

## **OFFICER REPORT FOR COMMITTEE**

**DATE: 12/04/2023**

**Q/0495/23**

**FAREHAM NORTH**

**RESIDE DEVELOPMENTS LIMITED**

DEED OF VARIATION OF SECTION 106 UNILATERAL UNDERTAKING  
REGARDING PUBLIC RIGHT OF WAY AND AFFORDABLE HOUSING  
OBLIGATIONS

LAND SOUTH OF FUNTLEY ROAD, FAREHAM

### ***Report By***

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### ***1.0 Introduction***

1.1 In May 2022 outline planning permission was granted on appeal for the construction of up to 125 one, two, three and four-bedroom dwellings including 6 self or custom build plots and a community building or local shop on land to the south of Funtley Road, Fareham (planning reference P/20/1168/OA; appeal reference APP/A1720/W/21/3283643). The planning permission is subject to a Section 106 planning obligation which secures various obligations including, but not limited to, financial obligations and the provision of a public right of way (PROW) to the south linking up with Thames Drive. The Section 106 provides obligations to both Fareham Borough Council and Hampshire County Council, who are the authority responsible for both highways and public rights of way.

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

2.1 As part of the development, the Section 106 requires the owner of the land to submit details of a Public Right of Way Scheme before development commences. The route proposed in the scheme as a PROW is to be for pedestrians and cyclists and is to run across the land south of Funtley Road effectively linking Funtley Road and Thames Drive. The route shown in principle on the plan in the Section 106 shows that route crossing the existing M27 bridge where to the south of which it connects into an existing public footpath which would be widened and improved through to where it then meets Thames Drive.

2.2 The Section 106 requires the approved scheme to be fully constructed, secured and completed prior to the occupation of any of the houses. A Deed of Dedication to grant public rights of way on foot and by bicycle over the route must then be entered into which, once completed, would mean the route would then become a PROW maintainable at public expense.

- 2.3 The developer has approached both this Council and Hampshire County Council with a request that a Deed of Variation be entered into to vary the Section 106. The reason for the request is that a small part of the route for the PROW passes over unregistered land a short distance south of the M27 bridge the owner of which cannot be identified through Land Registry records. The current wording of the Section 106 requires the developer to use all reasonable endeavours to identify the owner of the unregistered land through a process pursuant to Section 228 of the Highways Act 1980 after which the works to construct the PROW must be carried out at the developer's own expense and risk.
- 2.4 The current owner of the land south of Funtley Road site has indicated that they do not intend to develop the site themselves and have an interested purchaser. Officers consider it would be reasonable to amend the wording of the Section 106 to allow the works to the southern section of the PROW south of the M27 to come forward separately from the rest of the PROW and to amend the definitions within the Section 106 to mean that undertaking those works would not constitute commencement of the development as a whole for the purposes of the planning obligations. This would allow the current owner of the development site to proceed with the Section 228 process and then carry out the works to construct the southern section of the PROW themselves ahead of, or separately to, any sale of the development site thereby removing any risk in relation to the unregistered land to those carrying out the development on the land at Funtley Road.
- 2.5 During the course of discussions over this matter the current owners have indicated that the prospective purchaser would also like to request minor changes to the definitions and obligations relating to affordable housing provision on the site. The proposed changes would not affect the amount of affordable housing being secured and have been agreed by Officers from Fareham Housing.
- 2.6 With the exception of those parts of the Section 106 which relate to the PROW and affordable housing, there would be no changes to any of the other definitions or obligations it contains.

### **3.0 *Planning Considerations***

- 3.1 The purpose of the obligations relating to the provision of the PROW is to ensure that appropriate improvements to access to local services and facilities for pedestrians and cyclists are provided. The PROW will provide a route over which there is a public right of access in perpetuity connecting the new development and the wider settlement of Funtley with the services and facilities in the urban area of Fareham, including schools, shops and health services.

3.2 Officers are satisfied that, subject to wording drafted to the satisfaction of the Council's solicitor, the proposed variations to the Section 106 would not undermine that purpose or its effectiveness in securing the provision of the PROW. Similarly, the proposed amendments to the affordable housing elements of the Section 106 would not adversely affect that provision and the changes have been agreed by housing officers.

#### **4.0 Recommendation**

4.1 That Members authorise the completion of a Deed of Variation to the Section 106 along the following lines:

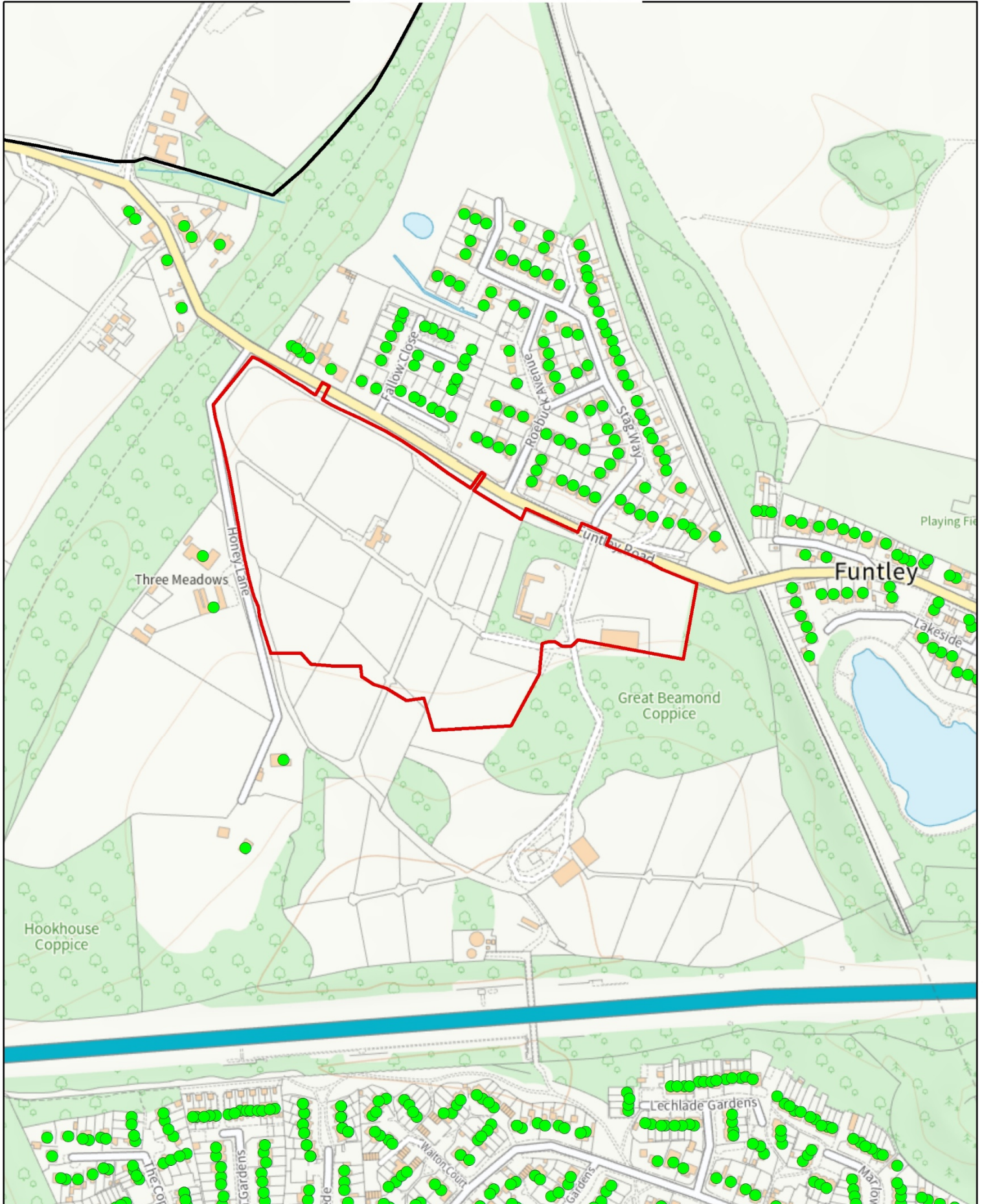
- a) To vary the wording of certain definitions and obligations relating to delivery of the Public Right of Way to:
  - i. Separate the definition of the Public Right of Way into Northern and Southern sections to enable the respective sections to come forward independently;
  - ii. Require the submission of a Northern Public Right of Way Scheme and a Southern Public Right of Way Scheme, including details of their laying out and construction, to the Council;
  - iii. Include the construction of the Southern Public Right of Way within the definition of a Preparatory Operation meaning its construction would not trigger the commencement of the development for the purposes of the planning obligation;
  - iv. Simplify the process for discharging obligations under Section 228 of the Highways Act 1980 in relation to unregistered land;
  - v. Amend the meaning of Deed of Dedication accordingly.
  
- b) To vary the wording of certain definitions and obligations relating to Affordable Housing provision regarding:
  - i. the minimum term of shared ownership lease increasing from 125 to 999 years;
  - ii. the minimum equity stake for shared ownership dwellings reducing from 25% to 10%;
  - iii. the protections applying to purchasers/occupiers of individual dwellings also applying to mortgagees, chargees and successors in title of those purchasers/occupiers.

## **5.0 Background Papers**

P/20/1168/OA; Q/0495/23

# FAREHAM

## BOROUGH COUNCIL



Land South of Funtley Road  
Fareham  
Scale 1:4,000



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