

Planning Application Reference:	BN/27/09/
Document Type:	Unilateral Undertaking
Date of Agreement:	4th August 2010

NB: Text in bold to be included in free text field.

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Please return original to s106 Monitoring Officer

DATED 4th August. 2010

WEST SUSSEX COUNTY COUNCIL

(1)

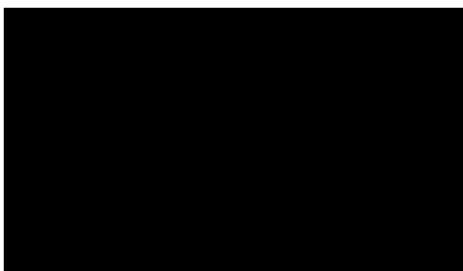
- to -

ARUN DISTRICT COUNCIL

(2)

UNILATERAL UNDERTAKING

under Section 106 of the Town &
Country Planning Act 1990 relating to
Land on the South West side of Yapton
Road, Barnham, West Sussex,



CT4/137/LCS

This Planning Obligation is made the 16th day of August 2010
and is given in the form of a Unilateral Undertaking

BY

- (1) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("the Owner")

TO

- (2) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5HF, ("the Council") and
- (3) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("the County Council")

RECITALS

- (1) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated and is the local authority by which the obligations in this Deed are enforceable
- (2) The Owner is the registered freehold owner with title absolute of the land on the south west side of Yapton Road, Barnham, West Sussex which is part of the land registered at the Land Registry under title number WSX259090 and enters into this Deed in its capacity as Owner of that land
- (3) The County Council is the local education authority the authority responsible for the provision of fire service and libraries infrastructure and is the highway authority for the area in which the Land is situated
- (4) The Application for Planning Permission made by the Owner to the Council to develop the Land was refused by the Council on 9 April 2010
- (5) On the 7 July 2010 the Owner submitted the Appeal to the Secretary of State against the Council's refusal to grant Planning Permission pursuant to the Application

- (6) The Owner is willing to enter into this Deed to ensure the Development makes an appropriate contribution towards the infrastructure required to service the Development and to make it acceptable
- (7) Save for the undertakings given in clause 16 this Deed is conditional upon the Secretary of State allowing the Appeal and granting Planning Permission

NOW THIS DEED is made in pursuance of Section 106 of the Act and all other powers the Owner enabling and WITNESSETH as follows:-

1. THE obligations created by this Deed are planning obligations for the purposes of Section 106 of the Act
2. THIS Deed comes into effect only upon the grant of Planning Permission by the Secretary of State
3. IF the Planning Permission shall expire or at any time be revoked or modified without agreement this Deed shall forthwith determine and cease to have effect
4. THIS Deed shall bind the Owner and the Owner's successors in title to each and every part of the Land and assigns
5. THE Council is the local authority responsible for enforcing the planning obligations contained in this Deed
6. IN respect of the planning obligations contained in this Deed:
 - 6.1 Until such time as the Owner has disposed of its interest in the Land the Council is the local planning authority responsible for enforcing the planning obligations herein contained;
 - 6.2 Upon disposal by the Owner of its interest in the Land the County Council shall become the local planning authority responsible for enforcing the planning obligations in this Deed other than in respect of the affordable housing community facilities and open space obligations which shall remain enforceable by the Council;

Definitions and Interpretation

7. IN this deed the following words shall have the following meanings except where the context requires otherwise:-

"Act" means the Town and Country Planning Act 1990 as amended;

"Affordable Housing" means Social Rented Housing and Intermediate Affordable Housing provided to specified Eligible Households whose needs are not met by the market which should:

- meet the needs of Eligible Households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices
- include provision for the home to remain at an affordable price for future Eligible Households or if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision;

"the Appeal" means the planning appeal submitted following the refusal of the Application and given reference APP/C3810/A/10/2132014

"the Application" means the application for outline planning permission for the Development made by the Owner and registered by the Council with reference number BN/27/09;

"Commencement Date" means the date on which the Commencement of Development begins;

"Commencement Development"	of means the carrying out of a material operation as defined in section 56 (4) of the Act exclusively referable to and comprised in the Development but excluding any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof, enabling works, site clearance archaeological investigations and digs, exploratory boreholes, operations permitted by the Town and Country Planning (General Permitted Development) Order 1995, the erection of hoardings and fencing, temporary diversion of services and signage (including the formation of temporary construction accesses) preliminary landscaping before construction activity occurs on the Land and any works matters and operations to enable any of the foregoing to take place and all references to commencing development shall be construed accordingly;
"Commencement Notice"	means the written notice confirming the Commencement Date referred to in clause 7.1.1 and served in accordance with clause 11;
"Community Facilities Contribution"	means the sum payable in accordance with clause 7.2.4 of this Deed being a financial contribution towards the cost of providing the Barnham Community Scheme to be constructed on the adjoining land as shown edged blue on the Plan attached to this Deed in accordance with planning permission BN/03/09 and calculated in accordance with Schedule 2;
"the Development"	means the development of the Land by the demolition of all existing buildings/structures and redevelopment with up to 95 dwellings (including up to 38 affordable homes) together with associated open space, landscaping and access improvements;
"Dwelling"	means any residential unit constructed as part of the Development and "Dwellings" shall be construed accordingly;

"Education Contribution"	means the sum payable in accordance with clause 7.2.1 of this Deed being a financial contribution towards the cost of providing the additional primary secondary and further secondary education infrastructure required to accommodate the extra demands for education services that would be generated by the Development and calculated in accordance with Schedule 1;
"Eligible Households"	means households who are unable to resolve their housing needs at a cost low enough for them to afford determined with regard to local incomes and local house prices;
Fire and Rescue Service Contribution"	means the sum payable in accordance with clause 7.2.1 of this Deed being a financial contribution towards the cost of providing the additional fire and rescue service infrastructure (excluding fire hydrants) in the vicinity of the Land to serve the additional needs of the community generated by the Development and calculated in accordance with Schedule 1;
"First Occupation"	means the occupation of any dwelling erected pursuant to the Planning Permission or any part thereof for the permitted use save for the purposes of construction or fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
"First Occupation Notice"	means the written notice confirming the date of occupation of the first Dwelling referred to in clause 7.1.2 and served in accordance with clause 11;
Interest Rate	means the rate of 4% above the base rate from time to time of the Bank of England applicable at the date the relevant contribution under this Deed is paid;
"Intermediate Affordable Housing"	means housing at prices and rents above those of social rent but below market price or rents and which meet the criteria set out above. These can include shared equity products (e.g. Homebuy), other low cost homes for sale and intermediate rent;
"Land"	means part of the land on the south west side of

Yapton Road, Barnham, West Sussex being registered at the Land Registry under title number WSX259090 and shown for the purposes of identification only outlined in red on the Plan attached hereto;

"Library Contribution"

means the sum payable in accordance with clause 7.2.1 of this Deed being a financial contribution towards the costs of providing the additional library infrastructure required to accommodate the extra demands for library services that would be generated by the Development and calculated in accordance with Schedule 1;

"Market Housing Units"

means any residential units within the Development which are not Affordable Housing;

"Planning Permission"

means the planning permission for the Development granted pursuant to the Application;

"Plan"

means the plan attached to this Deed;

"Qualifying Occupier"

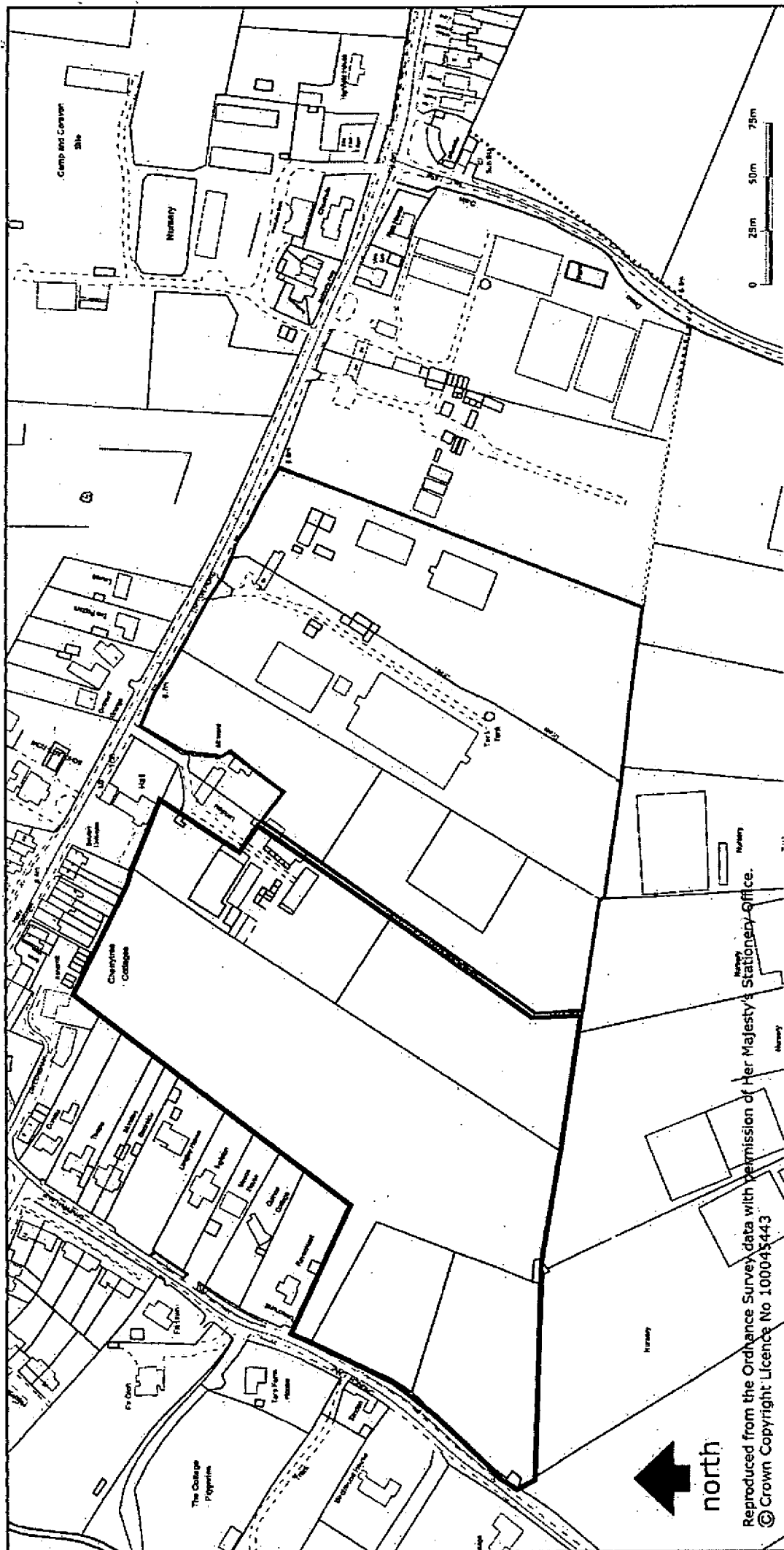
means persons who can satisfy the definition of those qualifying for Affordable Housing and including residents of Arun District who are unable to resolve their housing needs in the local private sector market because of the relationship between housing costs and income;

"Reserved Matters"

means any matter reserved for later approval by virtue of a condition imposed on Planning Permission for the Development granted pursuant to the Application for Planning Permission on appeal or any variations or renewals thereof from time to time;

"Social Rented Housing"

means rented housing owned and managed by local authorities and registered social landlords for which guideline target rents are determined through the national rent regime. The proposals set out in the Three Year Review of Rent Restructuring (July 2004) were implemented as policy in April 2006. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangement to the above as agreed with the local authority or with the Housing Corporation as a condition of grant;



ANGELS NURSERY SITE, YAPTON ROAD, BARNHAM for West Sussex County Council LOCATION PLAN

DRG NO 07.2009/01 SCALE 1:2500 @ A4 DATE OCT 2009

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Construction of Deed

- 6.1 Unless the context requires otherwise references in this Deed to a clause schedule or paragraph are references respectively to a clause schedule or paragraph of this Deed
- 6.2 Where any party to this Deed comprises two or more persons any obligations on the part of that party contained or implied in this Deed shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include references to each or any of those persons
- 6.3 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force
- 6.4 The headings to this Deed do not and will not by implication form any part of this Deed and shall have no legal force whatsoever
- 6.5 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa

Owner's Covenants

7. THE Owner hereby covenants with the Council as follows:

7.1 Notice

7.1.1 To give:

- (a) the Commencement Notice to the Council and the County Council not less than 10 Working Days before the Commencement Date; and
- (b) the First Occupation Notice to the Council and the County Council not less than 10 Working Days before the Occupation of the first Dwelling

7.2 Contributions

- 7.2.1 that on or before First Occupation of the first Dwelling to pay to the Council the Education Contribution, Library Contribution and Fire and Rescue Service Contribution in accordance with Schedule 1 to this Deed
- 7.2.2 not to allow First Occupation of the second Dwelling to occur prior to paying the Education Contribution, Library Contribution and Fire and Rescue Service Contribution in accordance with Schedule 1 to this Deed
- 7.2.3 the Education Contribution, Library Contribution and Fire and Rescue Service Contribution are paid to and accepted by the Council and are paid on the basis that such sums shall be released to the County Council within 28 days of written notice to the Council that such sums are required towards the infrastructure requirements identified in this Deed
- 7.2.4 that on or before First Occupation of the first Dwelling to pay to the Council the Community Facilities Contribution in accordance with Schedule 2 to this Deed
- 7.2.5 not to allow First Occupation of the second Dwelling to occur prior to paying the Community Facilities Contribution in accordance with Schedule 2 to this Deed

7.2.6 To pay in addition interest on the Contributions due under this Deed but not paid on the due date for payment from the due date for payment until the actual date of payment at the Interest Rate and any such interest shall be treated as part of the said Contributions

7.2.7 the Community Facilities Contribution is paid to and accepted by the Council on the basis that it will be used to part fund the provision of the Barnham Community Scheme to be constructed on the adjoining land as shown edged blue on the Plan attached to this Deed in accordance with planning permission BN/03/09

7.3 Fire Service Infrastructure

7.3.1 to submit to and have approved by the County Council (in its capacity as Fire and Rescue Authority) a proposal for the location and installation of three fire hydrants on the Land in accordance with the West Sussex Fire Brigade Guidance Notes attached hereto at Schedule 3

7.3.2 to install at its own expense the fire hydrants in the approved location and arrange at its own expense for their connection to a water supply which is appropriate in terms of both pressure and volume for the purposes of fire fighting

7.4 Affordable Housing

7.4.1 to make provision for 40% of the Dwellings within the development to be Affordable Housing of which 80% shall be Social Rented Housing and 20% Intermediate Affordable Housing

7.4.2 to provide the Council with a plan detailing the type and location on the Land of the affordable housing provision to be made at the same time as providing details to discharge any Reserved Matters

7.4.3 not to permit any more than 50% of the Market Housing Units to be occupied prior to fulfilling the obligations in clauses 7.4.1 and 7.4.2 above

7.4.4 to offer the land detailed on the plan provided under clause 7.4.2 for transfer to an affordable housing provider or providers at a price and on terms which reflect market value and conditions at the time of the offer within one month of the approval of Reserved Matters ("the First Offer") and ensure that this offer remains open for acceptance for 3 months following the date on which the First Offer is made ("the First Offer Period")

7.4.5 in the event that the First Offer made in accordance with clause 7.4.4 above is not accepted within the First Offer Period then the Owner undertakes to make a second offer for transfer to another affordable housing provider or providers not later than one month after the expiry of the First Offer Period ("the Second Offer") and such offer shall consist of the same as the First Offer subject to revisions necessitated by lapse of time and shall remain open for acceptance for no less than 3 months ("the Second Offer Period") from the date of the Second Offer being made ("the Second Offer Date")

7.4.6 in the event that the Second Offer made in accordance with clause 7.4.5 is not accepted within the Second Offer Period the Owner undertakes to pay to the Council a commuted sum equivalent to the cost at the time of providing the Affordable Housing within the District of Arun and will complete and permit to be occupied the Affordable Housing as Market Housing Units

7.4.7 the provisions of paragraph 7.4 shall cease to bind any of the Affordable Housing if in relation to that Affordable Housing:

7.4.7.1a statutory right to acquire pursuant to the Housing Act 1985 or Housing Act 1996 (or any statutory re-enactment amendment or replacement thereof) has been exercised; or

7.4.7.2it shall have been sold under a shared ownership lease and the leaseholder (or its mortgagee) has staircased ownership under the lease to 100 percent; and

7.4.7.3in the event of any dispute as to whether any proposed occupier of any Affordable Housing is a Qualifying Occupier

the matter shall be determined by the Council (acting reasonably)

Declarations

8. IT is hereby declared as follows:-

- 8.1 The expression "the Owner" shall include its successors in title and assigns and the expression "the Council" shall include its successor as Local Planning Authority and "the County Council" shall include its successors as a local education authority and highway authority and the authority responsible for the provision of education fire and library infrastructure
- 8.2 Nothing in this Deed shall derogate from any of the rights powers and duties of the Council or the County Council pursuant to any of its or their statutory functions or in any capacity
- 8.3 The failure of the Council (or as the case may be the County Council) at any time to require performance by the other parties of any provisions of this Deed shall in no way affect the right of the Council (or as the case may be the County Council) to require performance of that provision
- 8.4 The Owner shall not be liable for breach of a covenant contained in this Deed at any time when they have no legal interest in the Land or after they shall have parted with all legal interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such legal interest PROVIDED THAT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land shall constitute a legal interest for the purposes of this Clause

- 8.5 The planning obligations contained in this Deed shall not be enforceable against the persons who purchase for their own occupation by themselves or their lessees tenants or others individual Dwellings erected or to be erected on the Land nor against any statutory undertaker or public authority which acquires any part of the Land or an interest in it for the purposes of its statutory undertaking or functions (other than housing functions) only
- 8.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 8.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

Invalidity

9. IF any provision of this Deed shall be found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provisions shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect and the parties hereunto agree to take all reasonable steps to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves as far as reasonably practicable the legal social and environmental objectives of the invalid or unenforceable provision

Notices

11. ALL notices consents and approvals required to be served on the Council shall be in writing and shall either be delivered personally or sent by first class post. The addresses for service on the Council and the County Council shall be those stated in this Deed or such other address in England and Wales for service as the party to be served may have previously notified in writing and in the case of the Council shall be addressed to the Assistant Director Planning and Housing Strategy for the time being of the Council and in the County Council shall be addressed for the attention of the Monitoring and Records Team, Local Development Division for the time being of the County Council;

Expiration or Revocation of Planning Permission

12. IF the Planning Permission shall not be granted or expire before the Commencement of Development or shall at any time be revoked or shall be suspended or superseded by another planning permission this Deed shall forthwith determine and cease to have effect

Arbitration

13. ANY dispute or difference arising with regard to any matters or thing arising out of or connected with this Deed shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

Jurisdiction

14. THIS Deed is to be governed by and interpreted in accordance with the law of England and Wales

Local Land Charge

15. THIS Deed is a Local Land Charge and shall be registered as such by the Council

Costs

16. The Owner will on completion of this Deed pay the reasonable legal costs of the Council for checking this Deed

Schedule 1

A. Education Contribution

The Education Contribution as calculated by the County Council in accordance with the following formula:

DfCSF Figure x ACP = Education Contribution

[Note: 'x' = multiplied by]

ACP (Additional Child Product) = The estimated additional number of school age children likely to be generated by the Development calculated by reference to the total number of Dwellings, less any allowance for Affordable Housing as approved by subsequent Reserved Matters planning applications. The following criteria are used to generate a child product:

Houses and Bungalows

Dwelling Size - Occupancy

1 bedroom = 1.7 persons

2 bedrooms = 1.8 persons

3 bedrooms = 2.2 persons

4 bedrooms = 2.7 persons

5 bedrooms = 3.0 persons

Flats and Maisonettes

Dwelling Size - occupancy

1 bedroom = 1.2 persons

2 bedrooms = 1.3 persons

3 bedrooms = 1.7 persons

4 bedrooms = 2.4 persons

5 bedrooms = 2.0 persons

Using the above occupancy rates to determine an overall population increase the following factors are applied. According to 2001 census data, there are 14

persons per 1000 population in each school year group for houses and 5 persons per 1000 population in each school year group for flats. There are 7 year groups for primary (years R to 6) and 5 for secondary (years 7 to 11). For Sixth Form, a factor of 0.54 is applied to the Child Product figure as this is the average percentage of year 11 school leavers who continue into Sixth Form colleges in West Sussex

DfCSF Figure = Department for Children, Schools and Families (DfCSF) Primary school building costs per pupil place (for pupils aged 4 to 11) as adjusted for the West Sussex area applicable at the date when the Education Contribution is paid (which currently for the financial year 2009/2010 are – Primary £13,115, Secondary £19,762, Further Secondary £21,432), updated as necessary by the Royal Institute of Chartered Surveyors Building Cost Information Service All-In Tender Price Index

B. Library Contribution

The Library Contribution as calculated by the County Council in accordance with the following formula:

$L \times AP$ = Library Infrastructure Contribution where:

[Note 'x' = multiplied by]

L = Extra library space in sq.m. per 1000 population x the library cost multiplier (which currently for the financial year 2009/2010 are 30 sq.m and £3,620 per sq.m respectively).

AP (Additional Persons) = The estimated number of additional persons generated by the development calculated by reference to the total number of Dwellings, less any allowance for any Social Rented Housing, as approved by a subsequent Reserved Matters planning application. The following figures are given as a guideline:

Houses and Bungalows

Dwelling Size – Occupancy

1 bedroom = 1.7 persons

2 bedrooms = 1.8 persons

3 bedrooms = 2.2 persons

4 bedrooms = 2.7 persons

5 bedrooms = 3.0 persons

Flats and Maisonettes

Dwelling Size - Occupancy

1 bedroom = 1.2 persons

2 bedrooms = 1.3 persons

3 bedrooms = 1.7 persons

4 bedrooms = 2.4 persons

5 bedrooms = 2.0 persons

C. Fire and Rescue Service Contribution

The Fire and Rescue Infrastructure Contribution as calculated by the County Council in accordance with the following formula:

[Note: 'x' = multiplied by and '/' = divided by]

$Y \times (Z / M)$ = Fire and Rescue Infrastructure Contribution where:

Y = The estimated adjusted increase in population generated by the Development using the following figures as a guideline:

Houses and Bungalows

Dwelling Size - Occupancy

1 bedroom = 1.7 persons

2 bedrooms = 1.8 persons

3 bedrooms = 2.2 persons

4 bedrooms = 2.7 persons

5 bedrooms = 3.0 persons

Flats and Maisonettes

Dwelling Size - occupancy

1 bedroom = 1.2 persons

2 bedrooms = 1.3 persons

3 bedrooms = 1.7 persons

4 bedrooms = 2.4 persons

5 bedrooms = 2.0 persons

Z = the estimated costs of providing additional Fire and Rescue Infrastructure in the Southern Service Division of West Sussex at the time of payment which for

information, for 2007/2008 was £5,530,000)

M = The projected population of the Fire and Rescue Service Southern Service Division of West Sussex in 2016 at the time of payment (which, for information, for the 2007/2008 financial year was 429,647)

Schedule 2

A. Community Facilities Contribution

The Community Facilities Contribution shall be the sum of up to Eighty Thousand Pounds (£80,000) calculated on the basis of £1000 per dwelling approved at Reserved Matters stage minus fifteen thousand pounds (£15,000) being the cost of providing the LAP on site.

Schedule 3

WEST SUSSEX FIRE BRIGADE GUIDANCE NOTES

Guidance Note: The Provision of Fire Hydrants and an Adequate Water Supply for Fire Fighting

1.0 Water Undertakers

The water undertakers in the County are as follows:

Portsmouth Water Company
Southern Water Authority – incorporating Hardham Brighton and Worthing
South East Water
Sutton and East Surrey Water Company

2.0 Hydrants

Hydrants will be installed if required, in the following circumstances:

- i. when new water mains are laid
- ii. to cover new building development and
- iii. where fire risk is increased

2.1 Hydrants on New Mains

Water undertakers are required to notify the Fire Authority of proposals for new water mains. Details of such proposals are sent to Brigade Headquarters usually in plan form.

2.2 New Hydrants on Existing Mains

Water undertakers are required to notify the Fire Authority of proposals for

replacement of existing mains. The need may arise to provide additional hydrants where there has been new building development or where existing supplies have become inadequate.

2.3 Location and Spacing of Hydrants

Fire hydrants should be sited in positions to be agreed by the Fire Authority and, where possible, such locations will be at main roads, feeder roads or road junctions where they are readily visible.

Although no statutory distance is laid down for the spacing of hydrants, the distribution of hydrants relates to the location and degree of risk in accordance with the following general guidelines:

I Residential (to include Sheltered Housing)

Approximately 360 metres apart.

In effect, up to 350 metres apart and no more than 180 metres back to a hydrant in cul de sacs etc

II Industrial, Industrial Estates and Associated Risks: Approximately 180 metres apart.

In effect up to 180 metres apart and no more than 100 metres back to a hydrant in cul de sacs but these distances may be reduced in areas subject to higher risk

III Hospitals, Institutions, Hotels etc: To conform to any relevant Code of Practice. In the absence of such guidance 180 metres and no further back to a hydrant than 100 metres from risk.

iv) Educational Establishments and Other County Council Premises excepting previously outlined: To conform to any relevant Code of Practice. In the absence of such guidance 180 metres apart and no further back to a hydrant than 100 metres from risk.

V) Town Centres, Shopping Buildings, Malls and Other Major Commercial Developments: To conform to any Code of Practice. In the absence of such guidance, as for Industrial.

vi) Rural Areas: In rural areas, particular attention is paid to specific risks. Therefore, it is not appropriate to indicate a general spacing standard for rural areas.

vii) Trunk Road and Motorways: Where distribution systems allow, at 1 km intervals. At service centres (Little Chef, Happy Eaters etc) hydrants should be installed at the access position to the acceleration and deceleration points where they are readily visible.

viii) Major Risks: Such risks are considered individually to ensure that the overall provision for fire fighting comprising, as appropriate, internal water based protection systems, private fire hydrants, statutory fire hydrants and other 'open water' supplies, is adequate.

3.0 Water Supply

3.1 Diameter of Water Mains

Hydrants are to be fitted to water mains of not less than 100mm in diameter in residential areas and not less than 150mm diameter in industrial and commercial areas.

3.2 Water Pressure

Water undertakers are under a statutory duty to cause the water in such of their water mains as have fire hydrants affixed to them to be laid on constantly and at such pressure as will cause the water to reach the top of the top-most storey of every building in the undertakers area.

IN WITNESS whereof this Deed was duly executed the day and year first before written

THE COMMON SEAL OF
WEST SUSSEX COUNTY COUNCIL
was hereunto affixed in the presence of:-

Authorised Signatory

