

From: Jonathan Medlin [REDACTED]
Sent: 29 June 2017 14:10
To: Neighbourhood Planning
Subject: WVNP Consultation Response

Dear Sir/Madam,

I am supportive of the WVNP in general. It covers a diverse, important area which will see much change in coming years.

I am of the opinion that it could do more to assist the non-village parts of the parish. For example, it supports the role of and provision of affordable housing. This will not be delivered in the more rural settings, covered by the Green Belt.

Policy WV 1.3 relates to affordable housing in Whitchurch Village, and it requires that at least 30% of the affordable housing shall be allocated based on a local connection. Again, this is supported, but the WVNP should go further to promote affordable homes for local people on brownfield sites elsewhere. Where these sites may be in the Green Belt, it could be seen as an exception to Green Belt policy, in accordance with the NPPF. The WVNP could usefully address this issue. Similar restrictions and criteria would apply, but it would allow locally connected people the opportunity to self-build housing, on brownfield sites, and to remain within the parish. An example site is the brownfield site adjacent to 'Moret', on Hursley Hill (16/02474/FUL), which has been refused planning permission and subject to an appeal (APP/F0114/W/17/3166414). If the WVNP promoted this, it would assist delivery of housing which has been refused on Green Belt grounds. Such instances would remain exceptional – as advised in the NPPF – but could also contribute towards local needs housing.

Attached is the rationale and further information, from the appeal on that case. The WVNP should be amended slightly to support such developments. I suggest the following insertion to WV2.1, as shown with underlining:

Policy WV 2.1- Positive green buffer management between Whitchurch Village and Bristol

Development will not be permitted outside the housing development boundary, as defined on Fig.13 if individually or cumulatively it would result in increasing the coalescence between Whitchurch Village and Bristol or reducing their separate identity by:

- a) Reducing the gap between Whitchurch Village and Bristol or,
- b) Increasing the density of development within existing curtilages

Substantial weight should be given to any harm to the Green Belt. Very special circumstances will need to clearly outweigh potential harm to the Green Belt and the construction of new buildings is considered inappropriate. The exceptions to this are set out in the NPPF (Para 89), which except limited infilling in villages, and limited affordable housing for local community needs, and partial or complete redevelopment of previously

APP/F0114/W/17/3166414

Application No: 16/02474/FUL

**Land adjacent to "Moret",
Hursley Hill
Publow
Bristol BS14 0QZ**

Application for Erection of 1no. self build dwelling for use as starter home

Response to LPA Questionnaire and Statement of Case and appendices

On behalf of Mr S Reed (applicant)

By Jonathan Medlin BSc Hons Dip TP MSc MRTPI

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This Appeal is submitted under Section 78 of the Town and Country Planning Act 1990 by Mr S Reed against the refusal by Bath and North East Somerset Council (the LPA) to grant planning permission for a proposed self-build dwelling for use as a starter home on land adjacent to Moret, Hursley Hill, Publow.

This document responds to the LPA Submission Statement of Case dated 27th March 2017. It should be read in conjunction with the original planning application and supporting documentation, including the Planning, Design & Access Statement, and the Statement of Case submitted as part of the appeal.

1. Background

1.1 The planning application was refused on 12th July 2016. The reason for refusal is as follows:

“The proposed development is located within the Green Belt and outside of any housing development boundary. No very special circumstances have been identified which would outweigh the harm to the green belt. The development is therefore contrary to policies HG.10 of the Bath & North East Somerset Local Plan including minerals and waste policies - adopted October 2007, policy CP8 of the Core Strategy and paragraph 89 of the National Planning Policy Framework adopted March 2012”

1.2 The appeal Statement of Case outlined 3 headings which provided reasons, individually or cumulatively which suggest that the appeal should be allowed:

1) Although Green Belt, the site is **brownfield** (this is not disputed by the LPA). The NPPF allows for limited infilling of brownfield sites within the Green Belt.

Government policy had suggested that brownfield sites within greenbelt should be promoted for affordable/starter homes, but this has not yet translated into policy. Nevertheless, the 6th exception in para 89 of the NPPF suggests that infill development within the Green Belt is an exception for development, subject to certain criteria. The scheme should therefore be considered as an exception under para 89, but if it is not, then the provision of development on a brownfield site is a special circumstance specific to this proposal.

2) The proposal will fall within the **definition of a starter home**, and the appellant is prepared to provide a unilateral undertaking to ensure this. The proposed dwelling is, on the first occupation, to be used by the applicant's family (son and family) who are presently living nearby. The family have strong local connections, and children attend local school/ nurseries.

3) The proposal will fall within the **self-build definition which is promoted by government and local policy**. The appellant has been registered (via agent) on the local authority self-build register but there has been no suggestion or offer of land for self-build purposes within this location, or any other area. The proposal for a self-build property should be considered as special circumstances for the development, in the absence of land for self-build in this area from the Self Build register.

- 1.3 The Statement of Case concluded that the scheme, which is limited infilling on brownfield site, as well as a combination of other factors, together with the limited visual impact, agreed sustainable location, outweigh harm to Green Belt. The proposed dwelling will provide accommodation for family of the applicant which could be controlled to fall within the scope of an affordable starter home, will not impact on amenity of neighbours, and will enhance the building yard appearance of the brownfield site. The Parish Council has supported this and previous applications here and is bringing forward a Neighbourhood Development Plan which promotes affordable housing for local people.
- 1.4 The LPA has provided its Statement of Case – dated 27th March 2017 - which re-confirms its policy position as outlined in its officer’s report and decision. It fails to have regard to certain key points which are material considerations and gives insufficient weight to others.
- 1.5 A response to the LPA Statement of Case is provided below (section 2). Section 3 refers to certain important considerations which provide very special circumstances, to which the LPA has not responded. These are considered material to the determination of the application and cross-refer to the planning application and the LPA Statement of Case/appendices. They are not presented as new information to the appeal.

2. LPA Case and response

Appropriateness within Green Belt and Very Special Circumstances

- 2.1 The LPA has referred to Paragraph 89 of the NPPF which states that *“the construction of new buildings within the green belt are regarded as inappropriate development”*¹. The LPA accepts that the NPPF goes on to list a limited number of exceptions under 6 bullet points. The final bullet point is highly relevant to this appeal scheme, and has in fact been quoted by the LPA:

“limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development”

- 2.2 Additionally, the NPPF refers to ‘limited infilling in villages’. Both exceptions are pertinent to the proposal although the Framework does not define either ‘villages’ or ‘limited infilling’.
- 2.3 The appeal scheme falls within the scope of the above exception test, at the 6th bullet of para 89 of the NPPF because: (i) it represents limited infilling and redevelopment of previously developed site in continuing use, and (ii) it would not

¹ LPA Statement of Case – 27th March

have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

- 2.4 **Limited Infilling:** The appeal scheme falls within the definition of limited infilling, being developed on each side. The site has residential uses either side (north and south). To the west, at the rear of the site are uses associated with the adjoining residential uses including a swimming pool and stables. These uses to the rear of the site fall within permitted development, or are appropriate uses within the Green Belt. They act as built development which encloses the site on its western boundary, beyond which is open Green Belt. To the east, the site fronts the A37 road.
- 2.5 Infilling will allow for the completion of a built up linear frontage of 6 existing dwellings². The infill plot is of the same width as the neighbouring plots to each side. It is capable of accommodating only one dwelling, therefore replicating the existing street scene to either side. The 'infill' dwelling will be of a similar size, scale and massing to those in the area which are mixed, and it will provide amenity and circulation space around it comparable to adjoining properties.
- 2.6 The plot is not at the end of a row of continuous development. Therefore it will not have the effect of projecting the development into an open area which would undermine the openness of the Green Belt.
- 2.7 It is limited because the proposal is for one dwelling only, with no in-principle design objections having been advanced by the LPA.
- 2.8 **Impact on Openness:** As shown in the Planning, Design & Access Statement, the proposal would not have a greater visual impact on the Green Belt when viewed from the road or surrounding area. Its impact on openness would not be greater than the openness at present: the site is materially different to the Green Belt beyond the brownfield site and other built development which encloses the site. It does not conflict with the purpose of including the land in the Green Belt.
- 2.9 **Purpose of Green Belt:** The five purposes of the Green Belt are well known³, and the proposal will not detract from any of them:
- **to check the unrestricted sprawl of large built-up areas:** the appeal scheme will not result in sprawl of large built up areas;
 - **to prevent neighbouring towns merging into one another:** due to the infill nature of the scheme, it will not result in neighbouring towns merging.
 - **to assist in safeguarding the countryside from encroachment:** the site is a brownfield site within the Green Belt. It is fully enclosed by built development. The scheme will revert 70% of the site area back from a brownfield site builder's yard to garden/green space.

² This excludes the dwelling to the rear of 'Moret'

³ NPPF Para 80

- **to preserve the setting and special character of historic towns:** the scheme will not harm the setting or special character of historic towns;
- **to assist in urban regeneration, by encouraging the recycling of derelict and other urban land:** the scheme will regenerate and recycle land itself. It will not detract from the regeneration or recycling of derelict or other urban land elsewhere.

2.10 The LPA's interpretation of the scheme impact on the Green Belt is inaccurate. It suggests that any built development will be inappropriate in the Green Belt. This cannot be the case because the NPPF offers example buildings which are appropriate⁴: e.g. facilities for outdoor sport, outdoor recreation and for cemeteries, and limited infilling in villages all of which will include some form of built development.

2.11 The LPA states that the existing yard is largely open site with little existing built form. It asserts that the provision of a dwelling on this site would result in "*an increase in the amount of built form on this site*"⁵. It cannot be disputed that the erection of a dwelling will result in an increase in the amount of built form. However, the LPA concludes that: "*Therefore the development is considered to result in a greater impact on the openness of the green belt*". This is disputed, and it is not an automatic conclusion to draw in this case. As discussed above, the site is materially different to the open Green Belt beyond: it is enclosed on 3 sides by residential dwellings and built development, and the A37 to its frontage.

2.12 The conclusion that development will result in a "greater impact on openness of the green belt" also contradicts other, similar, LPA decisions⁶ which are cross-referred in the LPA Statement of Case. A nearby development under reference 08/02972/FUL (Longacre, Hursley Hill, Publow, BS14 0QZ⁷) an increase in floorspace of ~120 sq m (an increase in volume of 39%) was considered acceptable.

2.13 These nearby examples are given negligible weight in the appeal decision for APP/F0114/W15/3011477⁸ as the inspector found that the cases were unlikely to be similar. However, the proximity, setting and scale do provide similarities for consideration of impact on openness of Green Belt beyond. The LPA had concluded in the 08/02972/FUL case that the proposed extensions and roof alteration in terms of siting, design, size, scale and use of materials is considered to represent an appropriate addition to the existing dwelling "which is not harmful to the character and appearance of the local streetscene and the openness of the Green Belt".

⁴ NPPF Para 89

⁵ LPA Statement of Case – Comments on the grounds of appeal

⁶ These are referred to in the LPA Statement of Case Appendix: Appeal Decision for App/F0114/W15/3011477 – at para.15

⁷ The application site is a detached bungalow within the village of Publow to the south of Whitchurch; the site is located outside of the Housing Development Boundary within the Bristol/Bath Green Belt. The application proposed the erection of a single storey side and rear extensions and provision of a new raised roof to create further accommodation.

⁸ LPA Statement of Case - Appendix

2.14 In conclusion, therefore, because of the enclosed nature and infilling of the site, the openness of Green Belt would be retained. The site is surrounded by existing development, is part of an existing row of linear development which extends along the frontage of a road, and it does not make a significant contribution to the openness of the Green Belt in this locality. It is materially different in character to the open area of Green Belt that lies further to the west. The proposal would not result in material harm to the openness of the Green Belt.

2.15 The LPA assertion that the scheme has not demonstrated very special circumstances to outweigh harm to the Green Belt is not accepted. By virtue of the exception test referred to above, the scheme does not need to demonstrate very special circumstances.

2.16 Notwithstanding this, if the inspector considers that very special circumstances are required by virtue of inappropriateness, the appeal scheme demonstrates a number of specific circumstances which should be accorded significant weight. The planning application refers to these⁹ and they are considered sufficient to outweigh the conflict with Green Belt policy and the NPPF.

Inappropriate Site for Housing/ Housing Development Boundary

2.17 The LPA has referred to the location of the site as a reason for the scheme being inappropriate: *“The proposed development will be located outside of any housing development boundary”*¹⁰. The purpose of housing development boundaries is to guide growth and development to settlements with a range of local facilities, and good public transport access and community support considered more sustainable locations¹¹. Areas outside of settlements are generally considered to be rural areas, where housing development is limited to provision of affordable housing on rural exception sites.

2.18 The sustainable location of the site has been recognised by the appeal decision in relation to 14/05409/OUT (Appeal Ref: APP/F0114/W15/3011477)¹². This appeal decision is provided to support the LPA’s Statement of Case. The Inspector in the appeal decision accorded the sustainability of the proposal (location and proximity to public transport, re-use of brownfield land etc.) to be accorded some weight (para 18 of the Appeal Decision¹³).

2.19 That scheme (14/05409/OUT) was an outline planning application. Planning Application 16/02474/FUL is a full application and additional information has been provided to demonstrate and confirm compliance with additional sustainability

⁹ Very Special Circumstances are set out in the Planning, Design & Access Statement May 2016

¹⁰ LPA Statement of Case 27th March 2017 - Conclusion

¹¹ See Bath & NE Somerset Core Strategy Para 1.30

¹² This Appeal Decision is appended to the LPA Statement of Case

¹³ This point is made in the Planning, Design & Access Statement

criteria¹⁴. The weight to attach to the sustainability of the location, and of the appeal scheme itself should be at least equal to, or greater than, the weight attached to the sustainability of the previous appeal scheme (in APP/F0114/W15/3011477).

2.20 The Inspector in APP/F0114/W15/3011477 addressed the accessibility of the location and stated that the scheme “*would re-use a previously developed site, in a reasonably accessible location, and it is intended to construct a low energy dwelling of high quality design*”¹⁵. It is considered a reasonably accessible location, with a good bus service within 40 metres of the proposed front door, providing 4 buses per hour to Bristol in the AM and PM peak, and half hourly off-peak¹⁶. The bus service runs on Saturdays and Sundays also. The bus service enables local residents to access employment being a bus service that will get a worker to Bristol or another large urban area before 9am and returns from the employment centre after 5pm between Monday and Friday.

3. Material Considerations relevant to the appeal, not addressed by the LPA

Unilateral Undertaking to Provide Affordable Starter Home

3.1 A draft Unilateral Undertaking (UU) was submitted during the time that the original application was under consideration: this is at **Appendix 1**. This is referred to in the Appellant Statement of Case.

3.2 The UU was submitted to the LPA on 5th July 2016 and was received and acknowledged. Appendix 3 shows that this was presumably to have been copied to the file. Whilst the accompanying email had been copied to the file, and was therefore publically available, the attached draft UU had not been loaded onto the system. The existence of the draft UU should have formed part of the documentation which the LPA submitted.

3.3 The LPA has been made aware of this omission, and has subsequently uploaded the draft UU to the file on March 27th 2017. It is assumed that the existence of the draft UU was a consideration in the determination, and refusal of the planning application (16/02474/FUL) although it is not referred to. Because the planning application was refused, the draft UU has not progressed.

3.4 The purpose of the UU is to provide an assurance that the dwelling would be used restricted to the son and family of the applicant on first occupation. This was not addressed within the officer’s report which refused the application, nor in the LPA Statement of Case.

¹⁴ See Planning, Design & access Statement May 2016 Appendix 1, 2 and 3 for Sustainability Checklist, and Code for Sustainable Homes Pre-assessment.

¹⁵ Appeal decision: App/F0114/W15/3011477, Para 17 emphasis added

¹⁶ First Bus 376 runs half-hourly, and 177 runs during morning and afternoon peak. Both serve the nearest Bus Stop, and arrive in central Bristol in ~30 minutes.

3.5 In the time since the UU was drafted, further guidance has emerged on the role and definition of starter homes. The recent Housing White Paper (published on February 7th 2017¹⁷) “Fixing our broken housing market” sets out a broad range of reforms that government plans to introduce to help reform the housing market and increase the supply of new homes.

3.6 As a result of the Housing White Paper, there is greater clarity as to what should be provided, and that starter homes continue to play an important role within government policy, which this appeal scheme intends to provide. The UU was drafted prior to the Housing White Paper. There had been a suggestion that the Housing White Paper might announce a presumption in favour of development of brownfield sites in the Green Belt for Starter Homes which never materialised.

3.7 Nevertheless, the UU could be amended to ensure that the proposal accords with central government vision for this important addition to affordable dwelling stock, if it is required to ensure a very special circumstance.

Neighbourhood Development Plan (NDP)

3.8 The emerging **Whitchurch Village Neighbourhood Plan**¹⁸ is referred to in the appellant Statement of Case. It is entitled “Draft Whitchurch Village Neighbourhood Plan 2015 – 2042 Pre-submission version” and was published for consultation on 24th January 2017. It therefore post-dates the appellant submission of the Statement of Case. The Parish Council support for the appeal scheme had been set out in the planning application¹⁹.

3.9 The support of the Parish Council was considered by the Inspector in the decision APP/F0114/W15/3011477²⁰ and accorded it “*little weight... as a consideration weighing in favour of the proposal*”.

3.10 The appeal scheme as proposed is different, and it is appropriate to give greater weight to the Parish Council support as a result of the differences between the schemes, and as a result of the emerging NDP.

3.11 Relevant NDP policies are extracted and set out at Appendix 2. This is a draft Plan and policies have undergone consultation before proceeding to a referendum and adoption. The presence of the NDP was referred to in the Statement of Case, but it had not been published in draft form at that time. It has not been referred to in the LPA Statement of Case.

3.12 The draft NDP contains a number of policies which support the type of development proposed, and for which an acceptable UU ought to be able to secure. In particular it seeks, at Policy WV 1.3- “Allocation of Affordable Housing” - to

¹⁷ The Housing White Paper was published following submission of the appellant’s Statement of Case.

¹⁸ <http://www.whitchurchparishcouncil.co.uk/village-plan.html>

¹⁹ Para 8.2 of the Planning, Design & Access Statement May 2016

²⁰ See LPA Statement of Case – Appendix (Appeal Decision 26th June 2015) Para 14.

ensure that 30% of new affordable housing is **allocated based on a local connection**, meaning that people with a strong local connection to the Parish and whose needs are not met by the open market will be the first to be offered the tenancy or shared ownership of the dwelling.

- 3.13 It defines strong local connection as someone who:
- a) Is resident in the Parish and needs separate accommodation
 - b) Is not resident in the Parish, but:
 - c) Has family associations in the Parish; or
 - d) Has had periods of residence in the Parish; or
 - e) Through their work provides important services to the Parish and who need to live closer to the community or has employment or the offer of employment within the Parish.
- 3.14 The intended occupier for the proposed starter home satisfies the above **criteria a, as well as c, d and e**. The UU is an attempt to provide certainty that the occupier will use the dwelling as a starter home.
- 3.15 On the issue of Green Belt, the draft NDP contains draft policies WV2.1, WV2.2 and WV2.3 (see appendix 2 for extracts). The appeal scheme does not conflict with any of these policies.
- 3.16 The application 16/02474/FUL was supported by the Parish Council²¹ i.e. Whitchurch Parish Council which is the responsible council for preparing the NDP. The draft policies also promote this type of affordable housing. Although this has only reached pre-submission stage, it indicates support locally and the direction of travel.

Self Build

- 3.17 The fact that the proposal is for a self-build dwelling is referred to at point 3 of the appellant Statement of Case, and within the planning application²². The Self-build and Custom Housebuilding Act 2015 requires each relevant authority to keep a register of individuals and associations of individuals who are seeking to acquire serviced plots of land in the authority's area in order to build houses for those individuals to occupy as homes (referred to as self-build and custom housebuilding registers).
- 3.18 The applicant has been on the Self Build register since mid-2016. No site has been identified. It is unclear as to the weight accorded to this issue within the LPA decision, and within the Statement of Case. The promotion of self-build housing is supported by both local policy (Placemaking Plan and Core Strategy), and Central Government policy and is referred to in the Housing White Paper (Feb 2017).

²¹ See consultation responses to planning application 16/02474/FUL, as well as earlier schemes

²² Planning Design & Access Statement May 2016, Section 5

3.19 The NPPG²³ provides guidance to authorities (relevant bodies) to suggest ways in which the duty may be demonstrated in carrying out each function. For the planning function it may include both plan-making and decision-taking functions. It states that the registers that relate to their area “may be a material consideration in decision-taking”. The lack of suitable sites for self-build in this area should also be material to the consideration of the application. The proposal would accord with this Government’s aim. The shortage of self-build opportunities adds to the very special circumstances in this case.

4. Conclusion

4.1 The planning application Planning & Design Statement, together with the Appeal Statement of Case demonstrate that the scheme should be considered as appropriate within its Green Belt setting where limited infilling on brownfield sites is one of the exceptions permitted by the Framework.

4.2 In addition to the exception which means that the scheme is not inappropriate, the documentation has outlined the exceptional and very special circumstances which are specific to this scheme:

- (i) Sustainable location: Although not within a settlement boundary, the proximity to services, public transport, re-use of brownfield site are all factors which led the Inspector in APP/F0114/W15/3011466 to conclude that the site is a sustainable location.
- (ii) Green Belt location: although the site is within Green Belt, it is a brownfield site. It is unattractive, and the Parish Council supports the redevelopment, and supported the planning application. Its development would not detract visually from the openness of the Green Belt²⁴. No harm would arise. The special circumstances have been set out in the Planning Statement, Statement of Case and in this response to the LPA. The provision of an affordable starter home here is similar in principle to exceptional circumstances which allow affordable housing in rural areas.
- (iii) Provision of affordable starter home: the need is recognised, and the exact use has been heavily regulated through a submitted draft Unilateral Undertaking as part of the planning application. The restriction on occupier to a local family would bring the use within the definition of starter home as set out by central government. This should weigh significantly as a very special circumstance for allowing the appeal, with the proposal considered as an exception.
- (iv) Provision of self-build dwelling: this type of development is supported locally and nationally. There is a lack of alternative suitable sites, and despite being on the self-build register, no other sites have been identified or offered locally. This should be material to the consideration of the merits of the scheme.

23 Paragraph: 014 Reference ID: 57-014-20160401 Revision date: 01 04 2016

²⁴ See Section 6 of the Planning, Design & Access Statement May 2016

- (v) Support through emerging NDP, and support by Parish Council: emerging NDP policies suggest a need for affordable housing to be provided for people with a local connection. These provisions could be secured through an appropriate planning obligation or undertaking.

4.3 The above set of circumstances are considered to be very special and are clearly specific to this proposal. These ought to outweigh any harm to the Green Belt, or inappropriateness which may be perceived from this small scale infill development.

4.4 The site is currently a builders yard, and is considered as under-used, especially considered against the alternative provision of a much-needed starter home. Where applications for starter homes come forward on exception sites, they should be approved unless the local planning authority can demonstrate that there are overriding conflicts with the national planning policy framework that cannot be mitigated. The above list of very special circumstances outweigh any conflict with national planning policy.

4.5 Furthermore, The NPPG states that an application for a starter home should be approved unless there are overriding conflicts with the NPPF²⁵. The appellant would invite the Inspector to allow this appeal as the proposal is an exception to the presumption against development within the Green Belt, and demonstrates a number of very special circumstances which should be accorded significant weight due to the benefits provided.

²⁵ NPPG: Paragraph: 007 Reference ID: 55-007-20150318

APPENDIX 1 – Draft Unilateral Undertaking Submitted as part of Planning Application

{insert date}

UNILATERAL UNDERTAKING

GIVEN BY

{insert name}

Pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended)

IN RESPECT OF

Land adjacent to “Moret”, Hursley Hill, Publow, Bristol, Bath and North East Somerset BS14
0QZ

THIS DEED is made on the *{insert date}*

BY *{insert name and address of owner}* (“the Owner”)

WHEREAS

- (1) The Owner is the registered proprietor at HM Land Registry under title number *{insert land registry title number}* of the Land
- (2) The Council is the Local Planning Authority for the purposes of the Act for Bath and North East Somerset within which the Land is situated
- (3) The Owner has by the Application applied to the Council for permission to develop the Land
- (4) The Owner has determined to enter into a unilateral planning obligation by way of this Deed as hereinafter set out with the intent that the covenants by the Owner contained in Schedule 2 hereto shall be planning obligations for the purposes of Section 106 of the Act

NOW THIS DEED WITNESSES as follows:

1. Definitions and interpretation

In this Deed:

- 1.1. “the Act” means the Town and Country Planning Act 1990 (as amended)
- 1.2. “the Application” means a written application registered on the 18th of May 2016 and numbered 16/02464/FUL applying to the Council for planning permission in respect of the Land
- 1.3. “Commencement of the Development” means the carrying out of a material operation as defined in Section 54(6) of the Act in relation to the Development
- 1.4. “the Council” means the Bath and North east Somerset Council and its successors in title as the Local Planning Authority for Bath and North East Somerset
- 1.5. “the Development” means such development as may be authorised by the Planning Permission
- 1.6. “the Land” means the land described in the First Schedule hereto

- 1.7. "the Planning Obligations" means the covenants by the Owner contained in the Second Schedule hereto
- 1.8. "the Planning Permission" means a planning permission granted (whether by the Council or otherwise) in respect of the application
- 1.9. Words importing one gender shall be construed as importing any other gender
- 1.10. Words importing the singular shall be construed as importing the plural and vice versa
- 1.11. The clause and paragraph headings in the body of this Deed and in the Schedules hereto do not form part of this Deed and shall not be taken into account in its construction or interpretation
- 1.12. This Undertaking will be registered as a Local Land Charge and is entered into pursuant to Section 106 of the Act

2. The Planning Obligations

- 2.1. The Planning Obligations are planning obligations for the purposes of Section 106 of the Act
- 2.2. The Council is the Local Planning Authority by whom the Planning Obligations are enforceable
- 2.3. Any person deriving title from the Owner shall not be bound by the Planning Obligations during any period in which he no longer has an interest in any part of the land

3. Liability

- 3.1. No person shall be liable for a breach of covenant contained in this Deed after he shall have parted with his entire interest in the Land but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 3.2. None of the provisions of this Agreement relating to the Starter Home shall be binding upon a mortgagee in possession of the Unit which said mortgagee in possession may sell and dispose of free from the terms of this Agreement and upon such sale as aforesaid this Agreement shall become null and void in respect of that Unit and nor shall the terms of this Agreement be binding upon any receiver appointed by such mortgagee in possession of the Unit SUBJECT TO the said mortgagee in possession first using its reasonable endeavours for a period of 3 (three) months to sell and transfer the Unit to an alternative Registered Provider first approved in writing by the Council's Director of Planning such approval not to be

unreasonably withheld or delayed PROVIDED ALSO that the said mortgagee shall not be obliged to sell or convey to an alternative Registered Provider under this clause for a consideration less than that which the mortgagee requires to either (i) redeem its borrowing upon the Unit plus provide for its reasonable costs or (ii) that which the mortgagee could obtain on the open market whichever is the greater.

- 3.3. The Owners shall notify the Council's Strategic Director of Planning in writing within seven days of receipt of actual notice of any breach or alleged breach of any term contained in any mortgage or legal charge of the Unit affecting the Land.

4. Council's Legal Costs

- 4.1. The Owner shall pay to the Council upon the date hereof its reasonable legal costs incurred in connection with the assessment of this Deed and its registration as a Local Land Charge

THE FIRST SCHEDULE

The Land

Land adjacent to "Moret", Hursley Hill, Publow, Bristol, Bath and North East Somerset BS14 0QZ in Bath and North East Somerset shown for the purposes of identification only edged red on the plan attached hereto [plan to be as per the planning application site plan]

THE SECOND SCHEDULE

Covenants by the Owner – the Planning Obligations

The Owner hereby covenants with the Council that the Owner will transfer the unit to his son for use as a 'starter home' as defined by legislation (for first time buyers, one of whom is under 40 years old, discount valued to 80% of open market value capped at £250,000 on first occupation).

The unit will remain as a starter home for a defined period of 5 years from first occupation. If during the restricted period the home is sold the owner cannot sell the starter home for full market value. During the restricted period, the following restrictions apply:

If the property is sold during Year 0-1: 80% of open market value
If the property is sold during Year 1-2: 84% of open market value
If the property is sold during Year 2-3: 88% of open market value
If the property is sold during Year 3-4: 92% of open market value
If the property is sold during Year 4-5: 96% of open market value

The new purchaser would also be required to be a qualifying first time buyer, with evidence provided to the Local Housing Authority. At the end of the restricted period, the property can be sold for its open market value.

If the property is marketed to other purchasers as first time buyers for a period of 6 months without a suitable qualifying buyer being found, the property can be marketed to the open market without restrictions.

The unit cannot be used as a buy-to-let property during the restricted period.

IN WITNESS whereof this instrument has been executed as a Deed by the Owner the day and year first before written

EXECUTED as a Deed by

In the presence of

Witness Signature

Witness Name

Witness address

APPENDIX 2

Extracts from draft WVNP

Draft WHITCHURCH VILLAGE NEIGHBOURHOOD PLAN

2015 – 2042

Pre-submission version (January 2017)

Qualifying Body : Whitchurch Village Council

Policy WV 1.1 - Village Design

All proposals for new development shall comply with Whitchurch Village Character Assessment Document (2015). Furthermore, each new development application shall demonstrate the following:

- a) is designed to a high quality which responds to the heritage and distinctive character and reflects the identity of the local context of Whitchurch Village as defined in the Character assessment in terms of; height, scale, spacing, layout, orientation, design and materials of buildings, the scale, design and materials of the public realm (highways, footways, open space and landscape)
- b) is sympathetic to the setting of any heritage assets
- c) incorporates energy efficient design and climatic resilience into the design; and,
- d) efficiently uses water (such as through the use of flow regulators, water efficient fittings and appliances) and encourages water reuse

Policy WV 1.3- Allocation of Affordable Housing

At least 30% of affordable housing within Whitchurch village (or such different number as is evidenced by demonstrable need at the time of development) shall be allocated based on a local connection, meaning that people with a strong local connection to the Parish and whose needs are not met by the open market will be the first to be offered the tenancy or shared ownership of the dwelling. A strong local connection means an applicant(s) who:

- a) Is resident in the Parish and needs separate accommodation
- b) Is not resident in the Parish, but:
- c) Has family associations in the Parish; or
- d) Has had periods of residence in the Parish; or
- e) Through their work provides important services to the Parish and who need to live closer to the community or has employment or the offer of employment within the Parish.

Policy WV 2.1- Positive green buffer management between Whitchurch Village and Bristol

Development will not be permitted outside the housing development boundary, as defined on Fig.13 if individually or cumulatively it would result in increasing the coalescence between Whitchurch Village and Bristol or reducing their separate identity by:

- a) Reducing the gap between Whitchurch Village and Bristol or,
- b) Increasing the density of development within existing curtilages

Policy WV 2.2- Development proposals, particularly where sited on the edge of Whitchurch Village must maintain visual connections with the countryside

Where possible, open views towards the countryside, and across open spaces must be maintained from key existing routes within the village. Views along streets and/or open spaces to the surrounding countryside must be created within new developments where there are opportunities to do so.

Policy WV2.3- The Visual impact of new development on views into and from the countryside must be minimised.

An assessment of views to and from the proposed development must be included in a supporting Visual Impact Statement. Visual impact should be minimised through the design of the site layout, buildings and landscape. The approach to minimising visual impact must be fully explained in the visual impact statement.

APPENDIX 3

Email correspondence re Unilateral Undertaking

From: Alice Barnes
Sent: 11 July 2016 09:06
To: Development Management
Subject: RE: 16/02474/Ful- land adjacent to Moret

Yes please

Thanks

From: Development Management
Sent: 07 July 2016 11:40
To: Alice Barnes
Subject: FW: 16/02474/Ful- land adjacent to Moret

Hi Alice

Do you want this to go onto idox?

Thanks

Amy

From: Jonathan Medlin [REDACTED]
Sent: 05 July 2016 20:5 [REDACTED]
To: Alice Barnes
Cc: Development Management
Subject: Re: 16/02474/Ful- land adjacent to Moret

Dear Alice,

16/02474/FUL Land adj to Moret

I attach a draft unilateral undertaking for consideration. The purpose is to ensure that the proposed dwelling is provided within the definition of 'starter home' and should go on the file. The Planning Statement makes reference to the relevant mechanism to ensure that the dwelling is a starter home which could be by condition or s106.

Should be self explanatory but let me know if you have any comments.

Jonathan Medlin
[REDACTED]

[Sent from Yahoo Mail on Android](#)