

# Chichester District Council

Planning Committee

6 December 2023

## Planning appeal APP/L3815/W/23/3332866 Land off Longacre Way, Chichester PO202EJ (LPA ref. O/23/00188/FUL)

### 1. Contacts

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### 2. Recommendation

#### 2.1 That the Planning Committee:

i) notes the information within the report,

ii) agrees to contest appeal APP/L3815/W/23/3332866, in respect of the following matters:

- Design, mass, bulk, layout and appearance of the proposed built form relative to its immediate and wider site context at Shopwyke Lakes and the provision of insufficient open space and no equipped play space as required by the Planning Obligations and Affordable Housing SPD.
- In the scenario where the appellant's viability information is not agreed by the Council's appointed independent advisors with their additional sensitivity testing, that the appeal is defended on the grounds of a lack of affordable housing provision as required by policy 34 of the Local Plan 2014-2029 and the Planning Obligations and Affordable Housing SPD.
- Lack of infrastructure provision secured through a S.106 Agreement in respect of affordable housing, recreation disturbance mitigation, public open space including equipped play area, A27 highway improvements contribution, Travel Plan.
- Lack of financial contribution of the scale envisaged in draft Policy T1 of the Local Plan 2021-2039: Proposed Submission to enable the Council to secure the identified A27 highway improvements.

### 3. Introduction and Background

- 3.1 Full planning application 23/00188/FUL for '*Erection of apartment building (87 units), including Class E floor space, with associated car parking, bike stores, landscaping and utilising existing access*', was submitted to the Council in January 2023. The application was accompanied by an Affordable Housing Viability Report to substantiate the case for the development not providing any affordable housing. The Council subsequently commissioned an independent review of this report which concluded that the case for providing no affordable housing had not been

fully substantiated. A meeting with the applicants was held on 26 September to discuss viability issues and more fundamental issues with the design, form and layout of the development. The applicant's agreed to re-visit the proposals particularly in light of the critical consultation response from the Council's Design and Conservation Officer and to prepare sketches as to how an alternative housing development more responsive to its context might be delivered on the site.

- 3.2 There was no further communication received from the applicant after the meeting and an appeal against non-determination of the application was submitted to the Planning Inspectorate (PINS) on 9 November 2023. The start letter from PINS has indicated that the appeal will be heard by way of the submission of written representations and the Council's Statement of Case is due to be submitted to the Planning Inspectorate (PINS) on 25 December 2023, although the mode of appeal is open to change if PINS determine a Hearing or Public Inquiry is necessary. The purpose of this report is to explain the grounds on which officers consider the appeal should be contested based on the consultation responses received and the compliance or non-compliance with policies of the development plan and the NPPF and to seek the views of the Planning Committee as to how the committee would have determined the application, had it had the opportunity to do so.

## **4 The Appeal Site and Surrounds**

- 4.1 The appeal site comprises an area of approximately 0.59 hectares and lies within the wider 33 hectare Shopwyke Lakes site, a strategic development location of 585 homes on the eastern edge of Chichester sandwiched between the A27 to the north and west and the B2144 Shopwhyke Road to the south. It is located towards the centre of Shopwyke Lakes, with its north-west boundary fronting onto Longacre Way the main internal spine road passing through the development and the south-east boundary overlooking the central lake. Adjacent to the site's south-west boundary is the 4-storey block 'Longacre House' comprising the Shopwyke Lakes neighbourhood centre/community hub with 3 floors of apartments over a ground floor with permission for commercial and community use but which is currently vacant. To the north-east is the 2-storey domestic scale estate housing currently being built out by Cala Homes as part of its permission for 398 dwellings (out of the total 585). It is important to note that the proposed 87 unit would be in addition to the 585 dwellings permitted across the wider site.

## **5. The Proposal**

- 5.1 The key parameters of the proposed residential-led mixed use development for which full permission is sought at appeal are:
- 87 apartments (26 x 1 bed and 61 x 2 bed) all market dwellings with no affordable housing.
  - 872.3 m<sup>2</sup> of Class E commercial floorspace.
  - 85 car parking spaces to serve both residential and commercial uses.
  - Electric vehicle charging to accord with building regulations (all dwellings).
  - 87 cycle parking spaces plus 11 cycle parking spaces for the commercial element.
  - Single point of vehicular access from Longacre Way via already constructed access.

- Foul drainage via existing on-site pumping station connecting to Southern Water sewer on Shopwhyke Road and then conveyed to Easthampnett (Tangmere) WwTW.
- Surface water drainage to central lake.

5.2 The development comprises a large 4-storey block (13.55 m high) of a modern design described by the applicant as *'bold but contemporary, positive, yet cohesive'*. The built form is tight to the whole length of the south-east site boundary, wrapping up the sides of both the north-east and south-west boundaries, leaving an open central area of car parking which extends part way under the first floor of the building to serve as a parking undercroft. The apartment block proposes elevations with a high proportion of aluminium framed windows and projecting balconies giving the building a strong horizontal emphasis. The materials schedule comprises walls of brick and vertical cladding under an undulating single ply membrane roof.

## 6. Constraints

Listed Building	NO
Conservation Area	NO
Rural Area	NO
AONB	NO
Strategic Gap	NO
Tree Preservation Order	NO
EA Flood Zone	FZ1
- Flood Zone 2	NO
- Flood Zone 3	NO
Historic Parks and Gardens	NO

## 7.0 Planning History

**11/05283/OUT** - Urban extension comprising a residential development of 500 dwellings within a parkland setting together with employment redevelopment and associated vehicular, cycle and pedestrian access, drainage and landscape, community facilities, elderly care village, localised retail units, major new public open spaces.  
PERMIT WITH S106. 09.08.2013

**14/02826/REM** - Construction of spine road and associated site levelling and re-profiling works.  
PERMIT 09.01.2015

**15/03964/REM** - Proposed 398 dwellings together with commercial and community use floorspace. Application for approval of reserved matters following outline planning permission O/11/05283/OUT in respect of appearance, layout, landscaping (phase 1A and spine road) and scale.  
PERMIT 21.06.2016

**15/03720/OUT** - Additional 85 dwellings on land with outline approval for 500 dwellings under reference O/11/05283/OUT.  
PERMIT WITH S106. 18.11.2016

**19/01235/REM** - Application for Approval of Reserved Matters following outline planning permission O/15/03720/OUT (as varied by O/18/02329/OUT) in respect of appearance, layout, landscaping and scale for 80 dwellings. This forms part of the wider outline permission for 500 dwellings (585 in total) under planning reference O/11/05283/OUT.

PERMIT 04.03.2020

**19/01984/REM** - Application for the Approval of Reserved Matters following Outline Planning Permission O/15/03720/OUT (as varied by O/18/02329/OUT)- relating to appearance, landscaping, layout and scale of 5 dwellings.

PERMIT 19.03.2020

## **8. Representations and Consultations**

8.1 Refer to **Appendix 1** for all received representations and consultations.

## **9. Planning Policy**

### The Development Plan

9.1 The Development Plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029 and all made neighbourhood plans.

9.2 The principal policies of the Chichester Local Plan relevant to the consideration of this appeal are as follows:

Policy 1: Presumption in Favour of Sustainable Development

Policy 2: Development Strategy and Settlement Hierarchy

Policy 4: Housing Provision

Policy 8: Transport and Accessibility

Policy 9: Development and Infrastructure Provision

Policy 16: Shopwyke Strategic Development Location

Policy 33: New Residential Development

Policy 34: Affordable Housing

Policy 39: Transport, Accessibility and Parking

Policy 40: Sustainable Design and Construction

Policy 42: Flood Risk and Water Management

Policy 49: Biodiversity

Policy 50: Development and Disturbance of Birds in Chichester and Langstone Harbours  
Special Protection Areas

Policy 54: Open Space, Sport and Recreation

### Chichester Local Plan 2021-2039: Proposed Submission (Regulation 19)

9.3 The Chichester Local Plan 2021-2039: Proposed Submission (LPPS) has now completed its 'Regulation 19' consultation (17 March 2023) and it is anticipated that the plan will be submitted for examination later this year (the Council's published Local Development Scheme in January 2023 anticipated Summer 2023), this is now anticipated to be early 2024. Accordingly, the plan could now be considered to be at an 'Advanced Stage of Preparation' for the purposes of para 48(a) of the National Planning Policy Framework (NPPF) and consequently could be afforded moderate weight in the

decision-making process. Once it is submitted for examination it will be at an 'Advanced Stage' for the purposes of assessment of development proposals against para 49(b) of the NPPF.

9.4 Relevant policies from the published Chichester Local Plan 2021–2039: Proposed Submission (Regulation 19) are:

S1: Spatial Development Strategy

S2: Settlement Hierarchy

NE5: Biodiversity and Biodiversity Net Gain

NE6: Chichester's Internationally and Nationally Designated Habitats

NE7: Development and Disturbance of Birds in Chichester and Langstone Harbours, Pagham Harbour, Solent and Dorset Coast Special Protection Areas and Medmerry Compensatory Habitat

NE10: Development in the Countryside NE13: Chichester Harbour Area of Outstanding Natural Beauty

NE15: Flood Risk and Water Management

NE16: Water Management and Water Quality

NE20: Pollution

NE 21: Lighting

H1: Meeting Housing Needs

H2: Strategic Locations/ Allocations 2021 – 2039

H3: Non-Strategic Parish Housing Requirements 2021-2039

H4: Affordable Housing

H5: Housing Mix

H10: Accessible and Adaptable Homes

P1: Design Principles

P2: Local Character and Distinctiveness

P3: Density

P4: Layout and Access

P5: Spaces and Landscaping

P6: Amenity

P8: Materials and Detailing

P14: Green Infrastructure

P15: Open Space, Sport and Recreation

P16: Health and Well-being

P17: New and Existing Local and Community Facilities including Local Shops

T1: Transport Infrastructure

T2: Transport and Development

T3: Active Travel - Walking and Cycling Provision

T4: Parking Provision

I1: Infrastructure Provision

A7: Land at Shopwyke (Oving Parish)

National Policy and Guidance

9.5 Government planning policy comprises the National Planning Policy Framework (NPPF September 2023) and related policy guidance in the NPPG.

9.6 Paragraph 11 of the current Framework states that plans and decisions should apply a presumption in favour of sustainable development, and for decision-taking this means:

- c) *approving development proposals that accord with an up-to-date development plan without delay; or*
- d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
  - i. *the application of policies in this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed;*
  - or
  - ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

9.7 The following sections of the NPPF are relevant to this application: 2, 4, 5, 8, 9, 11, 12, 14 and 15. The relevant paragraphs of the National Planning Practice Guidance have also been taken into account.

#### Other Local Policy and Guidance

9.8 The following documents are also material to the determination of this planning appeal:

- Surface Water and Foul Drainage Supplementary Planning Document (SPD)
- Planning Obligations and Affordable Housing SPD
- CDC Waste Storage and Collection Guidance

## **10. Main Issues**

10.1 The main issues arising as a result of this appeal proposal are:

- i) Principle of development and the policy position
- ii) Layout, design, mass, bulk and appearance
- iii) Lack of affordable housing
- iii) Highways, access and parking
- iv) Drainage – foul water and surface water
- v) Other matters - HRA recreational disturbance & SAC bats, nutrient neutrality, sustainable construction, residential amenity
- vi) S.106 Agreement – infrastructure provision

i) Principle of development and the policy position

10.2 The primacy of the development plan and the plan-led approach to decision-taking is a central tenet of planning law and is enshrined in section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) which states that applications (and therefore by default, appeals):

*'should be determined in accordance with the development plan unless material considerations indicate otherwise'*

10.3 The principle of some new housing development on the site is not at dispute in this appeal, indeed the masterplan on the original outline planning permission 11/05283/OUT permitted its use for residential purposes although that permission is now 'spent' in terms of the quantum of housing it permitted overall at Shopwyke Lakes.. The site is within the

Shopwyke Strategic Development Location as defined by policy 16 of the Chichester Local Plan: Key Policies 2014-2029, a policy which is proposed to be carried forward under draft policy A7 into the emerging Local Plan, the Chichester Local Plan 2021-2039: Proposed Submission (Regulation 19) (LPPS). The site is not within the rural area or 'Rest of Plan Area' as defined in policy 2 of the extant the Local Plan where more restrictive policies to new development apply. As part of the LPPS it is proposed that the strategic site at Shopwyke Lakes as a whole will be encompassed within the enlarged settlement boundary for Chichester. Whilst policy 16 of the adopted Local Plan refers to development of 500 dwellings and draft policy A7 of the LPPS refers to development of 585 dwellings which reflects the current permitted development, neither are expressed as a maximum figure. The Shopwyke Lakes site could therefore potentially accept further housing development subject to the details meeting development plan policy and national planning policy constraints.

ii) Layout, design, mass, bulk and appearance

- 10.4 As part of the round of consultations undertaken on the application, views were sought from the Council's Design and Conservation Officer and these are set out in Appendix 1 to this report. In summary it is considered that whilst in of itself the appearance of the building has been given significant consideration and could result in a high quality appearance, critically, the building does not respond successfully to its context or to the anticipated development of this plot as set out in the Design Code and Regulatory Plan which formed the original masterplan for Shopwyke Lakes, and which was approved under the original overarching outline planning permission for the strategic site. The Design Officer is critical of the U – shaped footprint of the building, the positioning and massing of which along the south-east boundary results in all the car parking concentrated in one zone between the building and Longacre Way, dominating the view and detrimental to the street scene in what is a very prominent location. Overall, the manner of the proposals departure from the Shopwyke lakes Design Code is likely to have a negative impact on the visual amenity, appearance and quality of the resulting development of the site and the development more widely given the sites prominent location. This is contrary to policy 33 of the Local Plan and section 12 of the NPPF 'Achieving well-designed places'. It is therefore considered that the appeal should be contested on this issue and a putative reason for refusal is therefore cited in that regard.

iii) Lack of affordable housing

- 10.5 The application is accompanied by an Affordable Housing Viability Report the conclusion of which is that the costs of the development preclude the provision of the Council's standard requirement for 30% affordable housing under policy 34 of the Local Plan. The proposals are to provide a development of all market housing and 0% affordable housing. External consultants for the Council have been consulted to analyse this and their report (see Appendix 1) concludes that that the provision of nil affordable housing has not been fully substantiated. Officers have instructed the consultants to carry out further sensitivity testing to establish what is the minimum level of affordable housing that the scheme could bear, noting the clear line in government policy at paragraph 60 of the NPPF which states, '*Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership...*' [emphasis added]. At the time of writing, that additional sensitivity testing is still in progress, but it will explore the viability of different affordable housing tenures such as shared equity, discount

market sales and First Homes to establish whether any provision can be made. However, as it stands, the failure to provide any affordable housing let alone the Council's standard requirement for 30% is not accepted and is a clear reason for which officers consider the appeal should be contested. A reason for refusal is therefore cited in that regard.

iii) Highways, access and parking

- 10.6 The proposed vehicular access to the site from Longacre Way is pre-formed having been constructed when the spine road through Shopwyke Lakes was laid out. It therefore conforms to WSCC's technical requirements and safety audits. Following detailed discussions between the applicant's highway consultant and the local highway authority (LHA), the latter has concluded that it is not considered in principle that there would be grounds for WSCC to object on in terms of the level of parking proposed. It is pointed out that there are waiting restrictions in place (double yellow lines) that should avoid obstructive parking occurring along Longacre Way. WSCC accept that parking could take place in locations on side roads where there are presently no restrictions but that additional parking in these locations isn't necessarily an issue that WSCC would or could object on. Essentially the development imposes a 'buyer beware' caveat on new residents in terms of the parking arrangements. The objection of Oving Parish Council and third parties on the lack of parking for the development of 1 and 2 bed flats and the commercial use is noted but without a formal objection to the proposals from the LHA, the Council does not have the evidence to substantiate a reason for contesting the appeal on highway safety grounds. Consideration has also been given to whether the proposal would impact upon the amenity of future occupiers and neighbours as a result of the proposed parking provision, however due to the on-street parking restrictions in the locality it is considered that it would be difficult to evidence harm to amenity from overspill of parking to the surrounding roads. To attempt to contest the appeal on highway safety or amenity grounds without evidence runs the risk of the appellants making a claim for costs.
- 10.7 In terms of the potential impact of the new development on the capacity and safety of the A27, National Highways (NH) consultation response advises that on the basis of the development resulting in a total of 33 two-way vehicle trips in each of the AM and PM peak hours it does not consider, in isolation, there would be an unacceptable or severe impact on the safety, reliability, and/or operational efficiency of the Strategic Road Network in the vicinity of the site. However, NH does consider that the additional trips will add to the cumulative impact of development upon the A27 Chichester bypass and in that regard confirms that while it offers 'no objection', that view is contingent on the Council securing a contribution to the A27 Local Plan mitigations as set out in the SPD.
- 10.8 The Committee will be aware that subsequent to that consultation response in April 2023, NH issued a letter to the Council in September in response to draft policy T1 in the LPPS, which, based on the results of the Transport Study (2023) which underpin that policy, proposes a higher level of contribution than that identified in the 2016 SPD in order to mitigate the impact of new development, particularly in relation to junction improvements on the A27 Chichester Bypass. NH recognise that 2016 SPD is no longer fit for purpose in terms of providing the required level of financial contributions necessary to instigate the improvements needed to the A27.



10.9 The Committee will also be aware from recent applications and appeals with regard to the issue of A27 scheme of improvements that the Council's issue is that unless all housing permitted ahead of the adoption of the LPPS delivers the financial contributions of the scale envisaged in draft Policy T1 of the LPPS, the Council will be unable to secure sufficient funding for the requisite improvements to the A27 necessary to enable the planned housing development set out in the LPPS. Given this position, it is officers recommendation that non-compliant schemes are not supported on the basis of the acute nature of the Council's position and the risk to housing delivery in the district. In this instance the appellants have not confirmed that they will provide the financial contributions envisaged in the draft Policy T1 of the LPPS/revised SPD (or indeed any financial contribution based on the 2016 SPD) and thus officers recommend that the appeal is contested in respect of this issue. A putative reason for refusal in that regard is therefore cited in this report.

#### iv) Drainage

##### Foul water drainage

10.10 It is proposed that foul sewage from the development would be discharged to the public sewer via a private gravity sewer (there are two available outlets from the site) to the new pumping station located mid-way along the southern boundary of the Shopwyke Lakes site from where it will then be pumped via a rising main to the Tangmere village pumping station. This would pump directly to the Easthampnett Wastewater Treatment Works (WwTW).

10.11 Although the appellant has demonstrated that the site can be drained, officers note the concern of Oving Parish Council and third parties with regard to the foul drainage implications arising from the proposed development. However, there is capacity in the network and at the WwTW and ultimately it is the statutory duty of Southern Water to ensure that the off-site infrastructure leading to the WwTW is fit for purpose, that the development is satisfactorily drained, and that the proposed development does not lead to problems elsewhere in the system. If Southern Water is not performing its statutory function then the recourse is to the industry regulator OFWAT. Any failings on behalf of Southern Water to deliver required improvements to the offsite network are failings under Part 4 of the Water Industry Act 1991 not under the Town and Country Planning Act. Southern Water raised no objection to the proposals subject to the standard technical requirements of connecting into the public sewer system. Officers' view therefore, is that it would be unreasonable to seek to defend the appeal on foul drainage grounds. This view is borne out partly from the experience in several recent appeals where sewage capacity/failings of the public sewer network was raised as an issue, but where Inspectors have relied on government policy in paragraph 188 of the NPPF. This emphasises that planning decisions should focus on whether proposed development is an acceptable use of land rather than seek to control processes where these are subject to control by separate pollution control regimes/authorities.

##### Surface water drainage

10.12 The appeal site as part of the wider Shopwyke Lakes development was significantly re-engineered and re-profiled following the original grant of planning permission and is located within Environment Agency Flood Zone 1 i.e., a site with the lowest probability of fluvial flooding. The principle of the surface water drainage strategy for the whole of

Shopwyke Lakes was agreed under reserved matters approval 14/02826/REM with the central lake acting as the main surface water outfall. The proposed development feeds into this approved and established infrastructure through the open swales constructed as part of that overall strategy. Whilst a formal consultation response is awaited from the Lead Local Flood Authority it is not anticipated that the approved strategy would need to be re-visited for the appeal site as part of this appeal and if necessary, conditions could be recommended were the Inspector minded to allow the appeal. If the LLFA consultation returns an objection which cannot satisfactorily be addressed by the imposition of a condition/s then the Committee is advised this would need to form an additional putative reason for refusing the proposed development.

v) Other Matters

Recreational Disturbance (HRA)

- 10.13 Turning to the issue of potential recreational disturbance at the nearby Chichester and Langstone Harbours Special Protection Area, the proposals should not have an adverse effect on the integrity of this European site subject to the developer contributing towards the well-established Bird Aware Solent scheme. It is understood the appellant has agreed to make such a contribution although this is erroneously referred to in the submission as a contribution towards 'Heathland mitigation'. Were the appeal to be allowed, this contribution would need to be secured through the S106 legal agreement referred to below. As part of the appeal process the Inspector will be the competent authority and therefore, under Section 63 of the Habitat Regulations, will be required to undertake their own HRA in consultation with Natural England.

Protected bat species (HRA)

- 10.14 The Shopwyke Lakes site lies within the 12 km Singleton and Cocking Tunnels Special Area of Conservation (SAC) buffer zone for the rare barbastelle bats species. Whilst the appeal site is adjacent to the central lake to the south, the site itself comprises a largely featureless, sub-urban setting, devoid of natural features or network connectivity to natural features which might be supportive of an environment favourable for the bat species for which the SAC is so designated. Officers are satisfied that there would not be a likely significant effect on the SAC but noting that the Environment Officer requires the presence of (non-SAC) bats more generally to be taken into consideration when devising a lighting mitigation strategy for the site. This could be secured by condition were the Inspector as the competent authority to also conclude that the appeal proposal does not conflict with the habitat regulations.

Nutrient Neutrality

- 10.15 Proposals that comprise new development with overnight accommodation will have wastewater implications. It is Natural England's view that these implications must be addressed in the ways required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017. As this development will be draining to Easthampnett WwTW, the impact onto a European protected Habitat site (namely the Solent Maritime SAC and Chichester and Langstone Harbours SPA and Ramsar site) can be screened out - again accepting that as the application is now at appeal it is the Inspector who is the competent authority in this regard - and therefore nutrient neutrality does not need to be considered by way of an Appropriate Assessment under Regulation 63 of the

Conservation of Habitats and Species Regulations 2017. Similarly, the site is outside Solent Maritime SAC catchment so that no surface water drains from the site to the protected areas.

#### Sustainable design and construction

10.16 The application was accompanied by a Sustainable Design and Construction Statement which the Council's Environment Officer has examined and is satisfied is sufficient (subject to conditions) to address the criteria in policy 40 of the Local Plan. The statement confirms the proposals will meet the requirements to restrict domestic water usage to 110 litres per person per day, will have enhanced fabric insulation, solar PV panels on flat-roof areas, no gas boilers and air source heat pumps. To comply with building regulations each apartment will need to be provided with an electric vehicle charging point. Subject to condition/s the Committee is advised that this is not an issue on which to contest the appeal.

#### Residential Amenity

10.17 In terms providing for the amenity of the future residents of the development, the appeal proposal relies almost entirely on the green infrastructure and facilities that will be delivered by the masterplanned re-development of the Shopwyke Lakes site. The amenity space for the proposed 1 and 2 bed apartments is restricted to small balconies or terrace areas. The built form and associated car parking and manoeuvring areas occupy the vast majority of the available space with only token space left for soft landscaping. The proposals do not provide any on site amenity or playspace when ordinarily a major development of this size would be expected to wash its own face and deliver 718 m<sup>2</sup> of public amenity space and 215 m<sup>2</sup> of equipped play space. The failings of the scheme in this regard are part and parcel of the scale of development proposed and the first putative reason set out in Appendix 2 below.

#### vi) S.106 Agreement – infrastructure provision

10.18 This development is liable to pay the Council's CIL indexed at £147.01 per sqm which will address most of the infrastructure matters. However, if planning permission is granted by the Inspector, it will be necessary for that permission to be accompanied by a legal agreement under Section 106 of the relevant legislation. At the time of writing there is no draft S.106 agreement in preparation or Unilateral Undertaking and as such this must form a putative reason for refusal. This section of the report is important in that it sets out the Heads of Terms that it is currently envisaged would need to be included in any such Agreement in order to make the proposals policy compliant and acceptable in planning terms were the appeal to be allowed.

- Affordable Housing provision depending on outcome of the Council's assessment of the appellant's viability appraisal.
- Financial contribution towards the coordinated package of highway works on the A27 Chichester bypass, in accordance with the Chichester Local Plan 2021-2039: Proposed Submission (Regulation 19) draft policy T1 and as set out in the draft A27 Chichester Bypass Mitigation SPD (August 2023).
- Financial contribution of £50,497 for recreational disturbance mitigation at Chichester and Langstone Harbours SPA in accordance with Local Plan Policy 50 and Planning Obligations and Affordable Housing SPD.

- A management company for the parking and communal landscaping areas to provide for the management and on-going maintenance.
- Travel Plan and Travel Plan auditing fee.
- WSCC S106 monitoring fee.
- CDC S106 monitoring fee.

## **11. Conclusion and Planning Balance**

- 11.1 Officers recognise that in terms of the benefits, this proposal would increase the supply and choice of housing in the district at a time when the Council is not able to demonstrate that it has a 5-year housing supply. This potentially would make it easier for the Council to resist inappropriate development elsewhere. The Shopwyke Lakes site is acknowledged to be a sustainably located strategic site and is carried forward under policy draft A7 of the proposed Chichester Local Plan: 2021-2039 Submission Plan (Regulation 19). The principle of new housing on the site is not therefore at dispute. However, that provision is not at any cost. At the time of writing, it has not been substantiated to the Council that the appeal proposal cannot bear the provision of any affordable housing which is a key policy requirement of the Council and is at a time when there is a significant affordable housing need in Chichester. The scheme presented on application to the Council is potentially one of a number of different permutations for new housing on the site that could have been put forward to provide policy compliant affordable housing and resulting in a development which provides a high quality design with suitable landscaping and play space, laid out in a more sympathetic and appropriate response to its prominent position, and with an appropriate mix of accommodation. The proposals do not provide any financial mitigation for the cumulative impact on the A27 contrary to National Highways and no recreational mitigation contribution for the impacts at Chichester Harbour SPA is secured which conflicts with the habitat regulations.
- 11.6 For all the above reasons stated within this report it is recommended that the LPA contests appeal APP/L3815/W/23/3332866, in respect of the matters as set out in paragraph 2.1 of this report.

### **Background Papers**

The application, and all submitted appeal documents and consultation responses can be viewed online at: <https://publicaccess.chichester.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

### **Appendices**

#### **Appendix 1: Representations and Consultations**

## APPENDIX 1

### 1. Representations and Consultations

#### 1.1 Oving Parish Council

Oving Parish Council has met to consider the above mentioned planning application and would like to OBJECT to this application with the following comments:

- Parking.

According to the Parking Standards Guidance this scheme is massively under providing of car parking spaces to accommodate 87 flats and the linked commercial unit of 8072sq feet, and below the standards for EV parking of 20% and disabled parking of 5% even if categorised as PBZ3 as suggested in the public access statement from CL Planning.

It appears to only be designed for cars with no facilities for commercial vehicles in support of the commercial units. Oving Parish Council therefore concludes that this is not a sustainable location especially when considering the lack of bus routes to support it.

- Affordable Housing.

Oving Parish Council would challenge that as this proposed scheme is unable to provide any affordable housing, the scheme itself is therefore not compliant with policy and is therefore not a viable scheme in its own right.

- Appearance.

The height, bulk and mass of this proposal is out of keeping with the rest of the development of Shopwyke Lakes. Due to the height, bulk and mass Oving Parish Council suggests that it would struggle for support in an urban environment, let alone a rural designation such as this location which is outside a settlement. Oving Parish Council believe that the aesthetics of this proposal and the materials proposed are incongruous

with any other building within the vicinity.

The nature of the roof layout unnecessarily increases the height of the proposed building and precludes more significant PV generated space and/or sedum roofing which would help delivering some BNG on site.

- Highways.

These additional 87 units are beyond the outline permitted 585 which questions whether there is sufficient capacity of the junctions onto the A27 to support the significant increase in traffic that this proposal will generate, alongside the additional permitted units of City Fields and Indigo Park plus the capacity issue identified when allocating A8 in Reg19.

- Sewage.

The sewage capacity of this site is already known to be an issue.

I trust that the Parish Council's comments will be taken into consideration.

#### 1.2 National Highways

No objection. We are content that the proposals, in isolation, would not have an unacceptable impact on the safety, reliability, and/or operational efficiency of the Strategic Road Network in the vicinity of the site. However, this proposal will add to the cumulative impacts of development upon the A27 Chichester Bypass. We offer no objection provided that Chichester District Council apply their Supplementary Planning Document (SPD) 'Planning Obligations and Affordable Housing', and the applicant makes a relevant contribution to the A27 Local Plan mitigations in line with the SPD. The contributions set out in the SPD are based on 2012 Quarter 3 prices. Therefore, the contribution is to be indexed from 2012 Quarter 3 prices to current prices at the time of payment according to the ROADCON Tender Price Index. Previously the Council has tended to require the development contribution to be made at around 50% of occupations. National Highways do not object to this approach. If, however, the Council do not wish to apply the SPD, then we will need to reassess the application.

*[Planning Officer Comment: since making these comments in April 2023, NH in its letter to the Council of September 2023 has accepted that the existing 2016 SPD is not fit for purpose insofar as the financial sums it would secure would not deliver the anticipated cost of mitigation for the A27 improvements and that a revised basis for calculating that financial mitigation to address cumulative traffic growth is required]*

### 1.3 Southern Water

The applicant should ensure they have adequate rights to utilise the intervening private drainage systems. The applicant will need to further confirm that the private sewer does in fact connect into an existing public sewer further downstream. It is critical that the effectiveness of these [SuDS] systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system. The design of drainage should ensure that no groundwater or land drainage is to enter public sewers. This initial assessment does not prejudice any future assessment or commit to any adoption agreements under Section 104 of the Water Industry Act 1991.

### 1.4 WSCC – Highways

*Comments received 23.11.2023.*

As noted in the WSCC comments, there are waiting restrictions in place that should avoid obstructive parking occurring along Longacres Way. It is accepted that parking could take place in locations on side roads where there are presently no restrictions. Additional parking in these locations isn't necessarily an issue that WSCC would or could object on. Even with the issue where not all the information has been provided, it's not considered in principle that there would be grounds here for WSCC to object on.

*14.06.2023 – comments direct to applicant*

From my point of view, this covers everything off. *[this comment follows an earlier confirmation from the applicant to the LHA that the Class E element would not be a restaurant due to residential use on upper floors but could be a nursery which has equivalent parking impact to an office use].*

I'll confirm WSCC Highways acceptance to the scheme when we are formally requested to by the Local Planning Authority.

*12.06.2023 – comments direct to applicant*

I think it would be useful if a TRICS assessment could be made for those Class E uses (namely nursery and restaurant) that to date haven't been assessed unless of course these are specifically being excluded from the planning permission. This should then demonstrate that the parking assessment presented represents a worst case or at least is representative of other potential uses. The TRICS assessment for these other uses can just be based upon trip generation rather than needing any parking accumulation.

The above point aside, I'd confirm that all other matters have been resolved. Wording for the conditions and s106 obligations will be confirmed as part of any further consultation with the Planning Authority.

*Comments received 23.05.2023.*

Whilst the proposed units will make use of the constructed infrastructure that forms part of 11/5283/OUT, the proposals may need to further contribute towards other mitigation that meets the appropriate planning tests. It would be confirmed that highway modelling would not be required for the local highway network.

Further detailed parking assessment work has also been submitted. This reviews potential parking demands using Census data from a number of different wards within Chichester District. The approach of using Census data for the residential units is accepted and follows the general approach used within the WSCC Parking Guidance document. Applying the Census data, the worst case/highest level of parking being forecast is 80 spaces.

In addition to the residential parking demands, the site also includes an unrestricted use class E unit. Parking demands of the unit will vary depending on the end use with it noted that no assessment is made of parking demands for a 'restaurant' or 'nursery'. These aside, it's accepted that the worst case demands resulting from a retail use are in practice unlikely to materialise; for a retail use, there is likely to be a regular turnover of space as well as there being a high proportion of trips resulting from residents in the surrounding development. Likewise, an 'assembly and leisure' use may be expected to be used by local residents with a resultant lower parking provision than forecast. The parking demands for the office type uses are taken as being more representative of what may occur.

Taking the residential and use class E office, parking demands of 109 spaces could be realised. It is accepted that there will be some variation around this.

There is still a potential shortfall of parking spaces within the site (85 spaces are proposed) to meet potential demands. As mitigation, the developer is offering a car club space. This is presumed to refer to an allocated car club space and vehicle, as well as a travel plan for the class E use.

For the car club, the developer is quoting research that a car club space/vehicle has the potential to reduce private car ownership and overall parking demands by 20 vehicles. The research goes on to say that the number of private vehicles a car club vehicle replaces varies significantly by location type with the best results experienced in densely populated areas that have good public transport

connections; the Shopwhyke Lakes development perhaps doesn't meet these criteria. As a result, it's not a given that the provision of a car club would be as effective as the developer is suggesting. There is also no ability to secure the provision of the car club vehicle in perpetuity. There is the possibility that the car club is withdrawn by the operator, thereby removing this mitigation.

For the class E use, the effectiveness of the travel plan relies heavily on how well this is implemented, which is more a matter for the end user who is currently unknown. As already noted, the end use heavily influences potential parking demands.

The operation and allocation of the parking spaces is to be controlled by way of a car park management plan. The broad principle of this is acceptable. However, the more fundamental issues (in terms of the significant variations in parking depending on actual demands arising from both the residential and class E use as well as the effectiveness of the car club and travel plan) would need to be resolved to at least allow the framework for the car park management plan to be settled at this stage.

Overall, WSCC Highways interest in parking is to ensure that sufficient parking is provided to avoid overflow demands that then impact on the operation of the highway. It's accepted that the car club space and vehicle, and travel plan have some potential to mitigate the car parking demands. However the actual effectiveness of these measures is unknown. There remains the strong possibility that there will be a shortfall in parking on-site with resultant overflow.

#### 1.5 WSCC – Education Service

We have no education comments to make in relation to this application.

#### 1.6 WSCC – Fire and Rescue Service

Evidence is required to show that all parts inside all apartments are within 45 metres of the location of a fire appliance. This is to be measured along the hose lay route, not in a direct line or arc measurement. Any areas not within the 45 metre distance will need to be mitigated by the installation of sprinkler or water mist system complying with BS9251 or BS8458 standards.

#### 1.7 WSCC – Lead Local Flood Authority

Comments awaited the Committee will be updated.

#### 1.8 CDC – Conservation and Design Officer

The Design and Access statement references adherence to the design parameters set out at outline stage however on review it is considered that the design as proposed departs significantly from the outline approach based on the Design Code document. The mass of the building now proposed is considerably larger than the multiple smaller blocks illustrated at the outline stage. The smaller blocks provided some visual and physical permeability through from the street to the lake area beyond, the current proposal removes this permeability and would become a visual



and physical barrier from the main street to the lake. The smaller blocks proposed at outline stage provided a layout that broke up the mass of the building and better integrated with / reflected the pattern of development that will form its context. The 3-D sketch approach within the Design Code and the adjacent site as built out have 4 storey buildings with a step back above second floor height reducing the perceived height of the building. The current design has not carried this through resulting in the majority of the façade being read as full 4 storey. Whilst the built out mixed use building to the West is not considered to be of particular design merit it is considered the step back is a successful approach. In principle the greater level of interest and push/pull within the proposed facades is welcomed however it is considered the massing.

The footprint now proposed does not appear to relate to the building lines already established in neighbouring sites. It is considered that this goes against the Design Code in terms of the approach that should be expected for the Main Street Character area and the level of density and for a marker building / key building, which should be expected to address the public realm. The arrangement of smaller blocks previously proposed continued the building line around the curve of the street from Longacre House providing a more complete street frontage whilst also using the block to the rear to address the lake. The u-shaped design now proposed would lose this complete frontage making the proposal likely to appear out of keeping in the street scene and relating poorly to its setting. The proposal also lacks fenestration / active ground floor use to much of the North facing façade.

The form of the building results in the largest mass of the building being situated to the South-East away from the street with all the parking in one zone between the building and the main street through the development. This results in it having a high level of visibility in the street scene and the street lacking framing. The individual blocks proposed at outline stage appear likely to have resulted in car parking being provided within an internalised courtyard, an approach which would greatly reduce the visibility of the parking from the main street and therefore lessen its potential dominance.

In addition to the parking dominating the frontage some of the bin and bike store buildings are not integrated within the building design and are likely to appear as an afterthought. Their position fronting the street scene in combination with the shed like design approach is not considered to be appropriate for their location or level of visibility. Overall, it is considered that the approach to the street scene and unbroken mass of the block does not align with the outline layout or the maximum building dimensions initially set out in the Masterplan Document. The result of this is likely to be detrimental to the future street scene as it would not be appropriately resolved, and the pattern / layout of development is unlikely to sit comfortably within the wider scheme.

The internal layout of the apartment building proposes a central access corridor through the building and apartments situated on either side of this. Therefore, apart from apartments that turn the corners of the building all of the apartments are single aspect. This approach is one that should be avoided wherever possible. This is because it is known that single aspect dwellings are more likely to overheat as natural ventilation is less effective when there is no cross-ventilation limiting the heat

that can be purged. An additional issue is that all solar gain to the dwellings happens at the same time increasing the total peak solar gains. The approach also leaves North facing apartments with no sunlight having a harmful impact on the quality of the living environment for future occupiers.

It is acknowledged that overhanging balconies would provide some solar shading to the South facing apartments at ground, first and second floor. However, the third floor South facing apartments appear to be completely without solar shading and the overhanging balconies would not provide as effective solar shading to East and West facades where a different approach would likely be needed due to the angle of the sun at different times of day.

In principle the proposed materials are considered to align with the Design Code. Care is needed to ensure timber cladding is only proposed in those locations that are less vulnerable to disfigurement /discolouration such as considering how the water shed down the building is likely to behave and which aspect the façade faces.

Currently it is considered that the application provides insufficient information to understand how the proposals adjoins the adjacent parcels of land. For example, are boundary treatments proposed along the edge of the East facing parking and to the West adjacent to the green finger? There are no street elevations to understand how the proposal relates to the existing buildings adjacent to the site. This will be particularly important to understand whether the proposed building transitions appropriately to the shorter 2/2.5 storey houses to the West (it is acknowledged that the building steps down towards the East). The relationship with Longacre House also cannot be appropriately reviewed currently.

Overall it is considered that the proposals departure from the Design Code is likely to negatively impact the resulting development of this site and also the development more widely given the sites prominent location. Whilst it is clear that the appearance of the building has been given significant consideration and could result in a high-quality appearance it does not appear that the proposal has been designed with full consideration to the Design Code or its context. Therefore, it is not considered that in terms of design the proposal is capable of support currently.

#### 1.9 CDC – Housing Enabling Officer

We note that the applicant has provided an affordable housing viability assessment for a mixed used development and there are several points we seek further clarity and independent assessment. We would suggest that any viability appraisal should test this split [*the Council's policy compliant tenure mix*] alongside any alternative splits that have been considered. We would suggest that a range of alternative tenure mixes is explored for on-site provision and for a commuted sum in lieu of on-site provision. The Benchmark Land Value has been set at £1,000,000, it is not immediately clear where this value has come from and further clarification around this valuation and how it has been arrived at would be helpful.

We note that Chichester sits within the Coast to Capital LEP where land values are assessed as £1,750,000 per ha not the Solent LEP area where values are £1,500,000 per ha using the same information source as that outlined in the Report.

A policy compliant scheme of a development of 87 dwellings would require 26.1 dwellings to be affordable. We would expect to see 26 homes delivered on site and 0.1 as a commuted sum. As the application is for a single apartment block, we recognise that potentially there may be issues with the provision of larger sized dwellings... There can also be difficulties in providing mixed tenures where the dwellings share common parts and entrances and consequently some further refinements may be required.

#### 1.10 CDC - Coastal and Drainage Engineer

**Flood Risk:** The site is wholly within flood zone 1 (low risk) and we have no additional knowledge of the site of the proposed building being at increased flood risk. So subject to satisfactory surface water drainage we have no objection the proposed use, scale or location based on flood risk grounds.

**Surface Water Drainage:** We have no site specific comments to make and due to the scale (major development) of the proposal, please ensure you consult the LLFA who will comment on surface water flood risk and recommend any appropriate conditions.

#### 1.11 CDC – Environment Officer

##### Recreational Disturbance

For this application we are satisfied that the HRA issue of recreational disturbance can be resolved as long as the applicant is willing to provide a contribution to the Bird Aware scheme, the standard HRA Screening Matrix and Appropriate Assessment Statement template can be used.

##### Policy 40

Following submission of the Sustainability Design and Construction Statement we are satisfied with the inclusion of PV and electric charging points, this meets the requirements of policy 40. Further details and plans for this should be provided by condition.

##### Reptiles

Following submission of the Preliminary Ecological Appraisal (June 2022), we are happy that the mitigation proposed would be suitable. A condition should be used to ensure this takes place.

##### Bats

The lighting scheme for the site will need to take into consideration the presence of bats in the local area and the scheme should minimise potential impacts to any bats using the trees, hedgerows and buildings by avoiding unnecessary artificial light spill through the use of directional light sources and shielding.

##### Hedgehogs

Any brush pile, compost and debris piles on site could provide shelter areas and hibernation potential for hedgehogs. If any piles need to be removed outside of the hibernation period mid-October to mid-March inclusive. The piles must undergo soft demolition.

##### Enhancements

Though some enhancements for bird and bat boxes have been included within the Preliminary Ecological Appraisal (June 2022) there is not enough enhancements proposed for us to be satisfied that this would be sufficient for this site.

Example of enhancements we would be expecting to see include:

- Any trees removed should be replaced at a ratio of 2:1

- Wildflower meadow planting used
- Filling any gaps in tree lines or hedgerows with native species
- Bat bricks / tiles are integrated into the buildings onsite facing south/south westerly positioned 3-5m above ground.
- Bird boxes installed on the buildings / and or tree within the site.
- Grassland areas managed to benefit reptiles.
- Log piles onsite
- We require that gaps are included at the bottom of the fences to allow movement of small mammals across the site
- Hedgehog nesting boxes included on the site

#### 1.12 CDC – Environmental Protection

##### Land contamination

A verification report has been submitted. The report gives remediation recommendations which should be formalised into a remediation strategy which should then be implemented during construction and verified. Conditions recommended.

##### Noise

A noise impact assessment should be submitted to assess noise levels at the proposed development from traffic, commercial units associated with the development (Class E) and from industrial sources located at the Glenmore Business Park to the north of the site. A condition is suggested in order to ensure suitable internal noise levels.

##### Air quality

The site does not lie within an air quality management area (AQMA) however given the location of the development near the A27 and the scale of the development, there is potential for it to be affected by or result in air quality impacts. An air quality assessment should be submitted covering both impacts during the construction and operational phases. The approach detailed in the Institute of Air Quality Management documents should be followed when undertaking the assessment.

##### Lighting

It is recommended a lighting condition is applied to ensure design of the lighting shall not exceed the obtrusive light limitations for exterior lighting of the Institution of Lighting Professional Guidance for the relevant Environmental Zone.

##### Construction

Given the scale of development it is recommended a Construction Environmental Management Plan (CEMP) is provided and fully implemented, secured by condition.

#### 1.13 Financial viability consultant (Dixon Searle Partnership (DSP)) for CDC

Review to provide CDC with an independent check of, and opinion on, the planning applicant's viability information and stated position in this case. In presenting their viability position, the applicant has supplied to the Council a 'Affordable Housing Viability Report' (AHVR) together with a build cost estimate and evidence to support gross development value. A viable development could be regarded as the ability of a development project to meet its costs including the cost of planning obligations, while ensuring an appropriate site value (i.e., existing use value plus a reasonable premium) for the landowner and a market risk adjusted return to the developer in delivering that project. The submitted development appraisal has been run in a way which takes account of the benchmark land value (BLV) of the site (assumed at £1m)

and assesses the level of additional residual potentially available in excess of that after allowing for a fixed developer's profit (placed at 17.5% of gross development value for the market housing and 15% for commercial). The 'All open market' (0% AH) scheme as presented produces a residual land value of £265,280 and when compared to the assumed BLV of £1m produces a deficit of - £734,720. The AHVR states that the deficit increases to -£956,305 for the 'Policy compliant including 30% AH' scheme. CDC requires our opinion as to whether the viability figures and position put forward by the applicant are reasonable. A key theme for us is to identify whether, in our opinion, any key revenue assumptions have been under-assessed (e.g. sales value estimates) or any key cost estimates (e.g. build costs, fees, etc.) over-assessed – since both of these effects can reduce the stated viability outcome.

Findings summary - Although the majority of the [applicant's] assumptions appear reasonable at this stage, there are aspects that we have queried or where a difference of opinion exists. These include BLV and gross development value. As part of our audit style approach, we have carried out sensitivity testing based on making adjustments to the assumptions. When doing so, the scheme produces the following results: 30% A/H produces a surplus over BLV of £3,447. 0% A/H produces a surplus over BLV of £361,389. Overall, the viability of the scheme appears to have been understated. At this stage, our view is that a nil affordable housing outcome has not been justified and we recommend that additional evidence is sought in relation to the assumed value of the commercial unit. It is also worth noting that while the 30% AH scheme based on 16no. affordable rented units and 10no. shared ownership units produces a small surplus based on DSP's revised assumptions, a different scheme which includes the Council's AH requirements may produce a different outcome. A different scheme may of course be more or less viable [emphasis added]

*[Planning Officer Comment: subsequent to the above DSP report in June and the passage emphasised, DSP has been asked to carry out some further sensitivity testing on the viability to establish whether the scheme could bear some affordable housing if that housing was comprised of a different mix i.e., First Homes/discount market sales/shared equity. The Committee will be updated]*

#### 1.14 43 Third Party Objections

Over development of site    Too imposing will be an eyesore  
Too different from original plans for site  
Lack of parking will make existing situation worse  
No visitor parking  
No amenity space for the residents  
Still waiting for community facilities at Shopwyke Lakes  
No promised bridge to Chichester  
No promised sports ground or shops  
Road through estate is now a rat run  
No gardens or landscaping for residents  
Design out of keeping with surroundings won't blend in  
Height harmful to existing homeowners  
Will reduce quality of life for all