

OFFICER REPORT FOR COMMITTEE

DATE: 15/09/2021

**Q/1504/21
VIVID HOMES**

**TITCHFIELD COMMON
AGENT: TURLEY**

DEED OF VARIATION TO SECTION 106 AGREEMENT DATED 16 JULY 2020
RELATING TO APPROVED PLANNING APPLICATION P/18/0068/OA (OPEN
SPACE OBLIGATION)

LAND TO THE EAST OF SOUTHAMPTON ROAD, TITCHFIELD

Report By

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1.0 Introduction

- 1.1 The above legal agreement secured, amongst other things, the provision of open space on the site of the development of up to 105 dwellings at land East of Southampton Road (approved under outline planning permission P/18/0068/OA). The reserved matters submission relating to that site is presented for Members' consideration elsewhere on this Planning Committee agenda (reference P/20/1584/RM).
- 1.2 Schedule Five of the Section 106 agreement requires the developer to provide public open space in accordance with the minimum requirement set out in the Council's Planning Obligations Supplementary Planning Document (SPD) (excluding Welborne). As part of the open space there is a requirement to provide a locally equipped area of play (LEAP). As Members will see from the corresponding report elsewhere on this agenda, Officers are satisfied that the proposals in relation to the public open space in terms of its location and size are acceptable.
- 1.3 The legal agreement also puts in place measures for the future ownership and management of the public open space. The developer is obliged to complete the works involved in setting out the open space and the play area (or alternatively pay a contribution for the Council to do so) before then transferring the land on which the open space is located to the Council for the sum of £1 along with a maintenance contribution.
- 1.4 During the course of consideration of the reserved matters submission and following discussions with the developer Vivid Homes' agent, it has become evident that in order to provide suitable surface water drainage to the scheme it will likely be necessary to use areas of the open space as drainage features. For example, the applicant proposes shallow swales through the central linear

park. Whilst approval of the surface water drainage measures is a technical detail for future consideration reserved by a planning condition attached to the outline planning permission, the developer has informed Officers that it will also most likely involve constructing attenuation features underneath the ground in areas of the public open space, including underneath the LEAP.

- 1.5 Officers have consulted the Council's Public Spaces Operation Manager (Streetscene) who has expressed concerns over the implications of such drainage infrastructure underneath areas of open space and play area in terms of the liability and responsibility for managing and maintaining that drainage system that would fall on the Council if the open space and play area are transferred in accordance with the Section 106 Agreement. Whilst in some circumstances it is possible to separate the maintenance and management regimes for open space and drainage systems, given the nature of this particular site and the way in which drainage features would be integrated into the construction and setting out of the open space this would not be realistic in this instance.
- 1.6 The developer has proposed that a Deed of Variation be entered into by the respective parties to vary the Section 106 Agreement in order that the open space and play area are not transferred to the Council, but rather remain in private ownership, and responsibility for the maintenance of the land and the drainage infrastructure rest with a private management company. Officers consider that, on balance and given the particular constraints of this site, agreement should be given to varying the legal agreement subject to any revised or additional obligations required to ensure the appropriate management of the open space in the future.
- 1.7 Schedule Five of the legal agreement also contains obligations relating to the Wildlife Corridor on the eastern edge of the site. If the legal agreement was varied to remove the requirement for the public open space to be transferred to the Council as set out above, it would not be desirable for the Council to separately take on ownership and responsibility for maintaining the wildlife corridor. With that in mind Officers recommend that the wildlife corridor also be retained in private ownership and management and suitable measures put in place in relation to this.

2.0 Recommendation

- 2.1 That Members authorise the deed of variation to the legal agreement be agreed along the following lines:
 - a) To remove the obligation relating to the transfer of the public open space including play area and wildlife corridor to the Council;

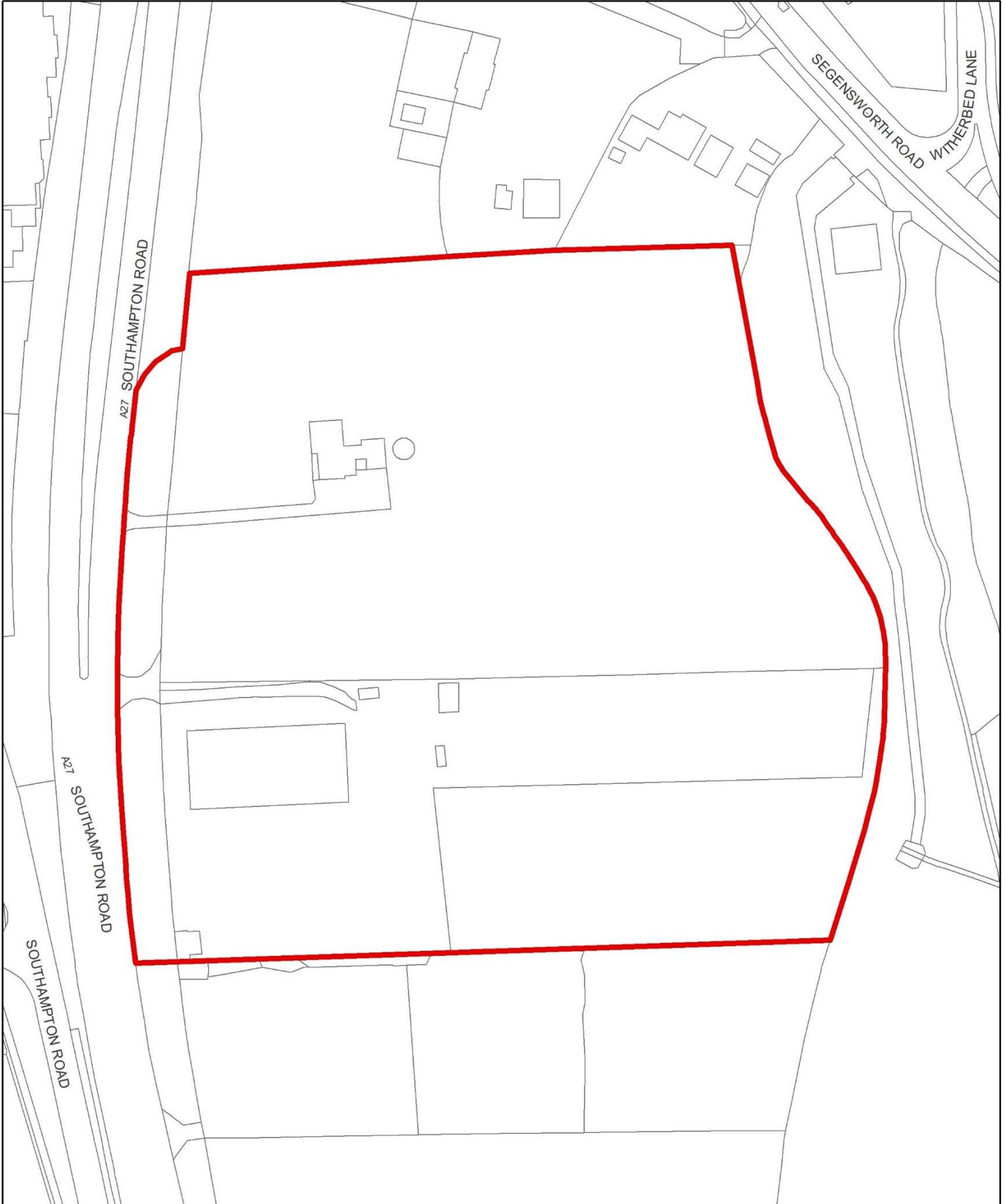
- b) To secure details of robust and appropriate management and maintenance measures relating to the public open space including play area and wildlife corridor in lieu of the land being transferred to the Council, including details on the formation, funding and governance of the body responsible for doing so;
- c) To delegate to the Head of Development Management authority to agree suitable revised and additional obligations in respect of the above, and any other matters deemed necessary, in relation to Schedule Five of the legal agreement.

3.0 *Background Papers*

Q/1504/21, P/20/1584/RM, P/18/0068/OA

FAREHAM

BOROUGH COUNCIL



Land East of Southampton Road
Scale 1:1,250



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