

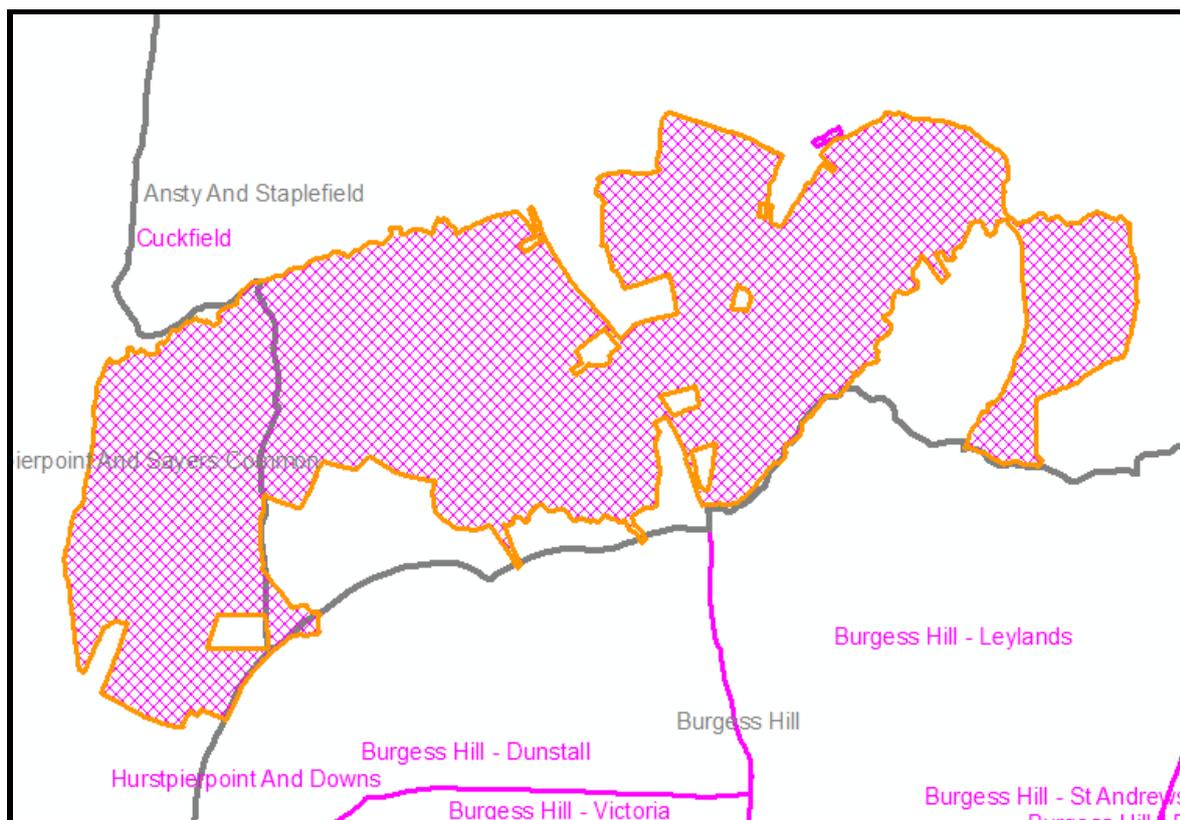
MID SUSSEX DISTRICT COUNCIL

District Committee

14 JAN 2021

OTHER MATTERS

DM/20/4178



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Purpose of the report

1. To ask the District Planning Committee to consider and agree proposed variations to the Legal Agreement secured as part of the Outline Planning Permission (DM/18/5114) on the Northern Arc.

Summary

2. Homes England has requested changes to the provisions in the S106 legal agreement, agreed as part of Outline Application DM/18/5114. The Northern Arc is the largest development scheme in the District and the legal agreement is extremely complex. The changes are requested following work to develop a more detailed programme for delivery.
3. The variations proposed to the legal agreement are all minor in nature and are considered reasonable having regard to the more informed delivery trajectory. None

of the changes unacceptably alter the quality or quantity of infrastructure provided, and the infrastructure will still be delivered at an appropriate rate in relation to housing delivery, in order to mitigate the impact of the development. The changes do not materially affect the planning considerations assessed at the time of the original decision, including those assessed as part of the Environmental Impact Assessment. ~~(b)~~ The delivery of infrastructure at an accelerated rate would not be compromised as a result of the amendments.

4. None of the changes unacceptably alter the quality or quantity of infrastructure provided, and the infrastructure will still be delivered at an appropriate rate in relation to housing delivery, in order to mitigate the impact of the development on existing infrastructure in Burgess Hill.

Recommendation

5. That the District Planning Committee **approve** the proposed variations to the Legal Agreement.

Proposal

6. The requests seeks the following changes to the legal agreement:
 - Timings for agreement of certain design elements
 - Open space parcel boundaries
 - Timings for the transfer of the Adur Open Space
 - Timings for the delivery of community facilities, including the removal of the requirement for a temporary community building due to the acceleration of the first permanent community building
 - Timing of the health centre delivery/financial contribution for health
 - Timings of highways improvements
 - Primary and Secondary parcel boundaries
7. Full details of the changes are set out in the considerations section below.

Background

8. The Northern Arc was allocated as a strategic development site in the Mid Sussex District Plan (March 2018) to deliver approximately 3,500 additional homes, associated new neighbourhood centres, business park, primary schools, secondary school, a Centre for Community Sport, permanent pitches for settled Gypsies and Travellers and a Link Road.
9. In September 2018 the Council approved a Masterplan and Infrastructure Delivery Plan, as required by the above allocation. These documents outlined the main requirements the Northern Arc development should include.
10. In July 2019 Outline Planning Permission was granted by the District Planning Committee for the following development (DM/18/0509) "Freeks Farm":
 - residential development comprising up to 460 dwellings
 - public open space, recreation areas, play areas,
 - associated infrastructure including roads, surface water attenuation and associated demolition.

11. Following this in October 2019, Outline Planning Permission was granted for a comprehensive, phased, mixed-use development (DM/18/5114) comprising:
 - approximately 3,040 dwellings including 60 units of extra care accommodation (Use Class C3)
 - 13 permanent gypsy and traveller pitches
 - Centre for Community Sport with ancillary facilities (Use Class D2)
 - Three local centres (comprising Use Classes A1-A5 and B1, and stand-alone community facilities within Use Class D1),
 - Healthcare facilities (Use Class D1),
 - Employment development comprising a 4 hectare dedicated business park (Use Classes B1 and B2),
 - Two primary school campuses and a secondary school campus (Use Class D1),
 - Public open space, recreation areas, play areas,
 - Associated infrastructure including pedestrian and cycle routes, means of access, roads, car parking, bridges, landscaping, surface water attenuation, recycling centre and waste collection infrastructure
 - Associated demolition of existing buildings and structures, earthworks, temporary and permanent utility infrastructure and associated works.Together these applications form the largest and most complex development site in the south east of England.
12. Both of these applications were subject to legal agreements to ensure the required infrastructure is delivered alongside the development. The variation to the legal agreement that the committee are being asked to consider relates to the larger outline application (DM/18/5114).
13. In January 2020 full planning permission was granted for the first phase of the spine road that will run through the entire site. The Eastern Bridge and Link Road will connect the Freeks Farm development with Isaacs Lane. This road will provide the main road infrastructure that will serve all the residential parcels to the east of Isaacs Lane, the Eastern Neighbourhood Centre, the first primary school, the secondary school and the eastern neighbourhood park.
14. In July 2020, reserved matters were granted for the Western Link Road, which will connect Jane Murray Way with the A2300. This road will provide the main road infrastructure that will serve the Centre for Outdoor Sports, the Western Neighbourhood Centre and housing to the west of the A2300.
15. Since then, a large number of applications have been agreed for obligations required by the legal agreements and details required by condition.
16. Construction has commenced on Freeks Farm with the first section of link road completed and house construction well underway. Construction is due to commence on the Eastern Bridge and Link Road and the Western Link Road early this year.

17. The Northern Arc makes a significant contribution towards meeting the District's housing need. Current housing projections set out the following housing delivery for the next 5 years (numbers are for all of the Northern Arc, including Freeks Farm):

Financial Year (1 st April – 31 st March)	Proposed Completions Per Financial Year	Proposed Completions Cumulative
2021/22	160	160
2022/23	255	415
2023/24	277	692
2024/25	317	1009
2025/26	335	1344

Policy Context

18. The following are Material Considerations in the determination of this request:
- Mid Sussex District Plan (2018), particularly Policies:
 - DP1 Sustainable Economic Development,
 - DP4 Housing,
 - DP7 General Principles for Strategic Development at Burgess Hill,
 - DP9 Strategic allocation to the north and northwest of Burgess Hill,
 - DP20 Securing Infrastructure,
 - DP21 Transport,
 - DP22 Rights of Way and other Recreational Routes,
 - DP24 Leisure & Cultural Facilities and Activities,
 - DP25 Community Facilities and Local Services,
 - DP26 Character and Design,
 - DP37 Trees, Woodland and Hedgerows,
 - DP38 Biodiversity,
 - DP39 Sustainable Design and Construction,
 - DP41 Flood Risk and Drainage,
 - DP42 Water Infrastructure & the Water Environment.
 - West Sussex Joint Minerals Local Plan (2018) & West Sussex Waste Local Plan (2014).
 - Burgess Hill Neighbourhood Plan 2015-2031 (2016), Hurstpierpoint & Sayers Common Neighbourhood Plan 2014-2031 (2015) & Ansty, Staplefield & Brook Street Neighbourhood Plan 2015-2031 (2017).
 - National Planning Policy Framework (NPPF) (February 2019) & National Planning Policy Guidance (NPPG).
 - Northern Arc Masterplan (2018) & Northern Arc Infrastructure Delivery Plan and Phasing Strategy (2018).
 - Burgess Hill Town Wide Strategy (2011) & Burgess Hill Public Transport Strategy (2016).
 - MSDC Developer Infrastructure & Contributions SPD (2018).

Consultation

19. The request to amend the legal agreement has been advertised by site notice and the Town and Parish Councils have been notified.
20. One comment has been received from Ansty and Staplefield Parish council, stating the following:

“The Parish Council object to this application and are disappointed to see the developer seeking to change the terms of the s106 legal agreement. The

infrastructure should be provided at the agreed time or demand will exceed supply for several years. For example, delaying the provision of a school will create logistical problems for the residents of the new development and many will need to drive their children to school which will increase road traffic and adversely affect the environment.”

21. The Committee should note that the proposed amendments to the legal agreement do not include any change to the delivery dates for the proposed schools. Changes to infrastructure delivery triggers include the Sussex Way/Jane Murray Way Highways Improvements, the healthcare facility and the community facilities, full details of which are provided below. None of these changes are considered to unacceptably delay infrastructure provision to an extent that demand would exceed supply.

Consideration

22. Section 106A of the Town and Country Planning Act allows for a planning obligation to be modified. The NPPG states that planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so.
23. The main outline application for the Northern Arc (DM/18/5114) included a high-level parameter plan detailing that the development of the site would be split into 4 phases. However, due to the scale and complexity of the development, detailed information in relation to delivery of housing within each phase was not included with the application and was reserved for approval as part of an obligation in the legal agreement. As such, the triggers in the legal agreement were based on a series of assumptions and required a large amount of information to be agreed with MSDC and WSCC in advance of commencement of development on site.
24. Since the outline application was granted, a large amount of work has progressed on the scheme as a whole. Further feasibility work has been carried out and the phasing of the development has been further refined since the application. Officers now have a greater understanding of how the development will be built out and a more mature understanding of the interrelationships between various parcels.
25. The feasibility work carried out since the decision on the outline application has refined the exact boundaries of certain development parcels, there are very minor changes proposed to the boundaries of the primary and secondary school boundaries, as well as certain open space parcels. None of these changes materially affect the quality or quantity of delivery of these pieces of infrastructure.
26. This feasibility work carried out has enabled Homes England to commit to the accelerated delivery of parcels on the eastern side of the site (east of Isaacs Lane), this has also enabled the accelerated delivery of the first permanent community centre, negating the requirement to provide a temporary community facility whilst this is constructed.
27. Due to this acceleration of the eastern parcels, the trigger for some of the highways improvements on the western side is proposed to be amended to relate to the delivery of housing on the western side of the site. The current trigger for providing these improvements is linked to the site wide delivery of homes. The acceleration of housing delivery would require these improvements to come forward earlier, which is considered to be unnecessary and would divert from progress being made on the eastern side of the site.

28. The feasibility work carried out has also resulted in a better understanding of how the drainage infrastructure would be provided for the entire site. Underground storage and swales would be provided as part of the drainage infrastructure. These pieces of infrastructure will be provided on land that will be transferred to MSDC and have a greater maintenance cost than the drainage infrastructure that was initially envisaged. As a result, the formula for calculating drainage maintenance costs payable to the District has been amended to reflect the increased costs.
29. Although a considerable amount of work has been undertaken to progress delivery, the Legal Agreement as currently drafted, requires further detailed feasibility work to be carried out early in the process. In addition, much of the information required, overlaps with information that will be required as part of reserved matters submissions. It therefore makes sense to assess this at the same time as reserved matters submissions. This will enable amendments required because of officer assessment, consultation responses or neighbour comments to be responded to in both the specification requirements and the reserved matters applications concurrently. This is more efficient as it will avoid the potential need to go back and revisit details that have been agreed in advance of reserved matters. Therefore, officers consider that it is not reasonable to require all of this detailed work to be carried out at this stage.
30. If the current triggers are maintained for detailed information on all parts of the site to be agreed in advance of commencement, Homes England's accelerated delivery programme would be impacted.
31. Finally, ongoing discussions are taking place with the CCG regarding health provision on the Northern Arc, and the trigger for making a decision as to how health infrastructure has been provided has been pushed back to enable these discussions to continue. At the current point in time the CCG are unable to commit to the agreement for an on-site health facility.
32. The following table sets out the specific changes proposed, the issues associated with the change and the consideration of acceptability of the change.

Proposed Amendment	Rationale/Issues	Officer Comment
<p>Areas of Lowlands Farm Open Space (OS1.1a and OS1.1b) amended</p> <p>OS1.1a is now proposed to total not less than 13.03 hectares (previously 11.9 hectares)</p> <p>OS1.1b is now proposed to total not less than 1.93 hectares (previously 2.34 hectares)</p>	<ul style="list-style-type: none"> Proposed to incorporate Freeks Lane (proposed cycle route). This will be transferred to MSDC as part of the Lowlands Open Space Switch in area between OS1.1a and OS1.1b to reflect how the two open space parcels will be developed separately. 	<ul style="list-style-type: none"> Total area of the two open spaces combined would be 14.96 hectares, 0.72 hectares more than in the original S106.

<p>Area of Adur Open Space (OS1.2) divided into 2 sections north and south</p> <p>The area to the north (OS1.2N) will be transferred prior to the occupation of 25% of the dwellings in Sub-phases P1.5 and P1.6 instead of prior to first occupation of the Dwellings within any of Sub-Phase P1.5, Sub-Phase P1.6, Sub-Phase P1.7 and Sub-Phase P1.8</p> <p>The area to the south will be transferred prior to the occupation of 25% of the dwellings in Sub-phases P1.5 and P1.6 instead of prior to first occupation of the Dwellings within any of Sub-Phase P1.5, Sub-Phase P1.6, Sub-Phase P1.7 and Sub-Phase P1.8</p>	<ul style="list-style-type: none"> • The Adur Open Space could be developed by 2 separate developers and dividing this space into 2 will prevent any delays from one developer impacting on the provision of the whole area. • 	<ul style="list-style-type: none"> • Total area of the two open spaces will remain the same. • Amendment to trigger for the two areas will enable the acceleration of homes on the residential parcels east of Isaacs Lane as the first residential dwellings can be developed alongside the Adur open space improvements. • Residents in these parcels who occupy dwellings prior to this open space being completed will have easy access to open space to the east on Freeks Farm. • Cycle routes in the open space will link to cycle routes along the Eastern Bridge and Link Road if one area is transferred before the other. • Access to the northern section would be by the eastern bridge and link road and access to the southern section will be provided by the eastern cycle superhighway bridge and link. Once both spaces are completed they will link together.
<p>Primary School 1 design agreed within 26 months of Planning Permission, rather than 12.</p>	<ul style="list-style-type: none"> • Current trigger requires design agreement by October 2020. • Amended trigger allows design to be agreed by December 2021. 	<ul style="list-style-type: none"> • The design of the school will be agreed in advance of the reserved matters for this primary school parcel and allows sufficient time for delivery of the school in line with the existing programme. • WSCC (Education Authority) has agreed to the amendment.
<p>Primary School 1 site boundary amended</p>	<ul style="list-style-type: none"> • Minor change to site boundaries to reflect detailed feasibility work 	<ul style="list-style-type: none"> • No change to quality/quantity of provision. • WSCC (Education Authority) has agreed to the amendment.
<p>Primary School 2 design agreed within 6 years of permission rather than 12 months.</p>	<ul style="list-style-type: none"> • Current trigger requires design agreement by October 2020. • Amended trigger allows design to 	<ul style="list-style-type: none"> • The design of the school will be agreed in advance of the reserved matters for this primary school parcel and allows sufficient time for delivery of the school in line with the existing programme.

	be agreed by October 2025.	<ul style="list-style-type: none"> WSCC (Education Authority) has agreed to the amendment.
Secondary School site boundary amended	<ul style="list-style-type: none"> Minor change to site boundaries to reflect detailed feasibility work 	<ul style="list-style-type: none"> No change to quality/quantity of provision WSCC (Education Authority) has agreed to the amendment.
Sussex Way/Jane Murray Way Highways Improvements delivered prior to occupation of western plots rather than prior to 400 th dwelling	<ul style="list-style-type: none"> The improvements include a footway extension, the relocation of the existing bus stop and the provision of a toucan crossing on Sussex Way to the east of the roundabout with Jane Murray Way. These improvements are required to mitigate impact of development on western side of the Northern Arc. Delivery of dwellings on Eastern Side are accelerating and the improvements are not required for these dwellings. 	<ul style="list-style-type: none"> Retaining the original trigger could impact on the accelerated delivery timetable for the homes on the eastern side. The highways improvements are required to mitigate impact of homes on western side and therefore more logical to tie the trigger for delivery into western side. WSCC (Highway Authority) has agreed to the amendment.
Centre for Community Sport references replaced with Centre for Outdoor Sport	<ul style="list-style-type: none"> MSDC request to reflect change in name. 	<ul style="list-style-type: none"> No impact on delivery of this piece of infrastructure.
Drainage Maintenance contribution amended to increase contributions where swales/underground storage included	<ul style="list-style-type: none"> Revised formula amended as Homes England would like to introduce underground storage and swales which are more expensive to maintain than 	<ul style="list-style-type: none"> Protects the public purse Providing some underground storage and swales allows more flexibility for landscape and other above ground development, which is a design benefit. MSDC Drainage Officer has no concerns with this amendment.

	over-ground flood storage.	
Community Facility Temporary Building requirement removed	<ul style="list-style-type: none"> No longer required due to acceleration of the permanent community facilities (see below amendment) 	<ul style="list-style-type: none"> Demonstrates Homes England's commitment to ensuring place making and delivering infrastructure early in the programme.
Community Building 2 transfer to be amended to prior to the occupation of the 292 nd dwelling instead or prior to 50% of dwellings in phase P1.7	<ul style="list-style-type: none"> Building to be constructed sooner than anticipated and therefore transfer would be 1 year earlier than originally envisaged. 	<ul style="list-style-type: none"> Demonstrates Homes England's commitment to ensuring place making and delivering infrastructure early in the programme. The MSDC Communities Team has no concerns with this amendment.
Community Building 2 specification trigger to be agreed prior to commencement of sub phase P1.7 instead of prior to commencement of development	<ul style="list-style-type: none"> Current trigger requires design agreement by October 2020. Amended trigger allows design to be agreed in advance of the reserved matters for the phase in which the community building is going. 	<ul style="list-style-type: none"> This revision ensures delivery in advance of the original timetable. The revised trigger allows sufficient time to ensure MSDC secures an acceptable community facility and it is transferred to MSDC in an appropriate form. The MSDC Communities Team has no concerns with this amendment.
Provision of Community Building 1 trigger to be amended from provision prior to the provision of 50% dwellings in Sub-Phase P1.4 to prior to the completion of 1004 dwellings	<ul style="list-style-type: none"> Amendment to trigger to tie it to site wide provision rather than just sub-phase P1.4 	<ul style="list-style-type: none"> The MSDC Communities Team has no concerns with this amendment.
Trigger for determining whether the Healthcare provision will be in the form of an on-site facility or a financial contribution to be spent off site on existing facilities to be prior to the occupation of 150 dwellings instead of 6 months from the	<ul style="list-style-type: none"> This pushes back the date when the CCG have to make a decision about whether they want on-site healthcare provision or a financial contribution to 	<ul style="list-style-type: none"> There has been ongoing discussions with the CCG who are still working on an overarching strategy for provision across Burgess Hill. Flexibility introduced by the change in trigger ensures that the CCG has sufficient time to complete its work.

<p>anticipated first occupation of the development.</p>	<p>off-site provision.</p>	
<p>Trigger for providing On-site healthcare facility or financial contribution to be amended to 1,400 from 300 dwellings.</p>	<ul style="list-style-type: none"> • Trigger amended to reflect the above change. 	<ul style="list-style-type: none"> • The CCG have confirmed that existing GP facilities in Burgess Hill would be able to meet the demand from these residents until a permanent solution is determined.
<p>Open Space specification triggers amended to be submitted alongside reserved matters applications and agreed prior to the commencement of the Sub-Phase in which they are located.</p>	<ul style="list-style-type: none"> • Current wording requires the agreement of specifications early in the programme, in advance of reserved matters applications. Amending the trigger so that they are agreed alongside the reserved matters approval means that concerns with either the reserved matters applications or the specification can be amended together where they impact on each other. • Local residents will be consulted on the reserved matters applications, where necessary local concerns can be dealt with in both the specifications and the reserved matters applications at the same time. 	<ul style="list-style-type: none"> • Still allows MSDC control over how the space will be designed to ensure it is suitable for the transfer of land. • No delays in delivery of open space

Equality Implications

33. None of the proposed amendments have any equalities implications and the conclusions of the Outline Planning Application report in relation to equalities remain.

Environmental Impact Assessment Implications

34. None of the proposed amendments alter the conclusions of the Environmental Statement submitted with the Outline Planning Application. The planning considerations for all the environmental issues set out in the Committee Report for the Outline Planning Application remain unaltered.

Conclusion

35. Whilst the above amendments alter various triggers in the original legal agreement and remove the requirement for a Temporary Community Building, they do not alter the overall conclusions of the original planning report. None of the changes unacceptably alter the quality or quantity of infrastructure provided, and the infrastructure will still be delivered at an appropriate rate in relation to housing delivery, in order to mitigate the impact of the development.
36. As such, it is recommended that the Planning Committee accept the proposed amendments.