

The Planning Bureau Limited

Bournemouth • Coventry • Hatfield • Manchester • **Ringwood** • Woking • York

E-mail: Gian.b@theplanningbureau.ltd.uk Tel: 07900821955

12th February 2025

Elizabeth Harrison: Principal Planning Officer
Planning & Environment - Planning/Development Management
Eastleigh Borough Council
Development Management
Eastleigh House
Upper Market Street
Eastleigh
SO50 9YN

Dear Liz,

F/24/97945 ERECTION OF RETIREMENT LIVING APARTMENTS WITH ASSOCIATED COMMUNAL FACILITIES AND CAR PARKING, THE ERECTION OF A PAIR OF DETACHED DWELLINGS, IMPROVED VEHICULAR ACCESS AND NEW PEDESTRIAN ACCESS TO WINCHESTER ROAD.

LAND AT OAK COTTAGE, WINCHESTER ROAD, BORLEY GREEN, BOTLEY, SO32 2DH

I write in response to the above and your e-mail dated 4th February 2025.

Attached is the response from **Alder King** referring the various Sec 106 items in your recent e-mail and responding to the Aspinall Verdi assessment. Other than for the BNG point we should hopefully all be going forward using the same figures or as close to as to not make any significant difference.

On the BNG point, I attach the contract regarding the purchase of credits. The figures refer to a greater amount so I have reduced the figure to the £150k referred to previously.

With reference to what I would call the “discretionary” Sec 106 requests, I do think they need to be fully evaluated against CIL Reg 122, for example the TRO, why is it required when the parking is more than sufficient and why is open space required etc. the full CIL tests will need to be applied.

As is generally the case in viability matters, there may need to be discussion between the consultants and if so, I do not have any objection to Alder King being contacted directly.

Yours sincerely

Gian Bendinelli
Principal Planning Associate

1 Embankment Way, Ringwood, Dorset, BH24 1EU

Registered Office: 4th Floor, 100 Holdenhurst Road, Bournemouth, BH8 8AQ.
Registered in England. Registered No. 2207050. VAT No. 927579181.

PLANNING APPLICATION DOCUMENTS AND DRAWINGS

Our Ref: RJM/99731

12 February 2025



Mr Gian Bendinelli
Principal Planning Associate
The Planning Bureau Ltd

**LAND ADJACENT TO OAK COTTAGE, WINCHESTER ROAD, BOORLEY GREEN
PLANNING REF NO. F/24/97945**

I refer to the above planning application and specifically the viability of the proposed scheme to meet the planning obligations.

Alder King submitted a Financial Viability Assessment (AK-FVA) in June 2024 confirming that the proposed scheme was in deficit after allowing for SPA/Nitrates/BNG contributions amounting to £324,470. We have now received a review of our viability report, prepared by Aspinall Verdi (AV-Review). The AV-Review considers a number of iterations and concludes the following:

- (1) A Policy compliant scheme (35% affordable housing) plus S106 costs of £315,453, Nitrate Cost of £110,450 & BNG at £100,000 is unviable producing a deficit of (-£721,644).
- (2) A 100% market scheme produces a surplus of £421,354* (after allowing for S106/Nitrates & BNG).

(* whilst AV state £412,354 in their report I assume this is a typo as the appraisal states £421,354).

- (3) Three further scenarios – considering the 2x houses as affordable units:

- (a) Both Houses – Affordable Rent: Surplus £134,925.
- (b) Both Houses – 1x Affordable Rent/1x Shared Ownership: Surplus £216,712.
- (c) Both Houses – Shared Ownership: Surplus £298,499.

AV therefore conclude that the Council should seek an on-site affordable provision of 2x Houses as well as an off-site contribution of either c. £135,000, £217,000 or £298,000. AV also recommend a review mechanism is entered into allowing the Council to benefit from any uplift in viability.

There are several areas where AV have altered the inputs of the appraisal to establish the outcomes reported to the Council. We highlight the key areas of difference below and our response to them.

1. Benchmark Land Value (Difference -£16,000)

There is a relatively small difference between the parties on this input. In our original report we applied adopted the EUV+ methodology, in line with the PPG Guidance and RICS recommendation.

AK assessment of EUV was to take the as the minimum option price for allocated land (as confirmed in the Local Plan testing) at £150,000 per acre plus a 20% premium to arrive at a BLV of £410,000.

12 February 2025

AV have also taken an approach from the Local Plan testing and valued the greenfield site at £25,000 per hectare and then applied a multiplier of 17.5 to arrive at £393,750 (rounded to £394,000).

There is no explanation as to why AV apply 17.5x EUV rather than say 20x. AV acknowledge the site is allocated and suitable for development. The difference in the approach is minimal, in an effort to narrow the areas of disagreement we are prepared to accept the BLV at £394,000 on a without prejudice basis.

2. Core Build Cost (reduction of -£358,000)

Both parties adopt the BCIS 'sheltered housing' index, rebased to Hampshire (3-storey). AK adopted the default index (15-year) due to the sample size (44 schemes). The AK assessment concluded a build rate as follows:

BCIS (Default) rebased for Hampshire June 2024):

- 3 Storey Sheltered at £1,810/m² (sample 44 schemes)
- Estate Housing (semi) at £1,594/m² (sample 356 schemes)

AV adopt the same index but restrict the sample to 10-years.

- 3 Storey Sheltered at £1,740/m² (sample 14 schemes)
- Estate Housing Generally (2-storey) at £1,515/m² (sample 360 schemes)

The main sum of the difference in the rate applied to the sheltered apartments. BCIS confirms that sample sizes below 20 should be used with caution as they can be unreliable. The wider the sample the more accurate the data. At just 14 scheme the 10-year index is unreliable. We therefore do not accept this reduction and maintain that the appropriate basis should be the default (15-year) period for a 3-storey retirement building. The most recent sample (December 2024) confirms a rate of £1,813/m². The cost for the houses can be agreed and we have amended the appraisal accordingly.

For the purposes of this rebuttal, we have maintained the original build cost (£1,810) but reserve our position to amend accordingly.

3. Sec 106 Costs

AV adopt the following costs in their appraisal:

- S106 Cost at £315,453
- Nitrates at £110,450
- BNG at £100,000

We have been provided with further details on these elements and can confirm the following updated costs:

1. **BNG:** The cost has increased and is confirmed at £150,000.
2. **Sec106:** These have been confirmed by the LPA in an email dated 4/2/25:
 - **Nitrates:** £139,432.12
 - **Solent SPA:** £30,925

12 February 2025

- **New Forest SPA:** £128,967.86
- **Total - £449,315 .**

Additional S106 Costs demanded:

- **Community Infrastructure:** £98,947.02
- **Public Open Space:** £54,211.95
- **Public Art:** £30,895.26
- **Sustainable Transport:** £51,895
- **Traffic Regulation Order:** £12,000
- **Health:** £17,652
- **S106 Monitoring Fee:** £5,700
- **TOTAL: £271,301.23**

The additional Sec106 listed above are subject to viability.

4. Development Profit (Reduced to 17.5% of GDV)

AV confirm that 20% profit on GDV is not 'wholly unreasonable' but reduce this to 17.5% based on the wording of paragraph 010 of the Viability PPG. It is worth repeating this paragraph below in full:

What are the principles for carrying out a viability assessment?

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. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.

This National Planning Guidance sets out the government's recommended approach to viability assessment for planning. The approach supports accountability for communities by enabling them to understand the key inputs to and outcomes of viability assessment.

Any viability assessment should be supported by appropriate available evidence informed by engagement with developers, landowners, and infrastructure and affordable housing providers. Any viability assessment should follow the government's recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available. Improving transparency of data associated with viability assessment will, over time, improve the data available for future assessment as well as provide more accountability regarding how viability informs decision making.

In plan making and decision making viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.

AV abbreviate the final paragraph in justification to reduce an input (developer profit) to improve the viability of the scheme. Paragraph 10, read in full, is explaining the principle of viability. It is clearly saying that viability i.e. the whole process, helps strike the balance between the aspiration of landowners and developers against the aims of the planning system to secure maximum benefits. Rightly the whole paragraph states that viability should be supported by appropriate available evidence.

In our assessment we set out this evidence in full. The latest being the Appeal Decision in Sale (3325034 - 2023) that confirmed:

81. Looking therefore at the Council's assessment of 18.5%, the starting point is by reference to recent appeal decisions and financial viability assessments in support of planning applications where a profit margin of 17.5% has been found to be appropriate for apartment developments.

82. In short, the Council does not accept the higher risk profile of retirement living schemes when compared to general housing. However, I disagree with its comparison with general market schemes. By way of example, I do not recognise the specific market sector as one of least risk for reasons outlined earlier in this decision. Additionally, although a comparatively small scheme, the category specific additional risk remains; and retirement living developments also have specialised costs associated with the provision of communal facilities and house management.

83. As the Council has failed to account for the particular risks associated with developing a retirement living scheme, I consider that its base line of 17.5% is unsound and the uplift of 1% to reflect 2023 market conditions is no antidote. I therefore agree with the Appellant that a profit of 20% of gross development value should apply.

The determining factors of developer profit/return in any proposed scheme is the risk associated with the form of development and the requirements of the funding source. It has been held at numerous Appeals and third-party assessments that retirement flatted development is at the upper end of the risk profile. This is due to the following:

- Retirement living housing must be fully completed and operationally ready before sales commences as older people are less likely to buy 'off plan' without seeing for example the benefit of the communal facilities.
- The above provides a slower return on investment and a longer period of uncertainty in the market and cost exposure. This risk is particularly pronounced in periods of market uncertainty when sales rates are slow. This is the case in the current market where we are seeing access to development finance tightening with lenders increasing borrowing rates and demanding higher coverage in the form of higher developer returns.
- A restricted occupancy also limits the marketability of such housing in comparison to general needs development. The sector does not benefit from Government incentives such as First Homes. A slow down in the wider market also means that sales for older persons housing also slow down given that such sales are often at the end of a much

12 February 2025



longer chain. We are now seeing sales transactions across the wider market slow considerably as a result of increased mortgage rates and affordability issues for prospective purchasers across the market.

20% profit of GDV is appropriate for this form of development and is the minimum requirement by funders. To arbitrarily reduce profit, without evidence is, in my view, a wrong interpretation of Policy.

The risks associated with retirement development, together with the funding market requirements means that the minimum acceptable return to fund such a development is 20% on GDV, this has been held at numerous appeals.

Conclusion – Updated Appraisal

Allowing for the changes highlighted above we have re-appraised the scheme and attach a copy of the updated ARGUS summary appraisals.

Appraisal 1 – Includes all Sec.106 costs and Additional Sec 106 costs. Payments are set at commencement of construction. This arrives at a residual land value of (£105,722) i.e. negative and unviable.

Appraisal 2 – Allows for the Sec.106 Costs (BNG, Nitrates and SPA contributions totalling £449,315) and arrives at a residual land value of £155,413. This produces a positive land value but is below the BLV.

It is clear from the re-assessment the scheme is unable to support the additional S106 obligations and £421,354 for off-site affordable housing, and remain viable.

We would welcome further discussion on the issues raised in this rebuttal at the earliest opportunity.

Alder King LLP

BOTLEY, Hampshire (1) FEBRUARY 2025
McCarthy Stone
Appraisal Summary for Phase 1

Currency in £

REVENUE

Sales Valuation	Units	m²	Sales Rate m²	Unit Price	Gross Sales
1 Bed Retirement Living Apartment	32	1,717.00	4,938.85	265,000	8,480,000
2 Bed Retirement Living Apartment	20	1,499.95	4,666.84	350,000	7,000,000
3 Bed House	2	208.00	4,326.92	450,000	900,000
Totals	54	3,424.95			16,380,000

NET REALISATION **16,380,000**
OUTLAY
ACQUISITION COSTS

Residualised Price (Negative land)	(105,722)	(105,722)
------------------------------------	-----------	-----------

CONSTRUCTION COSTS

Construction	m²	Build Rate m²	Cost
1 Bed Retirement Living Apartment	2,402.00	1,810.00	4,347,620
2 Bed Retirement Living Apartment	2,099.00	1,810.00	3,799,190
3 Bed House	208.00	1,515.00	315,120
Totals	4,709.00 m²		8,461,930

Contingency	5.00%	467,744	467,744
-------------	-------	---------	---------

Other Construction Costs

External Costs	8.00%	676,954	
Empty Property Costs		201,576	
Part L & O	54.00 un 4,000.00 /un	216,000	1,094,530

Section 106 Costs

Solent SPA		30,925	
New Forest SPA		128,958	
Nitrates		139,432	
BNG		150,000	
Additional Section 106 Costs		271,301	720,616

PROFESSIONAL FEES

Other Professional Fees	8.00%	748,391	748,391
-------------------------	-------	---------	---------

MARKETING & LETTING

Marketing	3.00%	491,400	491,400
-----------	-------	---------	---------

DISPOSAL FEES

Sales Agent Fee	2.00%	327,600	
Sales Legal Fee	54.00 un 750.00 /un	40,500	368,100

TOTAL COSTS BEFORE FINANCE **12,246,990**
FINANCE

Timescale	Duration	Commences
Pre-Construction	6	Feb 2025
Construction	15	Aug 2025
Sale	30	Nov 2026
Total Duration	51	

Debit Rate 8.000%, Credit Rate 2.000% (Nominal)	
Land	(11,401)
Construction	545,845
Other	322,567
Total Finance Cost	857,010

TOTAL COSTS **13,104,000**

BOTLEY, Hampshire (1) FEBRUARY 2025
McCarthy Stone
PROFIT
3,276,000
Performance Measures

Profit on Cost%	25.00%
Profit on GDV%	20.00%
Profit on NDV%	20.00%
IRR% (without Interest)	26.72%
Floor Area Ratio	0.00%

APPRAISAL SUMMARY

ALDER KING LLP

BOTLEY, Hampshire (1) FEBRUARY 2025
McCarthy Stone

Appraisal Summary for Phase 1

Currency in £

REVENUE

Sales Valuation	Units	m²	Sales Rate m²	Unit Price	Gross Sales
1 Bed Retirement Living Apartment	32	1,717.00	4,938.85	265,000	8,480,000
2 Bed Retirement Living Apartment	20	1,499.95	4,666.84	350,000	7,000,000
3 Bed House	<u>2</u>	<u>208.00</u>	4,326.92	450,000	<u>900,000</u>
Totals	54	3,424.95			16,380,000

NET REALISATION **16,380,000**

OUTLAY

ACQUISITION COSTS

Residualised Price		155,413	
			155,413
Agent Fee	1.00%	1,554	
Legal Fee	0.75%	1,166	
			2,720

CONSTRUCTION COSTS

Construction	m²	Build Rate m²	Cost
1 Bed Retirement Living Apartment	2,402.00	1,810.00	4,347,620
2 Bed Retirement Living Apartment	2,099.00	1,810.00	3,799,190
3 Bed House	<u>208.00</u>	<u>1,515.00</u>	<u>315,120</u>
Totals	4,709.00 m²		8,461,930
Contingency		5.00%	467,744
			8,929,674

Other Construction Costs

External Costs		8.00%	676,954
Empty Property Costs			201,576
Part L & O	54.00 un	4,000.00 /un	216,000
			1,094,530

Section 106 Costs

Solent SPA			30,925
New Forest SPA			128,958
Nitrates			139,432
BNG			150,000
			449,315

PROFESSIONAL FEES

Other Professional Fees		8.00%	748,391
			748,391

MARKETING & LETTING

Marketing		3.00%	491,400
			491,400

DISPOSAL FEES

Sales Agent Fee		2.00%	327,600
Sales Legal Fee	54.00 un	750.00 /un	40,500
			368,100

TOTAL COSTS BEFORE FINANCE **12,239,543**

FINANCE

Timescale	Duration	Commences
Pre-Construction	6	Feb 2025
Construction	15	Aug 2025
Sale	30	Nov 2026
Total Duration	51	

Debit Rate 8.000%, Credit Rate 2.000% (Nominal)

Land		22,325
Construction		519,565
Other		322,567
Total Finance Cost		864,457

TOTAL COSTS **13,104,000**

BOTLEY, Hampshire (1) FEBRUARY 2025
McCarthy Stone
PROFIT
3,276,000
Performance Measures

Profit on Cost%	25.00%
Profit on GDV%	20.00%
Profit on NDV%	20.00%
IRR% (without Interest)	26.46%
Floor Area Ratio	0.00%

Dated 18 September 2024

BIODIVERSITY UNIT ALLOCATION AGREEMENT

Between

HARRY FERGUSON FARMS LIMITED (1)

And

MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED

(2)

AT KINGS MANOR FARM, COPSE LANE, FRESHWATER ISLE OF WIGHT

This agreement is dated 18 September 2024

PARTIES

- (1) HARRY FERGUSON FARMS LIMITED (Co Regn No 00529469) whose registered address is at Kings Manor Farm, Copse Lane, Freshwater, Isle Of Wight, PO40 9TL (“the Owner”)
- (2) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED (Co Regn No 05626135) whose registered office is at Peninsular House, Wharf Road, Portsmouth, England, PO2 8HB (“the Developer”)

BACKGROUND

- (A) The Owner owns the Biodiversity Land registered with title absolute at the Land Registry under Title Numbers IW54441, IW39359 and IW52023 and intends to develop and maintain habitat upon it in accordance with an HDMMP (“the Scheme”).
- (B) The Owner has completed the Section 106 Agreement with the Monitoring Authority in order to regulate the implementation and thereafter compliance with its HDMMP.
- (C) The Scheme has been registered on the National Biodiversity Gain Sites Register by Natural England with reference **BGS-100624001**.
- (D) The Developer has submitted the Planning Application to the Determining Authority for a residential development upon the Development Land.
- (E) The Developer wishes to have Biodiversity Units created upon the Biodiversity Land allocated to the Planning Permission so that the Planning Condition is discharged to enable the Development to be carried out pursuant to the Planning Permission.
- (F) The Owner has agreed, subject to the terms of this Agreement to:
 - a. Allocate to the Planning Permission the Agreed Number of Biodiversity Units; and
 - b. Carry out the BHU Environmental Services and the BLU Environmental Services.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Agreed Number of BHU	1.64 (one and sixty-four hundredths) BHU, including a maximum of 0.07 hedgerow units, for use exclusively by the Developer in relation to the Planning Permission.
Agreed Number of BLU	5.20 (five and twenty hundredths) BLU for use exclusively by the Developer in relation to the Planning Permission
Agreed Number of Biodiversity Units	The Agreed Number of BHU and the Agreed Number of BLU
Allocate or Allocation	Has the meaning set out in the S106 Agreement
Availability Date	The first anniversary of the date of this Agreement

Biodiversity Metric	Has the meaning in paragraph 4(1) of Schedule 7A to the Town and Country Planning Act 1990 and the Biodiversity Metric for the purposes of this Agreement is the statutory version published by The Secretary of State for Environment, Food and Rural Affairs on 29 November 2023
Biodiversity Unit Linked Land	Has the definition afforded to it in the Section 106 Agreement
Biodiversity Units	The off-site habitat unit gains, off-site hedgerow unit gains and off-site watercourse unit gains (as defined in the Biodiversity Metric calculation agreed by the Determining Authority) by reference to meanings given in the Biodiversity Metric
BHU	Traditional Orchard (UKHab code 27) Biodiversity Units of High Distinctiveness or Hedgerow Biodiversity Units (UKHab code h2a) of Medium Distinctiveness (the value for each of this type being thirty thousand pounds (£30,000) plus VAT per unit) for the purposes of the calculation in this contract
BHU Credit Purchase Fee	The sum of four thousand nine hundred and twenty pounds (£4,920)
BHU Environmental Services	Services delivered in respect of the Biodiversity Units purchased from the Owner by the Developer for the BHU, with reasonable care and skill and of satisfactory quality to ensure compliance with the HDMMP in respect of the Biodiversity Unit Linked Land, the proportions of such work expected to be allocated in accordance with Appendix A to this Agreement
BHU Management Fee	The sum of thirty-four thousand four hundred and forty pounds (£34,440) for delivery of the BHU Environmental Services
BHU Processing Fee	The sum of nine thousand eight hundred and forty pounds (£9,840)
BLU	Other Neutral Grassland (UKHab code g3c) Biodiversity Units of Medium Distinctiveness (the value for each of this type being thirty thousand pounds (£30,000) plus VAT per unit) for the purposes of the calculation in this contract
BLU Credit Purchase Fee	The sum of fifteen thousand six hundred pounds (£15,600)
BLU Environmental Services	Services delivered in respect of the Biodiversity Units purchased from the Owner by the Developer for the BLU, with reasonable care and skill and of satisfactory quality to ensure compliance with the HDMMP in respect of the Biodiversity Unit Linked Land, the proportions of such work expected to be allocated in accordance with Appendix A to this Agreement
BLU Management Fee	The sum of one hundred and nine thousand two hundred pounds (£109,200) for delivery of the BLU Environmental Services
BLU Processing Fee	The sum of thirty one thousand and two hundred pounds (£31,200) for delivery of the BLU Environmental Services
Business Hours	9:00am – 17:00pm (GMT)
Completion Date	31 st August 2025,
Counterparty	If the Party is the Owner then this means the Developer and if the Party is the Developer this means the Owner
Default Interest Rate	4% (four per cent) per annum above the base rate of HSBC Bank plc at the time of the associated breach
Determining Authority	Eastleigh Borough Council of Eastleigh House Upper Market Street, Eastleigh SO50 9YN
Developer's Solicitor	Lester Aldridge LLP of Mountbatten House, Grosvenor Square, Southampton SO15 2JU FAO Matt Gilks
Development	The development that is the subject of the Planning Application and, if granted, the Planning Permission
Development Land	The land which is the subject of the Planning Application being Oak Tree

	Cottage & Apple Tree Cottage, Winchester Road, Hampshire, SO32 2DH as shown for the purposes of identification edged in red on Plan 2
Electronic Payment	Payment by electronic means in same day cleared funds from an account held in the name of the Developer's Solicitor at a clearing bank to an account in the name of the Owner's Solicitor
Extended Completion Date	28 th February 2026
Extension Processing Fee	The sum of twenty-three thousand one hundred and ninety pounds (£23,190)
HDMMP	The habitat delivery management and monitoring plan for the Biodiversity Land, the latest draft of which is annexed to the S106 Agreement, as may be varied or modified from time to time in accordance with the terms of the S106 Agreement
Mitigation Land	The Owner's property known as Kings Manor Farm, Copse Lane, Freshwater, title to which is registered at the Land Registry under title numbers IW54441, IW39359 and IW52023 and which is shown for the purposes of identification only edged in red on Plan 1
Monitoring Authority	The Isle of Wight Council of County Hall, High St, Newport PO30 1UD
Notice of Purchase	Means a Notice of Purchase (as defined in the Section 106 Agreement) in relation to any of the Agreed Number of Biodiversity Units
Owner's Solicitor	Lester Aldridge LLP of Mountbatten House, Grosvenor Square, Southampton SO15 2JU FAO Tom Alder
Parties	Means the Owner and the Developer
Party	Means the Owner or the Developer
Plan 1	The plan attached to this agreement and labelled Plan 1
Plan 2	The plan attached to this agreement and labelled Plan 2
Planning Application	A planning application in respect of the Development Land for development registered under (F/24/97945) at Eastleigh Borough Council.
Planning Condition	A condition to be attached to the Planning Permission requiring submission to and approval by the Determining Authority of a Biodiversity Gain Plan
Planning Permission	Detailed planning permission to granted pursuant to the Planning Application
Relevant Event	Means any of the following events: • a change in the law (other than the coming into force of the Schedule 7A to the Town and Country Planning Act 1990); or • a decision of a court, tribunal or other decision maker with competence; or • a change in Natural England's advice to the Determining Authority, or to custom or practice; or • a change in scientific opinion based on evidence; or • a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to create Biodiversity Units; that is evidenced to the Parties in writing by Natural England and the Determining Authority and results in any of the following: • Biodiversity Units not being required in relation to the Planning Permission; or • the obligations and restrictions set out in the Section 106 Agreement no longer being considered as effective in generating Biodiversity Units or the Agreed Number of

	Biodiversity Units
Section 106 Agreement	A legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 dated 13 May 2024 and made between the Owner and the Monitoring Authority
Secretary of State	The Secretary of State for Levelling Up, Housing and Communities
VAT	Value added tax or any equivalent tax chargeable in the UK
Working Days	A day which isn't a Saturday or Sunday or public holiday in England and when clearing banks in the City of London are open for general business

2. AGREEMENT

2.1 Subject to the payment by the Developer of the BHU Processing Fee and the BLU Processing Fee, Completion, and receipt by the Owner of the payments set out at clause 7 of this Agreement the Owner shall, on the Completion Date (or Extended Completion Date if clause 7.2 has effect):

2.1.1 deliver the BHU Environmental Services and the BLU Environmental Services; and

2.2.2 Allocate the Agreed Number of Biodiversity Units to the Developer

in accordance with the terms of this Agreement

2.2 Neither the BHU Processing Fee nor the BLU Processing Fee (nor, if paid, the Extension Processing Fee) is refundable in any circumstance.

2.3 The Developer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement or any part of it.

3. TITLE AND SECTION 106 AGREEMENT

3.1 The Owner's title to the Agreed Number of Biodiversity Units and entitlement to the benefit of this Agreement has been accepted by the Developer prior to the date of this Agreement and the Developer is not entitled to raise any objection, enquiry, requisition or claim in relation to it.

4. LEGAL COSTS

The Developer will pay £4,000 (four thousand pounds) plus VAT towards the Owner's legal costs in connection with this Agreement on or before the date of this Agreement.

5. FEES

The Developer will pay the BHU Processing Fee and BLU Processing Fee on or before the date of this Agreement.

6. VAT AND INTEREST

6.1 Each amount stated to be payable by the Developer to the Owner under or pursuant to this agreement is exclusive of VAT (if any).

6.2 If VAT is chargeable on any supply made by the Owner to the Developer under or pursuant to this agreement, the Developer will pay the Owner an amount equal to that VAT as additional

consideration on the date that the supply is made.

- 6.3 Where any sum or amount has not been paid by the Developer to the Owner by the date specified in this Agreement, the Developer shall pay the Owner interest at the Default Interest Rate on that amount for the period from the date such sum was due to and including the date of the payment

7. COMPLETION

- 7.1 Completion will take place on the Completion Date unless clause 7.2 has effect.
- 7.2 If, at least 3 Working Days prior to the Completion Date, the Owner receives the Extension Processing Fee from the Developer, then Completion will take place on the Extended Completion Date
- 7.3 On the Completion Date or Extended Completion Date as appropriate:
- (a) the Developer shall pay the BHU Credit Purchase Fee, the BLU Credit Purchase Fee, the BHU Management Fee and the BLU Management Fee to the Owner by Electronic Payment (less any Extension Processing Fee received); and
 - (b) on receipt of all monies due from the Developer under (a) above the Owner will send a Notice of Purchase on the Determining Authority and the Monitoring Authority and the Developer in respect of the Agreed Number of Biodiversity Units and commence the BHU Environmental Services and the BLU Environmental Services.

7A. ALLOCATION REQUEST NOTICE

7A.1A The Developer may serve a written notice ("Change Notice") on the Owner which shall be valid for the purposes of this Agreement if all of the following conditions are satisfied: is:

- (a) the Change Notice is received by the Owner at least one month prior to the Completion Date or (if clause 7.2 applies) the Extended Completion Date as appropriate; and
- (b) prior to the service of the Change Notice the Developer has paid, and the Owner has received the sums set out at clause 7.3(a); and
- (c) the Change Notice encloses evidence justifying why the Developer reasonably believes that the Planning Permission will not be granted prior to the Completion Date or Extended Completion Date as appropriate,

7A.1B For a period of three years from the date the Owner receives a valid Change Notice, the Developer may serve the Owner with a further written notice ("Allocation Request Notice") which must satisfy each one of the following requirements:

- (a) the Allocation Request Notice sets out the Agreed Number of Biodiversity Units that are to be allocated by means of the Allocation Request Notice;
- (b) the Allocation Request Notice refers to the planning permission or planning application to which the Allocation Request Notice relates;
- (c) the Allocation Request Notice encloses a copy of the biodiversity gain plan associated with the planning permission or planning application to which the Allocation Request Notice relates;

- (d) the Allocation Request Notice identifies the name and address of the local planning authority associated with the planning permission or planning application to which the Allocation Request Notice relates;

7A.2 Within 10 Working Days of receipt by the Owner of the Allocation Request Notice:

- (a) the Owner will serve a Notice of Purchase in respect of the Agreed Number of Biodiversity Units on the local planning authority identified by the Allocation Request Notice and commence the BHU Environmental Services and the BLU Environmental Services;
- (b) the Owner shall pay the reasonable and properly incurred legal and professional costs in relation to the Allocation Request Notice and the associated Notice of Purchase.

8. TERMINATION

8.1 Until the day before the Completion Date (or, if clause 7.2 has effect, the Extended Completion Date) and without affecting any other right or remedy available to it, each of the Parties may terminate this Agreement with immediate effect by that Party giving notice to the Counterparty if any of the following events occur:

- (a) the Counterparty is in fundamental or substantial breach of any of its obligations in this agreement;
- (b) the Counterparty suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Counterparty commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Counterparty with one or more other companies or the solvent reconstruction of the Counterparty;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Counterparty (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Counterparty with one or more other companies or the solvent reconstruction of the Counterparty;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Counterparty (being a company);
- (f) the holder of a qualifying floating charge over the assets of the Counterparty (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the Counterparty or a receiver is appointed over the assets of the Counterparty;

- (h) the Counterparty (being an individual) is the subject of a bankruptcy petition or order or makes an application for a bankruptcy order;
- (i) a creditor or encumbrancer of the Counterparty attaches or takes possession of, or an execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Counterparty's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the Counterparty in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned elsewhere in this clause;
- (l) the Counterparty (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs;
- (m) the Counterparty (being a company) is struck off from the Register of Companies; or
- (n) the Counterparty otherwise ceases to exist.

8.2 If a Relevant Event occurs then this Agreement shall terminate with immediate effect.

8.3 The termination of this Agreement for any reason shall not affect the rights of any Party against the other party in respect of antecedent breaches by that other Party.

9. NOTICES

9.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):

- (i) Owner : environmental@kingsmanorfarm.com
- (ii) Developer: ed.garcia@mccarthyandstone.co.uk
simon.broomfield@mccarthyandstone.co.uk

9.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

9.3 This clause does not apply to the service of any proceedings or other documents in any legal

action or, where applicable, any arbitration or other method of dispute resolution.

10. ENTIRE AGREEMENT

- 10.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 10.2 The Developer acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) made by the Owner.

11. JOINT AND SEVERAL LIABILITY

Where the Developer comprises more than one person, those persons will be jointly and severally liable for the obligations and liabilities of the Developer arising under this Agreement. The Owner may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

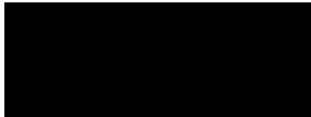
12. THIRD PARTY RIGHTS

Other than in the case of a Group Company a person who is not a party to this Agreement will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

13. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales.

This Agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of the Owner: 
Charles Sheldon

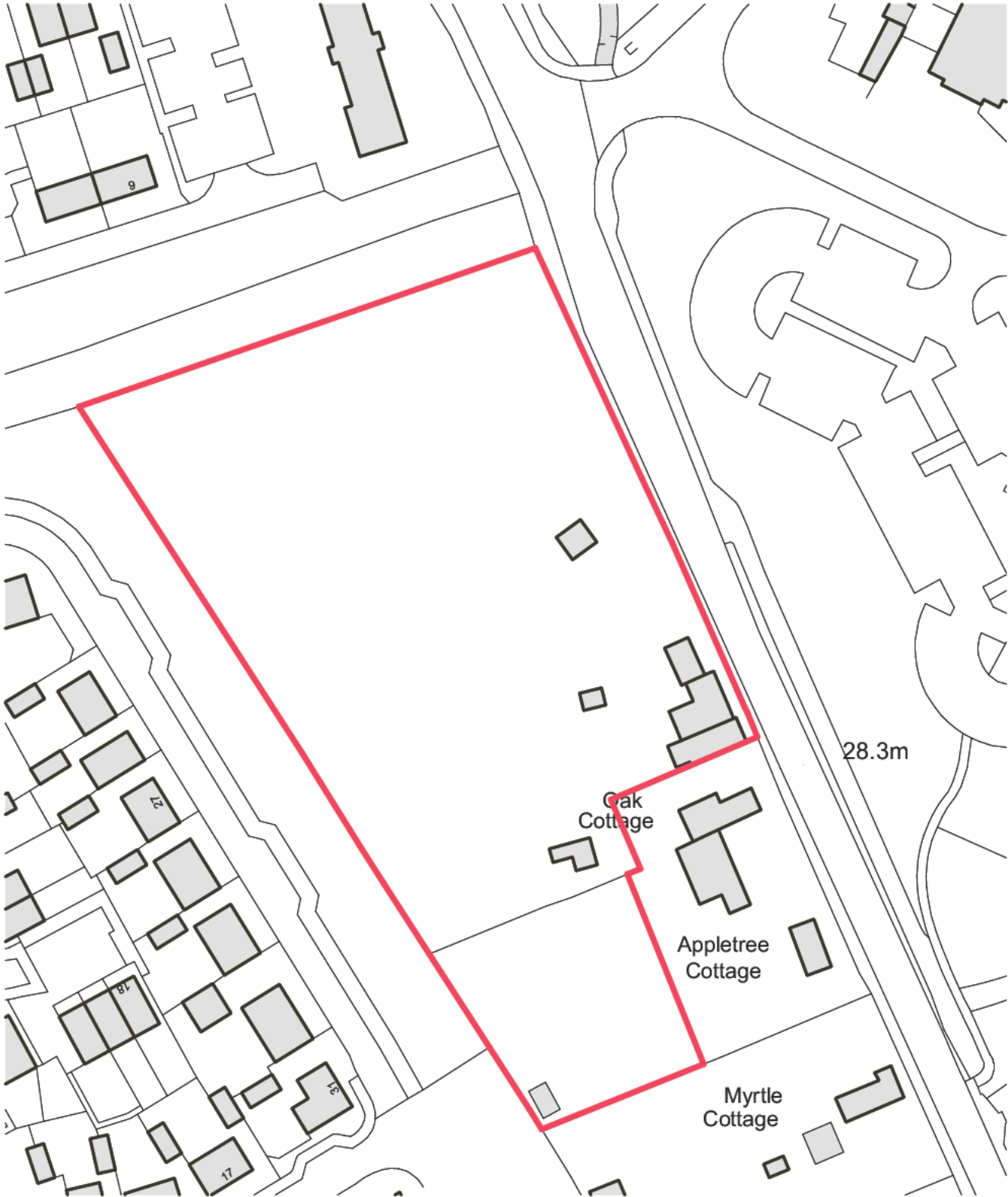
Signed for and on behalf of the Developer: 
Harry Jeffries

APPENDIX A

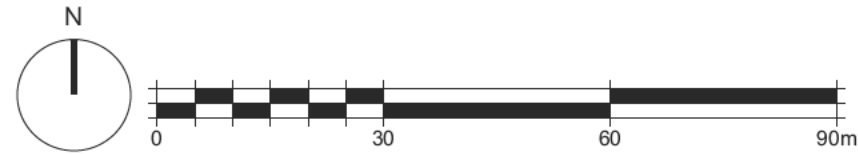
ANTICIPATED DIVISION OF WORK ASSOCIATED WITH DELIVERY OF THE ENVIRONMENTAL SERVICES

Years	Description	% of total service obligation
1-5	Removal of land from intensive agricultural production. Initial development of target habitat.	40%
5-10	Establishment of habitat and management to maturity.	30%
10-20	Final stages of habitat development. Ongoing management.	20%
20-30	Steady state habitat management.	10%

Plan 2



Ordnance Survey, (c) Crown Copyright 2024. All rights reserved. Licence number 100022432



DocuSigned by:
[Redacted Signature]
[Redacted Name]

FOR PINKFILE

McCARTHY STONE
Life, well lived

LOCATION PLAN

PROJECT	JOB NO
Boorley Green	24.013
SCALE	DATE
1:1000@A3	April 2024
DRAWN BY/CHECKED BY	REVISION
CK / SK	
DWG#	
SO_2977_03_AC_001	

hgp

Rev	Description	Date	DB	CB
-----	-------------	------	----	----

© HGP Architects Ltd.
Furzehall Farm, Wickham Road
Fareham, Hampshire, PO16 7JH
01329 283 225
email@hgp-architects.co.uk
hgp-architects.co.uk