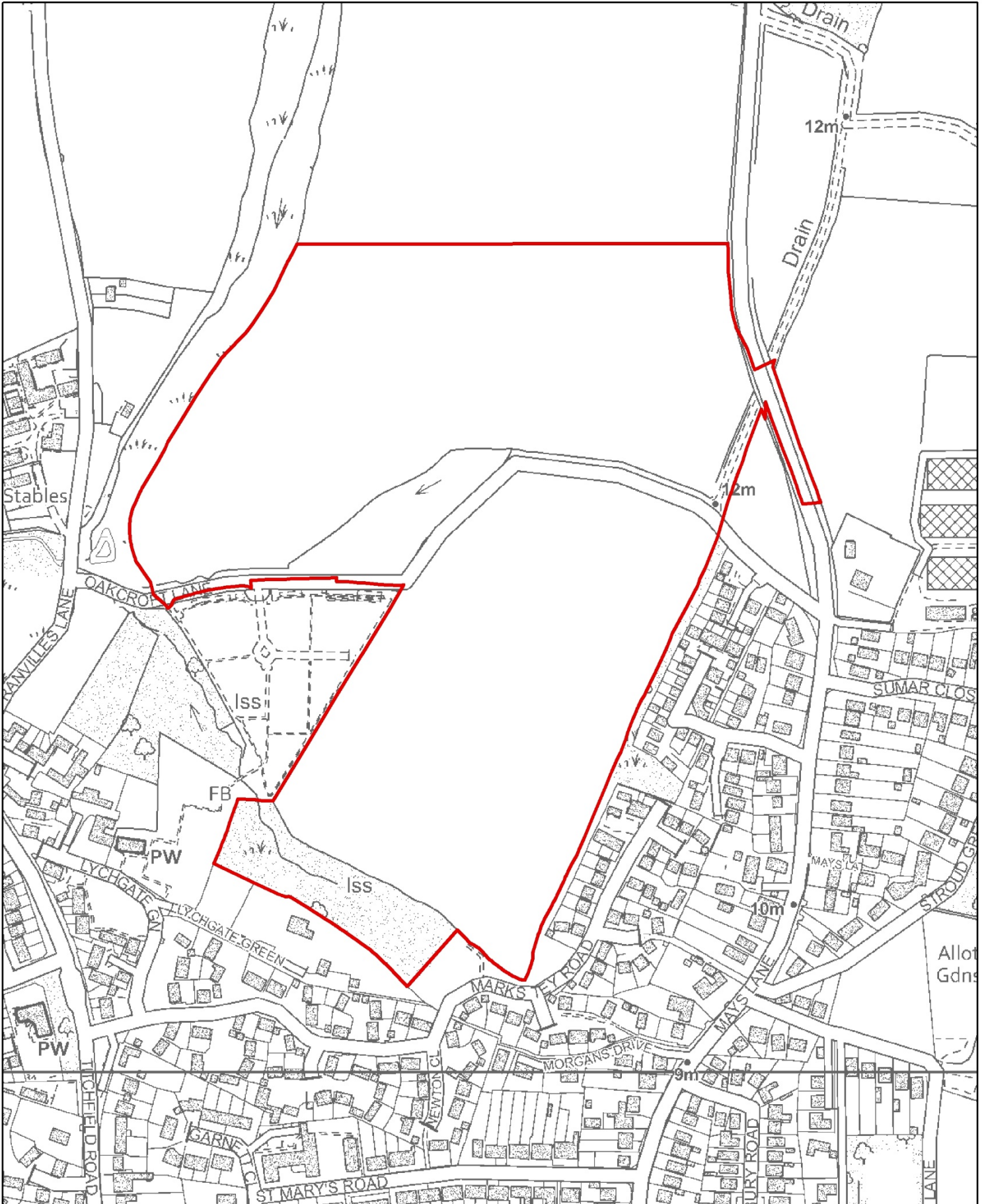
4.5 Officers are satisfied that the amended wording would still offer a good level of protection for the affordable housing, especially considering the minor nature of the amendment. If the Council were to refuse the request to vary the agreement the developer may find it significantly more difficult to find a RSP prepared to take on the affordable housing.

**5.0 Recommendation**

5.1 That Members authorise the completion of a deed of variation to the Section 106 planning obligation to update the mortgagee exclusion clause to reflect NHF requirements.

# FAREHAM

BOROUGH COUNCIL



Land East of Crofton Cemetery  
and West of Peak Lane  
Scale 1:4,000



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