Phillips Planning Services Ltd.
Town Planning and Development Consultants

Our ref: F185291
Appeal ref: S62A/2023/0026

Mark Boulton
Operations Manager
The Planning Inspectorate
3rd Floor
Temple Quay House
2 The Square
Bristol
BS1 6PN

1st February 2024

SENT VIA EMAIL

Dear Mr Boulton,

RE: S62A/2023/0026 - Land West of Robin Hood Road, Elsenham – S106 Planning Obligation

I write on behalf of the applicants, Rosconn, Nigel John Burfield Holmes, Rosemary Holmes, Mark Burfield Holmes, Robert Murton Holmes, Sasha Renwick Holmes, and Tanya Renwick Cran. In advance of the submission of the signed legal agreement, I enclose the engrossed copy to assist the Inspector in their considerations. The attached has been agreed between the applicants, Uttlesford District Council and Essex County Council. This document is being circulated for signature and will be submitted shortly.

Firstly, it is important to emphasise that the applicant has no objection to meeting its obligations, and for expediency has signed the S106, however, we do wish to raise an objection with the Inspector regarding the contribution towards Primary Healthcare requested by the Hertfordshire and West Essex Integrated Care Board (HWE ICB), and the requested covenants on Primary and Secondary Education contributions.

At the time of writing we have also not seen the Council's CIL Compliance Statement, and as such may wish to make further represntations where necessary.

Hertfordshire and West Essex Integrated Care Board (HWE ICB)

The Applicants contest the need for a NHS contribution. On 3rd January 2024, the NHS sent a request for £51,580. Last week, following a query raised by the Applicant, the Council for the first time indicated that they regard this request to be CIL Compliant and that, despite not having asked for this before, they wish for this to be included within the s.106 agreement.

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The Applicant invites the inspector to find within his decision letter that the tests within s.122 of the Community Infrastructure Levy Regulations 2010 are not satisfied and thus the blue pencil clause within the s.106 agreement would render the contribution to be unenforceable.

This debate does not go to the principle of development as:

i. if the Inspector agree with the Appellant, he can simply note as such within his decision letter that the contributions do not meet the tests within Regulation 122 of the CIL Regs and thus the blue pencil clause renders them as being unenforceable; or

ii. if the Inspector sides with the Council, he record this within his decision letter and the contribution remains payable.

Thus, no matter what view you take, the s.106 agreement caters for this outcome.

The Applicant invites the Inspector to read the following paragraphs of the attached judgment from R.(oao University Hospitals of Leicester NHS Trust) v Harborough District Council [2023] EWHC 263 (Admin):

Paragraphs 20, 29, 44, 134, 136, 139 - 143, 147 - 151 and 156 - 157.

From this the following propositions are clear:

1. It is the duty of the NHS to arrange for medical services of new residents in an area (paras 44, 134, 140 and 148). This also applies to primary medical services by virtue of s.83 of the National Health Service Act 2006. Thus, where new residents move into an area, they are entitled to rely on the NHS to provide medical services and it is not for a developer to provide for them. The Court distinguished an NHS contribution from a 'typical s.106 obligation' at paragraph 140 as follows:

In any event, the justification advanced by the Trust for a s.106 contribution needs to be seen in the context of the statutory framework for the provision of secondary health care services. The contribution would relate to people who are new to the Trust's area. But those people are entitled to such services wherever they may live in the country. They would be so entitled if the development were to be refused planning permission and so they did not move to the Trust's area. The relevant CCG for the area in which they live would remain under a statutory duty to arrange for the provision of the same treatment as would otherwise be provided by the Trust. The obligation to provide, and financial responsibility for, those services lies with the NHS. The context is far removed from the analogy of a typical s.106 obligation given by Mr Cairnes KC, namely where a developer is required to mitigate a reduction in the performance of a local highway network that would be caused by a new development. There, the highway authority is not under a statutory duty to fund improvements to the network, let alone to provide for highway facilities made necessary by a specific development.

2. The Court considered that there may be instances where funding for medical provision is required to account for residents moving into the area during the first year where there was a funding gap (paragraph 142).

3. The Court held (at 149) that a local funding gap would only arise if funding did not reflect a projected increase in population and that, even if this was the case (at 150), it was open to a decision maker to question whether this is a systematic problem. Further, the Court was critical of the fact that no proper explanation had been provided as to why the annual negotiations for a block contract did not take into account population growth during the first year (at 150). The Court held that it could have been taken into account (at 157).

4. Where a developer paid for an NHS contribution in such circumstances, they would be paying for a community benefit and thus this would be unlawful (at para 136):

That conclusion is reinforced by considering how the costs of treating "new residents" on the development site are addressed in the financial year after they have moved in and subsequently. There is no funding issue because it is common ground that such persons are taken into account in the funding for CCGs and in the relevant block contract payments to the Trust. Rightly, the Trust does not seek any s.106 contribution for such costs. In such circumstances a local planning authority could not properly require the owner or developer of the site to pay for those additional costs. A s.106 obligation to that effect would not be necessary to make the development acceptable (reg.122(2)(a) of the CIL Regulations 2010) and could not properly be taken into account in the decision on whether or not to grant planning permission. If, however, planning permission were to be granted on that basis, it would be liable to be quashed. In effect, the developer would be paying for a community benefit, increasing the funding of the NHS, which had no proper planning purpose or relationship to the development (see Tesco and Wright).

Thus, the starting point is that it is for the NHS to provide medical provision for new residents and not a developer. Were the developer to fund this, it would amount to the developer paying for a community benefit and thus be contrary to Regulation 122.

As highlighted, at the time of writing, the Council have not provided a CIL Compliance Statement and thus it is unclear how the Council regard the contribution to be CIL Compliant.

The letter from the NHS does not deal with the point. Rather, the Trust's letter simply suggests that the development will give rise to new residents that will require healthcare. That is not disputed. But the letter does not deal with any of the points from the ***Harborough*** judgment.

The Trust's position appears to be that as new dwellings will increase demand for services it is for the development proposal to address this.

It is not denied that new residents will require medical provision and that this will be a burden on the NHS. But that ignores the fact that it is for the NHS to meet this demand pursuant to their statutory duties (per paragraph 140 of the judgment). The Trust would need to be able to demonstrate that there is some funding gap in respect to these particular residents that could not have been accounted for - eg. the funding gap for the first year these residents move in. However, no funding gap has been identified.

The Applicant recognises that there are strains on the NHS. But, ultimately the legal framework is that the NHS must provide medical provision for new residents and not developers and there is nothing within the Council or NHS' evidence which justifies why the NHS could not have accounted for this development - which is consistent with their statutory duty. Thus, the Applicant is concerned that were a decision to be made that requires the NHS contributions to be made, this would be an unlawful decision and would expose the decision as being liable to being quashed (per paragraph 136 of the judgment). The Applicant is obviously keen to secure a planning permission that cannot be legally challenged and thus feels obliged to raise these points now.

Primary Education

Under Primary Education the County Council are seeking to impose a review mechanism to be triggered at two points in the building programme - the point of commencement and at 50% completion. This approach is highly unorthodox, and may well not be lawfully within the scope of S106 as the covenant would seek to retrospectively impose an undefined financial obligation on the

developer. In general terms, the request is simply not acceptable in the manner presented as it fails to demonstrate that there is any issue with primary school place capacity in the catchment and that the yield from the proposed development cannot be accommodated within the existing provision.

The justification that there is no Local Plan does not support a failure to provide a robust analysis of impact. The child yield for the primary school year groups can be calculated, existing places are known, and birth rates will enable an assessment of likely needs within an area. We would also draw on recent experiences elsewhere that appear to show a fall in the birth rate over the past 5 years has resulted in a growing level of capacity in primary schools even with new housing growth. Falling pupil rolls within Primary Schools are a big issue resulting in such schools becoming underfunded and unviable.

In order to comply with the CIL tests the Council must demonstrate a direct impact now, and that the level of contribution requested to address the impact is fairly and reasonably related in scale and kind to the development. However, this has not been done and as such we will seek for the clause to be struck from the agreement. It remains for the Council to demonstrate its request is compliant and we reserve our position to provide further comment on any additional submissions.

Secondary Education

With regard to the requested secondary education contribution, the Council has identified that the Priority Admissions Area secondary school for this development would be Forest Hall and that this has unfilled capacity. The requested contribution of £213,736.00 (index-linked) is based on a payment of £26,717 per place, but insufficient justification is given as to why the pupils from this development cannot be accommodated within this available capacity. The County Council's justification relies upon the stated fact that the number of children for whom this is their nearest school is already far higher than the number of available places. However, this is irrelevant to an assessment of the overall impact, as capacity is not limited by catchment, and parents and pupils may choose where they wish to go, and preference for any application will be given based on proximity to the school. The fact is that there are places available in the local secondary school now undermines this request, and it has not been shown that the development cannot be accommodated within that existing capacity. The requested contribution therefore fails to meet the test that an obligation must be fairly and reasonably related in scale and kind to the development.

Based on the consultation response, we must again raise an objection and will seek for the clause to be struck from the agreement. It, again, remains for the Council to demonstrate its request is compliant and we reserve our position to provide further comment on any additional submissions.

Finally, in respect of other contributions, we await the Council's CIL Compliance Statement and would reserve the right to make comment if necessary.

We trust these comments will be helpful in the Inspector's determination of this application, and welcome further discussion at the Hearing.

Yours faithfully

[redacted]

Frazer Hickling
Director
PHILLIPS PLANNING SERVICES LTD

Enc.

Robin Hood Road Elsenham s106 Agt (Engrossment Version 1.2.24).PDF

Copy of Judgement - R (on the application of the University Hospitals of Leicester NHS Trust) v Harborough District Council v Leicestershire County Council, Hadraj Limited

Robin Hood Road Elsenham s106 Agt (Engrossment Version 1.2.24).PDF

DATED **2024**

UTTLESFORD DISTRICT COUNCIL

- and -

ESSEX COUNTY COUNCIL

- and –

MARK BURFIELD HOLMES, ROBERT MURTON HOLMES, SASHA RENWICK HOLMES & TANYA RENWICK CRAN

-and-

NIGEL JOHN BURFIELD HOLMES & ROSEMARY HOLMES

SECTION 106 AGREEMENT

- relating to -

S62A/2023/0026 Land West of Robin Hood Road, Elsenham

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SCHEDULE 1 PLAN 1 - THE LAND

SCHEDULE 2 OBLIGATIONS ENTERED INTO WITH UDC)

PART 1 AFFORDABLE HOUSING

PART 2 FIRST HOMES

PART 3 MANAGEMENT COMPANY

PART 4 PUBLIC OPEN SPACE

THIS DEED is dated 2024

BETWEEN

(1) **UTTLESFORD DISTRICT COUNCIL** of Council Offices, London Road, Saffron Walden, Essex, CB11 4ER ("UDC")

(2) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford CM1 1QH (the 'County Council')

(3) **MARK BURFIELD HOLMES, ROBERT MURTON HOLMES, SASHA RENWICK HOLMES AND TANYA RENWICK CRAN** of [redacted] "(First Owners")

(4) **NIGEL BURFIELD HOLMES AND ROSEMARY HOLMES** of [redacted] ("Second Owners")

Together known as the "Parties"

1. **DEFINITIONS**

"the 1964 Act"	shall mean the Public Libraries & Museums Act 1964
"the 1972 Act"	shall mean the Local Government Act 1972.
"the 1990 Act"	shall mean the Town & Country Planning Act 1990.
"the 1999 Act"	shall mean the Contracts (Rights of Third Parties) Act 1999.
"the 2011 Act"	shall mean the Localism Act 2011.
"the Land"	shall mean Land West of Robin Hood Road, Elsenham shown on the Plan 1 edged in red and registered at HM Land Registry with freehold title under title number EX
"Additional First Homes Contribution"	means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 7, 8 or 7of Schedule 2, Part 2hereto, the lower of the following two amounts: (a) 30% of the proceeds of sale; and (b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

	and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.
“Affordable Housing”	shall mean subsidised housing within the definition of affordable housing contained in Annex 2 of the NPPF that will be available to persons who cannot afford to buy or rent housing generally available on the open market
"Affordable Housing Land"	shall mean the land on which the Affordable Housing Units will be constructed in accordance with the Permission.
"Affordable Housing Units"	shall mean the units of accommodation to be constructed on the Land for persons unable to compete for housing on the open market.
"Affordable Rented Units"	shall mean rented housing provided by an Approved Body that has the same characteristics as social rented housing except that it is outside the national rent regime but is subject to other rent controls that require it to be offered to those in identified housing need at a rent of up to 80% of local market rents inclusive of service charges.
"Affordable Housing Plan"	means the plan appended to this Deed marked “Plan 1” and with reference 018-015-002 P5 identifying the location of the Affordable Housing Units on the Affordable Housing Land
“Affordable Housing Scheme”	means a scheme to: construct in accordance with the Permission no less than 40% of the total of the Housing Units comprised in the Development as Affordable Housing Units to: (a) Identify the size and mix of the Affordable Housing Units; (b) Identify the design of each Affordable Housing Unit;
“Allocations Policy”	means the UDC's Allocations Policy dated June 2021 appended at Annex A or any subsequent Allocations Policy replacing the policy of June 2021
"Approved Body"	shall mean any registered provider registered with Homes England or successor organisation, any body organisation or company which is a registered charity with the Charity Commissioners for England and Wales and approved by the Homes England or any other body organisation or company approved by UDC and which has objects demonstrably similar to or compatible with or promoting those of a registered social landlord.

“Armed Services Member”	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
“Completion Notice”	means the notice served by the Owners on the County Council pursuant to Clause 10.3.3
“Compliance Certificate”	means the certificate issued by the UDC confirming that a Housing Unit is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 5.1.3 of Part 2 of Schedule 2 applies the Eligibility Criteria (Local) in a form to be provided by UDC and approved by the Owner.
“Community Hall Contribution”	means the sum of £95,385 (Ninety Five Thousand Three Hundred and Eighty Five Pounds) to be used towards the improvement of the Elsenham Community Hall
“County Council Monitoring Fee”	shall mean a fee of £700 (Seven Hundred Pounds) per obligation due to the County Council under this Deed and for the avoidance of doubt this is a total of £4,200 (four thousand two hundred pounds) (no VAT) towards the County Council’s reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed;
“Deed”	shall mean this Deed
"the Development"	shall mean the development authorised by the Permission.
“Discount Market Price”	means a sum which is the Market Value discounted by at least 30%
“Disposal”	means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than: (a) a letting or sub-letting in accordance with paragraph 6.1 of Part 2Schedule 2 (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner (c) an Exempt Disposal and "Disposed" and “Disposing” shall be construed accordingly
"Development Standard"	means a standard to fully comply with the following:-

(a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015

(b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the UDC from time to time

(c) Approved Document Q: Security- Dwellings published by HM Government or any document which supersedes it.

(d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)

and the same may be amended by written agreement of the Parties

"Eligibility Criteria (Local)" means in relation to the First Home(s) the criteria set out in Paragraphs 4.1 – 4.3 of the First Homes Planning Advice Notice

"Eligible Person" shall mean a person or persons on the Housing Register that meets the qualifying criteria within the Allocations Policy (unless otherwise agreed by UDC in writing)

"Eligibility Criteria (National)" means criteria which are met in respect of a purchase of a First Home if:

(a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and

(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).

"Exempt Disposal" means the Disposal of a First Home in one of the following circumstances:

(a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner

(b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner

(c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order

(d) Disposal to a trustee in bankruptcy prior to sale of the relevant Housing Unit (and for the avoidance of doubt paragraph 8 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 5.4 of Part 2 of Schedule 2.

"Final Certificate" means a certificate to be issued by UDC on expiration of the Open Space Maintenance Period when the Open Space has been maintained to the reasonable satisfaction of UDC;

"First Home(s)" means an Affordable Housing Unit which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap

"First Homes Owner" means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

(a) the Owner; or

(b) another owner or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or

(c) the freehold a tenant or sub-tenant of a permitted letting

"First Homes Planning Advice Notice" means the First Homes Planning Advice Notice published by UDC and dated 2022 a copy of which is annexed to this Deed as Annex B

"First Time Buyer" means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

"Flat" means a Housing Unit that occupies a single floor and /or does not benefit from private open space for the exclusive use of the residents of the Housing Unit and no other persons.

"Homes England" shall mean the body set up by section 1 of the Housing and Regeneration Act 2008 or any successor organisation.

"Housing Units" shall mean the dwellings to be constructed in accordance with the Permission being the Affordable Housing Units and the Open Market Housing Units.

"House" means a Housing Unit that does not meet the definition of a Flat.

"Implementation" shall mean the implementation of the Permission by the carrying out of any material operation (as defined by s. 56 of the 1990 Act) pursuant to the Permission PROVIDED ALWAYS for the purposes of this Deed Implementation shall exclude:

(a) land survey;

(b) ecological survey;

(c) archaeological survey;

(d) remediation;

(e) erection of fences or hoardings in association with securing the land;

(f) investigations of ground conditions;

(g) remedial works in respect of construction, any contamination or other adverse ground conditions;

(h) land access formation works;

(i) diversion and laying of services;

(j) site clearance;

(k) erection of any temporary means of enclosure, temporary access for construction works and the temporary display of site notices or advertisements,

and Implement and Implemented shall mutatis mutandis be construed accordingly.

"Implementation Date" shall mean the date specified by the Owner to UDC in a written notice served upon UDC as the date upon which the development authorised by the Permission is to be commenced or if no such notice is served the date of Implementation.

"Income Cap (Local)" means the Income Cap (National) or such other local income cap as may be published from time to time by UDC and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this agreement UDC has not set an Income Cap (Local)

"Income Cap (National)" means eighty thousand pounds (£80,000)

or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

"Index" shall mean the Index of Retail Prices compiled and published by Her Majesty's Government from time to time.

"Index Linked"	shall mean that the sum shall be changed by an amount equal to the change in the Index.
“Land”	means the land edged in red on Plan 1
“LAP”	means an area for play to be provided within the Public Open Space in accordance with the approved Public Open Space Scheme.
"Leaseholder"	shall mean the person or persons to whom an Affordable Housing Unit sold as a Shared Ownership Unit shall be allocated in accordance with this Deed
“Local Eligibility Criteria"	means the criteria set out in Paragraphs 4.1 – 4.3 of the First Homes Planning Advice Notice published by UDC and dated 2022 a copy of which is annexed as Annex B.
"Management Company"	shall mean a company body or other entity responsible for the long-term management and maintenance of the Public Open Space.
“Management Company Responsibilities”	means the maintenance of the Public Open Space over the lifetime of the Development to a comparable standard achieved on the issue of the Final Certificate by diligently applying monies received by the Management Company for those purposes;
"Market Value"	means the open market value as assessed by a Valuer of an Affordable Housing Unit as confirmed to UDC by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation
“NHS Contribution”	shall mean the sum of £51,580 (Fifty One Thousand Five Hundred and Eighty Pounds) Index Linked from the date of this Deed to the date of payment to be used towards to provision improved medical services at Elsenham Surgery or other appropriate medical services in the vicinity of the Development
“Notice of Implementation”	means the written notice served pursuant to Clause 10.3.1
"UDC Monitoring Fee"	shall mean the sum of £1664.00 One Thousand Six Hundred and Sixty Four Pounds) Index Linked from the date of this Deed to the date of payment to reflect UDC planning officer time in monitoring compliance with this Deed by the Owner which will include but not be limited to:- (a) recording of payments; (b) proof of expenditure; (c) meetings;

	(d) all correspondence - site visits; (e) data entry.
“Mortgagee”	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home
“National Eligibility Criteria”	means the criteria set out in Paragraph 1.4 of the First Homes Planning Advice Notice published by UDC and dated 2022 a copy of which is annexed as Annex B
"Nominated Person"	shall mean a person or persons nominated by UDC in accordance with the provisions of the Nomination Rights Agreement from their housing register to be offered an Affordable Housing Unit by the Approved Body
“Nomination Rights Agreement"	shall mean the nomination agreement in substantially the form of the draft appended to this Deed at Annex C (unless otherwise agreed in writing by UDC) in respect of the rights of UDC to nominate the occupants on the first and subsequent lettings in respect of the Affordable Rented Units (as Nominated Persons)
"Occupation"	shall mean occupation of a building constructed as part of the Development for the purposes permitted by the Permission and shall not include daytime occupation by workmen involved in the construction of the buildings the use of finished buildings for sales purposes for use as temporary offices or for the storage of plant and material and Occupied and Occupy shall mutatis mutandis be constructed accordingly.
"Open Market Housing Units"	shall mean the dwellings to be constructed in accordance with the Permission which are not Affordable Housing Units.
“Owners”	shall mean the First Owners and the Second Owners
“Parish Council"	shall mean Elsenham Parish Council or any successor that takes on the obligations Elsenham Parish Council.
“Payment Notice”	means a written notice advising of a proposed payment served pursuant to Clause 10.3.2
"the Permission"	shall mean the planning permission granted pursuant to the Planning Application.
"Plan 1"	shall mean the plan attached at Schedule 1Schedule 1 to this Deed
"the Planning Application"	shall mean the full application allocated reference number S62A/2023/0026 for the erection of up to 40 dwellings with all matters reserved except for access.

“Practical Completion”	in relation to the Affordable Housing Units, the issue of a certificate of practical completion by the Owners’ architect (or other such suitably qualified position) certifying the completion of any part of the Development so that such part can be used for the purpose and operate in the manner for which it was designed
“Price Cap”	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
"Provisional Certificate"	means a certificate or certificates which is/are issued by UDC when it is satisfied that the Public Open Space (or part thereof) has been provided laid out and landscaped in accordance with the Public Open Space Scheme;
"Public Open Space"	shall mean an area of landscaped land including the LAP in such position on the Land as shall be agreed between UDC and the Owner.
“Public Open Space Commuted Sum”	means the sum for funding the maintenance and upkeep of the Public Open Space to demonstrate that the Public Open Space is able to be maintained by the Parish Council such sum to be agreed in writing between UDC and the Owners in accordance with this Deed.
"Public Open Space Maintenance Period"	means a period of twelve months from the date of issue of the Provisional Certificate for the Public Open Space or such other period as may be agreed in writing by the Owner and UDC;
"Public Open Space Management Plan"	means a plan establishing the long term management and maintenance of the Public Open Space;
"Public Open Space Scheme"	means a scheme: (a) detailing how the Public Open Space and LAP will be laid out and constructed; and (b) which sets out the detailed technical specification of all the works to be carried out on the Public Open Space;
"Qualifying Flats"	means the number of Flats that shall be constructed on the Land that have two or more rooms that may by design be used as bedrooms.
"Qualifying Houses"	means the number of Houses that shall be constructed on the Land that have two or more rooms that may by design be used as bedrooms.

“Secretary of State” means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function

"Shared Ownership Units" shall mean Affordable Housing Units which will be offered on Shared Ownership Terms by the Owner to persons in need of affordable housing in accordance with Schedule 2.

"Shared Ownership Terms" shall mean the Affordable Housing Unit is let:-

(a) In accordance with 'shared ownership arrangements' within the meaning of section 70(4) of the Housing and Regeneration Act 2008; and

(b) On a lease in the form of the Homes England standard lease on terms where:-

(i) the percentage of the value of the dwelling paid as a premium on the day on which a lease is granted under the shared ownership arrangement does not exceed 75 per cent of the market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market);

(ii) on the day on which a lease is granted under the shared ownership arrangements, the annual rent payable is not more than three per cent of the value of the unsold interest; and

(iii) in any given year the annual rent payable does not increase by more than the percentage increase in the CPI for the year to September immediately preceding the anniversary of the day on which the lease was granted plus one per cent.

"Unit Mix" means the number of flats and the number of houses the sum of which shall for the avoidance of doubt equal the total number of Housing Units to be constructed on the Land or created by conversion of an existing building on the Land and including a breakdown of houses and flats by number of bedrooms.

"Wheelchair Accessible” means the Affordable Housing Units designed to meet the requirements of Part M, Category 3 (Wheelchair user dwellings) M4(3)(2)(B) of Schedule 1 (paragraph 1) of the Building Regulations 2010 (as amended) and which, so far as is appropriate, are constructed in accordance with the relevant guidance contained within approved document part M (March 2015) or subsequent equivalent or similar replacement guidance.

"Working Days" shall mean any day from Monday to Friday inclusive which is not Christmas Day Good Friday a statutory bank holiday or a day between Christmas Day and New Year's Day.

2. **RECITALS**

2.1 UDC is the District Planning Authority within the meaning of the 1990 Act for the District in which the Land is situated and is the authority by whom the planning obligations contains in this Deed are enforceable.

2.2 The County Council is a local planning authority and the local authority for statutory age education and pre-statutory age education and childcare and the highway authority for the county in which the Land is situated. The County Council is also the local library authority for the provision of library services under the 1964 Act and the County Council is required to provide a comprehensive and efficient service for all persons resident working or studying in the area in which the Property is located.

2.3 The Owners are registered at HM Land Registry as proprietor of the Land with freehold title under the Title Numbers EX749114 and EX753065.

2.4 The Parties have agreed to enter into this Deed pursuant to the operative powers described in Clause 3for the purpose of regulating the Development and use of the Land in the event that the Permission is granted.

3. **ENABLING POWERS AND OBLIGATIONS**

3.1 This Deed is entered into pursuant to section 106 of the 1990 Act section 111 of the 1972 Act section 1 of the 2011 Act and any other enabling powers.

3.2 Such of the covenants contained herein as are capable of being planning obligations within the meaning of section 106 of the 1990 Act are declared to be planning obligations and as such are enforceable by UDC and the County Council.

3.3 No person shall be liable for a breach of a covenant, obligation or restriction relating to any part of the Land in which it has no interest at the date of the breach but without prejudice to liability for any breach occurring at a time when the party held an interest in the relevant part of the Land.

4. **OBLIGATIONS UNDERTAKEN BY THE OWNERS**

4.1 With the intent that the Land shall be subject to the obligations and restrictions contained in this Deed for the purpose of restricting or regulating the Development and use of the Land so that the provisions of this Deed shall be enforceable against the Owners and their successors in title the Owners per covenant with UDC and the County Council to:-

4.1.1 observe and comply with the obligations contained in this Deed and

4.1.2 pay to UDC its legal fees associated with the drafting negotiating and completion of this Deed before completion.

4.1.3 pay to the County Council its legal fees associated with the drafting negotiating and completion of this Deed before completion.

4.2 The liability of the Owners under this Deed shall cease once they have parted with their interest in the Land or any relevant part thereof (in which event the obligations of the Owners under this Deed shall cease only in relation to that part or those parts of the Land which is or are transferred by them) but not so as to release them from liability for any breaches hereof arising prior to the transfer.

5. **CONDITIONALITY**

5.1 Subject to Clause 6.2, this Deed will take effect on delivery.

5.2 Other than the obligation in Clause 4.1.2, the planning obligations in this Deed are conditional on, and will not take effect until, the grant of the Permission.

6. **NOTICE OF IMPLEMENTATION**

6.1 The Owners will give UDC and the County Council not less than 20 Working Days' notice of intention to Implement the Permission specifying the intended Implementation Date.

6.2 Forthwith upon Implementation the Owners will give UDC and the County Council notice of Implementation.

7. **PROVISOS AND INTERPRETATION**

7.1 No provision of this Deed shall be interpreted so as to affect contrary to law the rights powers duties and obligations of UDC and the County Council in the exercise of any of their statutory functions or otherwise.

7.2 If any provision of this Deed shall be held to be unlawful or unenforceable in whole or in part under any enactment or rule of law such provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall not be affected.

7.3 No waiver (whether express or implied) by UDC or the County Council of any breach or default in performing or observing any of the obligations covenants or terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent UDC or the County Council from enforcing any of the said obligations covenants or terms and conditions or from acting upon any subsequent breach or default.

7.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

7.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established

7.6 The headings in this Deed do not affect its interpretation.

7.7 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

7.8 Any words following the term(s) including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

7.9 Where an obligation fails to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

7.10 Unless the context otherwise requires references to subclauses clauses and schedules are to subclause clauses and schedules of this Deed.

7.11 Unless the context otherwise so requires:-

7.11.1 references to any party shall include that party's personal representatives, successors and permitted assigns and in the case of UDC and the County Council the successors to their respective statutory functions

7.11.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and

7.11.3 references to any gender include both genders.

7.11.4 words in the singular shall include the plural and in the plural shall include the singular

7.11.5 references to sub-clauses clauses and schedules are to sub-clause clauses and schedules of this Deed

7.12 Representatives of UDC may enter upon the Land at any reasonable time and on reasonable notice to ascertain whether the terms of this Deed and of the Permission are or have been complied with, subject to complying with all health and safety and/or security requirements of the Owners or of any developer carrying out the Development.

7.13 No compensation shall be payable by UDC to any party to this Deed or their successors in title and assigns arising from the terms of this Deed and unless specified otherwise in this Deed all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) and (save where expressly provided otherwise) are to be at the sole expense of the Owners and at no cost to UDC.

7.14 In the event that the Owners fail to serve on UDC any of the notices that they are required by the provisions of this Deed to serve then UDC shall be entitled to payment of the various financial contributions contained in this Deed at any time following them becoming aware that an event or a level of Occupancy of Housing Units has occurred that would trigger the payment of the relevant financial contribution, and the time period for the return of the relevant financial contribution shall be extended accordingly.

7.15 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Land or the part of the Land in respect of which such breach occurs, but they will remain liable for any breaches of their obligations in this Deed occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause.

8. **AGREEMENTS AND DECLARATIONS**

8.1 The obligations contained in this Deed shall take effect only upon the Implementation Date (save where expressly stated to the contrary in this Deed) and in the event that the Permission is not implemented and expires the obligations contained in this Deed shall absolutely cease and determine without further obligation upon the Owners or their successors in title.

8.2 The obligations contained in this Deed shall absolutely cease and determine without further obligation upon the Owners or their successors in title if the Permission is revoked, quashed, is modified without the consent of the Owners expires or if a separate planning permission is subsequently granted and implemented which is incompatible with the Permission.

8.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission save for the Permission.

8.4 The obligations under this Deed shall not be enforceable against:-

8.4.1 persons who purchase or take leases of the Housing Units other than in respect of restrictions on the use of the Affordable Housing Units or where specified in this Deed (or their successors in title chargees mortgagees or receivers) nor;

8.4.2 any statutory undertaker/utility provider which acquires any part of the Land or an interest in it for the purposes of its statutory function.

8.5 This Deed constitutes a Local Land Charge and shall be registered as such provided that UDC will upon the happening of any of the eventualities referred to in Clauses 8.1 and 8.2 procure the removal of any entry made on the Local Land Charges Register (subject to the payment of UDC's reasonable and proper costs) in respect of or related to this Deed.

8.6 No variation to this Deed shall be effective unless made by deed, and for the avoidance of doubt the consent, seal, signature, execution or approval of the purchaser tenant or residential occupier of any Housing Unit or their mortgagees shall not be required to vary any part of this Deed.

9. **EXCLUSION OF THE 1999 ACT**

For the purposes of the 1999 Act it is agreed that nothing in this Deed shall confer on any third party any right to enforce or any benefit of any term of this Deed.

10. **NOTICES**

10.1 Any notices required to be served on or any document to be supplied or submitted to any of the parties hereto shall be sent or delivered to the address stated in this Deed as the address for the receiving party or such other address as shall from time to time be notified by a party to this Deed as an address at which service of notices shall be accepted or (in the case of a limited company) at its registered office.

10.2 Any notices to be served or documents to be supplied or submitted or applications for approval under the terms of this Deed to be made which are addressed:-

10.2.1 to UDC shall be addressed to the Council Offices, London Road, Saffron Walden, Essex CB11 4ER marked for the attention of the Assistant Director Planning and Building Control;

10.2.2 for the County Council marked for the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH AND to development.enquiry@essex.gov.uk

10.2.3 to the Owners shall be addressed to the addresses at the top of this Deed unless the Owners notify the parties of a different address.

10.3 The Owners shall serve on the County Council

10.3.1 the Notice of Implementation not less than three (3) months prior to Commencement stating the expected Implementation Date an estimate of the Triggers and any further information stipulated in the Schedules to this Deed

10.3.2 the Payment Notice between sixty (60) and thirty (30) Working Days prior to the date that each and any payment is due to be made to the County Council under this Deed stating the date that such payment becomes due and any further information stipulated in the Schedules to this Deed

10.3.3 the Completion Notice within thirty (30) Working Days of all Housing Units being Occupied for the first time stating the date that the last Dwelling was Occupied for the first time and any further information stipulated in the Schedules to this Deed and for the avoidance of doubt any dispute regarding any notice to be served under this Deed may be resolved through the 2 mechanisms set out in Clause 17 of this Deed.

10.3.4 to serve on the County Council notice of Occupation of the first (1st) Housing Unit within 1 (one) month thereof and thirty (30) Working Days' notice prior to fifty percent (50%) Occupation of the Housing Units to include the expected date of fifty percent (50%)

Occupation each notice indicating the Unit Mix of Occupied Housing Units the Unit Mix of Housing Units that are completed but not Occupied the Unit Mix of Housing Units that are under construction and the Unit Mix of Housing Units where construction work has yet to start at the time the notice is served

11. **ENTIRE AGREEMENT**

This Deed the schedules and the documents annexed hereto or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements arrangements and understandings between the parties relating to that subject matter.

12. **MONITORING FEE**

12.1 Upon Implementation the Owner will pay the UDC Monitoring Fee to UDC.

12.2 Prior to Implementation the Owner will pay to the County Council the County Council Monitoring Fee.

13. **OWNERSHIP**

13.1 The Owner warrants that that no persons other than the Owner has any legal or equitable interest in the Land.

13.2 Subject to Clause 8.4, until the covenants, restrictions and obligations in Schedule 2 have been complied with, the Owners will give to UDC within twenty (20) Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Land excluding any conveyance, transfer, lease, assignment, mortgage or other disposition of any individual Housing Unit:

13.2.1 the name and address of the person to whom the disposition was made;

13.2.2 the nature and extent of the interest disposed of.

14. **SECTION 73 VARIATION**

In the event that UDC or planning inspector on appeal shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the 1990 Act in respect of the conditions attached to the Permission (and for no other purpose whatsoever) references in this Deed to the Permission and the Development shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly PROVIDED THAT where any obligations in this Deed have already been discharged at the date of a consent issued pursuant to Section 73 of the 1990 Act they shall remain discharged for the purposes of any new consent.

15. **INDEXATION**

All Contributions payable to the Council shall be Index Linked from the date of this Deed until the date the payment is due.

16. **JURISDICTION**

This Deed is to be governed by and interpreted in accordance with the law of England and Wales; and the courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

17. **DETERMINATION OF DISPUTES**

17.1 Subject to Clause 17.7 if any dispute arises relating to or arising out of the terms of this Deed either party may give to the other written notice requiring the dispute to be determined under this Clause 17 and the notice shall propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute

17.2 For the purposes of this Clause 17 "Specialist" means a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to the matters in dispute

17.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power with the right to take such further advice as he may require to determine the appropriate type of Specialist and to arrange his nomination under Clause 17.4

17.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power with the right to take such further advice as he may require to determine and nominate the appropriate Specialist or to arrange his nomination and if no such organisation exists or the parties cannot agree the identity of the organisation then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute)

17.5 The Specialist is to act as an independent expert and

17.5.1 each party may make written representations within twenty (20) Working Days of his appointment and will copy the written representations to the other party

17.5.2 each party is to have a further fifteen (15) Working Days to make written comments on the others representations and will copy the written comments to the other party

17.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require

17.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other

17.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision which is to be in writing and is to give reasons for his decision and

17.5.6 the Specialist is to use all reasonable endeavours to publish his decision within twenty (20) Working Days from the last submission of evidence

17.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 17 including costs connected with the appointment of the Specialist and the Specialists own costs but not the legal and other professional costs of any party in relation to a dispute will be decided by the Specialist

17.7 This Clause 17 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts of England.

18. **COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010**

18.1 In the event that the Inspector appointed to determine the Planning Application expressly states in their decision letter that in their opinion:

18.1.1 any one or more provisions of this Deed is not compatible with any of the tests for planning obligations set out in the Community Infrastructure Levy Regulations 2010; and/or

18.1.2 decides to impose a condition upon the Planning Permission instead of one or more of the planning obligations in this Deed; and

18.1.3 accordingly attaches no weight to that obligation in determining the Planning Application

then the relevant provisions/obligations of this Deed shall thereafter have no legal effect and the Owners shall be under no obligation to comply with them, but the remainder of the obligations in this Deed (if any) shall remain legally effective and binding.

19. COUNTERPARTS

19.1 This Deed may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement

IN WITNESS WHEREOF the parties hereto have executed this Deed as a deed and it is delivered on the day and year before written.

THE COMMON SEAL OF UTTLESFORD DISTRICT COUNCIL
was hereunto affixed in the presence of:

Authorised Signatory

THE COMMON SEAL OF ESSEX COUNTY COUNCIL was
hereunto affixed in the presence of:

Attesting Officer

SIGNED AS A DEED BY

SASHA RENWICK HOLMES

as attorney for

MARK BURFIELD HOLMES

under a power of attorney dated 25 January 2024

in the presence of:

Witness Name:

Witness Occupation:

Witness Address:

SIGNED AS A DEED BY

ROBERT MURTON HOLMES

in the presence of:

Witness Name:

Witness Occupation:

Witness Address:

SIGNED AS A DEED BY

SASHA RENWICK HOLMES

in the presence of:

Witness Name:

Witness Occupation:

Witness Address:

SIGNED AS A DEED BY

SASHA RENWICK HOLMES

as attorney for

TANYA RENWICK CRAN

under a power of attorney dated 29th January 2024

in the presence of:

Witness Name:

Witness Occupation:

Witness Address

SIGNED AS A DEED BY

NIGEL JOHN BURFIELD HOLMES

in the presence of:

Witness Name:

Witness Occupation:

Witness Address:

SIGNED AS A DEED BY

ROSEMARY HOLMES

in the presence of:

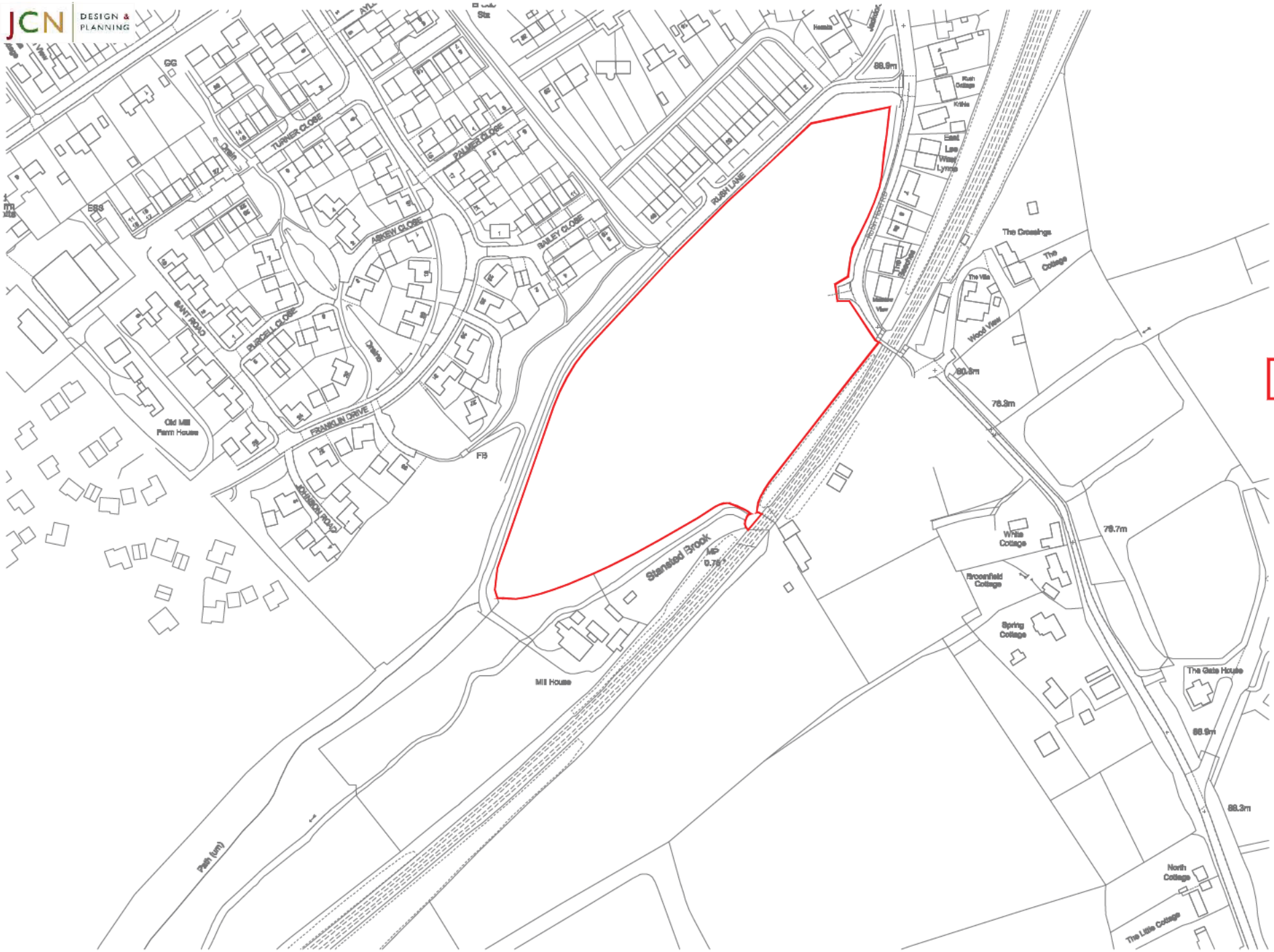
Witness Name:

Witness Occupation:

Witness Address:

SCHEDULE 1

PLAN - THE LAND



ROSCONN STRATEGIC LAND

Project:-

Land West of Robinhood Road Elsenham CM22 6TF

Description:-

Location Plan

Date:-	Drawing Scale:-
August 2023	1-2500 - A4
Drawing number:-	Revision:-
BW289a-PL-01	00

SCHEDULE 2

(OBLIGATIONS ENTERED INTO WITH UDC)

The Owners covenant with UDC so as to bind their interests in the Land:-

PART 1

AFFORDABLE HOUSING

1. The Affordable Housing Units shall comprise 40% of the total of all Housing Units constructed in accordance with the Permission PROVIDED THAT any fraction of a unit produced by calculating the percentage shall be rounded up if 0.5% or over and shall be rounded down if under 0.5%.

2. 5% of the Affordable Housing Units shall be Wheelchair Accessible PROVIDED THAT any fraction of a unit produced by calculating the percentage shall be rounded up if 0.5% or over and shall be rounded down if under 0.5%.

3. The Affordable Housing Units shall comprise 40% of the Housing Units constructed in accordance with the Permission as shown on the Affordable Housing Plan (unless otherwise agreed in writing between UDC and the Owners).

4. Not to cause or permit Implementation until the Affordable Housing Scheme and the Affordable Housing Plan have been submitted to and approved by UDC

5. To provide the Affordable Housing Units in accordance with Schedule 2 of this Deed, the approved Affordable Housing Scheme and the approved Affordable Housing Plan

6. Prior to the Occupation of the first (1st) Open Market Housing Unit the Owners shall:-

   EITHER

   transfer the whole of the Affordable Housing Land as a freehold estate (excluding any land upon which any First Homes are to be constructed) to an Approved Body (proof of which is to be supplied to UDC if requested);

   OR

   complete a binding agreement with an Approved Body (documentary proof of which to be supplied to UDC if requested) for the completion of the Affordable Housing Units and the transfer of the Affordable Housing Units (excluding any First Homes) and the Affordable Housing Land (excluding any land upon which any First Homes are to be constructed).

7. To procure that the terms of any transfer pursuant to paragraph 4 above shall include a covenant that the Approved Body shall comply with the terms of this Schedule 2 Part 1

8. Prior to the Occupation of 75% of the Open Market Housing Units the Affordable Housing Units shall be substantially completed and ready for Occupation and transferred to an Approved Body as a freehold estate (if not already transferred in accordance with paragraph 6 above).

9. After the substantial completion of any of the Affordable Housing Units no Affordable Housing Unit shall be Occupied unless there is compliance with the following paragraphs 9.1 9.6:-

9.1 Upon completion of the Affordable Housing Units and thereafter the Approved Body will allocate each Affordable Housing Unit to a Nominated Person and in accordance the following provisions;

9.1.1 Not later than twenty (20) Working Days from the date of completion of each Affordable Housing Unit or a notice from a tenant of an Affordable Rented Unit that he wishes to relinquish his tenancy the Approved Body will give notice thereof to UDC as regards the Affordable Rented Unit;

9.1.2 Within twenty (20) Working Days or such other time as is agreed between the Approved Body and UDC of receiving the notice from the Approved Body under the provisions of paragraph 9.1.1of this Schedule as regards an Affordable Rented Unit UDC will give details of the Nominated Person for each Affordable Rented Unit to the Approved Body;

9.1.3 Upon receiving details of the Nominated Person under the provisions of paragraph 9.1.2of this Schedule from UDC to procure that the Approved Body will within twenty (20) Working Days or such other time as is agreed between the Approved Body and UDC offer to grant the tenancy of the Affordable Rented Unit to the Nominated Person;

9.2 If UDC fails to give details of a Nominated Person under the provisions of paragraph 9.1.2of this Schedule to procure that the Approved Body shall have the right to grant an Affordable Rented Unit tenancy to any Eligible Person who is considered by the Approved Body to be in need of an Affordable Housing Unit.

9.3 Where UDC fails to give details of a Nominated Person under the Nomination Rights Agreement and the provisions of paragraph 9.1.2of this Schedule and the Approved Body does not have notice or details of an Eligible Person who it can nominate or house pursuant to paragraph 9.2above to procure that the Approved Body may grant a tenancy of an Affordable Rented Unit to any person who it considers to be in need of an Affordable Housing Unit and who complies with its lettings policy.

9.4 In respect of any of the Affordable Rented Units becoming vacant after the initial allocation following the completion of the Affordable Housing Units UDC shall in accordance with paragraph 9.1above be given the sole opportunity by the Approved Body to nominate the Nominated Persons up to a maximum of 75% (seventy-five per cent) of such vacant Affordable Rented Units.

9.5 To procure that the terms of the tenancy agreements for the Affordable Rented Units shall be in accordance with the regulations and guidance of Homes England.

9.6 The Approved Body will not:-

9.6.1 Transfer the freehold or leasehold interest in the land on which the Affordable Housing Units are constructed or any Affordable Housing Unit (save for an occupier of an Affordable Rented Unit who has exercised the right to acquire) to any person firm or company other than an Approved Body and the transfer to the Approved Body shall include a covenant that the Approved Body comply with the terms of this Deed;

9.6.2 Sell let or dispose (except by way of legal charge) of any Affordable Housing Unit or allow or permit or suffer any Affordable Housing Unit to be sold let or disposed of other than in accordance with paragraphs 9.1to 9.5of this Schedule.

9.7 To procure that the Approved Body will give UDC one month's written notice of the intended transfer of the freehold or leasehold interest in the Land or of any Affordable Housing Unit to

another Approved Body for the avoidance of doubt this does not include an occupier of an Affordable Rented Unit who has exercised the right to acquire or other statutory right.

9.8 The affordable housing provisions set out in this Part shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver")) of the whole or any part of the Affordable Housing Units and/or the Affordable Housing Land or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

9.8.1 such mortgagee or chargee or Receiver shall first give written notice to the Council (together with official copies of the relevant Land Registry Entries) of its intention to dispose of the Affordable Housing Units and/or the Affordable Housing Land and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units and/or the Affordable Housing Land to another Approved Body or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

9.8.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units and/or the Affordable Housing Land free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely.

9.9 A tenant of an Affordable Rented Unit who exercises the right to acquire (or their mortgagee or any party deriving title from them) shall not be bound by the terms of this Deed.

9.10 If the Affordable Housing Units are vested or transferred to another Approved Body pursuant to a proposal made by Homes England pursuant to Section 152 of the Housing and Regeneration Act 2008 then the provisions of this Deed shall continue (notwithstanding paragraph 9.8. above) in respect of such other Approved Body

PART 2

FIRST HOMES

1. **OBLIGATIONS**

1.1 Unless otherwise agreed in writing by UDC, the Owners for and on behalf of themselves and their successors in title to the Land with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come covenants with UDC as below save that:

1.2 paragraphs 22, 3 3and 4 shall not apply to a First Homes Owner;

1.3 paragraphs 5 to 6 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner.

1.4 Paragraph 7 applies as set out in therein.

2. **QUANTUM**

2.1 The Owners hereby covenant with UDC to provide and retain 2 Affordable Housing Units on the Land identified as First Homes in the Affordable Housing Plan (unless otherwise agreed in writing with UDC) as First Homes in perpetuity subject to the terms of this Schedule.

3. **APPEARANCE AND SPECIFICATION**

3.1 The First Homes shall not be visually distinguishable from the Open Market Housing Units based upon their external appearance.

3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Housing Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

4. **DEVELOPMENT STANDARD**

4.1 All First Homes shall:

4.1.1 be constructed to the Development Standard current at the time of the Planning Permission approval; and

4.1.2 no less than the standard applied to the Open Market Housing Units.

5. **DELIVERY MECHANISM**

5.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

5.1.1 the Eligibility Criteria (National); and

5.1.2 the Eligibility Criteria (Local).

5.1.3 If after a First Home has been actively marketed for 3 (three) months (such period to expire no earlier than 3 (three) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 5.1.2shall cease to apply.

5.2 Subject to paragraphs 5.6- 5.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.

5.3 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

5.3.1 UDC has been provided with evidence that:

(a) the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 5.1.3 applies meets the Eligibility Criteria (Local);

(b) the Housing Unit is being Disposed of as a First Home at the Discount Market Price; and

(c) the transfer of the First Home includes:

(i) a definition of the “Council” which shall be ‘Uttlesford District Council’;

(ii) a definition of “First Homes Provisions” in the following terms:

“means the provisions set out in Part 2of Schedule 2 of the S106 Agreement a copy of which is attached hereto as the Annexure.

(iii) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ]

made between (1) UTTLESFORD DISTRICT COUNCIL (2) ESSEX COUNTY COUNCIL (3) MARK BURFIELD HOLMES, ROBERT MURTON HOLMES, SASHA RENWICK HOLMES & TANYA RENWICK CRAN and (4) NIGEL JOHN BURFIELD HOLMES & ROSEMARY HOLMES

(iv) a provision that the Land is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions;

(v) a copy of the First Homes Provisions in an Annexure.

5.3.2 UDC has issued the Compliance Certificate and UDC hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 5.3and 5.4.1have been met.

5.4 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

5.4.1 "*No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Uttlesford District Council of Council Offices, London Road, Saffron Walden CB11 4ER or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition*"

5.5 The owner of a First Home (which for the purposes of this paragraph shall include the Owner and any First Homes Owner) may apply to UDC to Dispose of it other than as a First Home on the grounds that either:

5.5.1 the Affordable Housing Unit has been actively marketed as a First Home for six (6) months in accordance with paragraphs 5.1and 5.2(and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Affordable Housing Unit as a First Home but it has not been possible to Dispose of that Affordable Housing Unit as a First Home in accordance with paragraphs 5.3and 5.4.1; or

5.5.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 5.5.1before being able to Dispose of the Affordable Housing Unit other than as a First Home would be likely to cause the First Homes Owner undue hardship.

5.6 Upon receipt of an application served in accordance with paragraph 5.5UDC shall have the right (but shall not be required) to direct that the relevant Affordable Housing Unit is disposed of to it at the Discount Market Price.

5.7 If UDC is satisfied that either of the grounds in paragraph 5.5above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.5 that the relevant Affordable Housing Unit may be Disposed of:

5.7.1 To UDC at the Discount Market Price; or

5.7.2 (if UDC confirms that it does not wish to acquire the relevant Affordable Housing Unit) other than as a First Home;

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Affordable Housing Unit apart from paragraph 5.10which shall cease to apply on receipt of payment by UDC where the relevant Affordable Housing Unit is disposed of other than as a First Home

5.8 If UDC does not wish to acquire the relevant Affordable Housing Unit itself and is not satisfied that either of the grounds in paragraph 5.5 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.5 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of an Affordable Housing Unit as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Affordable Housing Unit as a First Home he may serve notice on the UDC in accordance with paragraph 5.5 following which UDC must within 28 days issue confirmation in writing that the Affordable Housing Unit may be Disposed of other than as a First Home.

5.9 Where an Affordable Housing Unit is Disposed of other than as a First Home or to UDC at the Discount Market Price in accordance with paragraphs 5.7 or 5.8 above the Owner of the First Home shall pay to UDC forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

5.10 Any person who purchases a First Home free of the restrictions in Part 2of Schedule 2of this Deed pursuant to the provisions in paragraphs 5.7 and 5.8 shall not be liable to pay the Additional First Homes Contribution to UDC.

6. **USE**

6.1 Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 6.1.1 - 6.3below.

6.1.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies UDC in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

6.1.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies UDC and UDC consents in writing to the proposed letting or sub-letting. UDC covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below

(a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;

(b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;

(c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;

(d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;

(e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and

(f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person

6.2 A letting or sub-letting permitted pursuant to paragraph 6.1must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

6.3 Nothing in paragraph 6of this Part 2of Schedule 2prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

7. **MORTGAGEE EXCLUSION**

7.1 The obligations in this Part 2Deed in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

7.1.1 such Mortgagee or Receiver shall first give written notice to UDC of its intention to Dispose of the relevant First Home; and

7.1.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to UDC the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 7.1.3of this Part 2 of Schedule 2;

7.1.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to UDC the Additional First Homes Contribution;

PART 3

MANAGEMENT COMPANY

In the event that the circumstances pursuant to paragraph 11 of Part 4 of this Deed occur, the Owners shall set up a Management Company and the details of the set-up of the Management Company and the arrangements with the Management Company in relation to the Public Open Space shall be agreed in writing by UDC in accordance with this Deed.

PART 4

PUBLIC OPEN SPACE

1. The Owners covenant with UDC as follows:

1.1 Prior to first Occupation of the Development to submit the Public Open Space Scheme and Public Open Space Management Plan to UDC for approval and not to allow or permit the first Occupation of the Development until the Public Open Space Scheme and Public Open Space Management Plan has been submitted to and approved in writing by UDC.

1.2 To provide the Public Open Space and LAP in accordance with the approved Public Open Space Scheme and Public Open Space Management Plan.

1.3 Prior to the Occupation of more than 70% of the Open Market Housing Units the Owners shall apply for the Provisional Certificate from UDC and shall not cause or permit Occupation of more than 70% of the Open Market Housing Units until a Provisional Certificate for all of the Public Open Space has been issued by UDC.

Provisional Certificate

2. After the Public Open Space (or part thereof) has been provided laid out and landscaped in accordance with the Public Open Space Scheme to apply to UDC in writing requesting issue of the Provisional Certificate and for the avoidance of doubt Provisional Certificates may be issued for the whole of the Public Open Space or in relation to parts of Public Open Space as they are provided and laid out.

3. Within twenty (20) Working Days after a first inspection of the Public Open Space by UDC if it considers that the Public Open Space has not been provided laid out and landscaped satisfactorily in accordance with the Public Open Space Scheme the UDC shall provide the Owners with details of any defects and the Owners shall at their own expense rectify any deficiencies and carry out such works or operations as may reasonably be required by UDC to bring the Open Space up to the standard required by the Public Open Space Scheme and the procedures referred to in paragraphs 2 and 3 of Part 4 of this Schedule shall be repeated as often as necessary until the Provisional Certificate is issued save that UDC must inspect the Public Open Space within 15 Working Days of receipt of the application for the Provisional Certificate or within 15 Working Days of written notification that any defects have been remedied (as applicable) and report any defects within ten (10) Working Days of any inspection otherwise it shall be deemed that the Provisional Certificate is issued by the UDC and within ten (10) Working Days of deemed approval the UDC shall provide the Provisional Certificate.

4. From the date of issue of the Provisional Certificate for the Public Open Space the Owners shall make the Public Open Space and all the facilities on the Public Open Space available for use by the public as an open amenity or recreation area for the lifetime of the Development and shall allow the public to have unrestricted access at all times to the Public Open Space save for temporary or emergency closures for maintenance of the Public Open Space.

5. From the date of issue of the Provisional Certificate for the Public Open Space the Owners covenant:

5.1 not to use or permit the use of the Public Open Space for any purpose other than as a public recreation or amenity area save the Owners may grant such rights to any statutory undertaker as the Owners consider necessary on under or over the Public Open Space; and

5.2 to manage and maintain the Public Open Space during the Public Open Space Maintenance Period (including maintenance of all soft and hard landscaping built features lighting drainage and any other features on the Open Space) and to make good to the reasonable satisfaction of UDC any damage or defects in the Open Space arising during the Public Open Space Maintenance Period.

Final Certificate

6. At the expiration of the Public Open Space Maintenance Period to apply to UDC for the issue of the Final Certificate for the Public Open Space.

7. If after inspection of the Public Open Space by UDC (acting reasonably) it considers that the Public Open Space has not been maintained satisfactorily in accordance with the Public Open Space Scheme and Public Open Space Management Plan the Owners shall at their own expense rectify any deficiencies and carry out such works or operations as may reasonably be required by UDC to bring the Public Open Space up to the standard required by the Public Open Space Scheme and Public Open Space Management Plan and this procedure shall be repeated as often as necessary until the Final Certificate is issued provided always that if UDC does not inspect the Public Open Space within 15 Working Days of receipt of an application for a Final Certificate or fails to provide written notification of any defects within 15 Working Days of any inspection then the Final Certificate shall be deemed to have been granted on expiry of the said period of 15 Working Days.

Transfer of the Open Space

8. Three (3) months prior to completion of the Public Open Space Maintenance Period the Owners shall provide to UDC its calculation of the Public Open Space Commuted Sum such calculation to be agreed between the Owners and UDC.

9. Following the agreement required by paragraph 8, the Owners shall offer to transfer the Public Open Space to the Parish Council at a sum to be proposed by the Owners ("the Offer"). The Owners shall make the Offer prior to completion of the Public Open Space Maintenance Period and the Parish Council shall confirm in writing whether it accepts the Offer within 28 Working Days of receipt "the Acceptance Period".

10. If the Parish Council confirms in writing that it accepts the Offer within the Acceptance Period the Owners shall transfer to the Parish Council the Public Open Space within 3 (three) months of the issue of the Final Certificate in accordance with the terms of this Deed and shall pay the Public Open Space Commuted Sum to the Parish Council upon completion of the transfer of the Public Open Space to the Parish Council.

11. If the Parish Council confirms in writing that it does not accept the Offer or fails to respond to the Offer within the Acceptance Period or if the Owners and UDC do not agree the Public Open Space Commuted Sum prior to the expiration of the Acceptance Period the Owners shall transfer the Public Open Space to the Management Company in accordance with the terms of this Deed and for the avoidance of doubt the Public Open Space Commuted Sum shall not be payable.

12. In the event that the circumstances pursuant to paragraph 11 of Part 4 of this Deed occur, the Owners shall prior to the transfer of the Public Open Space to a Management Company submit details of the Management Company to UDC for approval in writing and shall not transfer the Public Open Space to the Management Company until the details of the Management Company have been approved by UDC in writing.

13. The details of any Management Company referred to in paragraph 12 above shall include (where applicable):

13.1 its corporate structure

13.2 its registered office and correspondence address

13.3 its directors and officers (where known)

13.4 The means of funding the Management Company in respect of the Public Open Space to demonstrate that the Public Open Space is able to be maintained by the Management Company in perpetuity including details of any service charge to be paid by residents of the Development.

13.5 Details of insurances as shall be appropriate in respect of the use of the Public Open Space managed by the Management Company and against damage by those comprehensive risks as are reasonable to insure against.

14. After UDC has issued the Final Certificate for the Public Open Space to transfer the Public Open Space to the Management Company:

14.1 for nominal consideration;

14.2 free of all financial charges and other encumbrances that may materially affect use of the Public Open Space by the public; and

14.3 with vacant possession;

within 12 (twelve) months of the issue of the Final Certificate by UDC PROVIDED ALWAYS THAT the Owners shall continue to maintain the Public Open Space in a clean and tidy condition until the transfer to the Management Company has been completed.

15. The Owners covenant as follows:

15.1 Prior to 90% Occupation of the Development or no more than 12 (twelve) months following the issue of the Final Certificate by UDC (whichever is the earliest):

15.1.1 the Owners shall transfer the Public Open Space to the Management Company; and

15.1.2 not to cause or permit 90% Occupation of the Development until the earlier of the transfer of the Public Open Space to the Management Company or 12 months of the provision of the Final Certificate

15.1.3 to provide to UDC a copy of the transfer for the Public Open Space to the Management Company within 28 days following completion of the transfer.

16. The Owners further covenant:

16.1 Subject to sub-paragraphs 13.2, 13.3and 16.4below the obligations under this Part 4of Schedule 2shall not be binding upon any owner occupier tenant or their mortgagees or chargees or any successor in title of the respective owner occupier tenant or their mortgagees or chargees of any of the Housing Units; and

16.2 Where the Public Open Space is transferred to the Management Company each owner occupier or tenant of any Open Market Housing Unit or their mortgagees or chargees or their respective successors in title shall be liable for a proportionate sum of the total annual cost of carrying out the Management Company Responsibilities and associated costs which may be attributable to that residential plot (such proportionate amount to be calculated as a ratio of that residential plot area to the total aggregated residential plot areas permitted by the Permission); and

16.3 Pursuant to sub-paragraph 16.2above to pay the proportionate sum of the total annual cost of carrying out the Management Company Responsibilities and associated costs which may be attributable to any Open Market Housing Unit in respect of which a first sale or first occupation or first letting has not occurred following transfer of the Public Open Space to the Management Company (such proportionate amounts to be calculated as a ratio of such residential plot areas to the total aggregated residential plot areas permitted by the Permission); and

16.4 For the avoidance of doubt each liability of the Owners pursuant to sub-paragraph 16.3above in respect of any Open Market Housing Unit that has not been subject to a first sale or first occupation or first letting following transfer of the Public Open Space to the Management Company shall cease absolutely upon the first sale or first occupation or first letting of each such residential plot; and

16.5 Procure that upon any sale lease or transfer of title of any Open Market Housing Unit that a suitable covenant supported by restriction is entered on the Proprietorship Register at HMLR of every Open Market Housing Unit to ensure that the obligation to contribute towards the Management Company Responsibilities can be enforced by the Management Company in perpetuity such as the following restriction (or such alternative wording as may be required by the Land Registry's standard form of restriction from time to time or as may otherwise be required by the Management Company):

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate without a certificate signed by [insert name of Management Company 1 or its conveyancer that the provisions of clause [ ] of the transfer dated [ ] and made between have been complied with"

PART 5

COMMUNITY HALL CONTRIBUTION

17. Not to cause or permit the Occupation of any Housing Unit until the Community Hall Contribution has been paid to the Council

PART 6

NHS CONTRIBUTION

18. Not to cause or permit the Occupation of more than 9 Housing Units until the NHS Contribution has been paid to the Hertfordshire and West Essex Integrated Care Board

SCHEDULE 3

PART ONE - THE EDUCATION CONTRIBUTION

1. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

Early Years and Childcare Contribution means the Early Years and Childcare Pupil Product multiplied by the cost generator of nineteen thousand four hundred and twenty five pounds sterling (£19,425) to which the Relevant Education Indexation shall be added;

Early Years and Childcare Product means the sum of Qualifying Flats multiplied by 0.045 plus the Qualifying Houses multiplied by 0.09;

Early Years and Childcare Purposes means the design (including feasibility work) and or delivery and or provision of facilities for the education and/or childcare of children between the ages of 0 to 11 (both

inclusive) including those with special educational or additional needs up to the age of 19 within a 3 mile radius of the Development and including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Early Years and Childcare Contribution;

Education Contribution means the sum of the Early Years and Childcare Contribution and the Secondary Education Contribution and (subject to the provisions of Part Two of this Schedule) the Primary Education Contribution;

Education Index means the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-housing (PUBSEC Index) or in the event that the PUBSEC Index is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County Council;

Education Index Point means a point on the most recently published edition of the relevant index at the time of use;

Education Purposes means the Early Years and Childcare Purposes and the Secondary Education Purposes and the Primary Education Purposes (if applicable);

Flat means a Dwelling that occupies a single floor and /or does not benefit from private open space for the exclusive use of the residents of the Housing Unit and no other persons;

House means a Housing Unit that does not meet the definition of a Flat;

Primary Education Contribution means the Primary Pupil Product multiplied by the cost generator of nineteen thousand four hundred and twenty five pounds sterling (£19,425) to which the Relevant Education Indexation shall be added;

Primary Education Purposes means the design (including feasibility work) and/or delivery and or provision of facilities for the education and/or childcare of children between the ages of 4 to 11 (both inclusive) and including those with special educational needs within a 3 mile radius of the Development and or at a facility that in the opinion of the County Council serves the Development and including the reimbursement of capital funding for such provision made by the County Council and or the County Council's nominee in anticipation of the Primary Education Review Contribution;

Primary Education Contribution Review shall mean a two-stage review to be carried out by the County Council in consultation with UDC (i) Prior to Implementation of Development and (ii) on 50% Occupation of the Development of the Primary Education Contribution to be conducted to determine whether a Primary Education Contribution is due to the County Council taking into account the demand anticipated to be generated by the Development against the baseline at Implementation

Primary Education Review shall mean a review to be conducted by the County Council in consultation with UDC to determine whether a Primary Education Contribution is due to the County Council taking into account the demand generated by the Development

Primary Pupil Product means the sum of the Qualifying Flats multiplied by 0.15 plus the Qualifying Houses multiplied by 0.3;

Qualifying Flats means the number of Flats that shall be constructed on the Land that have two or more rooms that may by design be used as bedrooms;

Qualifying Houses means the number of Housing Units that shall be constructed on the Land that have two or more rooms that may by design be used as bedrooms;

Qualifying Housing Units means the Qualifying Houses and Qualifying Flats;

Relevant Education Indexation means the amounts that the Owner shall pay with and/or agree in addition to each part of the Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Education Contribution being paid and multiplying this amount by the percentage change in the Education Index between the Education Index Point pertaining to January 2023 and Education Index Point pertaining to the date payment is made to the County Council;

Secondary Education Contribution means the Secondary Pupil Product multiplied by the cost generator of twenty six thousand seven hundred and seventeen pounds sterling (£26,717) to which sums the Relevant Education Indexation shall be added;

Secondary Education Purposes means the design (including feasibility work) and or delivery and or provision of facilities for the education and/or childcare of children between the ages of 11 to 19 (both inclusive) and including those with special educational needs at Forest Hall School and or within a 3 mile radius of the Development and or at a facility that in the opinion of the County Council serves the Development and including the reimbursement of capital funding for such provision made by the County Council and or the County Council's nominee in anticipation of the Secondary Education Contribution;

Secondary Pupil Product means the sum of the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2;

Sterling Overnight Index Average (SONIA) Rate means an assessment of the rate of interest the County Council can expect to earn on investments through the British sterling market, the rate used being the average interest rate at which banks are willing to borrow sterling overnight from other financial institutions and other institutional investors and SONIA Rate shall be construed accordingly;

Unit Mix means the number of Qualifying Flats and the number of Qualifying Houses and the number of Housing Units that by definition shall not be counted as Qualifying Flats or Qualifying Houses.

2. The Owners [hereby covenant with the County Council so as to bind their interest in the Land as follows:

2.1 to pay fifty percent (50%) of the Education Contribution to the County Council prior to Implementation;

2.1.2 not to cause allow or permit Implementation unless and until fifty percent (50%) of the Education Contribution has been paid to the County Council in full;

2.1.3 to pay the remaining fifty percent (50%) of the Education Contribution to the County Council prior to first Occupation of any Housing Unit;

2.1.4 not to cause allow or permit the Occupation of any Housing Unit unless and until one hundred percent (100%) of the Education Contribution (save for any part of the Education Contribution which arises pursuant to the second phase of the Primary Education Review) has been paid to the County Council in full;

2.3 In the event that the Education Contribution is paid later than the date set out in paragraph 2.1 then the amount of the Education Contribution or part thereof payable by the Owners shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the date of payment is due and the Education Index Point prevailing at the date of actual payment multiplied by the Education Contribution due or if greater an amount pertaining to interest on the Education Contribution or part thereof due calculated at the SONIA Rate from the date of payment is due until the date payment of the Education Contribution is received by the County Council; and

2.4 In addition to the requirement of paragraph 2.3 above in the event that any sum due to be paid by the Owners to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owners hereby covenant to pay to the County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) for each and every letter sent to the Owners [pursuant to the debt.

3. The Notice of Commencement shall in addition to that information stipulated in clause 10.3.1 to this Deed state the Unit Mix and in the event that the Unit Mix constructed or to be constructed should at any time differ from the Unit Mix notified to the County Council then the Owners shall serve on the County Council a further notice stating the revised Unit Mix within ten (10) Working Days of the revised Unit Mix being decided and in the further event that the Owners fail to serve any notice set out in this Paragraph 3 of this Schedule 3 the County Council may estimate and determine the Unit Mix as it sees fit acting reasonably.

4 The Payment Notice stipulated in clause 10.3.2 to this Deed shall state the Unit Mix on which the payment is to be based.

5 The Completion Notice stipulated in clause 10.3.3 to this Deed shall state the final Unit Mix.

6. The County Council hereby covenants with the Owners as follows:

6.1 To place the Education Contribution when received into an interest-bearing account and to utilise the same solely for the Education Purposes;

6.2 If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Education Contribution any part of the relevant Education Contribution that remains unexpended when the Education Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of any Education Purposes the unexpended part of the Education Contribution shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid shall not include such payment;

6.3 Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the date of receipt of the Education Contribution in full the County Council shall provide the Owners with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent.

7. It is hereby agreed and declared:

7.1 In the event that the Unit Mix to be constructed on the Land does not match the Unit Mix on which the Education Contribution or part thereof paid was based the Owners hereby covenant to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Education Contribution paid and the amount of the Education Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Education Contribution;

7.2 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owners and received by the County Council within twenty (20) Working Days of receipt by the Owners of the County Council's statement referred to in paragraph 6.3 and shall clearly state the grounds on which the expenditure is disputed;

7.3 In the event that no written request is received by the County Council from the Owners pursuant to paragraph 6.3 above or no valid dispute is raised by the Owners pursuant to paragraph 7.2 the Owners shall accept the Education Contribution has been spent in full; and

7.4 In the event that the Education Contribution is overpaid by the Owners then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Education Contribution or have entered into a legally binding contract or obligation to spend the Education Contribution otherwise the County Council shall upon the Occupation of the final Housing Unit or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owners (in excess of those sums calculated as due for payment under this Deed) together with interest calculated at the SONIA Rate within twenty (20) Working Days of the County Council being informed by the Owners of such overpayment.

PART TWO - THE PRIMARY EDUCATION REVIEW MECHANISM

1. IT IS HEREBY AGREED AND DECLARED:

1.1. The County Council shall provide the Owners with written confirmation of the outcome of stage (i) of the Primary Education Contribution Review within twenty (20) Working Days of the review being completed;

1.2. The County Council shall provide the Owners with written confirmation of the outcome of stage (ii) of the Primary Education Contribution Review within twenty (20) Working Days of the review being completed;

1.3. Should the Primary Education Contribution Review determine that a Primary Education Contribution is required, the Owners shall pay to the County Council in full one hundred percent (100%) of the Primary Education Contribution within thirty (30) Working Days of receipt of the Primary Education Contribution Review.

1.4. Should the Primary Education Contribution Review determine that a Primary Education Contribution is required, the Owners shall make payment to the County Council as follows:

1.4.1. to pay fifty percent (50%) of the stage (i) review Primary Education Contribution prior to Implementation and not to cause allow or permit Implementation unless and until fifty percent (50%) of the stage (i) review Primary Education Contribution has been paid to the County Council

1.4.2. to pay the remaining fifty percent (50%) of the stage (i) review Primary Education Contribution prior to first Occupation of any Housing Unit and not to cause allow or permit the Occupation of any Housing Unit unless and until one hundred percent (100%) of the stage (i) review Primary Education Contribution has been paid to the County Council in full;

1.4.3. to pay one hundred percent (100%) of the stage (ii) review Primary Education Contribution in full within thirty (30) Working Days of service of the outcome of the Primary Education Contribution Review as notified under 1.2 immediately above.

1.5. Should a Primary Education Contribution be made it will form part of the Education Contribution as defined in Part One of this Schedule and be treated as such for the remainder of 2.3-7.4 inclusive of Part One of this Schedule subject to the following changes:

1.6. Instead of 'In the event that the Education Contribution is paid later than the date set out in paragraph 2.1' to 'In the event that the Education Contribution is paid later than the date of the payment in accordance with clause 1.4 of Part Two of this Schedule'

1.7. Instead of 'If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Education Contribution any part of the relevant Education Contribution that remains unexpended when the Education Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part)' to 'If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Primary Education Contribution part of the Education Contribution any part of the relevant Primary Education Contribution part of the Education Contribution that remains unexpended when the Primary Education Contribution part of the Education Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part)'

1.8. Instead of 'Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the date of receipt of the Education Contribution in full the County Council shall provide the Owners with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent.' To 'Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the date of receipt of the Primary Education Contribution part of the Education Contribution in full the County Council shall provide the Owners with a statement confirming whether the Primary Education Contribution part of the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent.

1.9. Should a Primary Education Contribution be made it will form part of the Education Contribution Purposes as defined in Part One of this Schedule and be treated as such for the remainder of Part One of this Schedule

1.10. Should notices fail to be served in accordance with Clause 10.3 the County Council reserves the right to carry out a Primary Education Review at any time with written confirmation of the outcome to be provided to the Owners within twenty (20) Working Days of the review being completed;

1.11. Should the Primary Education Review determine that a Primary Education Contribution is required, the Owners shall pay to the County Council in full one hundred percent (100%) of the Primary Education Contribution within thirty (30) Working Days of service of the outcome of the Primary Education Review as notified under 1.10 of this Part Two.

SCHEDULE 4

LIBRARY CONTRIBUTION

1. In this Schedule the following words and expressions shall have the following meaning:

Library Index means the Consumer Price Index (CPI) or in the event that the CPI is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County Council;

Library Index Point means a point on the most recently published edition of the Library Index at the time of use;

Library Contribution means the sum of seventy-seven pounds and eighty pence (£77.80) per Housing Unit to which sum the Relevant Library Indexation shall be added;

Library Contribution Purposes means the use of the Library Contribution towards the upgrading of existing facilities at Stansted Library to include but not limited to, additional furniture, technology and stock;

Relevant Library Indexation means the amount that the Owner shall pay with and in addition to the Library Contribution paid that shall in each case equal a sum calculated by taking the amount of the Library Contribution being paid and multiplying this amount by the percentage change shown in the Library Index between the Library Index Point pertaining to April 2020 and the date of the most recent Library Index Point published in relation to the date the payment is due to be made to the County Council.

2. The Owners hereby covenant with the Council and the County Council so as to bind their interest in the Land as follows:

2.1 to pay the Library Contribution to the County Council prior to Implementation of the Development and not to Commence or cause or allow or permit Implementation of the Development unless and until the Library Contribution has been paid to the County Council in full.

2.2. In the event that the Library Contribution is paid later than dates set out in paragraph 2.1 of this Schedule 3 then the amount of the Library Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the

Library Index between the Library Index Point prevailing at the date the payment is due and the Library Index Point prevailing at the date of actual payment to the County Council multiplied by the Library Contribution due or if greater an amount pertaining to interest on the Library Contribution (or the part thereof) due calculated at the SONIA Rate from the date that the payment is due until the date payment of the Library Contribution is received by the County Council; and

2.3 In addition to the requirement of paragraph 2.2 above in the event that any sum due to be paid by the Owners to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owners hereby covenant to pay to County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) for each and every letter sent to the Owners pursuant to the debt.

3. The County Council hereby covenants with the Owners as follows:

3.1 to place the Library Contribution when received into an interest-bearing account and to utilise the same for the Library Contribution Purposes;

3.2 If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Library Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Library Contribution any part of the Library Contribution that remains unexpended when the Library Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of any Library Contribution Purposes the unexpended part of the Library Contribution shall not be repaid until such payment is made and the unexpended part of the Library Contribution to be repaid shall not include such payment

3.3 Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of receipt of the Library Contribution in full the County Council shall provide the Owners with a statement confirming whether the Library Contribution has been spent and if the Library Contribution has been spent in whole or in part outlining how the Library Contribution has in whole or in part been spent.

4. It is hereby agreed and declared:

4.1 In the event that the Unit Mix to be constructed on the Land does not match the Unit Mix on which the Library Contribution or part thereof paid was based the Owners hereby covenant to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Library Contribution paid and the amount of the Library Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Library Contribution;

4.2 Any dispute in relation to how the Library Contribution has been spent must be raised in writing by the Owners and received by the County Council within twenty (20) Working Days of receipt by the Owners of the County Council's statement referred to in paragraph 4.3 and shall clearly state the grounds on which the expenditure is disputed;

4.3 In the event that no written request is received by the County Council from the Owners pursuant to paragraph 3.2 above or no valid dispute is raised by the Owners pursuant to paragraph 4.2 the Owners shall accept the Library Contribution has been spent in full on the Library Contribution Purposes as appropriate; and

4.4 In the event that the Library Contribution is overpaid by the Owners then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Library Contribution or have entered into a legally binding contract or obligation to spend the Library Contribution otherwise the County Council shall upon the Occupation of the final Dwelling on the Development or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owners(in excess of those sums calculated as due for payment under this Agreement) together with interest calculated at the SONIA Rate within twenty (20) Working Days of the County Council being informed by the Owners of such overpayment.

SCHEDULE 5

PART ONE - SUSTAINABLE TRANSPORT CONTRIBUTION

1. In Part One of this Schedule unless the context requires otherwise the following words, expressions and terms shall have the following meanings:

Relevant Sustainable Transport Indexation means the amount that the Owners shall pay with and in addition to the Sustainable Transport Contribution paid that shall equal a sum calculated by taking the amount of the Sustainable Transport Contribution being paid and multiplying this amount by the percentage change shown in the Sustainable Transport Index between the Sustainable Transport Index Point pertaining to April 2018 and the Sustainable Transport Index Point pertaining to the date the payment is made to the County Council;

Sustainable Transport Contribution means the sum of one hundred and seven thousand two hundred and eighty pounds (£107,280) payable to the County Council to which sum the Relevant Sustainable Transport Indexation shall be added;

Sustainable Transport Contribution Purposes means the use of the Sustainable Transport Contribution for the provision of an enhanced bus service to serve Elsenham, Stansted Mountfitchet and Stansted Airport and/or other areas within the locality, and/or sustainable transport infrastructure within the vicinity of the Development and shall include the reimbursement of capital funding for such provision made by the County Council in anticipation of the receipt of the Sustainable Transport Contribution

Sustainable Transport Index means the Consumer Price Index (CPI) or in the event that the CPI is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County Council;

Sustainable Transport Index Point means a point shown on the Sustainable Transport Index indicating a relative cost at a point in time

2. The Owners hereby covenant with the County Council:

2.1 to pay the Sustainable Transport Contribution to the County Council prior to first Occupation of any Dwellings on the Development and not to cause permit or allow first Occupation of any Dwellings on

the Development unless and until the Sustainable Transport Contribution has been paid to the County Council in full (100%);

2.2 In the event that the Sustainable Transport Contribution is paid later than dates set out in paragraph 2.1 above of this Schedule then the amount of the Sustainable Transport Contribution or part thereof payable by the Owners shall in addition include either an amount equal to any percentage increase in build costs shown by the Sustainable Transport Index between the Sustainable Transport Index Point prevailing at the date the payment is due and the Sustainable Transport Index Point prevailing at the date of actual payment to the County Council multiplied by the Sustainable Transport Contribution due or if greater an amount pertaining to interest on the Sustainable Transport Contribution (or the part thereof) due calculated at the SONIA Rate from the date that the payment is due until the date payment of the Sustainable Transport Contribution is received by the County Council;

2.3 In addition to the requirement of paragraph 2.2 above in the event that any sum due to be paid by the Owners to the County Council pursuant to this Schedule should not be received by the County Council by the date that the sum is due then the Owners hereby covenant to pay to the County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) for each and every letter sent to the Owners pursuant to the debt.

3. The County Council hereby covenants with the Owners to:

3.1 place the Sustainable Transport Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the Sustainable Transport Contribution Purposes;

3.2 upon receipt of a request in writing to do so to be received by the County Council from the Owners no sooner than the tenth (10th) anniversary of receipt of the Sustainable Transport Contribution in full and no later than the eleventh (11^{th}) anniversary of the same to return to the party who deposited the Sustainable Transport Contribution or any part of the Sustainable Transport Contribution that remains unexpended when such request in writing is received (together with interest accrued on the unexpended part) Provided Always that where a legally binding contract or obligation has been entered into by the County Council prior to the tenth (10th) anniversary of receipt of the Sustainable Transport Contribution in full to make a payment in respect of the Sustainable Transport Contribution Purposes the unexpended part of the Sustainable Transport Contribution shall not be repaid until such payment is made and the unexpended part of the Sustainable Transport Contribution to be repaid (if any) shall not include such payment; and

3.3 That upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of receipt of the Sustainable Transport Contribution in full the County Council shall provide the Owners with a statement confirming whether the Sustainable Transport Contribution has been spent and if the Sustainable Transport Contribution has been spent in whole or in part outlining how the Sustainable Transport Contribution has in whole or in part been spent.

4. It is hereby agreed that:

4.1. Any dispute in relation to how the Sustainable Transport Contribution has been spent must be raised in writing by the Owners] and received by the County Council within twenty (20) Working Days of receipt by the Owners of the County Council's statement referred to in 2.3 above and shall clearly state the grounds on which it is disputed;

4.2. In the event that no written request is received by the County Council from the Owners pursuant to paragraph 4.2above or no valid dispute is raised by the Owners pursuant to paragraph 4.1the Owners shall accept the Highway Contribution has been spent in full on the Highway Contribution Purposes as appropriate;

4.3 The County Council may utilise up to two percent (2%) of the total amount of the Sustainable Transport Contribution due under this Deed to a maximum of Two Thousand Six Hundred and Forty Five Pounds (£2,645)[1] plus the Relevant Sustainable Transport Indexation for the purposes of scheme validation, programming, commissioning of works, scheme monitoring including site visits and meetings, budget control, governance and for the avoidance of doubt such purposes are agreed by the Owners to form part of the definition of use of the Sustainable Transport Contribution Purposes;

4.4 In the event the Sustainable Transport Contribution that is overpaid by the Owners then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Sustainable Transport Contribution or have entered into a legally binding contract or obligation to spend the Sustainable Transport Contribution otherwise the County Council shall upon the Occupation of the final Unit on the Development or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owners (in excess of those sums calculated as due for payment under this Deed) together with interest calculated at the SONIA Rate within twenty (20) Working Days of the County Council being informed by the Owners of such overpayment.

PART TWO - RESIDENTIAL TRAVEL INFORMATION PACKS

1. In this Schedule the following words and expressions shall have the following meaning:

Residential Travel Information Pack means a specific [district or borough or city] tailor-made booklet aimed at promoting the benefits of sustainable transport in support of the objective to secure a modal shift from the private car and increase the use of sustainable modes of travel and shall contain the following:

(a) guidance and promotional material on the use of sustainable modes of travel;
(b) details on walking, cycling, trains, buses, park & ride, taxis, car sharing, car clubs, electric vehicles, school transport and personalised journey planning services;
(c) reference to travel websites, resources and support services for each mode of travel, information provided by the County Council and the Council;
(d) details of local travel campaigns and networking/support groups; and
(e) to include six one day travel vouchers for use with the relevant local public transport operator;

Travel Vouchers means tickets/passes/ vouchers or other means of accessing transport or journey planning information as agreed with the County including the following as a minimum (six scratchcard bus tickets per household OR season ticket voucher) and/or (incentives for rail travel with the local rail operator) for each eligible member of the household AND access to an online tool to generate personalised travel plans using a home and destination postcode to provide details of different travel modes/options travel routes/maps and timetable information).

1. The Owners further hereby covenant with the County Council:

1.1 to submit a draft Residential Travel Information Pack (including Travel Vouchers) to the County for written approval prior to first Occupation of a Housing Unit and not to cause or allow first Occupation of a Housing Unit prior to the Residential Travel Information Pack (including Travel Vouchers) being submitted to and approved in writing by the County Council;

1.2 to provide the first occupier of each Housing Unit with an approved Residential Travel Information Pack and Travel Vouchers prior to Occupation of any Housing Unit and not to cause or permit Occupation of any Housing Units unless and until the Owners have provided the first occupiers with an approved Residential Travel Information Pack and Travel Voucher at the expense of the Owners.

Annex A – Allocations Policy

UTTLESFORD DISTRICT COUNCIL

HOUSING ALLOCATIONS SCHEME

(ALLOCATIONS POLICY)

June 2021

Uttlesford District Council Housing

Allocations Scheme

1. Introduction

1.1 The Council is required, by virtue of Section 168(1) of the Housing Act 1996 to have an allocations scheme for determining priorities and the procedure to be followed in allocating housing accommodation.

1.2 We have written and published this policy so everyone can be clear how:

i. Council houses are allocated

ii. The homes we are offered by our Registered Providers (RP) are allocated

iii. Applicants on our housing register have some choice about the home they are offered;

iv. We meet the law's requirements about people whose housing needs we should consider.

v. We make best use of the available housing stock within the District

vi. We give preference to those applicants who have a local connection to the District

1.3 This Allocations Scheme has been formulated in accordance with the provisions of

- The Housing Act 1996, as amended by the Homelessness Act 2002
- The Localism Act 2011
- The Allocation of Accommodation: Choice Based Lettings Code of Guidance 2008
- The Equality Act 2010
- The Allocation of Accommodation: Guidance for Local Housing Authorities England 2012
- Providing social housing for local people: Statutory Guidance December 2013
- Other relevant legislation and Guidance

1.4 In operating the Allocations Scheme, the Council will have due regard to legislation which shall take precedence.

2. Choice Based Lettings

2.1 The Council allocates accommodation through a Choice Based Lettings Scheme (CBL) called Home Option. The scheme enables applicants to

express an interest in available properties which are advertised in a fortnightly publication and on a website. All applicants are provided with detailed information explaining how the scheme operates.

2.2 Under the CBL Scheme, applicants are able to register their interest in properties which are suitable for their household size and needs in accordance with the terms of this Allocations Policy.

2.3 Direct Lets

2.3.1 Direct Lets will not be part of the choice based lettings scheme.

2.3.2 Direct Lets may apply in the following circumstances:

i. Extra care properties

ii. If a property is needed to house someone in council property temporarily

iii. In cases of where someone has to be moved immediately a direct let may be made

iv. In the case of a specially adapted property built for a specific person

v. Decants – Council properties required to be vacated by the Council for a specific purpose

vi. If a previously joint applicant qualifies to be offered the property of which they were previously a joint tenant we will make them an offer of that property

vii. Where applicants owed the full homelessness duty by the Council under Section 193 of the Housing Act 1996 as amended who do not meet the Council's Allocation's Policy eligibility criteria.

viii. In cases where a multi-agency team requests a planned move to resolve a serious management situation a direct let (one offer only to be made) may only be considered if the situation cannot be resolved by any other means and the tenant is either an existing Uttlesford tenant or the tenant of a RP property within Uttlesford and the subsequent vacancy would be allocated through the council's Choice Based Lettings Scheme

ix. Exceptional cases where there is an evidenced risk of significant harm to a vulnerable household, where there are no other housing options available, and which is supported

by at least one other agency, for example social care. Cases to be agreed by the Asst. Director

3. The Allocations Scheme

3.1 Allocation of accommodation will be through the Housing Register in accordance with the provisions of the Allocations Scheme.

3.2 The Council recognises that there may be some exceptional situations not covered by the Allocations Scheme. In such instances, Assistant Director of Housing and Environmental Health will have delegated authority to make decisions, as he/she considers appropriate and these will be fully documented.

3.3 The Scheme will apply to vacancies in the Council's own housing stock and to vacancies in accommodation in the District belonging to RPs for which the Council is required to make nominations.

3.4 The provisions of this Allocations Scheme will apply to applicants on the Council's Housing Register at the effective date of this Allocations Scheme, as well as those who apply after the effective date.

3.5 **The Allocations Scheme will not apply in the following cases;**

i. Where a tenant succeeds to a secure tenancy on the death of a tenant

ii. Where a tenancy is assigned to a person who would qualify to succeed to the secure tenant

iii. Where a tenancy is assigned by way of a mutual exchange to an existing secure tenant or RP assured tenant

iv. Where a tenancy is disposed through the courts (under matrimonial and family proceedings)

v. Where a priority transfer is agreed in urgent circumstances due to person's safety being at risk.

vi. Where a property has been identified as temporary accommodation

vii. Where the council needs to provide alternative accommodation for a council tenant in order to carry out repairs or improvements to their property.

viii. Where the council needs to provide accommodation to meet its duties under homelessness legislation

ix. Where the council has a duty to re-house home owners following a compulsory purchase, provide suitable alternative accommodation under the Land Compensation Act 1973, s 39, or under the Rent Agricultural Act 1976. (If it is not possible to provide a permanent tenancy immediately, the applicant will be registered within band A of the scheme).

x. Where the council grants a secure tenancy to a former owner of a defective home under the Housing Act 1985, s554 or s555

4. The Housing Register

4.1 The Council is not legally obliged to maintain a Housing Register but has chosen to do so.

4.2 The Housing Register will be maintained by Housing Services at the Council Offices in Saffron Walden.

4.3 The Housing Register will be open to all categories of person except those who are ineligible as defined at Paragraph 5.

4.4 The Housing Register will be open to;

i. homeseekers of 18 years of age and over

ii. current council or RP tenants

iii. 16 and 17 year olds owed a full housing duty by a local housing authority under homelessness legislation.

iv. 17yr 6mth old Care Leavers who were resident in Uttlesford at the time they were placed in Care or who are living in Uttlesford immediately prior to the time of leaving care

v. People with the capacity to understand and adhere to a tenancy agreement

5. Eligibility categories

5.1 Eligibility

5.1.1 The following categories of applicant may not be eligible for the Housing Register;

i. Persons subject to immigration control (except those in classes prescribed by the Secretary of State as being eligible for an allocation of housing)

ii. Persons not habitually resident in the Common Travel Area (i.e. the U.K., Channel Islands, Isle of Man and the Irish Republic)

5.1.2 Any person making an application who is identified as falling under the Asylum and Immigration Act 1996 will be assessed in accordance with the Act.

5.1.3 Eligibility for housing will be determined in accordance with the Allocation of accommodation: guidance for local authorities in England issued by the government under s169 of the Housing Act 1996 Part 6 as amended by the Localism Act 2011.

5.1.4 Any other persons the Secretary of State may by regulations prescribe as persons from abroad who are ineligible to be allocated housing by local authorities in England.

5.2 Local Connection Eligibility

5.2.1 Any applicant who does not meet one or more of the following local connection eligibility criteria will not be eligible to join the housing register.

i. Have lived continuously in the Uttlesford District for the last 3 years (time spent away at University or college will count as living continuously within the district providing the applicant had previously lived in the district immediately prior to the start of their course.)

ii. Living outside of Uttlesford or within the District for less than 3 years but have immediate family members who have lived in Uttlesford for the last 5 years and from whom they are receiving or giving substantial ongoing support that cannot be provided from outside of the District

iii. Living outside of Uttlesford but have been permanently employed in the Uttlesford District for a minimum of 3 years and working at least 24 hours per week

iv. Applicants who meet the Right to Move criteria as set out in Appendix III.

v. Applicants who are owed a full homelessness duty by Uttlesford District Council under s.193 of Part VII of the Housing Act 1996, as amended and where a Senior Officer has agreed exceptional circumstances resulting in the need for access to social housing locally

vi. Applicants who have been assessed as falling within a reasonable preference category (under 166A (3) of Part 6 of the Housing Act 1996) and where a Senior Officer has agreed exceptional circumstances resulting in the need for access to social housing locally.

vii. Applicants who are owed a prevention and/ or relief duty under The Homelessness Reduction Act 2017 and where a Senior Officer has agreed exceptional circumstances resulting in the need for access to social housing locally

viii. Care leavers up to the age of 25 who were originally from Uttlesford but were accommodated outside of the district

ix. Care Leavers who were placed in Uttlesford for at least 2 years including sometime before they reach the age of 16. They will retain a connection to Uttlesford until they reach the age of 21

x. Other special reasons, to be agreed by two Senior Officers at their discretion, for example where an applicant has no safe connection to another area due to domestic abuse

5.2.2 The following categories of person will be exempt from local connection criteria:-

i. Existing social housing tenants residing in the Uttlesford District

ii. Applicants who are serving members of the regular forces or who have served in the regular forces, if the application is made within five years of their date of discharge.

iii. Applicants who have recently ceased or will cease to be entitled to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner where:-

- the spouse or civil partner has served in the regular forces; and
- their death was attributable (wholly or partly) to that service
- Is serving or has served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service and the application is made within five years of discharge.

5.3 Financial Eligibility

5.3.1 Any homeseekers who in the opinion of the Council has sufficient funds including: annual income, residential property equity, savings, or other assets to enable them to meet their own housing costs by open market purchase or open market renting will be ineligible to join the housing register.

5.3.2 Any lump sums received as compensation for injury or disability sustained on active service by either, members of the Armed Forces, former Service personnel, bereaved spouses and civil partners of members of the Regular Forces, or serving or former members of the Reserve Forces, will be disregarded from this criterion

5.3.3 Owner Occupiers, or other applicants who are financially ineligible to join the housing register, will be eligible to join if they qualify for sheltered housing.

5.4 Housing Related Debt Eligibility

5.4.1 Applicants with housing related debt will generally not be eligible to join the housing register if they are not addressing the debt. Housing related debt includes rent arrears to the Council, RP, other local authority or private landlord, also Council Tax and any monies given through the Councils Rent Deposit Guarantee Scheme.

5.4.2 When a financial assessment carried out by the Council shows that the debt cannot be cleared immediately then a realistic and affordable repayment arrangement should be agreed to clear the debt.

5.4.3 Applicants will become eligible to join the register if they have an agreed repayment plan in place and have made regular payments for at least 12 months or the debt has been cleared in full.

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5.4.4 Council and RP tenants who have been accepted onto the housing register but have rent arrears on their current property will not be offered another tenancy until all rent arrears have been cleared in full.

5,4.5 Accepted homeless applicants who have rent arrears on their current temporary accommodation will not be offered accommodation that would discharge the Council's homelessness duty until the rent arrears are cleared in full.

5.4.6 Housing Associations may also hold their own policy on debt.

5.4.7 All cases of housing related debt will be considered on an individual basis taking account of all the information provided by all interested parties. All exceptions to the above Policy criteria on debt are to be agreed by two Senior Officers.

5.5 Exclusions from the Housing Register

5.5.1 The Council may exclude someone from the register if it considers it proportionate and reasonable to do so as a result of unacceptable behaviour. The Council will take into account all relevant factors such as health, dependants and the individual circumstances of the applicant when making these decisions. The decision to exclude someone from the housing register will in the first instance be made by the Housing Options Team Leader.

5.6 Unacceptable Behaviour

5.6.1 “Unacceptable behaviour” “ is defined as behaviour, which would, if the person was either a secure tenant or a member of a secure tenants household, entitle a landlord to a possession order under any of grounds 1 to 7 of HA 1985 sch 2.”

5.6.2 If an applicant who has previously been refused an application onto the housing register because of unacceptable behaviour and considers that their unacceptable behaviour should no longer be held against them they can complete a new application from.

5.6.3 When making decisions regarding unacceptable behaviour Uttlesford District Council will consider:

i. If the applicant (or a member of their household) has been guilty of unacceptable behaviour serious enough to make them unsuitable to be a tenant.

ii. When the unacceptable behaviour took place. Consideration will be given to the length of time that has elapsed, this will be a minimum of two years and whether there has been any change in circumstances.

iii. What action the landlord would have taken against the perpetrator of the unacceptable behaviour. The behaviour must be serious enough for the landlord to be granted a possession order as detailed above.

iv. Whether the behaviour is serious enough to make the applicant unsuitable as a tenant.

v. If the applicant or any member of their household is subject to an Anti-Social Behaviour Order an Acceptable Behaviour Contract or any similar penalty introduced by the ASB and Crime and Policing Act 2014 or any relevant legislation.

5.6.4 The Council may decide to exclude existing applicants from the register where they become aware of unacceptable behaviour that would make them unsuitable to be a tenant.

5.6.5 All decisions made by the Council in relation to excluding applicants from the housing register are subject to review if requested by the applicant (see 16).

5.7 Notifying an ineligible applicant

5.7.1 Applications from ineligible applicants will not be registered. The applicant will be notified in writing of the decision and the reasons for the decision will be explained to them.

6. Application to the Housing Register

6.1 Advice and Information

6.1.1 The Council will ensure that advice and information is available free of charge to persons in the District about the right to make an application for housing.

6.1.2 The advice and information can be provided by the Council on the phone, by letter/e-mail or in person at the Council Offices. Applicants may also seek advice from other agencies such as the Citizens Advice Bureau.

6.1.3 Applicants will be required to complete an on-line application form for inclusion on the Housing Register and to provide supporting documentation as the Council deems appropriate to allow an assessment of their entitlement to housing accommodation to be made.

6.2 Joint Applicants

6.2.1 Applicants may be a joint applicant with another person although for a joint application, both applicants must be eligible under this policy, except for the local connection criteria where only one of joint applicants needs to meet the criteria.

6.3 Definition of a household

6.3.1 Applicants should only include persons on their application who are established members of their household and who will be occupying the accommodation as their only principal home.

6.3.2 Non-dependent adults will not be considered as part of the household. Unless they have had continuous recorded residence with the applicant, except whilst in further education.

6.3.3 Applicants with a shared residence order or staying contact for children are not automatically entitled to bedrooms for their children. The general principle is that a child needs one home of an adequate size, and that the council will not accept responsibility for providing a second home for children. The council will make an assessment based on the individual circumstances.

6.4 Documents

6.4.1 As part of the application process, applicants will be asked to provide the following documentation:

i. Photographic proof of their identity or a full birth certificate for all those included on their application

ii. Proof of immigration status for all those included on the application

iii. Proof of current address

iv. Proof of meeting the local connection residency criteria

v. Proof of dependency responsibilities anyone living with them

vi. Proof of income, including bank statements for all accounts held

vii. Proof of savings for all accounts held

viii. Details relating to previous accommodation where appropriate

6.4.2 We may require additional information according to an applicant's circumstances and may sometimes need to contact third parties to verify the information that the applicant has given us. By completing the application form applicants, as detailed on the form, are giving consent for us to do this.

6.4.3 If all the required supporting documents are not received within 28 days the application will be cancelled.

6.4.4 If assistance is needed in making an application to the Housing Register help will be available from the Housing Services Department.

6.5 User guide

6.5.1 When an applicant has been found to be eligible to join the Register, we will assess their application and they will receive a letter of confirmation and access to an on-line Scheme User Guide which will tell them:

i. Their HomeOption identification number;

ii. The Band that their application has been placed in and the date from which this takes effect

iii. The size of home for which they are eligible

iv. Details of how they can register interest for a home under CBL

6.5.2 If from an application form we have identified that an applicant may need assistance with using the Scheme we will add their name to a database of applicants for whom assistance with making expressions of interest is offered. Applicants can be added to this list at any time upon their request.

6.5.3 A printed version of the User Guide can be provided on request.

6.6 Renewal of applications

6.6.1 In order to keep the Housing Register up to date, applicants will be required to renew their application, this will normally be on the anniversary of their application. Applicants will be prompted to renew their application when they log on to the HomeOption website. They will also be sent an email to the email address supplied on their application or a letter to the address registered on the application.

6.6.2 If an applicant fails to renew their application within 28 days from the date they received a communication to say that renewal is due, they will be deleted from the Housing Register without further notification.

6.7 Cancelling an application

6.7.1 We will only cancel an application if:

i. The applicant has written to us to ask us to cancel it, or

ii. The applicant has not responded to the renewal requests (see paragraph 6.6 above) or

iii. The applicant has accepted an offer of accommodation through HomeOption.

iv. The applicant has ceased to be eligible (see paragraph 5 above), or

v. The applicant has made false or deliberately misleading statements in connection with their application (see paragraphs 18 below)

vi. The applicant has not provided documentary proofs for their application within 28 days of completing the on-line form

7. Access to Information

7.1 Upon written request, an applicant, will be able to;

i. receive a copy of their details entered on the Housing Register free of charge

ii. receive copies of documents provided by them

iii. have access to their file in accordance with the provisions of the Data Protection Act 1998

iv. ask for a formal review of any decisions about the facts of their case

v. be informed in writing of any decision about the facts of their case and of their right to request a review of any such decision

vi. receive general information to enable an applicant to assess;

- how their application is likely to be treated
- whether accommodation appropriate to their needs is likely to be available and, if so, when

8. Assessment of Housing Need and Allocation of Properties

8.1 Assessing Housing Need

8.1.1 Applicants housing circumstances are assessed on their individual circumstances and their application placed in one of five Bands. These Bands ensure that we give greatest priority to those in the greatest housing need, so that we make the most effective use of available homes. The law also requires us to give preference to certain categories of housing need, and these have been included within the banding priority criteria.

8.1.2 Band A is considered the highest priority of housing need, Band B the next highest etc., with Band E being the lowest priority.

8.1.3 Within each Band, the applicant with the greatest priority is the applicant who has spent the longest time in that band.

8.1.4 Some allocations will be dealt with outside the scheme; these are explained in paragraphs 2.3 and 3.2.

8.1.5 Where an applicant or one of joint applicants is a tenant of the Council at the time of the application then the property subject to that tenancy will be inspected by the Council to ensure compliance with the terms of the tenancy agreement before the application is processed.

8.1.6 Further details of how each band has been assessed is provided below:

The Band Criteria

8.1.6.1 **BAND A**

Applicants meet at least one of the following criteria

i. Accepted Homeless in severe need

ii. Critical Medical/Welfare award – to include emergency situations

iii. Relationship breakdowns in council properties where applicants are under-occupying but have been assessed as having housing need within Uttlesford

iv. Successor tenants in council properties where applicants are under-occupying

v. Releasing a property in need (council or RP property that the Council has nominations rights to) or where it prevents the Council making expensive alterations to a property

vi. Those applicants within Uttlesford required to leave their homes as a result of an emergency prohibition order served in relation to the premises under the Housing Act 2004

vii. Uttlesford Council tenants, or tenants in RP property where the Council will receive the nomination, who are currently in accommodation larger than their needs(Uttlesford tenants may be eligible for removal expenses grant see paragraph 9.21 below)

viii. Multiple needs - If someone has two or more needs in band B they will be moved to band A (accepted homeless cases do not come under this category – if additional preference is needed for homeless cases they will be assessed as accepted homeless in severe need)

8.1.6.2 High welfare and multiple needs in band A would be expected to express an interest within 4 cycles of available properties otherwise priority may be reduced.

8.1.6.3 **BAND B**

Applicants meet at least one of the following criteria

i. Serious Medical/Welfare award (If after 6 months applicants have not expressed interest in all suitable advertised properties this award will be reviewed and applicants may be placed in a lower band)

ii. Social housing tenants living in overcrowded permanent social housing within Uttlesford

iii. Accepted homeless cases who meet the Allocation's Policy eligibility criteria

iv. Applicants owed a relief duty under the Homelessness Reduction Act 2017 who are assessed by the council as likely to be in priority need and unintentionally homeless

v. Nominations from supported housing schemes where the Council has agreed move-on arrangements and the applicant is ready to move on. These applicants will be able to use the CBL scheme for a period of 4 weeks from the date they are placed into this band to express interest in any suitable flatted accommodation. If they have not been successful

after the end of this period they will be made one offer of suitable flatted accommodation which may be either in the private or social sectors which if they refuse will result in them being down banded to a band that reflects their housing need.

vi. A prohibition order or demolition order has been served, or is about to be served in relation to the applicant's dwelling. This indicates that the property contains one or more category 1 hazards that probably cannot be remedied.

vii. An improvement notice has been, or is about to be, served in relation to the applicant's dwelling and :-

a. The remedies that are needed to reduce the hazard will require the property to be vacated for a significant period of time

b. The cost of the remedies are beyond the means of the applicant (where applicable)

c. The remedies will make the property unsuitable for occupation by the applicant

viii. Multiple needs – Applicants with four or more needs in band C will move to band B

8.1.6.4 **BAND C**

Applicants meet at least one of the following criteria

i. Moderate medical/welfare award

ii. Notice of Seeking Possession due to expire within 56 days or assessed as being at risk of homelessness within 56 days

iii. Applicants who are owed the relief duty under the Homelessness Reduction Act 2017 but who are assessed by the council as likely to not be in priority need

iv. Applicants who are owed the relief duty under the Homelessness Reduction Act 2017 but who are likely to be intentionally homeless

v. Applicants who following a homelessness application have been deemed by the council to be in priority need but intentionally homeless

vi. No fixed abode

vii. Overcrowded in private rented accommodation or social housing outside Uttlesford

viii. Fixed term licensees

ix. Shared facilities – not generally applicable for single applicants under 35yrs

x. Lacking facilities

xi. A hazard awareness notice has been served in relation to a category 1 or 2 hazard at the applicant's dwelling

and

the remedies that are needed to reduce the hazard will require the property to be vacated for a significant period of time;

or

the cost of the remedies are beyond the means of the applicant (where applicable);

or

the remedies will make the property unsuitable for occupation by the applicant

8.1.6.5 **BAND D**

i. Applicants assessed as meeting Right to Move criteria who have been placed in one Band higher than their housing need.

ii. Any applicant subject to the prevention (s.195 (2) or the relief duty (s189(2): S.193B(1).) under the Homelessness Reduction Act 2017 who fails to co-operate as stated in s193B and 193C of the Act will be placed in Band D.

8.1.6.6 **BAND E**

Applicant meets at least one of the following criteria

i. Caravan or mobile home but no housing need

ii. Tied accommodation but no housing need

iii. Applicants who live in a property that is adequate to meet their needs in terms of property type, size and facilities.

iv. Applicants aged under 35 years who are sharing accommodation

v. In prison

vi. A suspended prohibition order or improvement notice has been or will be served by the Environmental Health Department in relation to the applicant's dwelling but the criteria leading to it becoming active are not met by the applicant.

vii. A hazard awareness notice or improvement notice has been or will be served in relation to the applicant's dwelling but the specified remedies are low cost and straight-forward to achieve.

8.2 Allocation of Properties

8.2.1 With the exception of those allocations dealt with outside the scheme; these are explained in paragraphs 2.3 and 3.2 properties will be allocated to the applicant who expressed interest in the property, who is in the highest Band and with the earliest priority date within that Band.

8.2.2 At the time of the offer of a property applicants will be asked to provide proof that they continue to meet all eligibility criteria to be included on the housing register

8.2.3 Where two applicants have the same priority date in the Band the property will be allocated to the household who it is judged to have the family composition that makes best use of the accommodation. This will be decided by a Senior Manager and the reasons documented

8.2.4 **Houses –** Transfer applicants and homeseekers who are tenants of RP accommodation within Uttlesford, where UDC has the nomination rights, will be given priority for houses or general needs

bungalows with the same number of bedrooms as their current property ahead of other applicants, even if they are in a lower Band or have a lower priority date (which will be the date of application or date they have been a tenant of the flat for 2 years, whichever is the latter), providing they meet the following criteria:-

- Currently living in a flat or maisonette
- Have lived in the flat for more than 2 years
- Have conducted their current tenancy in a satisfactory manner

For properties larger than one bedroom this will only apply if there are children under 16 within the household.

9. Housing Priority

9.1 Deciding who has priority on the register

9.1.1 Applicants will be placed in the relevant Band defined by their specific circumstances and as assessed by the Housing Options Team with reference to the banding system set out in this policy

9.2 Overcrowding

9.2.1 Homeless applicants placed in temporary accommodation by the council will not be assessed under the criteria for overcrowding.

9.2.2 Applicants will be placed in Band B if they are overcrowded, i.e. lacking one or more bedrooms and are tenants of a Council or Housing Association property where the Council has nomination rights to the RP.

9.2.3 Applicants will be placed in Band C if they are overcrowded in private rented accommodation or living with relatives or friends.

9.2.4 Overcrowded applicants with a local connection to Uttlesford, but living in Council or Housing Association properties outside the District will be in Band C.

9.2.5 Rooms which do not meet the standards for use as living accommodation for one person (the standards are given in the Housing Act 1985 Part X) will not be counted.

9.2.6 If applicants need an extra room for medical or welfare/hardship reasons they will not be considered overcrowded but will be assessed for medical or welfare priority.

9.2.7 Overcrowding priority will not be given if someone moved into the applicants' household making them overcrowded. This will be looked at on welfare grounds.

9.2.8 Where an applicant is pregnant and the birth of the child will mean that they are entitled to a larger property, the applicant will not receive overcrowding priority until the baby is born.

9.3 Children sharing bedrooms

9.3.1 Two children of the same sex are expected to share a bedroom until one of them reaches the age of 16.

9.3.2 Two children of the opposite sex are expected to share a bedroom until the oldest is 10 years old.

9.4 Applicants without children

9.4.1 Single applicants and couples without children who are living in overcrowded conditions will not be given priority for overcrowding unless they are in self-contained accommodation which is too small, for example a couple in a one person bed-sit. Young adults living with their parents or people temporarily sharing with friends will not get overcrowding priority.

9.5 Disrepair, poor design and lack of facilities

9.5.1 Any complaint about poor repair within Council or RP properties must be reported to the applicant's landlord's Repairs service.

9.5.2 Applicants living in private sector accommodation in poor condition must be referred to the Council's Environmental Health Department who will assess the situation and then make their recommendations according to the Allocations Scheme.

9.5.3 If an applicant lacks facilities such as cooking facilities, washing facilities, toilet facilities or adequate heating they will be placed in Band C.

9.6 Sharing with another household

9.6.1 Applicants will be placed in Band C if they share any of the following facilities with either people they are not related to or their family if they are wishing to live separately from them.

i. living room

ii. kitchen

iii. bathroom or toilet.

9.6.2 Single applicants under the age of 35 who are sharing will generally be considered as adequately housed. Consideration will be given for applicants in special circumstances.

9.7 People living in mobile homes or caravans

9.7.1 Applicants living in a caravan, mobile home or houseboat will be placed in band E if there is no other housing need, reflecting parity with other private sector applicants.

9.7.2 It does not matter if the caravan is on a site or not or if they own or rent the property.

9.7.3 If their accommodation lacks facilities or is in poor repair (see paragraph 9.5) they will be placed in band C.

9.8 Homelessness

9.8.1 Accepted homeless households are applicants to whom:

i. The Council has accepted a duty under Part VII of The Housing Act 1996, as amended by the Homelessness Act 2002 (the duty towards households who are in priority need and unintentionally homeless) **and**

ii. the council accepts a duty to provide suitable accommodation.

9.8.2 In the first instance the Council will look to discharge its homelessness duty for all accepted homeless applicants within the private rented sector. The Council will ensure that any offer of private rented housing is appropriate to the needs of the household, that the length of any tenancy is a minimum of 12 months and that the property meets the Homelessness (Suitability of Accommodation) (England) Order 2012. An assessment will also be carried out to assess the affordability of the property, including the eligibility to receive Local Housing Allowance/Housing Benefit. The property may be outside the Uttlesford District.

9.8.3 When a private rented property becomes available it will be offered to the accepted homeless applicant for whom the property is suitable and if this is more than one applicant, it will be offered to the applicant with the earliest homelessness application date.

9.8.4 Any private rented tenancy that discharges the council's homelessness duty will be for a period of not less than 12 months. If within 2 years, beginning with the date on which the applicant accepts a private rented sector offer, the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and if the applicant is found to be homeless (from the date of the expiry of the termination notice) and did not become homeless intentionally from the private rented accommodation, the Council will accept a homelessness duty regardless of whether the applicant has a priority need.

9.8.5 Applicants who meet the Allocation's Policy eligibility criteria will be allowed to make expressions of interest on suitable properties advertised through the CBL system. If after a period of 2 cycles from when the applicant received their S.184 decision letter they have not been suitably accommodated, the Council will express interest on their behalf and make one final offer of suitable flatted accommodation. If this offer is refused, the Council's homelessness duty under the Housing Act 1996 to provide accommodation will be considered to have been discharged.

9.8.6 Homelessness applicants who do not meet the Allocation's Policy eligibility criteria but meet the criteria for a Direct Let will be made one final offer of suitable accommodation. If there is more than one homeless case waiting for a direct let then when a property is available it will be offered to the case for whom it is suitable and with the earliest homelessness application date.

9.9 Accepted homeless households in severe need

9.9.1 These are applicants to whom:

i. the council has accepted a duty under the Homelessness legislation **and**

ii. they meet the Councils eligibility criteria

iii. are elderly and vulnerable due to frailty***or**

iv. have a terminal or long-term illness **or**

v. have severe mental health problems, have been unable to cope in temporary accommodation, and have been 'sectioned' or are likely to be admitted under the Mental Health Act **or**

vi. are permanent wheelchair users **or**

vii. are council or RSL tenants who have an urgent need to transfer as they are suffering from violence or threats of violence and are considered to be at significant risk

9.9.2 Where the above circumstances apply these applicants will be placed in Band A.

9.9.3 The Council will decide who will be placed in Band A. Recommendations will be made by the Housing Officer dealing with the case because they have the most accurate and up-to-date information on the applicant, due to the investigations carried out before an applicant is accepted as homeless.

9.9.4 *Elderly non-frail applicants may still be placed in Band A, however clear supporting evidence will be required to support their application.

9.11 Failure to Co-operate

9.11.1 Any applicant subject to the prevention (s.195 (2) or the relief duty (s189(2): S.193B(1).) under the Homelessness Reduction Act 2017 who fails to co-operate as stated in s193B and 193C of the will be placed in Band D.

9.12 Assured shorthold tenants under notice

9.12.1 Assured shorthold tenants who have received a ‘Notice Requiring Possession’/ Notice to Quit from their landlord will be placed in Band C if there is 56 days or less before the notice expires.

9.12.2 All applicants will be offered advice regarding their housing options.

9.13 Lodger under notice

9.13.1 This applies to applicants living in the same property as their landlord.

9.13.2 They must be renting a room that is for their own use only, and be paying a market rent.

9.13.3 Proof that notice has been served is required.

9.13.4 They will be placed in Band C if there is 56 days or before the notice expires.

9.13.5 The Council will then check to see whether the notice will be enforced.

9.14 Tenants of tied accommodation under notice

9.14.1 Tenants in tied accommodation with no need to move will be placed in Band E.

9.14.2 If they have received a legal notice requiring them to leave their accommodation in 56 days or less will be placed in Band C.

9.15 Protected tenants with a possession order

9.15.1 This applies to a tenant with a 'protected' tenancy (that is a tenancy with protection from eviction, but not an assured shorthold tenancy).

9.12.5 They must have been served with a court order for possession and then will be placed in Band C.

9.16 Fixed-term licensee

9.16.1 This applies to applicants living in supported housing schemes. Applicants in these schemes will be placed in Band C.

9.16.2 Applicants in supported housing schemes where the Council has agreed move-on arrangements will be placed in Band B if they are judged as ready to move on.

9.16.3 Applicants accepted by the Council as being owed the full homeless duty and in a specialist refuge for victims of domestic abuse will be placed in Band B

9.17 Applicants with no fixed address

9.17.1 This applies to applicants who have no fixed address.

9.17.2 They will be placed in Band C.

9.17.3 If they are in prison they will be placed in Band E.

9.18 Medical, welfare, hardship and harassment

9.18.1 Important**:** priority can only be awarded under **one** heading: medical, welfare, hardship or harassment.

9.18.2 Applicants can be assessed under all headings, but get awarded priority under only one heading.

9.18.3 Any medical or welfare priority can be reassessed if an applicant's circumstances change.

9.19 Medical assessments

9.19.1 This applies if an applicant's present housing is detrimental to their health, or if a move to more suitable accommodation would have a positive effect on their health.

9.19.2 Applicants may also be awarded priority if the applicant is asking to be rehoused so they can receive care or specialist support.

9.19.3 Extra information may be sought from private sector landlords, housing officers, GPs, health visitors and other parties.

9.19.4 The table below is used to act as a guide to priority:

Effect of housing on health	**Medical Problem**			
	Very Serious	Serious	Moderate	Low
Very Serious	Band A	Band B	Band C	No award
Serious	Band B	Band B	Band C	No award
Moderate	Band C	Band C	Band C	No award
Low	No award	No award	No award	No award

9.19.5 Assessments of medical priority of band B or above will be carried out by two senior officers in consultation with any officers with direct knowledge of the applicants and using all information available at the time and using the above guide.

9.19.6 Applicants accepted under Homelessness legislation will not be eligible for medical priority. If a homeless applicant's temporary accommodation is unsuitable on medical grounds the Council will first look to see if alternative temporary accommodation can be found.

9.19.7 Homeless households can be considered through a medical assessment if an extra room is required on medical grounds.

9.20 Welfare/Hardship/Harassment assessments

9.20.1 This applies if at least one person in the household is vulnerable and less able to find settled or suitable accommodation.

9.20.2 These people will have a need to move but may not get medical priority because their present housing may be suitable for their needs.

9.20.3 The table below is used to act as a guide to priority:

Need for settled suitable accommodation	Level of Vulnerability		
	High	Medium	Low
High	Band A	Band B	Band C
Medium	Band B	Band B	Band C
Low	Band C	Band C	Band C

9.20.4 Welfare/Hardship/Harassment priority of band B or above will be carried out by two senior officers in consultation with any officers with direct knowledge of the applicants and using all information available at the time and using the above guide.

9.20.5 Homeless applicants will not be looked at under welfare issues. If a homeless applicant's temporary accommodation is unsuitable on welfare grounds the Council will first look to see if alternative temporary accommodation can be found.

9.20.6 If a homeless applicant or household is particularly vulnerable and they may be at significant risk in temporary accommodation the Council can consider the category of 'accepted homeless applicants in particular need' to increase them to band A (see paragraph 9.9).

9.21 Tenants with a home that is bigger than they need

9.21.1 This applies to Uttlesford District Council secure tenants or tenants of RPs (where the Council has nomination rights), who are 'under-occupying' their homes and want to move to a smaller property. These applicants are given high priority because it enables a household with high need to move into the freed up larger home.

9.21.2 Applicants who are currently in property larger than their needs will be placed Band A.

9.21.3 Where an Uttlesford District Council tenant is downsizing to a Council or RSL property they may be eligible for a downsizing grant to help with removal costs. For further details please see the Council's Decant Policy.

9.22 Applicants offered housing because of the death of an Uttlesford Council secure tenant

9.22.1 This applies if the applicant qualifies to 'succeed' to a tenancy when the tenant dies.

9.22.2 To be a 'successor tenant' the applicant has to meet certain rules – usually must be related to the tenant, or be their partner, and have

lived in the property a certain time. The rules for this are in the tenancy conditions for the property.

9.22.3 If the successor tenant does not need the property because of its size, or the adaptations or services in the property, they may be served a notice seeking possession under Schedule 2, Ground 16 of The Housing Act 1985. This will be served more than six months but less than twelve months after the tenant's death.

9.22.4 Where successor tenants are in a property larger than they need or with major adaptations they do not require they will be placed in band A. They are able to express an interest for suitable properties under the scheme. If they have not expressed an interest within six months of their application their case will be reviewed and the Council may reserve the right to express an interest for them on suitable properties.

9.23 Uttlesford Council secure tenants offered housing because of a Relationship breakdown

9.23.1 This category applies to Uttlesford secure tenants only.

9.23.2 If a joint tenant ends the tenancy when moving out, the property is not automatically offered to the tenant remaining.

9.23.3 Applicants will be placed in Band A when there is a relationship breakdown and the joint tenant moves out and ends the tenancy and the other tenant qualifies to be offered a smaller property.

9.23.4 They will be able to express an interest for properties under the scheme but if they have not expressed an interest within six months of their application their case will be reviewed. The Council reserves the right to express an interest for them on suitable properties.

9.23.5 If a property is then subsequently refused they will have no right to remain in their current property and therefore action will be taken by the council to gain possession of the property.

9.23.6 If an applicant qualifies to be offered the same property we will make them a direct let offer of that property.

9.24 Transfers which will release a property that is needed

9.24.1 Applicants will be placed in Band A of the scheme if they wish to move **and**

i. the property they would leave is needed to meet the urgent housing needs of another household on the register which otherwise would not be met within a reasonable time **or**

ii. where it prevents the Council making expensive alterations to the property **and**

iii. there is not a serious shortage of the types of home they want to move to.

9.25 Applicants who have deliberately made their housing situation worse

9.25.1 The Council will consider whether an applicant has deliberately made their housing situation worse to increase their housing need, and consequently improve their chances of re-housing through the register.

9.25.2 If it is decided that the applicant has made their housing situation worse, they will remain in the band that reflects their housing need in their previous accommodation.

9.25.3 If the applicant was not registered from their previous address, the assessment of housing need will be based on the accommodation occupied before their accommodation changed.

9.25.4 The assessment will be reviewed after 12 months, on request. If the restriction is removed, the application will be placed in the band that reflects current circumstances. Their effective date will be the date they moved to the new band.

9.26 Owner-occupiers

9.26.1 Applicants who previously owned a property and have sold it will be asked to provide proof of the sale and evidence of any proceeds received.

9.26.2 Owner-occupiers will generally not be eligible to join the housing register unless they are able to demonstrate that they are unable to meet their housing needs through their own resources.

9.26.3 Property owners over 60 will be eligible to join the housing register if they can demonstrate a need for sheltered accommodation.

9.27 Applicants in ‘tied’ accommodation which is suitable for their needs

9.27.1 Applicants are considered to be in tied accommodation if the occupation of their home is essential for the performance of their

duties as an employee. This includes applicants who are accommodated by HM Forces.

9.27.2 Applicants in 'tied' accommodation will be placed in band E. They will be moved to Band C if:

i. they are six months away from retirement **or**

ii. they have received a legally binding notice asking them to leave their accommodation.

9.28 Deciding the effective date

9.28.1 Priority within bands relates to an applicant's effective date. The effective date is usually the date the application is received, except;

i. Where an applicant is moved from one band to a higher band. Their new effective date will be the date their circumstances changed.

ii. Where an applicant receives priority on medical or welfare grounds their effective date will be the date the Council receives the required supporting evidence to make this award.

iii. Where an applicant has been accepted as Homeless their effective date will be the date a relief duty was accepted, unless they already qualify for Band B with an earlier date.

9.29 Armed Forces Priority

9. 29.1 Members of the Armed Forces, who are in urgent housing need who fall within one or more of the following criteria, will be placed in one Band higher than their housing need.

i. Is serving in the regular forces and is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to the person's service

ii. Formerly served in the regular forces where the application is made within 5 years of their date of discharge

iii. Has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner who has served in the regular forces and whose death was attributable (wholly or partly) to that service or

iv. Is serving or has served in the reserve forces and is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to the person's service

9.29.2 For this purpose "the regular forces" and the "reserve forces" have the meanings given by section 374 of the Armed Forces Act 2006(4)

9.30 By-passing applications that would otherwise meet eligibility criteria for an offer of accommodation

The Council reserves the right to by-pass an offer of accommodation while shortlisting applicants in the following circumstances

i. The property is not in accordance with an applicants assessed medical needs

ii. Applicant has pets and the property is not suitable or pets are not permitted

iii. Applicant has housing related debt where an agreed repayment plan has been breached (see 5.4)

iv. Applicant is a Council or RP tenants with rent arrears *(*see 5.*4)*

v. Council tenants where the condition of their current property is considered to be a breach of their Conditions of Tenancy

vi. If the applicant does not meet the rules relating to age or household size by the RP advertising the property.

vii. Other reasons where the Council deem that a sensitive allocation is necessary and this has been agreed by a Senior Manager .

viii. If the applicant has been offered a property and have not yet refused that offer.

ix. If the applicant is unable to view or accept the property within the required timescale.

x. Where the applicant has not notified the Council of a change of circumstances material to their application.

9.31 Penalty for refusal of offers of accommodation

Any applicant (except from existing Council or RP tenants who are under-occupying and wishing to move to smaller accommodation) who refuses 2 offers of accommodation, for properties on which they have expressed interest, within a 6 month period, will have their application e suspended for 12 months.

10. Types of Tenancies

10.1 The type of tenancy an applicant will be offered will be in accordance with the Council's tenancy policy or the tenancy policy of the landlord of the property. Tenancy policies will be set having regard to the West Essex Tenancy Strategy.

10.2 The Council will offer joint tenancies to adult partners where there is a need for a long term commitment to a joint home, except where one of the prospective joint tenants is excluded from or ineligible to join the housing register.

10.3 Generally, homeless applicants residing at homeless accommodation (including the Council's managed short stay accommodation) or bed and breakfast accommodation, if offered Council accommodation, will be offered an Introductory Tenancy followed by secure or flexible tenancy in accordance with the Council's Introductory Tenancy Scheme and Tenancy Policy.

11. Tenancy Start Dates

11.1 The Council will allow applicants 7 days to reach a decision whether to accept any Council accommodation they are offered, although we may allow longer having regard to personal circumstances.

11.2 Where possible the applicant will be given an opportunity to view the property they are being offered before they have to give the Council a decision.

11.3 If the applicant is interested in the tenancy they will either be advised by telephone when the property is ready for letting or receive a formal offer of the tenancy by first class post.

11.4 Generally, for properties becoming ready for letting on Friday, the tenancy start date will be the following Monday.

12. Redecoration Scheme

Internal decorations to an Council property are the tenant's responsibility. However, if a property (excluding sheltered accommodation)offered to a housing applicant is, in the view of the inspecting officer, in need of redecoration, a voucher for the purchase of an appropriate amount of paint will be provided.

13. Designation of Property Type – Age restrictions

13.1 To make best use of housing stock properties are designated as being either general needs or for older persons or people with disabilities.

13.2 Older person's properties, such as bungalows, will normally be allocated to the following categories of person:-

i. Those aged 60 or over (55 for some RP accommodation)

ii. Those under 60 with Band B medical assessment who require this type of accommodation. In these circumstances single people and couples will only be offered 1 bed bungalows and will not generally be able to express interest in general needs properties (unless they have a verified need for a 2-bedroom bungalow).

13.3 In areas of lower demand some bungalows may be advertised without an age restriction, however, in the first instance preference will still be given to applicants over 60 expressing interest.

13.4 General needs properties such as houses or flats will be allocated to persons under 60 unless there are special circumstances which indicate that a particular general needs property is suitable for and applicant who is 60 or over.

14. Allocating Sheltered Housing

14.1 When allocating sheltered housing the same general principles as for other property types are followed, apart from the following:

i. An assessment of the applicants suitability and need for support must be completed before any tenancy is offered. If the applicant is considered unsuitable for sheltered accommodation, they will be advised and given advice on homes more suitable to their needs.

ii. When assessing suitability for sheltered housing applicants will also be given advice about the allocation scheme and how to bid. If an applicant needs help with the process, this will be noted and appropriate arrangements made.

iii. Applicants must generally be over 60 years of age to be eligible for sheltered housing (over 55 for some RP accommodation)

15. Properties designed or adapted for people with physical disabilities

15.1 If an applicant needs a home suitable for wheelchair users or needs other specialist adaptations we will usually require an assessment by an Occupational Therapist before an offer can be considered. (Please refer to the Council's Disabled Adaptations Policy)

15.2 Homes particularly designed for, or accessible to, people with disabilities will be advertised as such to help applicants with those needs identify them.

15.3 Properties which have been adapted to a very high standard may not be included in the scheme and may be directly allocated.

16. Reviews

16.1 If an applicant considers they have been unfairly or unreasonably treated having regard to the provisions of the Allocations Scheme they have the right to request a review of their case within 28 days of the decision

16.2 In the first instance, they must appeal in writing to the Housing Options Team Leader and will receive a written response within 10 working days.

16.3 If, having received this response they wish to make a further appeal they can write to the Housing Strategy and Operations Manager who will then review the case.

17. Equal Opportunities

17.1 The Council's allocation scheme will be operated strictly in accordance with Council policy irrespective of an applicant's ethnic origin, race, nationality, colour, religion, gender, sexual orientation, marital status, age or disability.

17.2 The Council will have regard to, and implement, the provisions of the Race Relations Code of Practice in Rented Housing, which it has adopted. The Council will also abide by the Race Relations Act 1976.

17.3 As an aid to ensuring that applicants are not discriminated against on the grounds of race, the Council will monitor the racial origin of:

i. Applicants on the Housing Register

ii. Applicants allocated housing

iii. Applicants offered sheltered accommodation

17.4 The practices and procedures of Housing Services will be monitored by the Head of Service to ensure that they do not discriminate directly or indirectly. Changes will be made if it is established that practices or procedures may be contravening the Equalities Act 2010.

18. False and Withheld Information

18.1 It is an offence for anyone seeking housing assistance from us to give false information or withhold information that may affect their application for housing.

18.2 This could result in:

i. Criminal prosecution

ii. Cancelling the applicant's housing register application (see paragraph 6.6 above)

iii. Possession proceedings for any tenancy an applicant has obtained as a result of giving or withholding false information

18.3 The Council may seek possession of a property under Ground 5 of Schedule 2 of the Housing Act 1985 if a tenant has induced the Council to grant a tenancy by knowingly or recklessly making a false statement. The Council can prosecute and fine up to £5,000 if found guilty.

19. Information on the Allocations Scheme

19.1 The Council will:-

i. Publish a summary of its Allocations Scheme in a leaflet and provide copies free of charge on request to any member of the public

ii. Provide copies of the Allocations Scheme free of charge at Housing Services, Council Offices, Saffron Walden

iii. Enable copies of the Allocations Scheme to be downloaded on the Internet from the Council's web-site: www.uttlesford.gov.uk

19.2 Within a reasonable period of time, the Council will notify applicants on the Housing Register of an alteration to the Allocations Scheme reflecting a major change of policy, explaining in general terms the effect of the change.

20. Review of Allocations Scheme

The Allocations Scheme will be reviewed periodically by the Council's Housing Board and any recommended changes agreed by the Council's Cabinet.

21. Consultation on Changes to the Allocations Scheme

Before adopting a new Allocations Scheme or making an alteration reflecting a major change of policy in an existing Allocations Scheme, the Council will notify every RP with which it has nomination arrangements of the change, and all local Councils affording them a reasonable opportunity to comment on the proposals.

Data Protection Act

The information you provide may be put on a computer system registered under the current Data Protection law. It may be checked with other information or data held by the Council. It may be disclosed for the purposes as described on the Register Entry

in the Council's Data Protection Register. We may also share data with other agencies for the prevention and detection of crime.

IF YOU REQUIRE THIS INFORMATION LEAFLET IN AN ALTERNATIVE FORMAT AND OR LANGUAGE PLEASE CONTACT HOUSING SERVICES ON 01799 510510

Housing Services
Uttlesford District Council
Council Offices
London Road
Saffron Walden
CB11 4 ER

Telephone: 01799 510510
Email: uconnect@uttlesford.gov.uk
Website: www.uttlesford.gov.uk

Appendix I

For General Needs Accommodation, the number of bedrooms that working age applicants are eligible to express interest in, will be in line with the prevailing Housing Benefit Regulations on size criteria.

Size of Accommodation Allocated – working age applicants

Household Size	**Number of rooms**
1 adult	Bedsit/ 1 bedroom
2 adults living together as a couple	1 bedroom
1 adult (2 adults living together as a couple) expecting baby and the pregnancy is over 24 weeks	2 bedrooms
1 adult (or 2 adults living together as a couple) with either: - 1 child* - 2 children* of different sexes where neither child is over 10 years of age - 2 children* of the same sex up until the eldest child is 16 years of age	2 bedrooms
1 adult (or 2 adults living together as a couple) with either: - 2 children* of different sexes where the oldest child is over 10 years of age - 2 children* of the same sex where the eldest child is over 16 years of age - 3 children* - 4 children* regardless of sex up until the eldest child is 16 years of age	3 bedrooms
1 adult (or 2 adults living together as a couple) with either: - 4 children* where 1 child is over 16 years of age - 5 or more children*	4 bedrooms

***Parents with 'staying access' to dependent children or shared residence orders -** Applicants with a shared residence order or staying access for children are not automatically entitled to bedrooms for their children. The general principle is that a child needs one home of an adequate size, and that the council will not accept responsibility for providing a second home for children. The council will make an assessment based on the individual circumstances.

Single applicants or couples where one is over 60 years of age will be eligible to express interest in 1 or 2 bedroom designated older persons accommodation.

Appendix II

Local Lettings Plans

A Local Letting Plan is an arrangement for the allocation of properties to meet the specific needs of a locality in response to results of a housing needs survey..

Rural Housing – Exception site

When vacancies arise in properties that have been built in rural localities (rural exception sites) and a planning obligation specifies a local connection requirement, this takes precedence over the local connection eligibility in 5.2. This means that households wishing to apply for housing on an exception site who fulfil the local connection requirement set out in a planning obligation, but not the eligibility criteria in 5.2, will be eligible to join the housing register but **only** for this specific development site.

The local connection criteria for rural exception sites will be as follows and in the following order of priority

1. Persons who have been permanently resident in the specified parish for at least two years

2. Persons who are no longer resident in the specified parish but who have been resident for at least three years during the past five years

3. Persons who meet either of the following criteria

    i. in permanent employment in the specified parish for a minimum of 2 years and working at least 24 hours per week

    ii. having close relatives (i.e. parents, grandparents, children, brother or sister) living in the specified parish or parishes who have lived there for at least five years

4. If there are no persons meeting the criteria in 1 to 3 then the cascade above will be applied to any neighbouring parishes identified in relevant clauses in the planning agreement

5. In the event that it is still not possible to allocate a property to applicants who meet criteria 1 to 4 above then the property may be allocated to applicants who meet the local connection requirements who will under-occupy the property, providing that the under-occupancy created does not exceed one bedroom

6. In the event that it is still not possible to allocate a property to applicants who meet criteria 1 to 5 above then the property may be allocated to applicants who meet the Uttlesford eligibility criteria set out in Section 5.2.1

7. In the exceptional event that the council is unable to nominate any persons from its Housing Register who comply with 1 to 6 above, the Registered Provider would offer tenancies to Eligible Persons, the definition of which would be consistent with both the council's local connection criteria and the occupancy requirements. The priority when offering tenancies to Eligible Persons would mirror the council's policies on Allocation of Properties.

The council will select nominations which meet the criteria set out in 1 to 6 in the priority order of their local connection and then on the basis of their housing need and then the date that their housing need priority was awarded.

The age criteria (Section 13) may be waived for suitable properties to allow older people to remain in a village.

Rural Housing – Non exception site

Requiring applicants to have a connection with the locality may also be considered by the Council, on a proportion of the affordable housing provision, on any site subject to the terms of a planning obligation where a local need can be demonstrated through a housing needs survey, no more than three years old at the time of the submission of the planning application.. To be eligible for an allocation on these sites applicants must be assessed as having a housing need by being in Bands A – D of the allocation policy.

Sustainable Communities

In exceptional circumstances, the council may decide to let properties on a slightly different basis from normal, in the interests of building a strong and sustainable community or to deal with particular local issues. The decision to apply such criteria will be jointly made by the landlord of the property and the council.

On new developments, the Council and the landlord may consider widening the eligible bands for home types on first lettings, again taking equal opportunities and legal issues into account

Appendix III

Right to Move Guidance

The Allocation of Housing (Qualification Criteria for Right to Move) (England) Regulations 2015 states that local authorities cannot decide that a person does not qualify for an allocation of accommodation on the grounds that the applicant does not have a local connection with the area if the applicant is a tenant of social housing and who needs to move to take up a job or live closer to employment or training (including apprenticeships).

A local connection requirement must **not** be applied to existing social tenants seeking to transfer from another local authority district in England who:

- have reasonable preference under s.166(3)(e) because of a need to move to the local authority's district to avoid hardship, and
- need to move because the tenant works in the district, or
- need to move to take up an offer of work

The applicant must demonstrate that they **need,** rather than wish, to move, for work related reasons. In this regard the following factors will be taken into account:

- the distance and/or time taken to travel between work and home
- the availability and affordability of transport, taking into account level of earnings
- the nature of the work and whether similar opportunities are available closer to home
- other personal factors, such as medical conditions and child care, which would be affected if the tenant could not move
- the length of the work contract
- whether failure to move would result in the loss of an opportunity to improve their employment circumstances or prospects, for example, by taking up a better job, a promotion, or an apprenticeship

This is not an exhaustive list, other local circumstances may be taken into consideration.

The following forms of work are excluded from the Right to Move

<u>Short-term</u>

In determining whether work is short-term the following factors will be taken into consideration

- whether the work is regular or intermittent
- the period of employment and whether or not work was intended to be short-term or long-term at the outset
- A contract of employment that was intended to last for less than 12 months could be considered to be short-term

Marginal

In determining whether work is marginal the following factors will be taken into consideration

- the number of hours worked (employment of less than 16 hours a week could be considered to be marginal in nature)
- the level of earnings

However Uttlesford District Council may take into account, for example, if a tenant only works 15 hours a week but they can demonstrate that the work is regular and the remuneration is substantial.

Ancillary

- If a person works occasionally in the local authority's district, even if the pattern of work is regular, but their main place of work is in a different local authority's district, the work is excluded from the regulations
- If the tenant is expected to return to work in the original local authority district. If a local authority has reason to believe this is the case, they should seek verification from the tenant's employer
- A person who seeks to move into a local authority to be closer to work in a neighbouring authority – for example, where the transport links are better in the first local authority's area – is also excluded from these regulations.

Voluntary Work

- Voluntary work means work where no payment is received or the only payment is in respect of any expenses reasonably incurred

Apprenticeship

- The term 'work' includes an apprenticeship. This is because an apprenticeship normally takes place under an apprenticeship agreement which is an employment contract (specifically a contract of service) *[Why are apprenticeships excluded?]*

Verification and evidence

Uttlesford District Council will require proof that the work or job-offer is genuine and will need to see appropriate documentary evidence, which could include:

- a contract of employment
- wage/salary slips covering a certain period of time, or bank statements (this is likely to be particularly relevant in the case of zero-hours contracts)
- tax and benefits information – e.g. proof that the applicant is in receipt of working tax credit (if eligible)
- a formal offer letter
- additionally, the employer may be contacted to verify the position *[Do we need to write in that applicants may be required to sign an authority to enable the employers to provide information regarding employment?]*

Uttlesford District Council may consider whether an applicant qualifies both at the time of the initial application and when considering making an allocation.

A set quota which the Council feels appropriate for the proportion of properties that it expects to allocate each year to transferring tenants who need to move into their district for work related reasons is 1%. However this will be reviewed and revised as appropriate based upon supply and demand through monitoring channels.

Applicants who meet the criteria for Right to Move will be placed in one and higher than their housing need.

Annex B - First Homes Planning Advice Notice

UTTLESFORD DISTRICT COUNCIL

FIRST HOMES

PLANNING ADVICE NOTICE

2022

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1. BACKGROUND

1.1 On 24th May 2021, the Government published a Written Ministerial Statement[1] that set out plans for delivery of a new type of affordable home ownership product called First Homes. To support the future development of First Homes, the Government also set out changes to national planning policy.[2]

1.2 First Homes are a specific kind of discounted market sale housing which must:

- be discounted by a minimum of 30% against the market value; and
- can only be sold to a person or persons meeting the First Homes eligibility criteria (see below); and
- after the discount has been applied, the first sale must be at a price no higher than £250,000 outside of London; and
- on the first sale, a First Home will have a restriction registered on the title of the property at HM Land Registry to ensure the discount (percentage of current market value) and certain other restrictions are passed on at each subsequent title transfer.

1.3 This is the minimum criteria a First Home must meet and would be considered to meet the definition of 'affordable housing' for planning purposes.

1.4 The national eligibility criteria for purchasers of First Homes includes the following:

- a purchaser (or, if joint purchase, all the purchasers) of a First Home should be a first-time buyer[3];
- and purchasers of First Homes, whether individuals, couples or group purchasers should have a combined annual household income not exceeding £80,000 in the tax year immediately preceding the year of purchase.
- and a purchaser of a First Home should have a mortgage or home purchase plan (if required to comply with Islamic Law) to fund a minimum of 50% of the discounted purchase price.
- and the First Home must be the buyer's main residence with restrictions on lettings being applied.

1.5 The First Homes Written Ministerial Statement does give local authorities or neighbourhood planning groups discretion to:

- Require a higher minimum discount of either 40% or 50% if they can demonstrate a need for this.
- Set lower price caps if they can demonstrate a need for this.
- Apply time limited eligibility criteria in addition to the national criteria described above, for example a local connection test, or criteria based on employment status.

1.6 First Homes are the Government's preferred discounted market tenure and should account for a minimum 25% of affordable housing secured through planning obligations.

1.7 Uttlesford District Council requires the provision of 40% of the total number

of residential units to meet the national definition of 'affordable housing' within all new residential developments that comprise 15 or more residential units or a site of 0.5 hectares and above.

1.8 To meet housing need the 40% affordable housing policy requirement must incorporate 70% affordable housing for rent, provided as either social or affordable rented housing. The remaining 30% required to meet demand for affordable home ownership and comply with national planning policy, which requires that at least 10% of homes should be available for affordable homes ownership. It was assumed to be provided as shared ownership housing where buyers purchase a share in a home and pay a below market rent on the share that they do not own.

1.9 The First Homes Written Ministerial Statement also introduced a First Homes exceptions site policy to encourage First Homes-led development on land that is not currently allocated for housing, replacing the entry-level exception site policy.

1.10 First Homes exception sites should be on land which is not already allocated for housing and should:
a) comprise First Homes (as defined in the Written Ministerial Statement); and
b) be adjacent to existing settlements, proportionate in size to them, not compromise the protection given to areas or assets of particular importance in the National Planning Policy Framework[4], and comply with any local design policies and standards.

1.11 The First Homes exceptions site policy also allows a small proportion of market homes on the site at the local authority's discretion.

2. PURPOSE

2.1 The purpose of this advice note is to:

2.1.1. Clarify what a policy compliant affordable housing requirement on developments of 15 or more dwellings or a site of 0.5 hectares and above is following the implementation of the First Homes Written Ministerial Statement.

2.1.2 Set out the Council's position regarding those elements of the National criteria that can be amended by local authorities relating to the homes and purchasers of First Homes.

2.1.3 Clarify the Council's interpretation and position regarding the terms 'proportionate to the settlement' and 'small proportion of market homes' in relation to First Homes exceptions sites.

2.2 This Planning Advice Note will be reviewed in line with the review of the Local Plan, which is currently being undertaken to enable the new Local Plan to be adopted in 2024.

3. POLICY COMPLIANT AFFORDABLE HOUSING MIX

3.1 A minimum of 25% of all affordable housing units secured through developer contributions should be First Homes, subject to the transitional arrangements (see below).

3.2 Once a minimum of 25% of First Homes has been accounted for, social rent should be delivered in the same percentage as set out in the Local Plan.

3.3 The remainder of the affordable housing tenures should be delivered in line with the proportions set out in Local Plan policy.

3.4 The First Homes Planning Practice Guidance states that a policy compliant planning application should seek to capture the same amount of value as would be captured under a local authority's up-to-date published policy. It sets out that where a plan viability assessment shows the amount of value captured, this allows the total value captured under the policy to be calculated. This value can then be reallocated to a different affordable housing mix under the new policy[5].

3.5 Currently the 40% affordable housing policy requirement consists of 70% affordable housing for rent and 30% affordable home ownership – assumed to be provided as shared ownership housing. As the 25% First Homes requirement can be accounted for within the 30% affordable home ownership element of the contribution,
The following affordable housing contribution will be considered policy compliant:

70% of the affordable units on new residential developments of 15 or more residential units or on a site of 0.5 hectares and above will be required as affordable housing for rent.

25% of the affordable units on new residential developments of 15 or more residential units or with a site of 0.5 hectares or more will be required as First Homes.

5% of the affordable units on new residential developments of 15 or more residential units or with a site of 0.5 hectares or more will be required as Shared Ownership Housing to continue to meet demand for affordable home ownership homes and from purchasers that do not meet the qualification criteria applied to First Homes.

3.6 To ensure a compliant planning application captures the same amount of value as would be captured under the Local Plan:

First Homes will be required at the 30% discount against the market value and the national price cap of £250,000 will apply.

4. LOCAL ELIGIBILITY CRITERIA

4.1 As part of planning obligations secured through section 106 agreements, local authorities can apply eligibility criteria to First Homes in addition to the national criteria described above.

In Uttlesford, the following additional local criteria will apply to all First Homes on initial sales and resales for a period of 3 months from when a home is first marketed:

Households with an adult that at the time of marketing the First Home lives or works[7] in the Uttlesford district; or

Households with an adult that at the time of marketing the First Home is due to commence employment in the Uttlesford district: or

Households with an adult that at the time of marketing the First Home has a close family connection to the Uttlesford district *(parents, grandparents, children, siblings)*

4.2 If a suitable buyer has not reserved a home after 3 months, the eligibility criteria will revert to the national criteria to widen the consumer base.[6]

4.3 In accordance with national Planning Practice Guidance, the local eligibility criteria will be disapplied for all active members of the Armed Forces, divorced/separated spouses or civil partners of current members of the Armed Forces, spouses or civil partners of a deceased member of the armed forces (if their

death was wholly or partly caused by their services) and veterans within 5 years of leaving the armed forces.

5. FIRST HOMES EXCEPTIONS SITES

5.1 The First Homes Written Ministerial Statement and associated planning guidance allows for First Homes exceptions sites to come forward on unallocated land outside of a development plan so long as it meets the criteria set out above. As well as being adjacent to existing settlements, the criteria states that these sites must be 'proportionate in size' to the existing settlements.

5.2 National Planning Practice Guidance states that for decision making, what constitutes a proportionate development will vary depending on local circumstances and encourages local authorities to set policies which specify their approach to determining the proportionality of First Homes exceptions site proposals.

5.3 Uttlesford District Council will consider whether First Homes exceptions site proposals are 'proportionate' to an existing settlement as part of the assessment process for each First Homes exception site application which is submitted. In all instances this will not exceed 15 units or 0.5 hectares, and in smaller settlements[7] 15 units is likely to not be proportionate.

5.4 The First Homes exceptions site policy also allows a small proportion of market homes on the site at the local authority's discretion.

5.5 The starting point is that market homes are not required, especially given First Homes are not required to be discounted beyond the 30% minimum, however: Where it can be demonstrated to the satisfaction of the Council that market housing is essential to cross-subsidise the delivery of First Homes on First Homes exceptions sites: the proportion of market housing must not exceed 20% of the total number of homes; and the market and affordable homes must be indistinguishable in design and quality.

5.6 National Planning Policy Guidance allows small quantities of affordable housing products for one or more other form of affordable housing on a proposed First Homes exceptions site where evidence suggests that a significant local need exists. This evidence can be in the form of a local Housing Needs Assessment or the local authority Housing Register.

5.7 As Uttlesford District Council has significant local need for more affordable housing for rent to meet the needs of households on the Council's Housing Register, we expect **at least 25% of First Homes exceptions sites to provide affordable housing for rent to meet the needs of those households in the greatest housing need on the Council's Housing Register.**

6. TRANSITIONAL ARRANGEMENTS

6.1 National Planning Practice Guidance sets out that the First Homes policy requirement does not apply to decision making for the following:

- sites with full or outline planning permissions already in place or determined (or where a right to appeal against non-determination has arisen) before 28 December 2021;
- applications for full or outline planning permission where there has been significant preapplication engagement which are determined before 28 March 2022; and
- sites where neighbourhood plans are adopted/made under the transitional arrangements -submitted for examination before 28 June 2021 or have reached publication stage and subsequently submitted for examination by 28 December 2021.

6.2 These transitional arrangements also apply to permissions and applications for entry-level exception sites.

6.3 The First Homes requirement does not apply to applications made under section 73 of the Town and Country Planning Act 1990 to amend or vary an existing planning permission unless the amendment or variation in question relates to the proposed quantity or tenure mix of affordable housing for the development.

7. KEY DOCUMENTS

Uttlesford Local Plan (2005)
7.1 Policies H9, H10 and H11 set out the affordable housing and rural exceptions site policies.

7.2 The Council is in the process of producing a new Local Pan for adoption in 2024.

Housing Strategy (2021-2026)
7.4 The Council's Housing Strategy 2021-2026 establishes the key priorities relating to housing for the Uttlesford district and the actions to be taken to address these priorities.

Annex C – Nomination Rights Agreement

(RP LOGO)

Uttlesford Nominations Agreement

1.0 Principles

1.1 Uttlesford District Council ("the Council") and __(*RP name)*_____ ("the Registered Provider") intend to work together to:

- Address housing need
- Operate an efficient and effective nominations process

1.0 Introduction

1.1 This agreement is made between The Registered Provider and the Council on (*insert date)*_____

1.2 This agreement should be read in conjunction with the Council's Housing Allocations Policy and Tenancy Strategy. The Housing Allocations Policy sets out the Council's criteria for prioritising households on its Housing Register. The Tenancy Strategy sets out the Council's position on Flexible/Fixed-term Tenancies and Affordable Rents.

1.3 This agreement applies to general needs and sheltered housing let on fixed- term assured shorthold/assured lifetime tenancies let at a Social or Affordable Rent.

2.0 The Agreement

2.1 The Registered Provider agrees to grant the Council 100% nomination rights in respect of the first letting and 75% nomination rights in respect of the subsequent re-

lettings of each residential accommodation property listed in Appendix 1 to this agreement ("Appendix 1 properties").

3.0 Nominations

3.1 When an Appendix 1 property is available for first letting or (where the Council has nomination rights) for re-letting:

3.1.1 The Registered Provider must send a completed nomination request form to the Council's Housing Options Team via email.

3.1.2 On receipt of the completed nomination request form the Council will upload details of the property onto its Choice Based Lettings platform for advertising at the next bidding cycle provided that the nomination request is received by 1pm on a Wednesday.

3.1.3 Nomination requests will not be accepted for advertisement unless the property is ready to let within 8 weeks.

3.1.4 Properties are advertised on a weekly cycle from 9am each Friday until close of bids at 1pm on the following Wednesday. After close of bids, the Council will endeavour to provide the Registered Provider with the details of one nominee within five working days. The details provided to the Registered Provider will consist of a copy of the nominee's application form and a nomination form. The Council will provide only one nominee at a time. Any request for more than one nominee may be approved by the Housing Options Team Leader only in exceptional circumstances.

3.1.5 The Registered Provider must accept the Council's prioritisation of housing need and let the property in accordance with the nomination unless any of the reasons for rejection of the nomination listed at paragraph 3.1.6 below or in the case of new build developments any relevant stipulations in an agreement made under sections 106 and/or 106A of the Town and Country Planning Act 1990 applies.

3.1.6 The Registered Provider may reject nominations if any of the following applies:

- The nominee's circumstances have changed and they no longer satisfy the relevant eligibility criteria for the allocation of the property.
- The property is unsuitable on medical/social/affordability grounds (with agreement of the Housing Options Team Leader).
- The nominee has viewed property and received a verbal offer but fails to agree or refuse the offer within 24 hours.
- The nominee or their representative fails to respond to initial contact within 48 hours (the Housing Options Officers can assist with making contact).
- The property was advertised as a sensitive let and the Housing Options Team Leader agrees that the nominee is not suitable for housing management reasons.
- For emergency and transitional housing management reasons.
- The property does not have a re-let date because there is outstanding work to be completed.
- The nominee does not meet the criteria of the Registered Provider's Allocations Policy
- In exceptional circumstances where it transpires that an offer of accommodation would put a vulnerable person at risk of harm (to be agreed with the Housing Options Team Leader).

3.1.7 The Registered Provider must provide the Council's Housing Options (Allocations) Officer with detailed written reasons for the rejection of a nomination.

3.1.8 The Registered Provider must provide an explanation of its internal decision review procedure to the nominee.

3.1.9 Unless the Housing Options Team Leader otherwise agrees, the Council will not provide a fresh nomination if the rejection is in dispute with the nominee.

3.1.10 The Council will endeavour to provide a fresh nomination within 3 working days of receiving notification of a rejection.

3.1.11 The Registered Provider must inform the Council's Housing Options (Allocations) Officer of the tenancy commencement date within 5 working days of the date when the tenancy agreement is signed by the tenant.

3.1.12 In the event that the shortlist is exhausted (there are no eligible applicants remaining), the Council may provide a “direct let” by nominating an applicant from the Housing Register who is not on the shortlist. If the Council is unable to fulfil another nomination, the property will need to be advertised again to generate more interest.

3.1.13 In the event that the Council is unable to provide a nomination within the agreed timescales the Council will notify the Registered Provider that the property is labelled “hard-to-let”. The Registered Provider may then allocate the property to someone not on the Housing Register provided that the allocation is in accordance with the relevant provisions of any Town and Country Planning Act 1990 section 106 agreement which applies to the property. The Registered Provider will ensure the Council is provided with the details of the successful nominee.

3.1.14 In the event that the Registered Provider requests for a property to be withdrawn from advertising on the Choice Based Lettings platform that property shall not count towards the Council’s nomination rights for the purposes of paragraph 2.1 of this agreement.

3.1.15 Uttlesford District Council expects Registered Provers to operate a flexible policy in respect of any requests for a deposit or rent in advance so as not to disadvantage an applicant. The Council will not have responsibility for payment of these charges.

4.0 Monitoring and Dispute Resolution

4.1 The Council will monitor all lettings to ensure they adhere to the provisions of this agreement.

4.2 An annual voids and lettings return will be completed by the Registered Provider. The return must show the details of all properties that have become void in the Uttlesford District and whether these properties were subsequently let through its Choice Based Lettings scheme. The return must list first lets and re-lets separately. The Registered Provider must send the return to the Council not more than four weeks after the end of the relevant financial year.

4.3 This agreement will be reviewed every 2 years or sooner if a major amendment is considered necessary. Nominations policy and procedure may be discussed at liaison meetings to be held at least once a year.

4.4 This agreement may only be varied in writing and with the agreement of the parties.

4.5 In the event of any dispute or difference arising between the Council and the Registered Provider in connection with the terms of this agreement, such dispute or difference should be raised in the first instance by the Registered Provider with the Council's Housing Options Team Leader. Where a resolution is not forthcoming the matter should be referred to Senior Management level and if necessary escalated to Director/Assistant Director level. Any dispute or difference regarding this agreement arising from the Council will be raised in the first instance with the service manager of the Registered Partner. Where a resolution is not forthcoming the matter should be referred to Senior Management level and if necessary escalated to Director/Assistant Director level.

Signed

Uttlesford District Council

Signed

X Registered Provider

Appendix 1: (Name of RP) properties in the Uttlesford district (date)

Property size	Quantity
0 bed	
1 bed	
2 bed	
3 bed	
4 bed	
5 bed	
Total	

Address Line1	Address Postcode	No Of Bedrooms	Property Type

Copy of Judgement - R (on the application of the University Hospitals of Leicester NHS Trust) v Harborough District Council v Leicestershire County Council, Hadraj Limited

R (on the application of the University Hospitals of Leicester NHS Trust) v Harborough District Council v Leicestershire County Council, Hadraj Limited


No Substantial Judicial Treatment

Court
King's Bench Division (Administrative Court)

Judgment Date
13 February 2023

Case No: CO/2298/2022

High Court of Justice King's Bench Division Planning Court

[2023] EWHC 263 (Admin), 2023 WL 01967342

Before: The Hon. Mr Justice Holgate

Date: 13/02/2023

Hearing dates: 7 and 8 December 2022

Representation

Paul Cairnes KC and Dr Ashley Bowes (instructed by The Wilkes Partnership Solicitors) for the Claimant.
Dan Kolinsky KC and David Lock KC (instructed by Harborough District Council) for the Defendant.
Zack Simons and Isabella Buono (instructed by Leicestershire County Council) for the First Interested Party.

Judgment Approved

The Hon. Mr Justice Holgate:

Introduction

1. The claimant, the University Hospitals of Leicester NHS Trust ("the Trust"), challenges the grant of planning permission by the defendant, Harborough District Council ("HDC"), by a decision notice dated 17 May 2022 to the first interested party, Leicestershire County Council ("LCC"), in relation to land east of Lutterworth, Gilmorton Road, Lutterworth, Leicestershire ("the site"). LCC is the principal landowner of the site. The second interested party, Hadraj Limited, owns part of the site but did not take part in these proceedings.

2. The decision notice grants *inter alia* :-

(i) outline planning permission for up to 2,750 dwellings, business, general industrial, storage and distribution uses, two primary schools, a neighbourhood centre, public open space, green space and associated infrastructure; and
(ii) detailed planning permission for a spine road and associated junctions with the A426 and the A4304 east of junction 20 of the M1.

3. The site comprises 225 ha of predominantly agricultural land and lies predominantly to the east of the M1. The town of Lutterworth lies to the west of the motorway. A proportion of the residential development, 40%, would be provided as affordable housing. There would be 10 ha of B1/B2 general employment land, 13 ha for B8 storage and distribution uses and 111 ha for green infrastructure. Condition 3 of the permission restricted the development to the principles and parameters shown in a number of specified documents. Condition 5 required a phasing programme to be approved and then the development to be carried out in accordance with that programme.

4. HDC adopted the Harborough Local Plan 2011-2031 on 30 April 2019. The spatial strategy in Policy SS1 requires 12,800 dwellings to be provided during the plan period. Much of that figure comprises development already completed, or committed by the grant of planning permissions. The site is allocated as a strategic development area ("SDA"). It is the largest allocation in the Local Plan and represents about a third of the housing allocated in the district (see Policy H1). The site is to provide 1,260 new homes during the plan period to 2031.

5. HDC's housing trajectory assumed in 2019 that housing completions on the site would begin in 2023/4 and continue through to 2030/31. It was also assumed that about 1,490 homes would be completed between 2031 and 2036, after the end of the local plan period. So it was projected that 25 dwellings would be completed in 2023/4, rising to about 200 dwellings a year during the period 2027/8 to 2030/31. It is estimated that the 23 ha of employment land will generate about 2,500 new jobs.

6. Policy L1 of the Local Plan allocated the Lutterworth SDA as a "new neighbourhood", a sustainable urban extension to Lutterworth with facilities for living, working and recreation. Thus, in addition to the employment land, Policy L1 requires the provision of community facilities, including two 2-form entry primary schools in parallel with the progress of the housing development, appropriate contributions to secondary education if necessary and a neighbourhood centre. That centre is to include shops to meet local needs, a public house or café, a doctor's surgery and a community hall. In other words, the educational and medical facilities to be provided on site are those which would be expected for a sustainable community on this scale.

7. The Trust does not object to the development as a matter of principle. The central issue in this case is whether HDC erred in law by not requiring the payment of a contribution under s.106 of the Town and Country Planning Act 1990 ("TCPA 1990") of about £914,000 towards the delivery of health care by the Trust to mitigate what are said to be the harmful effects of additional demands upon its services from that proportion of the people moving to the site who would be new to the Trust's area (referred to as "new residents"). The Trust estimates that the 2,750 houses on the site would accommodate 7,520 people, of whom 38.5%, or 2,896 people, would be new residents in the Trust's area.

8. Under the legislation governing the National Health Service ("NHS"), the Trust is responsible for providing acute services to NHS commissioning bodies, who at the relevant time were the Clinical Commissioning Groups ("CCGs"). According to the Trust's representations to HDC, the relevant CCGs were the Leicester CCG, the Leicestershire CCG and the Rutland CCG. Mr. Cairnes KC, who together with Dr. Bowes appeared on behalf of the claimant, told the court that the geographical area covered by these three CCGs is co-extensive with that of the Trust. There are about 1 million residents in that area (para. 2 of claimant's skeleton).

9. From the 2020/21 financial year the CCGs pay for services provided by the Trust under a block contract. Those payments represent the Trust's main source of income to pay for its acute care services. Under a block contract a trust receives a lump sum in respect of all the services contracted for, in contrast to a "pay by results" arrangement, under which a trust receives a rate for each patient actually treated for the condition treated. As Haddon-Cave LJ explained in R (Shepherd) v NHS

Calderdale Clinical Commissioning Group and Monitor *[2019] PTSR 790 at [44]* , a block contract provides for payment by way of a fixed sum regardless of the number and type of activities undertaken by the provider of services.

10. Each of the Trust's block contracts lasts for one year and are re-negotiated at the end of that year. The funding paid by a CCG "is based upon locally agreed planned activity which is informed by the previous year's activity". If the activity during the year of a block contract is greater than that which was assumed in arriving at the lump sum figures, the Trust is not entitled to any additional payment, whether during that year or retrospectively in the next year (see claimant's skeleton para. 40). Equally if the level of activity during a year turns out to be less than had been assumed for the purposes of the contract, the Trust is not required to repay any money to the CCGs. One advantage of block contracts is that they facilitate financial planning by a trust (see para. 36 of the claimant's skeleton).

11. The Trust's concern relates solely to the first financial year (or more precisely that part of the financial year) in which a "new resident" begins to occupy a dwelling and is treated by the Trust. It says that any treatment it provides for such residents is not accounted for in the funding agreed under the block contract for that year. Net increases in population from new development are not inputs to the funding mechanisms used within the NHS or the negotiations for block contracts.

12. The Trust is operating at what it describes as "full capacity". But even so, it is not able to turn away new residents living on the site, whether for that reason or because the block contract has not allowed for that additional activity. Instead, those patients will be treated, but there will be a consequential increase in the time taken to provide treatment for patients in general. In addition, there will be delays in being able to allocate patients on arrival to the appropriate type of bed, because the relevant occupancy benchmark is already exceeded. The Trust's case is that these adverse impacts on the timing of treatment appropriate for achieving good health outcomes and on the health of the community are land use planning considerations relevant to the determination of the planning application for the Lutterworth SDA.

13. The object of the s.106 contribution sought by the Trust is to provide funding for additional staff, drugs, materials and equipment which will mitigate those impacts.

14. Although the Trust has often objected to the use of the term "funding gap", the Trust itself has used that language in its representations to HDC in order to explain its case on how the development will cause those impacts (see e.g. pp.37 and 39 of Appendix 7 to the Trust's representations dated 23 July 2020 - answers to questions 1 and 3). As Mr. Cairnes KC rightly accepted, if the Trust could not point to a funding gap for the provision of health services attributable to the occupation of housing on the site, there would be no relevant impacts from the SDA scheme to justify a s.106 contribution. Equally, and as a matter of common sense, the size of that gap would be relevant to determining the amount of any s.106 contribution which may be justified. As a result of this concession many of the Trust's complaints in this case fall away. Nevertheless, I will address the arguments

15. It is important to note that the Trust's case relates solely to an alleged funding gap during the first financial year in which a new resident occupies a dwelling on the site. This is because the Trust accepts that when the block contract comes to be re-negotiated for the next financial year, the baseline population used in arriving at a revised lump sum figure takes into account new residents who have arrived at some point in the previous financial year. The Trust also accepts that there is no justification for requiring the developer/landowner of the site to make a contribution to its funding to cover any impact upon its health services arising from those same people after the financial year in which they start to live on the site. It is accepted that that is a cost for which NHS funding should be, and is, provided.

16. The Trust's requested contribution of about £914,000 has been expressed as a one-off lump sum payable "up front". However, it recognises that a development on this scale will take many years to build. Accordingly, it would accept that any s.106 contribution should also be phased.

17. To put the Trust's concern into a practical context, we are talking about additional pressure on acute services from development on the site reaching 210 or so new homes in any one year. Using the Trust's figures, that would equate to about 575 additional persons on the site, of whom the Trust says 38.5% would be new to its area, or 221 persons. That figure of 221 may be compared to the 1 million persons already living within its catchment (about 0.02%). Mr. Lock KC and Mr. Kolinsky KC, who appeared for HDC, pointed out that the single payment lump sought, £914,000, represents about 0.07% of the most recent figure for the Trust's turnover, £1.28 billion.

18. HDC says that the Trust failed to satisfy the authority that population growth is not, or could not be, taken into account in the negotiations between the Trust and the CCGs each year. It considered that *inter alia* insufficient information had been provided by the Trust to demonstrate the funding gap which was said to give rise to the harmful consequences relied upon by the Trust, so as to justify the s.106 contribution sought. This was despite the considerable efforts made by HDC to understand the Trust's position, which included obtaining advice from two leading counsel, including one with expertise in the NHS and its funding arrangements.

19. The remainder of this judgment is set out under the following headings:

Heading	**Paragraph**
A summary of the grounds for judicial review	20-21
Legal principles	22-30
Ground 3 and the speech of Lord Hoffman in the Tesco case	31-42
The statutory framework for funding NHS services	43-74
Chronology	75-120
Ground 1	121-130
Ground 3	131-152
Ground 2	153-165
Ground 4	166-179
Delay	180
Conclusion	181

A summary of the grounds for judicial review

20. In summary, the claimant raised the following grounds of challenge in its skeleton:

> **Ground 1** : The defendant misconstrued provisions about "health" in national and local policy and therefore ignored, or failed to understand, the impacts upon the claimant's capacity to provide healthcare services to the community it serves, leading it to disregard the health impacts of the development.
>
> **Ground 2** : The defendant misunderstood the claimant's funding system, leading it to disregard the financial impacts of the development.
>
> **Ground 3** : The defendant proceeded on the fallacious basis that the claimant's funding system meant that a mitigating contribution did not meet the requirements of the Community Infrastructure Levy Regulations 2010 ("the CIL Regulations 2010 ").
>
> **Ground 4** : The defendant refused to consider any of the claimant's evidence and representations after 28 July 2020, thereby failing to take into account material considerations and/or failed or refused to take that evidence back before members of the Planning Committee and/or failed to disseminate that environmental information to the public prior to the final determination.

However, during his oral submissions Mr Cairnes KC said that the claimant no longer pursues that last part of ground 4 concerned with "environmental information".

21. I will address those grounds in the following order: ground 1, then ground 3, ground 2 and ground 4, because the questions of legal principle raised under ground 3 affect ground 2.

Legal Principles

Material planning considerations

22. Section 70(2) of the TCPA 1990 provides *inter alia* that in determining an application for planning permission a local planning authority "shall have regard to the provisions of the development plan, so far as material to the application … and to any other material considerations". The effect of s.38(6) of the Planning and Compulsory Purchase Act 2004 is that the authority must determine the application in accordance with the development plan unless material considerations indicate otherwise.

23. A matter is a material, or relevant, consideration if (i) it serves a planning purpose, that is one which relates to the character or use of land and (ii) it fairly and reasonably relates to the development (*R (Wright) v Resilient Energy Severndale Limited [2019] 1 WLR 6562 at [36]-[44]*).

24. There are three categories of consideration: -

(i) Those expressly or impliedly identified by the legislation as mandatory considerations to which the decision-maker *must* have regard (e.g. relevant provisions of the development plan);
(ii) Those considerations which the legislation identifies as irrelevant;
(iii) Those considerations which are relevant and which the decision maker *may* take into account in the exercise of his judgment.

25. A failure to take into account a relevant consideration in category (iii) is not unlawful unless the court considers that it was so obviously material "that it was irrational not to take it into account". A decision-maker is not obliged to work through every relevant consideration in category (iii) in order to decide whether or not to take it into account. If a consideration in category (iii) is taken into account, the weight to be given to it is a matter for the decision-maker, who might decide, for example, to give it no weight. Such a decision on weight can only be challenged if irrational (*R (Friends of the Earth Limited) v Secretary of State for Transport [2021] PTSR 190 at [116] to [121]*).

Planning obligations

26. Section 106(1) of the TCPA 1990 provides: -

> "Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section …. as a "planning obligation"), enforceable to the extent mentioned in subsection (3)–
>
> (a) restricting the development or use of the land in any specified way;
>
> (b) requiring specified operations or activities to be carried out in, on, under or over the land;
>
> (c) requiring the land to be used in any specific way; or
>
> (d) requiring a sum or sums to be paid to the authority ….. on a specified date or dates or periodically."

Although, s.106(1)(d) refers to the payment of money to a local planning authority, no point is taken about the fact that the payment in this case was sought by another body, the Trust.

27. *Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Company Limited [2017] PTSR 1413* sets out principles for determining the legality of a s.106 obligation and its materiality when deciding a planning application ([33] to [35], [41] to [44] and [47] to [52]). However, regulation 122 of the CIL Regulations 2010 did not form part of the legal framework in Scotland considered by the Supreme Court.

28. In addition, regulation 122 of the CIL Regulations 2010 provides: -

> "(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.
>
> (2) Subject to paragraph (2A), a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—
>
> (a) necessary to make the development acceptable in planning terms;
>
> (b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

(2A) …

(3) In this regulation—

"planning obligation" means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation; and

"relevant determination" means a determination made on or after 6th April 2010—

(a) under section 70 , 73 , 76A or 77 of TCPA 1990 of an application for planning permission; or

(b) under section 79 of TCPA 1990 of an appeal

29. It is common ground that for the obligation sought by the Trust to have been material to the determination of the planning application for the SDA, HDC had to be satisfied that each of the three tests in reg.122(2) was met. Regulation 122 made the application of those tests, including the necessity test in sub para. (a), a legal requirement, rather than a policy requirement as had previously been the case (*R (Working Title Films Limited) v Westminster City Council [2017] JPL 173 at [20]* ; *Good Energy Generation Limited v Secretary of State for Communities and Local Government [2018] JPL 1248 at [71]-[72] and [75]*). The application of each of those tests is a matter of evaluative judgment for the local planning authority, subject only to judicial review applying the *Wednesbury* standard (see e.g. *Smyth v Secretary of State for Communities and Local Government [2015] PTSR 1417 at [118]* ; *Working Title Films* at [25]). Although the application of the three tests in reg.122(2) is a matter of judgment for the decision-maker, the interpretation of the language used in para.(2) is a matter of law for the court. The Trust alleges under ground 3 that HDC misinterpreted reg.122(2)(a). I will deal with that point below.

Judicial review of the decisions of local planning authorities

30. The principles are well-established and do not need to be rehearsed here. An officer's report should be read and considered in accordance with the principles summarised in *Mansell v Tonbridge and Malling Borough Council [2019] PTSR 1452 at [41] to [42]* ; *R (Hayes) v Wychavon District Council [2019] PTSR 1163 at [26] to [27]* ; and *R (Plant) v Lambeth Borough Council [2017] PTSR 453 at [66] to [72]* . A report should be read with reasonable benevolence and flexibility. It does not have to summarise each and every representation made to the authority. A key consideration is whether the officer's advice was significantly misleading (*R v Selby District Council ex parte Oxton Farms [2017] PTSR 1103, 1111*).

Ground 3 and the speech of Lord Hoffmann in the Tesco case

31. It is helpful at this point to put into context the basis upon which the Trust has sought to advance its legal arguments under ground 3. The Trust has contended that it was irrelevant for HDC to take into account its funding arrangements, because they do not relate to the development or the use of land or to the development of the site. Accordingly, whether the claimant could itself "mitigate" harm resulting from the development was legally irrelevant. If the availability of alternative funding arrangements were to be material, a body with tax raising or borrowing powers would be unable to obtain a contribution from a developer under s.106 of the TCPA 1990 .

32. Plainly, that line of argument might have wide ramifications for the development control system, such that it might have been appropriate to invite the Secretary of State to assist the court. However, given the way in which the claimant's submissions proceeded, it was unnecessary to seek that assistance. Indeed, those sweeping contentions initially made by the Trust are inconsistent with the concession recorded in [14] above.

33. No authority was cited in the claimant's skeleton or in the Statement of Facts and Grounds to support the broad argument initially advanced under ground 3. Nevertheless, it appeared from the correspondence between the Trust and HDC during

2020 and 2021 that the claimant has been relying upon a passage from the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759* at 776G to 777A. It emphasised that passage repeatedly in its representations to HDC. When he opened the case I understood Mr. Cairnes KC to adopt that passage as part of his argument, although he very fairly said that he was not aware of it being applied in any subsequent authority. He also said that the claimant was not relying upon any other authority to support ground 3 specifically. That same passage from the speech of Lord Hoffmann was also relied upon in opinions provided by counsel in 2008, 2015 and 2016 to other NHS Trusts. It has formed part of the underpinning for much of the argument which has been taking place in planning appeals on contributions of the kind sought by the claimant in the present case. Although the Trust's position is now as set out in [14] above, the potential ramifications of the arguments which have previously been raised make it necessary to address Lord Hoffmann's dictum.

34. In *Tesco* at pp.774H to 775H Lord Hoffmann discussed the now revoked DoE Circular 16/91 which set out the Secretary of State's then policy on the use of planning obligations. This included a policy requirement to consider whether a planning obligation is necessary to make a development proposal acceptable.

35. He then went on to discuss planning policy on "external costs" at pp.775H to 776F. That section included a reference to *R v South Northamptonshire District Council ex parte Crest Homes Plc [1994] 3 PLR 47* , where the Court of Appeal had held that there was nothing unlawful about a development plan policy requiring developers of sites which would double the size of a small town to contribute to the costs of road infrastructure, schools and a community centre made necessary as a result. There was nothing controversial about requiring a developer to pay for, or towards, infrastructure made necessary by his development.

36. The passage upon which the claimant has often relied follows at pp. 776G – 777A under the heading "legislation in support of the new policy":-

> "The government policy of encouraging such agreements has been buttressed by amendments to the planning and highways legislation to confer upon local planning authorities and highway authorities very wide powers to enter into agreements with developers. The new section 106 of the Town and Country Planning Act 1990 says in express terms that agreements under that section may require a developer to pay sums of money. The new section 278 of the Highways Act 1980 , substituted by section 23 of the new Roads and Street Works Act 1991 , confers a broad power upon a highway authority to enter into agreements by which some other person will pay for the construction or improvement of roads or streets. Parliament has therefore encouraged local planning authorities to enter into agreements by which developers will pay for *infrastructure and other facilities* which would otherwise have to be provided at the public expense. These policies reflect a shift in *Government* attitudes to the respective responsibilities of the public and private sectors. While rejecting the politics of using planning control to extract benefits for the community at large, the Government has accepted the view that market forces are distorted if commercial developments *are not required to bear their own external costs* ." (emphasis added)

37. The Trust has treated that passage as supporting the proposition not only that a development *may* be required to meet its own external costs in relation to publicly funded facilities, but also that the public funding available to provide such facilities is legally irrelevant to the determination of a planning application. I do not accept that either *Tesco* or the passage cited at pp776G-777A can be treated as having laid down any such principle for a number of reasons:

(i) Lord Hoffmann did not address that issue;

(ii) The *Tesco* case was not concerned with that issue. The Secretary of State dismissed Tesco's appeal against refusal of planning permission for a superstore, deciding that its offer to fully fund a link road, which bore little relationship to the proposal, should not be treated as a reason to allow the appeal. The narrow questions before the House of Lords were (1) whether the Secretary of State had wrongly treated the offer as legally irrelevant and (2) if not, whether his judgment on a matter of weight was open to challenge. Both questions were answered in the negative and so the Secretary of State's decision should not have been quashed by the High Court;
(iii) The leading speech was given by Lord Keith of Kinkel with whom three other Law Lords agreed. None of those four agreed with the speech of Lord Hoffmann;
(iv) Lord Hoffmann himself agreed with Lord Keith at p.771D and expressly did so again in relation to the narrow issues in the appeal at pp.783E to 784C. The intervening passages, particularly that cited from pp.776G to 777A, were not, with respect, necessary to decide the issues in the appeal. In particular, the appeal was not concerned with whether the Secretary of State had failed to *require* a s.106 obligation to be made, or had approached that issue unlawfully. It does not appear that the link road was an "external cost" of Tesco's development;
(v) The passage at pp. 776G to 777A did not lay down principles of law. Rather it discussed how the introduction of certain legislation had enabled effect to be given to the then Government's policy approach to external costs. That passage is also reflected in what Lord Hoffmann said at p. 779F-G.
(vi) Lord Hoffmann went on to state that the law does not require a necessity test to be satisfied for a planning obligation to be taken into account in favour of a decision to grant planning permission (pp.779H-780E). Subsequently, the legislature has decided to impose that very test (reg. 122(2)(a) of the CIL Regulations 2010).

38. Counsel were able to find only one decision which had referred to the passage cited from Lord Hoffmann in *Tesco* , namely *Swindon Borough Council v Secretary of State for Housing, Communities and Local Government [2021] PTSR 432 (see [42]-[51])* . The discussion there was mainly concerned with the wider scope of what may lawfully be *achieved* by a planning obligation as compared to a planning condition. Lewison LJ acknowledged at [51] that the permissible extent of a planning obligation may have been altered by reg.122 of the CIL Regulations 2010 . That regulation has imported the criteria in *Newbury District Council v Secretary of State for the Environment [1981] AC 578* for the legality of a planning condition when deciding whether a planning obligation may be taken into account in the determination of a planning application. All parties agreed that those criteria fell to be applied by HDC in this case.

39. Mr. Cairnes KC made it clear in his reply that the claimant no longer relies upon the passage cited from Lord Hoffmann. In my judgment he was right to do so. It is also necessary to bear in mind that the Trust raises no legal objection to the fact that the development of the site will not contribute to the ongoing costs of treating "new" residents on the site beyond their first year of occupation. Those costs will be borne by the public purse. On analysis, therefore, this challenge is concerned essentially with the way in which HDC handled the material that was presented to it by the Trust and the application of the tests in reg.122 of the CIL Regulations , particularly the necessity test.

40. Following the hearing in this case, the Supreme Court handed down its judgment dismissing the appeal from the Court of Appeal, *DB Symmetry Limited v Swindon Borough Council [2023] 1 WLR 198* . The parties agreed that any submissions they wished to make should be dealt with in writing. Submissions were made by the claimant and by the defendant.

41. At [55]-[65] Lord Hodge DPSC discussed the wider ambit of the power to enter to enter into a s.106 obligation as compared with the power to impose a condition in a planning permission. At [57] he stated that it is well-established that a local planning authority may achieve, by obtaining the *agreement* of landowner to a planning obligation, a purpose which it could not achieve by imposing a planning condition. At [59] *et seq* he then identified two constraints on the use of planning obligations in the determination of an application for planning permission. First, a planning obligation which has nothing to do with a proposed development is irrelevant to that decision ([60] – [61]). Second, Parliament has imposed limitations on the use of planning obligations in the determination of planning applications through reg.122 of the CIL Regulations ([62]). However, in the *DB Symmetry* case the parties agreed that the dedication of an access road as a public highway would have satisfied the tests in reg.122. The court did not address that regulation any further.

42. I agree with Mr Kolinsky KC that the present case is concerned with the application of reg.122 and that *DB Symmetry* does not assist in the resolution of the issues which have to be determined here. I did not understand the written submissions of the claimant to take a different view on those points or attempt to resurrect its earlier reliance upon Lord Hoffmann in *Tesco* at pp.776G to 777A. For completeness I note that the Supreme Court did not endorse that passage.

The statutory framework for funding Nhs Services

43. This judgment refers to the statutory framework as it was at the date of the planning permission challenged in the proceedings, 17 May 2022. The parties agreed that reforms to the NHS which came into effect after that date do not affect the legal issues raised by this case or the effect of the court's decision on those issues.

44. By s.1 of the National Health Service Act 2006 the Secretary of State is under a duty to promote a comprehensive health service in England designed (*inter alia*) to secure improvement in physical and mental health and in the prevention, diagnosis and treatment of physical and mental illness (s.1(1)) and to exercise his functions under the Act so as to secure that services are provided in accordance with the Act (s. 1(2)). Parliament allocates money to the Secretary of State for the NHS, over 90% of which is passed by him to the NHS Commissioning Board (otherwise known as NHS England).

45. NHS England is established under s.1H of the 2006 Act . It is subject to the duty in s.1(1) concurrently with the Secretary of State (s.1H(2)). It has the function of arranging for the provision of services for the health service in England and must exercise its functions in relation to "clinical commissioning groups" so as to secure that services are provided in accordance with the Act (s.1H(3)).

46. A CCG is a clinically led statutory body with the function of arranging for the provision of health services for the purposes of the health service in England (s. 1I). A CCG has a duty to arrange for the provision of a range of secondary care services including hospital accommodation, medical, nursing and ambulance services, and services for the diagnosis and treatment of illness and the care of persons suffering from illness, to such extent as it considers necessary to meet the reasonable requirements of "the persons for whom it has responsibility" (s.3(1)). They are persons provided with primary medical services by a member of the CCG (i.e. GPs) and other persons usually residing in the area of the CCG (s.3(1A)). Thus, the responsibility of the CCG is not limited to those who are registered with a GP. In addition, regulations under s.3(1B) may extend that responsibility.

47. By s.3A of the 2006 Act a CCG also has a power to arrange "for the provision of such services and facilities as it considers appropriate for the health service" that relate to improving *inter alia* the health of the persons for whom it has responsibility or for treating illness in those persons.

48. By s.3(1F) a CCG, in exercising its functions under ss.3 and 3A , must act consistently with the discharge by the Secretary of State and NHS England of their duty under s.1(1) of the Act .

49. Section 13D of the 2006 Act imposes a duty on NHS England to exercise its functions effectively, efficiently and economically. Section 14Q imposes a like duty upon each CCG.

50. NHS England is obliged to determine and then pay the amount to be allotted in a financial year to each CCG towards meeting the expenditure of that group "which is attributable to the performance by it of its functions in that year" (s.223G(1) of the 2006 Act). NHS England may make a new allotment increasing or decreasing an allotment previously made (s.223G(4)). By s.223H a CCG must ensure that its expenditure on the performance of its functions does not exceed the amount allotted to it under s.223G and any other sums received by it in that year under the Act , or otherwise in order to defray such expenditure.

51. By s.14Z11 a CCG must prepare and publish a "commissioning plan" before the start of its financial year setting out how it proposes to exercise its functions during that period, including the discharge of its duty under s.223H . Under s.14Z12 a CCG may revise its plan.

52. Section 25 of the 2006 Act empowers the Secretary of State to establish by order NHS trusts, such as the claimant, to provide goods and services for the purposes of the health service. A trust must exercise its functions effectively, efficiently and economically (s.26). The Trust is one of the providers from whom the CCGs obtain services in order to discharge their functions.

53. Section 27 and sched.5 of the 2006 Act set out financial provisions governing NHS trusts. By para.2(1) each trust "must ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account." An NHS trust has power to borrow subject to borrowing limits (paras.3 to 5 of sched.5). Instead of making a loan the Secretary of State may pay an amount to a trust as "public dividend capital" (para.6 of sched.5). The Secretary of State may also make supplementary payments to a trust (para. 7 of sched. 5). It is common ground that the Trust has been in deficit since 2014 and has received substantial loans from the Secretary of State to cover those deficits, which have since been converted into public dividend capital (i.e. written off as loans and treated as capital invested in the Trust).

54. Section 9 of the 2006 Act provides for "NHS contracts" under which a commissioning body (e.g. a CCG) arranges for the provision to it by a provider (e.g. a NHS trust) of goods or services reasonably required for the purpose of its functions (s.9(1)). Such contracts do not give rise to contractual rights or liabilities (s.9(5)), but a dispute may be referred to the Secretary of State for determination (s.9(6)).

55. Under reg.17 of the National Health Service Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (SI 2012 No. 2996) ("the 2012 Regulations") NHS England is required to draft terms and conditions appropriate to be used in commissioning contracts and may do so in the form of model contracts. NHS England has drafted a Standard Contract which CCGs are required to use. The contract provides that, subject to any express provision of the contract to the contrary, the commissioner of services must pay to the provider for all services it delivers sums in accordance with the National Tariff ("NT") (see below), to the extent applicable.

56. "Monitor" was established by the Health and Social Care (Community Health and Standards) Act 2003 . Under the Health and Social Care Act 2012 ("the 2012 Act ") Monitor acts as the independent regulator of NHS health care services in England. Its main duty is to protect and promote the interests of people who use health care services by promoting provision which is economic, efficient and effective (s.61(1)). "In carrying out its main duty, Monitor must have regard to the likely future demand for health care services" (s.61(2)). Monitor must also exercise its functions with a view to preventing anti-competitive behaviour in the provision of health care services which is against the interests of people who use those services (s.61(3)).

57. Chapter 4 of Part 3 of the 2012 Act deals with the NHS Payment Scheme. Under s.116 Monitor is obliged to publish the NT. By s.116(1) Monitor must set out in the NT which health care services are to be treated as "specified services",

methods used for determining the national prices of those services and national prices for such services. By s.116(2) the NT may provide rules under which a commissioner and a provider may agree to vary the specification or the national price of a "specified service". Section 116(4) and (5) also enable Monitor to lay down rules determining the price payable for a service which is not a "specified service" under s.116(1).

58. Where a health service is "specified in the NT" (see s.116(1)) a commissioner must pay the national price in the NT for that service (s.115(1)). Sections 115(1) and 124 of the 2012 Act enable a commissioner and a provider to agree a "local modification" of a national tariff subject to approval by Monitor. But such a modification may only be approved if it would be uneconomic without the modification for the provider to provide the service in accordance with the NT. If a health service is "not specified in the NT", the price payable for the service is determined in accordance with rules in the NT for that purpose (s.115(2)).

59. The Health and Care Act 2022 was passed on 28 April 2022. Many of its provisions came into force on 1 July 2022, after the date when the planning permission challenged by the Trust was granted. CCGs are abolished and replaced by Integrated Care Boards ("ICBs"). However, the Trust's representations to HDC and the authority's decisions were based upon the legislation unamended by the 2022 Act . Some of the technical documents on funding presented to the court relate to ICBs, but it is common ground that, for the purposes of this case, there is no material difference between those documents and the preceding editions, or between the commissioning functions of CCGs and ICBs, or their relationships with NHS trusts.

60. In December 2021 NHS England published a "Technical Guide to Allocation Formulae and Convergence". This deals with the allocation of funding by NHS England to ICBs under s.223G of the 2006 Act and covers the 3-year period 2022/3 to 2024/5. The preceding document which dealt with the allocation of funding to CCGs, and concerned the 5-year period 2019/20 to 2023/4, was published in May 2019. The starting point for determining the population base was GP registrations as at October 2021. GP registrations in October 2021 were projected forward for each year from 2022/3 through to 2024/5, using the ONS 2018-based Sub-National Population Projections published at the level of Local Authority Districts. Weights were applied to these figures to reflect a range of differences across the country, including ages of the population, variations in health and deprivation, and higher costs of delivery of services in some parts of the country. It is common ground that this method (i) did not take into account persons residing in an area but not registered with GPs and (ii) relied upon the ONS projections for population figures for subsequent years rather than updated GP registrations. The earlier document published in May 2019 used GP registrations average over the 12 months to October 2018 and population projections in the ONS 2016-based projections.

61. The parties referred to the Bulletin published by the ONS on its 2018-based projections for England. The East Midlands is projected to be the fastest-growing region in England with a projected increase in population of 7% between 2018 and 2028. For North West Leicestershire the increase is 15.9%. The document explains that the factors contributing to changes in population, whether positive or negative, are firstly, "natural change", the difference between births and deaths and secondly, net migration (page 9). That second factor includes movements between different local authority areas. Population projections may be used to inform planning and the making of policy at a local level. That *may* include planning development to accommodate such movements of population. But the projections are not informed by local development plans, local development aims, or local policies on growth (pp. 9 and 11).

62. The upshot is that although the ONS projections are not influenced by specific development plan policies, or the grant of planning permissions in accordance with such policies, a local planning authority may adopt policies to accommodate projected population growth to the extent they consider appropriate. Accordingly, it would be wrong to infer that there is no connection between an ONS projection of population growth in an area, used in the funding of CCGs, and new development in an area to accommodate that growth. On the contrary, the two are related. They are not divorced.

63. The other aspect of funding concerns the Trust itself. During its consideration of LCC's application for planning permission HDC sought to understand from the Trust how the funding gap relating to the first year of occupation by new residents is said to arise and whether that would (or could) be addressed in future by the Trust switching from a block contract arrangement to "Payment by Results" ("PbR"), or by population growth being taken into account in the annual negotiations with the CCGs for a fresh block contract for the next financial year.

64. In its responses the Trust explained how the choice between PbR and block contracts is affected by many considerations apart from the short-term cost of funding first-year treatment for new residents in new development. Accordingly, it would be inappropriate for the Trust to switch to PbR simply to address that issue.

65. The argument at the hearing therefore focused on the alternative possibility that annual renegotiations for future block contracts do address population growth and hence the alleged funding gap. Because these negotiations involve the CCGs, HDC had also sought to understand from the Trust how population growth is taken into account in their funding arrangements.

66. In *Shepherd* Haddon-Cave LJ stated that the NT provides for national prices to be the subject of "local variations" pursuant to s.116(2)(b) (see [55] and [72]). According to para. 26 of the original note on NHS funding agreed between the parties for this hearing, it is common ground that a block contract is a type of "local variation" authorised by s.116(2). At [44] of *Shepherd* Haddon-Cave LJ said that block contracts are "expressly permitted" by the NT and available under existing NHS England model commissioning contracts. The parties in this case agreed with that statement and so it might have been thought that they would also be able to agree where block contracts are dealt with in the NT. Unfortunately, that turned out not to be the case.

67. HDC submitted that it is either a requirement, or at the very least permissible, for a block contract to take into account growth in population during the course of the relevant financial year. Chapter 3 of the NT for 2021/2 sets out "aligned payment and incentive rules" for services without national prices for 2021/2 (para. 40). Mr Lock KC relied on Rule 2 in Chapter 3 of that NT to support the proposition that this is a requirement rather than a mere ability. Rule 2 states that the provider and the commissioner must agree "the *expected* level of elective activity for the payment period …." (emphasis added). Mr. Lock KC also pointed to Rule 1(c) which states that "rule 2 and the aligned payment and incentive specified in that rule applies to all secondary care services where … (i) the commissioner and provider have an expected annual contract value of £10 million or more". Plainly, that threshold is easily surpassed by the Trust's block contract.

68. Mr. Cairnes KC submitted that rule 2 of the NT does not apply because the Trust does not have "an aligned payment and incentive version of a block contract" and therefore does not fall within Chapter 3 of the NT. He submitted that the block contract is instead subject to the rules in section 4.2 by virtue of para. 44 of the NT. Those rules do not contain any *requirement* of the kind set out in rule 2d of Chapter 3. He said that the Trust had operated a "blended" arrangement with the CCGs, blended in the sense that the contract was part PbR and part block contract, but the Trust had moved from that blended arrangement to an arrangement which was *entirely* a block contract. He said that Chapter 3 of the NT only applies to blended contracts.

69. I note two things. First, para. 42 of the NT says that "the aligned payment and incentive approach is *based* on the blended payment model introduced in the 2019/20 tariff" and that a "blended payment approach remains the direction of travel for the NHS payment systems" (emphasis added). Somewhat confusingly, the equivalent paragraph in the NT for 2022/3 (para. 43) states that "the aligned payment and incentive *is a type of blended payment* based on the model introduced in the 2019/20 tariff" (emphasis added). Second, Rule 4 in Chapter 3 also appears to define the interface between contracts falling within Chapter 3 and contracts falling within Chapter 4 by reference to a contract value of £10 million (see also para. 45 of Chapter 4). These points would tend to support Mr. Lock's submission.

70. However, neither the Trust nor HDC were able to point to any text which would enable the court to resolve this dispute on the interpretation and application of the NT one way or the other. The NT rules are sadly lacking in clarity. The court is left in this position. "Block contract" is not defined or explained in the NT shown to the court. The term is not even used. Likewise the NT does not define "aligned payment and incentives" or a "blended" arrangement, nor does it relate these expressions to "block contracts".

71. The second witness statement from Lorraine Hooper, the Chief Financial Officer of the Trust did nothing to assist on this issue. Indeed, at para. 4 she stated that the Trust's contractual terms changed from *PbR to block contract* , without mentioning any blended arrangement. That conflicts with the statement made by Mr Cairnes KC (see [68] above) and so only adds to the confused position presented to the court.

72. I also note para. 7 of the same statement in which Ms. Hooper says: -

> "I can confirm that the Government Guidance and contracting rules do not take into consideration how many potential houses are going to be built in accordance with the local plan or existing planning permissions. Moreover, the claimant Trust is required to take the relevant Government Guidance of funding models into account and is not required to adapt its funding model to suit the development plans or policies of the local planning authority. Indeed, were it to do so it would be rightly criticised for not following the correct and appropriate guidance in respect thereof."

That passage misses the point. HDC does not contend that the guidance or rules do, or should, take into account development plan policies. Instead, the focus is on the extent to which population growth (which may include growth accommodated in new development) is, or can be, taken into account according to those documents. In any event, broad assertion is no substitute for accurate citation or analysis of the rules themselves. The same applies to para. 10 of the witness statement.

73. Fortunately, it is unnecessary for me to resolve the issue on how the NT is to be interpreted and applied. HDC's case does not depend upon being able to show that Rule 2d in Chapter 3 of the NT applied to the Trust's arrangements. Its alternative position was that the NT Rules (and the Model Contract) do not preclude the CCGs and the Trust from negotiating a block contract which has regard to population growth, or to additional activity resulting from first year occupancy of new development, when negotiating a block contract for the next financial year. Mr. Cairnes KC accepted that that is correct.

74. In a note produced on the second day of the hearing the Trust added:-

> "there is no evidence the CCG would fund a contract on a level of need which is not within the NT."

That bland formulation cannot be treated as detracting from what Mr Cairnes KC had clearly accepted (see [73] above), if that is what was intended. First, it does not contradict the clear acceptance that the NT does not preclude regard being had to *anticipated* levels of activity. Second, what is meant by "not within the NT" is not explained, nor is any source cited. Third, the Technical Guidance for the allotment of funds by NHS England to CCGs allows for some population growth within a financial year. The Trust has not advanced any reason or explanation as to why money allocated for that purpose should not be taken into account *for that purpose* when a block contract comes to be negotiated by a CCG and a NHS trust.

Chronology

Overview

75. In January 2015 HDC issued a "call for sites" consultation as part of its preparation of a new local plan. In February 2015 LCC responded by submitting a proposal for "Lutterworth East" to accommodate up to 2,500 dwellings and other uses. They produced a concept masterplan and a phasing plan.

76. In September 2015 HDC issued a local plan options consultation document to which LCC responded by proposing a Strategic Development Area ("SDA") at Lutterworth East. The consultation included NHS UK, NHS Property, West Leicestershire CCG and Leicester City CCG.

77. Between September and November 2017 HDC consulted on its draft Local Plan proposed to be submitted to the Secretary of State for independent examination under the Planning and Compulsory Purchase Act 2004 . This included Lutterworth East as a SDA for 2,750 dwellings and 23 ha of employment use. The draft projected first completions of dwellings in 2022/3. The consultation included East Leicestershire and Rutland CCG, West Leicestershire CCG and Leicester City CCG. They did not respond. The Trust says that it was not consulted.

78. In March 2018 HDC submitted its draft Local Plan to the Secretary of State for examination with its proposal for the SDA on the same site.

79. The examination hearings were held in October 2018, with one day allocated to the proposal for East Lutterworth. In advance of the hearings LCC submitted hearing statements describing the processes agreed with HDC for making a planning application, the development and its programme. It was estimated that 1,710 dwellings would be built within the plan period and the site would be fully built out by 2037/8. LCC held a "stakeholder day" comprising a workshop with local representatives, statutory consultees and stakeholders. East Leicestershire and Rutland CCG attended.

80. On 8 March 2019 LCC made a planning application which resulted in the permission the subject of the claim. The Trust and the East Leicestershire and Rutland CCG were consulted in February, August and November 2019.

81. On 8 April 2019 the Inspector submitted to HDC his report on the examination of the Local Plan. On 30 April 2019 HDC adopted the Local Plan including its allocation of the SDA.

82. On 3 May 2019 the Trust submitted to HDC its first consultation response on the planning application. It requested a s.106 contribution of £1,399,318. There then followed lengthy correspondence between the Trust and HDC on the justification for the authority to require the developer to pay this contribution.

83. On 9 April 2020 HDC's Planning Committee deferred consideration of the planning application, in part to consult on late representations from the Trust on its request for a s.106 contribution.

84. Between 19 June and 23 July 2020 the Trust provided responses to points raised by HDC. The Trust's final updated consultation response and Appendices were sent on 23 July 2020.

85. On 23 July 2020 HDC published the officers' report to the meeting of the Planning Committee on 28 July 2020. This was the main report before the Committee. But because the Trust's final consultation response was only sent to HDC on that same day, the report could not reflect any differences from earlier consultation responses by the Trust. Accordingly, the officers prepared a "Supplementary Information" report for the Planning Committee which appended the Trust's final response of 23 July 2020 and provided the officers' additional views.

86. At the meeting on 28 July 2020 the Committee resolved to approve the application subject to *inter alia* LCC entering into a s.106 agreement to provide for certain obligations, including financial contributions, but not the contribution sought by the Trust.

87. On 6 October 2020 the Trust's solicitors sent two letters to HDC, one of which was a letter before action. The Trust complained about the approach taken in the officers' report to reg.122 of the CIL Regulations 2010 and alleged inaccuracies in the way in which the Trust's position had been represented to members of the Committee. Mr. Cairnes KC relied upon that material, together with subsequent correspondence in support of ground 4. HDC responded on 16 November 2020.

88. A further officers' report was presented to the planning committee on 20 July 2021 to update members on progress made in agreeing s.106 obligations which had been authorised at the meeting in July 2020. The report also explained why various appeal decisions by Planning Inspectors which the Trust had submitted from time to time did not alter the advice previously given that the Trust's request for a financial contribution should not be accepted.

89. On 10 August 2021 HDC wrote to the Trust asking for further explanation of the NHS funding model. The letter said that, on the basis of the information provided by the Trust, a s.106 contribution was not justified. The Trust responded on 24 September 2021.

90. On 9 December 2021 HDC sent a lengthy letter explaining why it would not require LCC to make the financial contribution under s.106 requested by the Trust. This has been referred to by HDC and LCC as a "decision letter" in order to support a submission that the time for bringing a judicial review under CPR 54 in relation to the s.106 issue should be treated as running from 9 December 2021, rather than from 17 May 2022 when HDC issued its decision notice granting planning permission. I will deal with the allegation of delay towards the end of this judgment.

91. On 14 December 2021 the Trust submitted to HDC another planning appeal decision ("the IKEA decision") upon which the Trust relies in its submissions under ground 4.

92. I will set out a summary of certain passages in the Trust's consultation responses and the officers' reports in July 2020. However, I have considered all the material identified by counsel as relevant and read the material referred to as a whole. I will deal with relevant aspects of the correspondence between the Trust and HDC following the resolution passed on 28 July 2020 under ground 4.

The Trust's consultation response dated 23 July 2020

93. The main response document began by describing the Trust and the usage of its hospitals (paras.1 to 4). The Trust was established in 2000 and runs the Leicester General Hospital, the Glenfield Hospital and the Leicester Royal Infirmary. "The primary obligation is to provide NHS services to NHS patients and users according to NHS principles and standards – free care, based on need and not ability to pay." The CCGs commission from the Trust planned and emergency, acute medical and surgical care and some specialist and tertiary care. "The Trust is required to provide the commissioned health services to all people that present or who are referred to the Trust." This obligation extends to all services, from emergency treatment at A&E to routine and non-urgent referrals.

94. Paragraphs 6 to 13 summarised the "payment system". It briefly referred to "tariffs" (para. 6). In para. 7 the Trust stated that its relevant services were covered by a block contract "based on locally agreed planned activity which in turn is based on last year's activity levels and a nationally set tariff." It was said that the Trust does not receive any additional funding for any additional activity in relation to the care that is contracted for under the block contract. Paragraph 8 stated:-

> "None of the additional expenditure spent outside the current year's funding is ever recovered in the following year's funding. The new funding is only based on the previous year's activity. *The commissioning is not related to Local Planning Authorities' housing needs, projections or land supply. There is no possibility to change the NHS funding model, or spending priorities of the Government* " (original emphasis)

95. In paras. 15 and 16 the Trust said this about "planning for the future":-

> "15. It is not possible for the Trust to predict when planning applications are made and delivered, and, therefore, cannot plan for additional development occupants as a result. The Trust has considered strategies to address population growth across its area and looked at the overall impact of the known increased population to develop a service delivery strategy to serve the future healthcare needs of the growing population. This strategy takes into account the trend for the increased delivery of healthcare out of hospital and into the community
>
> 16. The funding from the CCG is negotiated on a yearly basis and this will eventually catch up with population growth, *but cannot take into account the increased service requirement created by the increase in population due to development, including that from this development, in the first year of occupation* ." (emphasis added)

96. Paragraph 18 explained that the Trust's hospitals are at full capacity. It was subsequently clarified that this did not mean that additional patients could not be treated, but rather that the consequence of additional activity would be an increase in waiting times and a decline in quality of service. Paragraph 19 explained that a maximum bed occupancy rate of 85% is used to maintain standards of care. Higher occupancy rates can adversely affect the quality of service provided and the ability of the Trust to place a patient in the right type of bed. Information was provided on the extent to which the 85% factor has been and is being exceeded.

97. Paragraphs 21 to 24 of the response described the alleged impact on staffing and services from new residents during their first year in occupation of dwellings in the scheme. There then followed an explanation of the Trust's "Impact Assessment Formula" ["IAF"] to arrive at the requested contribution, then said to be £914,452. This assumed that the 2,750 dwellings would accommodate 7,520 people, of whom 38.5% or 2,896 people would be new to the Trust's area. It was estimated in Appendix 3 that these new persons would give rise to an additional 4,164 acute interventions split between specified types of treatment. The response also explained one component of the sum sought, "premium costs", as the consequential need to employ agency staff at higher costs.

98. Paragraphs 27, 28 and 29 of the Trust's response stated:-

> "27. As a consequence of the above and due to the payment mechanisms and constitutional and regulatory requirements the Trust is subject to, it is necessary that the developer contributes towards the cost of providing capacity for the Trust to maintain service delivery during the first year of occupation of each unit of the accommodation on/in the development. The Trust will not receive the full funding required to meet the healthcare demand due to the baseline rules on emergency funding and there is no mechanism for the Trust to recover these costs retrospectively in subsequent years as explained. Without securing such contributions, the Trust would be unable to support the proposals and would object to the application because of the direct and adverse impact of it on the delivery of health care in the Trust's area. Therefore the contribution required for this proposed development of 2,750 dwellings is £914,452.00. This contribution will be used directly to provide additional health care services to meet patient demand as detailed in Appendix 3.
>
> 28. The contribution requested (see Appendix 3) is based on these formulae/calculations, and by that means ensures that the request for the relevant landowner or developer to contribute towards the cost of health care provision is directly related to the development proposals and is fairly and reasonably related in scale and kind. Without the contribution being paid the development would not be acceptable in planning terms because the consequence would be inadequate healthcare services available to support it, also it would adversely impact on the delivery of healthcare not only for the development but for others in the Trust's area.

> Failure to receive contribution will put significant additional pressure on the current service capacity leading to patient risk and dissatisfaction with the Trust services resulting in both detrimental clinical outcomes and patient safety.
>
> As to the payment of the contribution, this may be phased and agreed with the developer and the Council
>
> **Summary**
>
> 29. As our evidence demonstrates, the Trust is currently operating at full capacity in the provision of acute and planned healthcare. It is further demonstrated that although the Trust has plans to cater for the known population growth, it cannot plan for unanticipated additional growth in the short to medium term. The contribution sought is to enable the Trust to provide services needed by the occupants of the new development. The contribution requested cannot be sourced from elsewhere."

99. Appendix 6 to the Trust's response contained a technical report by its planning consultants, DLP, answering a number of questions from HDC about the methodology, assumptions and data sources used in the IAF. During the hearing the Trust accepted that this Appendix did not address the issue of the extent to which funding is not, or could not, be available to the Trust for any treatment provided for "new" residents at East Lutterworth during their first year of occupation. The Trust accepted that the IAF assumes that there is a funding gap and then estimates the sum of money referable to the costs of "first year" interventions for new residents at the SDA.

100. Appendix 5 to the Trust's consultation response contained answers from the Trust's Solicitor to questions from HDC.

101. Question 4 asked: -

> "In respect of the point above your email of 20 April refers to a new block contract which no longer pays for treatment over and above that contracted for. How long is the contract for and does the non-payment for excess treatments reflect new practice generally or is the outcome of this particular negotiation? The previous calculations include a percentage for treatment above the block contract. Will any revised calculation be reflecting this?"

to which the Trust responded:-

> "The contract negotiations between UHL and the CCGs are now based on a block contract. Whilst the current contract is for one year only the block contract is now here to stay. As per the previous calculations the requested sum is based on the careful calculation based on reference costs (actual audited costs for the service), the difference only being that instead of receiving funding for a percentage of additional in year activity, the Trust receives no additional funding over and above agreed figure *based on previous year's activity and an element of 'growth'* .
>
> The allocated 'growth' is broadly intended to uplift income to accommodate the increasing costs of delivering healthcare to the existing population. This includes the cost of inflation, increased costs of an ageing population, growth in demand for certain medical technologies etc. *Only a very small element of growth in population is allocated to CCG based on the number of people registered in the GP practices* ." (emphasis added)

102. Question 11 asked:-

> "The original report refers to a "shortfall in funding" which is not the issue but the impact on services, however, there is later reference to employing agency staff, because in effect funding is a year behind, and the requirement to cover this "gap" in funding. Is the point that it is this year-on-year gap that needs to be dealt with?"

to which the Trust responded: -

> "The issue is fairly straight forward. The new population will create an impact on the Trust's services. This impact is similar that it creates on education, highways, libraries and on the additional staff costs for the Council's own monitoring officer. The impact is potentially long term as it affects the Trust's ability to provide services at the safe level required as explained. The issue is how to mitigate the impact? The Developer should not be paying something that has already been paid for. The Trust has provided careful calculation methodology as required by CIL regulation. The Trust does not get paid for the additional new population creating the impact on the services as explained. The calculation methodology explains the lack of funding created by the new population. If the developer contributes towards the financial gap in the funding then the impact is mitigated. The Trust could mitigate the impact in various ways but the Trust considers that this is modest but very effective way of dealing with the direct impact as the mitigation model will take the immediate impact away as explained below.
>
> As the funding is based on the previous year's activity, and not what could be in the future created by the potential development (this includes known exciting [sic] permissions) then by contributing towards the gap in the funding it allows the Trust to function at the level which is required (this includes the extra staffing). As explained the Trust is only seeking the element over and above the standard staffing costs that is created by having to hire locums. (Please see the Spring Lane Appeal decision)
>
> It would not be wholly unreasonable that the developer would not contribute towards the impact. It is not for the taxpayer to fund the impact that the development will create (please see the case of *Tesco* previously referred to."

103. Given the points accepted by the Trust during the hearing (see [99] above), this response was incorrect in suggesting that the IAF "explains the lack of funding created by the new population."

104. In appendix 7 to the Trust's response of 23 July 2020, the Trust provided answers to questions raised by HDC on 16 July 2020. In response to question 1, the Trust said:-

> "As explained in our evidence submitted, our email of 20 May and our further email on 9th June, the "funding gap" is not the impact. The impact is created by the new population on the services in the similar way that it creates an impact on education, libraries and as confirmed in the Developer's EI assessment. *I refer you once more to the case of Tesco Stores Ltd case where Lord Hoffmann examined the evolution of planning obligations in the context of, inter alia, mitigating the impacts*

> *development proposals upon community facilities and services that are usually funded by the public purse as already explained many times over.* " (emphasis added)

105. In question 2 HDC asked whether the Trust could show that the development would necessarily give rise to an additional burden on its services and that this would arise from the development, "as opposed to a failure in the funding mechanism, whether caused by its structure or the lack of reasonable co-ordination between CCG and the Trust in agreeing block contracts for care and treatment based on up-to-date information as to new or anticipated housing development." The Trust responded:-

> "The impact is not the failure in the funding mechanism as explained many times over and in the previous paragraph."

The Trust added that "the funding gap will always exist and cannot be paid back retrospectively".

106. In response to question 9 in Appendix 7, the Trust said that it would be willing to give an undertaking to allocate the monies paid under the s.106 contribution requested "towards the new activity created by the proposed development" and to negotiate an appropriate clause for inclusion in the s.106 agreement.

The officers' report for the meeting on 28 July 2020

107. The officers' report stated that the Trust had submitted further representations to HDC on an earlier report by officers to the meeting of the Planning Committee on 9 April 2020, when it had been necessary to defer consideration of the planning application.

108. Paragraphs 4.2.36 to 4.2.46 of the report published on 23 July 2020 contained a summary of the Trust's representations. Paragraphs 4.2.48 to 4.2.55 then summarised a further response by the Trust, this time dealing with a report by officers to a meeting of the Planning Committee on 21 April 2020. I note that the Trust has not criticised the accuracy or adequacy of those summaries. In addition there was attached to the officers' report for the meeting on 23 July 2020 one of the several iterations of the Trust's consultation response on the planning application. This one was dated 3 July 2020. It covers essentially the same key points as the Trust relied upon in its representations dated 23 July 2020. The Trust's contentions as summarised in the officers' report are similar to those repeated in its claim. It is self-evident that these points were taken into account by the members of the Committee.

109. At para. 6.27 of their report officers recorded that in April 2020 HDC had already considered that the Trust's request for a s.106 contribution should not be supported. The Trust's subsequent representations had sought to address the advice previously given to members and they were summarised in the officers' report for the meeting on 28 July 2020.

110. Mr. Kolinsky KC submitted that a key aspect of the officers' report concerned the first of the three tests in reg. 122 of the CIL Regulations 2010 , namely, was the financial contribution necessary to make the proposed development acceptable in planning terms. He said that HDC was not satisfied that the reasons advanced by the Trust in support of the contribution satisfied that first test. For example, it had not been shown that there would be a funding gap as asserted by the Trust. Accordingly, Mr. Kolinsky KC submitted that HDC had been entitled to reach the conclusion that the requested contribution failed at the first hurdle, even before coming to the second and third tests in reg.122(2)(b) and (c) of the CIL Regulations 2010 .

111. The officers' report began to deal with the first test in reg. 122(2) at para. 6.31:-

> "6.31. Under the CIL regulations the first test is to establish that the funding is necessary in that it serves a planning purpose and it is needed to enable the development to go ahead. The planning purpose would be to ensure the provision of adequate health care and treatment. In this case the matter seems to be about delay in patients receiving treatment. Given that the overall funding of the

NHS is through national taxation, the difficulty in treating patients would appear to be a contractual issue which itself appears to be a national one.

6.32 .A request must be directly related to the development; this raises a number of issues. The first is does the funding serve a substantial planning purpose or does the impact arise because of other matters. To this end it is necessary to examine the funding mechanism. *As has been set out previously UHL is funded through a block grant negotiated annually based on the previous year's activity. What is unclear is why the negotiation of the block grant cannot take into account an element for growth in population or household numbers. There are a number of sources of information about planned growth and consultation with local authorities could identify any unplanned growth. The second matter is the speed of occupation of any new dwellings. From the grant of planning permission to the occupation of any dwellings there is a time lag and during this period it is clear how many dwellings would be occupied and potentially how many new residents there would be. This would appear to give an opportunity to negotiate a contract which reflects this known growth. It is not clear from the evidence submitted by UHL why the CCG block contract cannot be adjusted to take into account the anticipated growth of an area.*

6.33 The initial question is whether the UHL requested contribution serves a planning purpose and is necessary. UHL have identified a gap in its funding due to the way in which the block grant forward funding operates which does not appear to take into account population growth attributable to new housing developments and a subsequent increase in demand until the year following the impact. It seems that this is a systemic problem given that the identification of growth underlies the Health and Well Being Strategy and there is information available on planned and actual growth readily available. While it is said that the planning purpose of the requested contribution is to ensure adequate health care and treatment, the issue is not whether a person will be treated or not, but the effect on the quality of the service in terms of delay. However, given that NHS treatment is intended to be provided from national taxation, what is being said in substance is that the planning system/ developers should subsidise UHL for the effects of the operation of NHS's funding mechanisms.

6.34 In terms of direct relationship, a key consideration is whether UHL can show that the development necessarily gives rise to the additional burden on the developer and that it arises from the development, as opposed to a failure in the funding mechanism, whether caused by its structure *or a lack of reasonable coordination between the CCG and the Trust in agreeing block contracts for care and treatment based on up to date information as to new or anticipated housing development* . Consideration also needs to be given to whether the housing development that is permitted is likely to be built out and occupied within 12 months and whether there is sufficient time for the NHS bodies to take it into account in their funding arrangements." (emphasis added)

As Mr Kolinsky KC submitted, the lack of information from the Trust to demonstrate a funding gap was the key issue identified by officers in para.6.32 of their report. Their suggestion in para.6.33 that there could be a "systemic problem" depended on whether further information from the Trust could demonstrate the existence and extent of such a gap.

112. At para. 6.39 *et seq.* the officers' response identified concerns with the handling of population figures in the Trust's representations. Paragraph 6.43 recorded the Trust's statement that the funding of CCGs only allowed "for a small element of population growth". The report made it clear that the Trust had not explained the extent to which growth had been allowed for in the funding of the bodies who would be commissioning services from the Trust.

113. If the first two tests in reg.122(2) are passed, the third test is whether the contribution is fairly and reasonably related in scale and kind to the development. Paragraph 6.50 of the officers' report considered whether the deployment of the requested contribution would satisfy the third test:-

"6.50 A further issue with revenue funding of this kind is evidencing that the monies are deployed in a way which directly and fairly reasonably relates in scale and kind to the permitted development.

> Where infrastructure is involved, it can be scaled to meet the requirements of a given new population by reference to a robust methodology. Where revenue funding is involved, in this case staff, it is more difficult to attribute their time to patients arising from the development or to ensure that the monies are directed at services which will meet the actual healthcare needs of the new population as opposed to being subsumed in general budgets. This is key to the directly related and fairly and reasonably related in scale and kind tests of regulation 122. In its submission of 20 April UHL undertook to demonstrate how funding would be accounted for. UHL have set out the following. The monies are used to service the additional population from this development. Each patient creates an activity which has a tariff. The total costs of the activity includes among other things pathology tests, drugs, imaging, endoscopy, critical care, blood and operating theatres. The Trust is happy to provide an undertaking that the contribution is used as requested and the breaking it down as explained above i.e. towards the extra activity created by the new population of the development. The Trust is happy to provide an undertaking that the contribution is used as requested and the breaking it down as explained above i.e. towards the extra activity created by the new population of the development."

114. Given that any contribution would be for the purpose of providing additional staff and service capacity, para. 6.51 advised that it was unclear that there were any mechanisms in the NHS to ensure that the funding was deployed correctly so as to satisfy the third test.

115. Paragraphs 6.55 to 6.73 of the report brought together the officers' conclusions on the Trust's request for the contribution. On the first test in reg. 122(2), officers advised that because of the time lag between the grant of any permission and the first occupation of any dwellings there was an opportunity for the CCGs and the Trust to address their funding arrangements so that there would not be a reduction in the standard of care. NHS funding and health service planning at a local level appeared to take account of population growth and it had not been shown to HDC why NHS funding would not respond appropriately to it. If there was a funding gap as alleged by the Trust, for example, because of a time lag between the "new residents" occupying dwellings and NHS funds becoming available, that was a problem in the system of funding (paras. 6.57 to 6.59). It is necessary to note that that last statement assumed that there would be such a gap. One of the problems throughout the protracted consideration of the Trust's request for a financial contribution under s.106 was that the Trust failed to show that the annual negotiations of a new block contract do not, and could not, address the issue of population growth satisfactorily, albeit that the commissioning bodies were receiving some funding for such growth.

116. In relation to the second test in reg.122(2), whether the contribution sought was "directly related to the development", a number of issues were identified. These included concerns about the robustness of the methodology to demonstrate the level of population growth attributable to the development, in particular the data sources and geographical areas used (para. 6.64).

117. In relation to the third test, officers took the view that the cost of using agency staff was a function of recruitment and capacity issues within the NHS, rather than being directly attributable to the development (paras. 6.68 to 6.69). The report also referred back to the issue summarised in [114] above.

The supplementary information reported to the Committee meeting on 28 July 2020

118. In relation to funding issues, the officers advised the committee *inter alia* :-

> "The NHS is centrally funded with contracts being negotiated locally for by the CCG the provision of services. *The funding which the CCG receives is calculated using a formula which takes into account population growth, using Office of National Statistics projected populations.* UHL is a contracted provider of services and is bound by contract to provide those services it has contracted to provide.
>
> The evidence submitted states that UHL's funding is calculated on the basis of previous year's activity, consequently with new population there is a deficit as unfunded treatments are carried out. *What is not explained is why, when contracts are negotiated locally, there cannot be an element for population growth, this is taken into account in both central funding to the CCG and in the forward planning in the Leicestershire Joint Strategic Needs Assessment. Furthermore there is a time lag*

> *between the commencement of development and its occupation providing a further opportunity to take into account the implications of the potential increase in demand.* " (emphasis added)

and subsequently:-

> "UHL have suggested that in effect another government body is being asked to pay a contribution that should be paid by the developer.
>
> This does not recognise that the NHS is fully funded centrally. UHL's request amounts to an additional burden being placed upon a local developer to meet the health needs of persons for whom the NHS is already making funding provision for. The issue raised by UHL is the time lag before it is in receipt of any re-directed funding. The issue is not the total sum of funding it is the manner in which it is distributed. It is not reasonable to expect developers to pay for services for which the NHS is already in receipt of funding."

That last paragraph must be read in the light of the preceding passages.

119. The supplementary information provided to members also addressed the population modelling carried out for the Trust. This was relevant to the second and third tests in reg.122(2).

120. Mr. Cairnes KC rightly pointed out that HDC's officers accepted the Trust's assumption that 38.5% of the occupiers of the dwellings on the SDA would be people moving into the Trust's catchment area. But as Mr. Kolinsky KC pointed out, HDC raised a number of technical issues and concerns about the derivation of the population projections to which that figure of 38.5% was applied (see p. 4 of the report). In other words, officers remained unsatisfied about the prior stage of the Trust's analysis concerned with the population estimates themselves.

Ground 1

121. The first aspect of ground 1 is whether HDC misinterpreted the policy in the 2019 edition of the National Planning Policy Framework ("NPPF") on the significance of "health" in determining planning applications.

122. Paragraph 8 of the NPPF sets out the three overarching objectives of the planning system for achieving sustainable development, the second of which is:-

> "a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; …. "

123. Chapter 8 of the NPPF is concerned with "promoting healthy and safe communities". Paragraph 91 states:-

"91. Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

(a) …

(b) …

(c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layout changes that encourage walking and cycling."

Paragraph 92 states:-

"92. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

(a) …

(b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;

….. "

124. The Trust criticises paras. 6.28 and 6.30 of the officers' report as having misinterpreted those policies and related policies. The whole section, from paras. 6.28 to 6.30, reads as follows:-

"6.28 Before turning to the detail of matters relating to the request it is worth setting out the national policy context. The NPPF at paragraphs 91 and 92 refers to promoting healthy and safe communities. These take a broad approach to health, healthy lifestyles and local infrastructure to facilitate this. It does not refer to health in terms of treating illness.

6.29 The PPG makes a number of references to health. As with the NPPF it refers to facilitating healthier lifestyles, the PPG also refers to the provision of facilities for health care. The guidance then sets out the bodies that need to be engaged in improving health, wellbeing and the provision of health infrastructure. It makes specific reference to the Director of Public Health, the Health and Wellbeing Boards, NHS England and locally the CCG. The last two bodies are referred to particularly as these can provide information on their current and future strategies to refurbish, expand, reduce or build new facilities to meet the health needs of the existing population as well as those arising as result of new and future development.

> 6.30 The emphasis here is on planning new facilities and opportunities for healthier lifestyle and living not the treatment of illness. It may be helpful to set out some matters of principle before turning to the detail."

125. The Trust criticises the statement in para. 6.28 that although the NPPF takes a broad approach to health, healthy lifestyles and local infrastructure, "it does not refer to health in terms of treating illness". A similar point was made in para. 6.30. The Trust submits that healthcare services, including the treatment of ill health, are firmly within the ambit of the national policies referred to above. The Trust criticises the approach taken in the officers' report because it resulted in HDC *excluding* the health impacts of the development in relation to the services provided by the Trust. That is the second aspect of ground 1. In other words HDC failed to take that "obviously material consideration" into account.

126. The claimant's reading of the officers' report is untenable. No criticism is made by the Trust of para. 6.29. Paragraph 6.30 simply makes the point that the emphasis of the matters summarised in para. 6.29 is the provision of facilities rather than the treatment of illness. It did not purport to exclude health treatment as a material consideration. Read fairly and as a whole, the same is also true of para. 6.28 of the officers' report.

127. It is also necessary to keep in mind the context, namely that HDC was solely being asked to consider a request by the Trust for a contribution to the provision of services rather than infrastructure. Elsewhere in their report the officers said that it is more difficult to relate the use of a financial contribution for the provision of services to the effects of a development, as compared with a need for infrastructure. That was a judgment on a matter of fact and degree. That is consistent with Mr. Kolinsky's acceptance that there is no hard-edged distinction between the two. The officers' report did not proceed on the basis that contributions to the provision of services should not be considered.

128. The second aspect of ground 1 shows why this complaint is hopeless. If HDC had adopted the interpretation alleged by the Trust and regarded *treatment* of ill health as excluded, then it would not have gone on to consider at such length the Trust's case on the merits. HDC took a great deal of trouble to seek further information and explanations from the Trust and, in due course, to obtain specialist legal advice.

129. The officers' reports amply demonstrate that HDC was fully aware of, and took into account, the health impacts which the Trust said would flow from the development. The references in the officers' reports to a funding gap relied upon by the Trust does not detract from that fact. The need for treatment for new residents *after* their first year of occupation was not raised by the Trust as a planning consideration. Mr. Cairnes KC accepted that the Trust's reliance upon treatment impacts in relation to the *first* year of occupation depended upon the Trust's contention that there would be a funding gap in relation to the costs of that treatment. He accepted that the Trust's argument for requiring a s.106 financial contribution from the developer fell away if there was no funding gap.

130. The Trust's contention that HDC misinterpreted policy and excluded, or failed to have regard to, impacts upon treatment services is impossible. Ground 1 must be rejected.

Ground 3

The short answer

131. The claimant submits that HDC took into account an irrelevant consideration, namely the Trust's funding arrangements. The Trust says that that was not a material planning factor because it does not relate to the development or use of land, nor does it relate to the development for which planning permission was granted. Whether the Trust could itself "mitigate the harm it would suffer because of the development" was irrelevant. Instead, the decision HDC had to make "was about [LCC] and whether it could or should be obliged to mitigate the negative effects of the proposed development to make it acceptable". This then led to the following sweeping assertion:-

> "Fundamentally, it is not the defendant's place to investigate how the claimant is funded, much less dictate how it should be funded, when deciding a planning application."

132. The Trust did not cite any authority to support its position. As I have noted above, Mr. Cairnes KC abandoned any former reliance by the Trust upon the speech of Lord Hoffmann in *Tesco* .

133. The Trust's objection to HDC's approach related in part to the latter's interest in the possibility of *alternative* funding arrangements, in particular a switch from block contracts to PbR. But irrespective of HDC's questions about PbR, the defendant's wanted to know whether the arrangements relating to block contracts (the approach actually applied by the Trust) do or could allow for population growth over the year in question to be taken into account and, if not, why that is so. On any fair reading of the officers' reports and the correspondence, that second matter was a freestanding concern which was in no way dependent upon, or affected by, the questions raised by HDC in relation to the possibility of the Trust switching to PbR. The claimant failed to satisfy HDC on that second issue in any event. Accordingly, any complaint about the PbR issue could not possibly provide a basis for the court to intervene.

134. As we have seen, each of the CCGs in this case had a duty to arrange for the provision of secondary care services in relation to "the persons for whom it has responsibility", which include those registered with a GP and those usually residing in their areas (see [46] above). So when persons new to the area begin to reside in homes on the site, they become persons for whom the CCG is responsible to provide secondary services under s.3(1) of the 2006 Act .

135. As Mr. Cairnes KC rightly accepted, additional demand arising from new residents would only have a harmful impact on the provision of commissioned services, through increased waiting times or other decline in standards of service, if there is a gap in the Trust's funding to pay for additional staff and treatment. That is why the Trust sought a financial contribution rather than, for example, an obligation on the developer to provide infrastructure or some other physical form of mitigation. If there were to be no funding gap resulting in that harm there would be no relevant impacts to justify a s.106 contribution (see [14] above). It is the very nature of the harm claimed by the Trust which makes the alleged funding gap an integral part of its case. The Trust's argument that the funding arrangements of the NHS or of the Trust are irrelevant is unsustainable.

136. That conclusion is reinforced by considering how the costs of treating "new residents" on the development site are addressed in the financial year after they have moved in and subsequently. There is no funding issue because it is common ground that such persons are taken into account in the funding for CCGs and in the relevant block contract payments to the Trust. Rightly, the Trust does not seek any s.106 contribution for such costs. In such circumstances a local planning authority could not properly require the owner or developer of the site to pay for those additional costs. A s.106 obligation to that effect would not be necessary to make the development acceptable (reg.122(2)(a) of the CIL Regulations 2010) and could not properly be taken into account in the decision on whether or not to grant planning permission. If, however, planning permission were to be granted on that basis, it would be liable to be quashed. In effect, the developer would be paying for a community benefit, increasing the funding of the NHS, which had no proper planning purpose or relationship to the development (see *Tesco* and *Wright*).

137. The analysis cannot be any different in relation to the costs of treating new residents to the area during their first year in occupation of homes on the development site. HDC was entitled to consider whether there was a funding gap for the Trust in relation to those costs. HDC was entitled to ask the Trust to provide information to see whether it was satisfied about the existence of such a gap and, if so, its size.

138. The members were advised by officers, and they are to be taken as having agreed, that the Trust failed to provide sufficient information to show that there was any funding gap. The request for a financial contribution did not satisfy the necessity test in reg.122(2)(a) of the CIL Regulations 2010 (see e.g. [111] above). Those were matters of judgment for HDC and the claimant has not shown any public law error in that respect. Indeed, it was a perfectly rational and unsurprising judgment for the authority to have made. That is sufficient to dispose of ground 3. However, the arguments in this case have raised wider issues and it would be helpful for me to address them. If it had been necessary for me to do so I would have relied upon my conclusions below (excluding [147]-[151]) as further reasons upon which to reject ground 3.

Wider issues

139. The Trust made the broad assertion that HDC's approach "would preclude any public body with tax-raising (or borrowing) powers from being funded by a developer in a planning obligation". This is misconceived. The Trust does not have the power to raise taxes and HDC's approach did not assume that the Trust should borrow additional monies or that some other public authority should raise additional taxes. Instead, HDC was concerned to understand whether the costs identified by the Trust could be met having regard to the funding available to CCGs. That simply flowed from the very nature of the planning obligation which the Trust sought, namely a financial contribution to fill a funding gap. But where, for example, a development would itself cause direct harm to a public facility, so that the three tests in reg.122(2) of the CIL Regulations 2010 are satisfied, the local planning authority would be entitled to require the developer to mitigate that harm under a s.106 obligation, irrespective of whether the authority responsible for that facility is able to raise taxes or has borrowing powers.

140. In any event, the justification advanced by the Trust for a s.106 contribution needs to be seen in the context of the statutory framework for the provision of secondary health care services. The contribution would relate to people who are new to the Trust's area. But those people are entitled to such services wherever they may live in the country. They would be so entitled if the development were to be refused planning permission and so they did not move to the Trust's area. The relevant CCG for the area in which they live would remain under a statutory duty to arrange for the provision of the same treatment as would otherwise be provided by the Trust. The obligation to provide, and financial responsibility for, those services lies with the NHS. The context is far removed from the analogy of a typical s.106 obligation given by Mr Cairnes KC, namely where a developer is required to mitigate a reduction in the performance of a local highway network that would be caused by a new development. There, the highway authority is not under a statutory duty to fund improvements to the network, let alone to provide for highway facilities made necessary by a specific development.

141. The question therefore arises how could an applicant for planning permission for a new development be required lawfully by a system of land use planning control to contribute to the funding of treatment within the NHS? It is well established that planning permission cannot be bought and sold, for example, by making a payment for community purposes unrelated to the development authorised. Furthermore, planning legislation does not confer any general power to raise revenue for public purposes (see e.g. *Attorney General v Wilts United Dairies Limited (1921) 37 TLR 884* ; *(1922) 38 TLR 781* ; *McCarthy & Stone (Developments) Limited v Richmond London Borough Council [1992] 2 AC 48*).

142. Ordinarily a resident of the development at East Lutterworth who had moved to the Trust's area would previously have been the responsibility of a CCG elsewhere in the country. So it has not been suggested that the development would increase the burden on the NHS in England as a whole. The attempt by the Trust to obtain a financial contribution under s.106 therefore depends upon their demonstrating a *localised* harm. The only harm they seek to rely upon concerns the provision by the Trust of services commissioned by the CCGs. On the Trust's own case, that has to depend upon them showing a funding gap in relation to treatments for residents new to the area during their first year. The Trust accepts that there is no justification for any payment relating to other "first year" residents who are simply moving home within the Trust's area, or to any resident after their first year at East Lutterworth. The extent to which funding is available to the Trust for the services it provides to the CCGs is the only possible justification for drawing these distinctions. Whether a funding gap genuinely exists was critical to the Trust's request for a financial contribution under s.106 .

143. Accordingly, HDC was fully entitled to ask questions and to seek information in order to see whether there is a real funding gap for treatment by the Trust of "new" residents in their first year of occupation. Indeed, if the local planning authority had agreed to require the developer to pay the contribution sought by the Trust before granting planning permission without being adequately satisfied that there was a relevant funding gap, it would have been open to criticism. In the event of the issue having to be determined in a planning appeal, HDC would have been at risk of being ordered to pay costs for unreasonable conduct.

144. The Trust's doctrinaire approach to the funding issue, as revealed by ground 3, is troubling. It involves a wholly unwarranted interference with the proper discharge by a planning authority of its statutory functions. It has been no more than a smokescreen behind which the Trust has sought to deflect the perfectly proper questions posed by HDC.

145. The Trust also submits that HDC misdirected itself as to the correct interpretation of reg.122(2)(a) of the CIL Regulations 2010 by treating it as meaning that "it could only require a planning obligation to mitigate harm to a public service if the provider of that public service could not itself mitigate the harm." Mr. Cairnes KC was not able to point to any paragraph in the officers' report to that effect or to any line of reasoning which impliedly imposed that limitation upon the scope of reg.122(2)(a). The Trust's complaint simply overlooks the fact that its own case was based upon an assertion that there was a funding gap that could not be overcome. The fact that HDC sought to examine whether that was so simply involved them in considering the merits of the Trust's request for a s.106 contribution. It did not involve any erroneous interpretation of reg.122(2)(a).

146. When the officers' reports and the correspondence between the parties are read fairly and as a whole, it is absurd for the Trust to claim that HDC attempted to dictate how it should be funded. This suggestion appears to rely upon the final paragraph of the letter from HDC's Chief Executive dated 9 December 2021. By that stage HDC had taken advice from leading counsel specialising in NHS law to assist its understanding of NHS funding and the Trust had failed over a long period to explain why the annual review of block contract payments could not satisfactorily address the funding issue raised by the Trust.

What if a funding gap could be demonstrated for a particular NHS trust?

147. But what if in a future case a NHS trust could demonstrate that it would suffer a funding gap in relation to its treatment of new residents of a development during the first year of occupation? On one level it would be a matter for the judgment of the local planning authority as to whether the three tests in reg.122(2) of the CIL Regulations 2010 are satisfied and whether it would be appropriate to require a financial contribution to be made, after taking into account other requirements and any impact on the viability of the scheme. But all that assumes that there is no legal (or other) objection to a contribution of the kind sought in the present case. The argument in this case does not enable the court to decide that issue as a legal question. This judgment should not be read as deciding that there would be no legal objection.

148. Where a housing development is carried out, some of the new residents may be entitled to social welfare benefits, which, like the need for secondary healthcare, arises irrespective of where that person lives. Of course, no one would suggest that the developer should make a contribution to funding those benefits.

149. The funding of treatment in NHS hospitals would appear to be different in two respects. First, in an area of net in-migration any increase in the need for treatment and staff will be experienced in the relevant local area, not nationally. Second, because the patients would receive treatment even if they had not moved home, a local funding gap would only arise if funding for the relevant NHS trust did not adequately reflect a projected increase in population and/or the national funding system did not adequately provide for a timely redistribution of resources. Population projections will involve some areas of out-migration as well as areas of net in-migration. It is therefore significant that CCG funding across the country takes into account ONS population projections. Accordingly, in the distribution of national funds there may be increases or decreases in funding for individual CCGs by reference to size of population.

150. It seems to me that two points follow. First, even if it could be shown in a particular area that there is a funding gap to deal with "new" residents, HDC was entitled to raise the possibility that this is a systemic problem in the way national funding is distributed. Although the Trust criticised HDC for taking it upon themselves to raise this point, it strikes me as being a perceptive contribution to a proper understanding of the issue. If there really is a systemic problem, this may raise the question in other cases whether it is appropriate to require individual development sites across the country to make s.106 contributions to address that problem. However, for the purposes of dealing with the present challenge, HDC's decision rested on the Trust's failure to show that there was a funding gap in this case, not any systemic issue.

151. Second, whether there is a lack of funding for a Trust to cope with the effects of a substantial new development is likely to depend not on those effects in isolation, but on wider issues raised by the population projections used as one of the inputs to determine funding for CCGs. The interesting arguments from counsel in this case suggest that these issues merit further consideration as a matter of policy outside the courts and even outside the planning appeal system.

152. Ground 3 must be rejected.

Ground 2

153. The Trust submits that HDC failed to take into account a relevant consideration, namely the "short and long term" impacts of the proposed development and the "gap in the claimant Trust's funding because its funding model does not take into account local housing needs, projections, allocations, planning permissions or housing supply". As para. 70 of the Trust's skeleton puts it, ground 2 "addresses the impacts upon the finances of the claimant." Paragraph 70(c) and (d) states "the impact upon the claimant's finances relates to the character or use of land because it arises directly from the development…" "The claimant cannot avoid the impacts." Paragraph 70(e) states that HDC was "obliged to consider the financial impacts on the claimant. This was because they were so obviously material that not to take them into account was irrational."

154. Those paragraphs only serve to show how muddled the Trust's case has been. Ground 3 complains that the Trust's funding arrangements were not a relevant planning consideration at all, whereas ground 2 complains that HDC failed to take them into account.

155. Under ground 2 the Trust submits:-

> a. Because HDC erroneously insisted that it was for the Trust to mitigate the financial impacts arising from the East Lutterworth scheme, the authority disregarded those impacts when considering the planning application;
>
> b. Alternatively, HDC erroneously adopted the position that the Trust *could* avoid those impacts by adjusting its funding scheme (see the officer's report to the meeting on 28 July 2020 at para. 6.32);
>
> c. The Trust was unable to switch to PbR, nor claim extra money as marginal payments through the block contract scheme. The additional pressures arising from the "new" population on the East Lutterworth site could place part of the Trust's "conditional funding" at risk.

156. There is no merit in any of the submissions advanced under ground 2. Points (i) and (ii) assume that there would be a financial impact on the Trust because of a funding gap to cover the costs of treating new residents during their first year of occupation. What the Trust repeatedly failed to explain in its representations to HDC was why the annual negotiations for a block contract for the next financial year do not, or could not, take into account population growth during that year, given that CCG funding has an element for future population growth. HDC's position was made clearly enough in, for example, paras. 6.32 to 6.34 of the officers' report to the meeting on 28 July 2020 and in the Supplementary Information given to the Committee (see [111] above).

157. Read fairly the advice given by officers to members was not based upon changes to the scheme for block contracts in the NHS being necessary. Even if a population increase attributable to a specific development or policy cannot be taken into account in the discussions between CCGs and the Trust each year, the fundamental question still remained to what extent is *population growth* in the area taken into account in the negotiations, or could be taken into account, given the agreed position that funding for that purpose is provided to the CCGs for the relevant year.

158. The nearest the Trust got to addressing that question was in Appendix 5 to its response document dated 23 July 2020 when it said that the Trust would receive funding based on the "previous year's activity". "an element of 'growth' ". The Trust then went on to assert that "only a very small element of growth in population is allocated to CCG". That assertion does not sit very well with the ONS material which both sides showed to the court. But leaving that point to one side, the

Trust failed to deal with an obviously important point. They did not explain how much population growth was allowed for in the funding provided to the CCGs and then to the Trust, and how that compared, for example, to up to 220 "new" persons that might be expected to start living at East Lutterworth in any year, or to any other annual population estimate from HDC based on its housing trajectory. That would be directly and obviously relevant to whether there was a funding shortfall at all, and if so how much.

159. The problem is that the Trust continued to assert that there was a funding gap without demonstrating that there was. Clearly this was a highly technical issue on which the Trust was well placed to provide proper assistance to the local planning authority, and it ought to have done this.

160. Read properly, the stance taken in the officers' reports on the block contract arrangements did not involve telling the Trust to mitigate any financial impact arising from the development or that the NHS funding scheme should be adjusted. Instead, it was concerned with understanding how population growth is, and can be, factored into the funding of the CCGs and the block payments they make to the Trust.

161. Lastly, I turn to the Trust's complaints under point (iii). The PbR issue fell away (see [64]-[65] and [133] above) and need not be addressed further.

162. In its representations dated 23 July 2020 the Trust stated that it expected to receive conditional funding of about £16m to £17m from the Provider Sustainability Fund if it achieved certain "improvement goals". Plainly, the assertion that the development would affect the ability of the Trust to achieve those goals depended on whether there was a funding gap. The point made by the Trust did not go to that fundamental issue and gave rise to no error of law on the part of HDC.

163. Paragraph 3(ii) of Ms Hooper's second witness statement gives an explanation of the limited circumstances in which "marginal payments" may be made for additional activity. I assume that that statement is correct. Even so the court was not shown any passage in HDC's consideration of the funding issue which relies upon marginal payments or is inconsistent with that evidence. This point did not go to the fundamental matter relied upon by HDC.

164. For completeness I would mention that Ms. Hooper goes on to assert, without referring to any source or supporting material, that the funding provided by a block contract is "entirely based on historical funding levels". As we have seen, that is inconsistent with what the Trust told HDC in its representations and with how both the Trust and HDC explained to the court the block contract regime.

165. For the above reasons, ground 2 must be rejected.

Ground 4

166. The Trust submits that applying the principles in *R (Kides v South Cambridgeshire District Council (2003) 1 P & CR 19 at [122]-[126]* , HDC's officers were under a duty to refer the planning application back to the Committee so that it could consider the representations submitted by the Trust to HDC between the date of the resolution to grant permission on 28 July 2020 and the issuing of the decision notice on 17 May 2022.

167. It is important to note [122] of the judgment of Jonathan Parker LJ in which he stated:-

> "In my judgment, an authority's duty to "have regard to" material considerations is not to be elevated into a formal requirement that in every case where a new material consideration arises after the passing of a resolution (in principle) to grant planning permission but before the issue of the decision notice there has to be a specific referral of the application back to committee. In my judgment the duty is discharged if, as at the date at which the decision notice is issued, the authority has considered all material considerations affecting the application, and has done so with the application in mind – albeit that the application was not specifically placed before it for reconsideration."

It is clear from [123] that the Court of Appeal had in mind a material consideration which arises for the *first time* after the Committee's resolution to grant permission.

168. Likewise [125] and [126] refer to an officer becoming aware of a new material consideration or to a "new factor" which has arisen:-

> "125. On the other hand, where the delegated officer who is about to sign the decision notice becomes aware (or ought reasonably to have become aware) of a new material consideration, s.70(2) requires that the authority have regard to that consideration before finally determining the application. In such a situation, therefore, the authority of the delegated officer must be such as to require him to refer the matter back to committee for reconsideration in the light of the new consideration. If he fails to do so, the authority will be in breach of its statutory duty.
>
> 126. In practical terms, therefore, where since the passing of the resolution some new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a "material consideration" for the purposes of s.70(2) , it must be a counsel of prudence for the delegated officer to err on the side of caution and refer the application back to the authority for specific reconsideration in the light of that new factor. In such circumstances the delegated officer can only safely proceed to issue the decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority *would* reach (not *might* reach) the same decision."

169. It is important to note that the principles in [122]-[126] were laid down solely in the context of the decision-maker's statutory obligation to take into account "any other material consideration" (s.70(2) of the TCPA 1990). That obligation has been reconsidered more recently by the Supreme Court and the Court of Appeal in, for example, *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council [2020] PTSR 221* ; *Oxton Farm v Harrogate Borough Council [2020] EWCA Civ 805 at [8]* ; and *R (Friends of the Earth Limited) v Secretary of State for Transport [2021] PTSR 190 at [116] to [121]* . The parties in this case did not address how *Kides* now sits with this subsequent high authority and whether it needs to be understood in a different light. But this is not a matter which I need to consider in order to determine ground 4.

170. In any event, in *R (Dry) v West Oxfordshire District Council [2011] 1 P & CR 16* Carnwath LJ (as he then was) said that the statement in *Kides* should be treated as "guidance" on what is admissible, "erring on the side of caution". It must be applied with common sense and with regard to the facts of the particular case. *Dry* also illustrates that ultimately it is for the court to decide whether a post-committee factor is "material".

171. Mr. Cairnes KC did not suggest that the post-resolution correspondence in this case identified a new material consideration which had arisen for the first time after the officers' report to the committee meeting on 28 July 2020. Nor does the Trust say that their correspondence identified some material change of circumstances.

172. In my judgment the Trust's request for a s.106 contribution had been considered at great length by HDC's officers prior to, and in the body of, their report to the meeting on 28 July 2020. Furthermore, ground 4 should be approached on the basis that the court has rejected the legal criticism of the officers' report, including the "Supplementary Information" document. Essentially, the post-resolution correspondence involved more submissions on the same topics, often repeating what had already been said to HDC several times. The court needs to be careful not to apply the guidance in *Kides* in such a way as would undermine the proper process for the determination of planning applications, or else there would be a risk that a Planning Committee's job would never be done.

173. I accept the submission of Mr. Kolinsky KC that there is a short answer to ground 4. A major deficiency in the Trust's request for a financial contribution, which officers had already identified to the committee, was its failure to show that there was a funding gap and to explain why that was so. The subsequent correspondence from the Trust did not remedy that deficiency. There was no legal obligation for officers to report to the committee material from the Trust which did not address that concern. It could not alter the position reached at the meeting on 28 July 2020 materially. Nevertheless, I will briefly refer to the points which the Trust has relied upon.

174. Mr. Cairnes KC laid emphasis upon an appeal decision by an Inspector dated 6 December 2021 at Ikea Way, Exeter where a s.106 obligation to deal with the so-called "12-month time lag" was required. The decision cannot be taken as establishing any principles. The Inspector accepted that a funding gap appeared to exist on the evidence before him in that case (DL 27 and DL 29). The Inspector even appears to have implied that whether there was a deficit in the NHS Trust's budget was not material (DL 27), which plainly was wrong for the reasons I have given. Certainly, it is not the way the Trust has argued its case here. Ultimately, such a decision letter was of no real use to a decision-maker dealing with the financial issues in the present case without being told by the Trust what relevant materials the Planning Inspector had been given, in particular dealing with the legal, policy and contractual aspects of funding. If, for example, those materials did not remedy the deficiency in the information on funding arrangements supplied by the Trust to HDC the decision letter would not matter.

175. Furthermore, the officers' report to committee had already referred to a range of Inspector's decisions in the summary of the Trust's representations and had advised why they did not assist. That was a matter of planning judgment which has not been challenged. Similarly, there is nothing in the several references in post-resolution correspondence to other planning appeal decisions.

176. The letter from the Trust's Solicitors complained about a number of alleged errors in the officers' report to committee. None of those points is capable of supporting a *Kides* challenge. I have already rejected several of the criticisms. Several are not even new points. For example, the absence of *retrospective* funding to cover "first year" treatment had been addressed in the officers' report (see e.g. para. 4.2.49). More pertinently, the points made by the Trust assume that a funding gap, or deficit, exists in the first place. The very fact that the Trust repeated this same point in purporting to address HDC's concern that the gap had not been adequately explained and demonstrated, only serves to show that the Trust was still refusing or failing to deal with that issue. The Trust's assertion in relation to para. 6.58 of the officers' report that ONS projections only take into

account natural growth is simply wrong. The projections take into account net in-migration which is relevant to the need for new development. What the Trust continually failed to do was to explain how much population growth (and of what kind) was (or could be) allowed for in the funding of the CCGs and in arriving at a new block contract each year, applying NHS rules.

177. HDC made clear in, for example, its letters dated 16 November 2020 and 10 August 2021 that the Trust had not addressed the population growth issue in the context of annual renegotiations of the block contract, taking into account the methodology of ONS projections. The reply from the Trust dated 24 September 2021 failed to deal with that central point. For example, it referred again to the passage in *Tesco* at [1995] 1 WLR 776G to 777A and said that "the tenet" of HDC's most recent letter "misses the point completely; the way the Trust is funded is irrelevant". Fortified by that misconception of the law, the letter mainly comprised a recycling of points made several times before. Reference was made once again to the use of "historical population" figures based on GP registrations, demographic weighting factors, and the use of ONS data. But no further explanation was offered on the treatment of population growth.

178. By now HDC would have been entitled to regard this protracted, unhelpful process as exasperating. The letter from HDC's Chief Executive of 9 December 2021 was reasonable and is unsurprising. HDC's officers were entitled to point to the net in-migration population forecasts produced by ONS and to conclude that the Trust had not made out its case that there would be a funding gap under the arrangements for a block contract. Given the failure, or unwillingness, of the Trust to engage with that issue over such a long period of time, it is not surprising that the Chief Executive expressed confidence that there was no problem.

179. There was nothing of any substance in the post-resolution material which officers were legally obliged to report back to the committee before planning permission could be granted in accordance with the members' resolution. Accordingly, ground 4 must be rejected.

Delay

180. If any ground of challenge had been made out, HDC and LCC invited the court to reject the claim on the grounds of delay, by treating the letter from HDC dated 9 December 2021 as the effective decision, rather than the issuing of the decision notice on 17 May 2022. Counsel recognised that this would involve creating an exception to the principle laid down by the House of Lords in *R (Burkett) v Hammersmith and Fulham London Borough Council [2002] 1 WLR 1593* . The justification for, and extent of, any such exception would be closely related and would require full argument. In the absence of such argument it would be inappropriate for this court to consider the point. In any event, because I have rejected each of the grounds of challenge, there is no need to do so.

Conclusion

181. For the reasons given above, the claim is dismissed.