
Site Address: Land at Hampshire Farm, Westbourne Road, Emsworth,
PO10 7RN

Proposals:

Application 1 APP/18/00120

Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to discharge the obligation to provide community facilities (doctors surgery and pharmacy) on the community facilities land or transfer the land to the Council for Community Use (use falling within use class D1 non-residential institution).

Application 2 APP/18/00121

Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to extend the period to procure that the Community Facilities (doctors surgery and pharmacy) on the community facilities land for a further two years until 1st December 2019.

Application 3 APP/18/00122

Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to vary the definition of the community facilities from specifically a doctors surgery and pharmacy to any use within Use Class D1 (non-residential institution) and to extend the period to procure the use for a further two years until 1st December 2019.

Application No's :	APP/18/00120, APP/18/00121, APP/18/00122	Expiry Dates:	03/05/2018
Applicant:	Bellway Homes and Bloor Homes		
Agent:	Miss L Grimason	Case Officer:	David Eaves
Ward:	Emsworth		

Reason for Committee Consideration: HPS Referral

Density: N/A

HDS Recommendation: **REFUSE PERMISSION**

Executive Summary:

This report relates to three applications seeking Deeds of Variation to the S106 dated 12th May 2011 (as previously varied) which was associated with the granting of planning permission reference 10/74014/000. This planning permission was an *Outline application for demolition of existing dwelling and erection of 280No. residential dwellings, doctors surgery and pharmacy with associated parking and landscaping, improvements to roundabout, and realignment of southern section of Redlands Lane to provide access and provision of public open space with parking, landscaping and construction of balancing pond with some matters reserved (approved 13/05/2011).*

The three applications are as follows:

Application 1 APP/18/00120

Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to discharge the obligation to provide community facilities (doctors surgery and

pharmacy) on the community facilities land or transfer the land to the Council for Community Use (use falling within use class D1 non-residential institution).

The effect of this variation would be to remove any obligations imposed by the S106 Agreement on the land. Therefore there would be no requirement to either:

1. Provide and lay out the Community Facilities Land for the purpose of providing the Community Facilities (Doctors Surgery and Pharmacy)
2. Transfer the Community Facilities Land to the Council for use for use for Community Use (Use falling within Use Class D1 non residential institutions)

The provision of the Doctors Surgery and Pharmacy were part of the original planning application and the requirement for their provision was fully assessed during the consideration of the planning application and included in the associated S106 Agreement. During the current application consideration has been given as to whether the requirements of the relevant parts of the S106 continue to serve a useful purpose and it is concluded that they do as evidenced in this report. The deed of variation is therefore recommended for refusal.

Application 2 APP/18/00121

Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to extend the period to procure that the Community Facilities (doctors surgery and pharmacy) on the community facilities land for a further two years until 1st December 2019.

The effect of this variation would be to extend period of time for the applicant to meet the requirements of the S106 agreement to allow for a further 2 year period.

Given that the requirements in relation to the Community Facilities have still not been realised beyond the extended period of time (previously granted by Deed of Variation), that the clauses continue to serve a useful purpose that would not be equally well served by the deed of variation and that the S106 includes within it the clause where the land is required to be transferred to the Council for Community Use the further extension of the compliance period is not considered to be necessary or acceptable.

Application 3 APP/18/00122

Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to vary the definition of the community facilities from specifically a doctors surgery and pharmacy to any use within Use Class D1 (non-residential institution) and to extend the period to procure the use for a further two years until 1st December 2019.

This application seeks to extend the range of Community Facilities that could be provided at the site and to seek a further two year period to secure their provision.

The original consent clearly anticipated the provision of a Doctors Surgery and Pharmacy on the Hampshire Farm site and there is every indication that this is moving towards being secured. This aspiration could be harmed by the widening of the definition of Community Facilities to include any D1 use in a situation where the land owner may be looking to secure a greater financial return from an alternative use, potentially less widely beneficial to the public.

The transfer of the Community Facilities land to the Council as required by clause 2.3

would allow for a Community Use (a use falling within Use Class D1 non residential institutions), however, this would allow the Council to exercise control over the use. Therefore the use of the land for a Doctors Surgery and Pharmacy could still be set as a preferred option as originally envisaged and as supported in the Planning Policy consultation response in part 5 of this report.

In conclusion in relation to Application 3 it is considered that the original relevant clauses in relation to the S106 agreement continue to serve a useful purpose which would not be equally well served by the deed of variation.

In relation to all three applications it is therefore recommended that the Deeds of Variation are refused.

Finally it is recommended that the Head of Legal Services be instructed to commence the transfer of the land to the Council as set out in the S106 Legal Agreement.

1 Site Description

- 1.1 The site forms part of the large residential development area formerly known as Hampshire Farm and post development known as Redlands Grange. The site area is approximately 0.46ha.
- 1.2 The site itself is currently open grassland with trees and hedges to the south-western and south-eastern sides. There is also a parking area with 13 car parking spaces on the north-western part of the land.
- 1.3 To the north-east beyond the land is an electricity sub-station. The land is bounded by the B2147 (Westbourne Road) to the south, Redlands Lane and Skylark Avenue to the West and Yarrow Road to the north. To the east is an area of allotments and associated parking with public open space beyond. To the North is the modern residential development of Redlands Grange and to the west and south more established residential development.

2 Relevant Planning History

10/74014/000 - Outline application for demolition of existing dwelling and erection of 280No. residential dwellings, doctors surgery and pharmacy with associated parking and landscaping, improvements to roundabout, and realignment of southern section of Redlands Lane to provide access and provision of public open space with parking, landscaping and construction of balancing pond with some matters reserved (approved 13/05/2011).

This application was granted planning permission subject to an associated S106 Legal Agreement and it is this S106 (as previously varied) that is sought to be varied in the three current applications. Details of the proposed variations are provided in part 7 of this report.

APP/11/01089 - Reserved Matters Application for 280No. residential dwellings relating to layout, appearance, scale and landscaping following Outline Planning Permission 10/74014/000 (approved 31/10/2011).

APP/12/00168 - Variation of approved plans under Condition 3 of Planning Permission APP/11/01089 for plots 5, 6, 8-15, 37-39, 44, 45, 48-51 and 54-64 to include various changes to house and garage types, elevational changes and minor resiting, also reconfiguration of car parking spaces., PERMITTED, 11/05/2012

APP/12/00837 - Reserved Matters Application (pursuant of outline planning permission 10/74014/000) for redesign of northern part of the site to provide a total of 161 units (reduction of 32 units) with associated parking and landscaping. , PERMITTED,14/12/2012

This application resulted in an associated Deed of Variation to the original S106 Agreement related to affordable housing (this provision is not subject to the three current applications)

APP/17/00300 - Variation of S106 legal agreement relating to Planning Permission 10/74014/000 (Hampshire Farm) to extend the period to procure that the Community Facilities (doctors surgery and pharmacy) are provided on the Community Facilities Land until the 1st December 2017.

Deed of Variation agreed on the 19th October 2017. This provided additional time for the owner/developer to procure that the Community Facilities be provided on the Community Facilities Land. It also extended the time period for transfer of the Community Facilities land to the Council in the event that the Community Facilities had not been provided.

It should be noted that the transfer period included an additional 56 days from the 1st December 2017 under the S106 Agreement taking the transfer date to the 22nd January 2018. The applications subject to this report were submitted shortly after that date, with letters dated 26th January 2018 and date stamped received on the 29th January 2018.

This Deed of Variation to the original S016 Agreement amended the timescales for the requirements under consideration in the three current applications.

3 Proposals

- 3.1 This report relates to three separate applications to vary the requirements of the S106 Agreement (as amended) associated with planning permission 10/74014/000. The report covers all three applications but each application will be commented on separately in part 7 and there will be three separate recommendations for consideration and determination.

Application No1. Ref: APP/18/00120

- 3.2 Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to discharge the obligation to provide community facilities (doctors surgery and pharmacy) on the community facilities land or transfer the land to the Council for Community Use (use falling within use class D1 non-residential institution).

Application No.2. Ref: APP/18/00121

- 3.3 Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014, to extend the period to procure that the Community Facilities (doctors surgery and pharmacy) on the community facilities land for a further two years until 1st December 2019.

Application No.3. Ref: APP/18/00122

- 3.4 Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014, to vary the definition of the community facilities from specifically a doctors surgery and pharmacy to any use within Use Class D1 (non-residential institution) and to extend the period to procure the use for a further two years until 1st December 2019.

4 Policy Considerations

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011
Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS1 (Health and Wellbeing)
CS17 (Concentration and Distribution of Development within the Urban Areas)
CS19 (Effective Provision of Infrastructure)
CS21 (Developer Requirements)
CS7 (Community Support and Inclusion)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)
AL2 (Urban Area Boundaries and Undeveloped Gaps between Settlements)

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Arboriculturalist

No comment

Community Infrastructure

No comments received

Economic Development - Commercial and Housing, Economic Development - Commercial and Housing

No comments received

NHS Property Services

No comments received

South East Hampshire Clinical Commissioning Group

No comments received

Neighbourhood Development Officer

No comments received

Planning Policy

The original obligation under permission 10/74014/000 was to provide community

facilities (doctors surgery and pharmacy) on the community facilities land or transfer the land to the Council for Community Use. The existing Emsworth Surgery building does not meet the requirements for space. Consideration has been given to the use of the Victoria Cottage Hospital site, which is centrally located in Emsworth and is owned by NHS Property Services. However, it is not fit for purpose, so the plan is to replace the existing surgery with a new building. Within the terms of the S106 planning agreement for the Hampshire Farm development a site (Redlands Grange) has been set aside for a doctor's surgery and pharmacy. This site would become more central to the expanding population given the proposed developments to the north of Long Copse Lane and at Southleigh as well as the need to cover Westbourne. The development of the Strategic Site and other sites in the Emsworth area will require additional GPs. These could be accommodated subject to the Emsworth Surgery finding a suitable new site / premises that will be capable of further expansion in the future.

Property Services

With reference to the above application, the applicant failed to comply with the requirement of the s106 Agreement within the timescale specified nor within an extension of that timescale which was agreed with the Council in order to comply with the requirement, despite there being ongoing interest expressed in the land consistent with the required use. The extended timescale expired in January.

As such it is considered that the land should now be transferred to the Council in accordance with the provisions of the s106 agreement. It is also believed that there is a continued demand for the land as a D1 Use, including use as a doctors' surgery and pharmacy.

I therefore do not support this application.

Public Health Team, Hampshire County Council

No comments received.

6 Community Involvement

This applications were publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 21

Number of site notices: 2

Statutory advertisement: 09/03/2018

Number of representations received: 4 Objections (Including Primary Care Surveyors and Emsworth Residents Association) and 1 Support.

6.1 Objections

Primary Care Surveyors: (original comments)

I am the surveyor appointed by the doctors of Emsworth Surgery to advise them on

their proposed relocation to a new medical centre.

I have been advising the practice for a number of years with much initial effort having been focussed on the Victoria Cottage Hospital (VCH) site. That site, whilst readily accessible for residents of the town of Emsworth, was felt to ultimately suffer the same constraints as the existing surgery in North Street. This was to offer very little by way of expansion space and inflexible accommodation compounded by insufficient car parking provision. The VCH site is owned by NHS Property Services Ltd and once the forecast operational cost was provided by the landowner this rendered the scheme unviable for my client. This decision was made in 2017 to cease proceeding with VCH site with my clients focusing their efforts on the land available at Hampshire Farm.

Negotiations with Bellway and Bloor Homes were undertaken and commercial terms agreed for the purchase of the land in question in 2017. A business case has been written and submitted to South West Hampshire NHS Clinical Commissioning Group (CCG) to secure funding for this new medical centre.

The demand for a new medical centre to serve the residents of Emsworth is ever-increasing.

There is a demand for greater provision of healthcare services within the community in order to ease access to healthcare for residents and to reduce the burden on the secondary care sector (ie hospitals). For this reason engagement with the CCG has been positive and the indications are encouraging. If it had not been for the initial encouragement having been directed towards the VCH site then the S106 opportunity may have been explored further much sooner. However, good progress has been made and my clients are anxious that the opportunity to develop a new medical centre on this site is not lost.

To this end my clients have urged me to write this letter of objection to the three planning applications as made to ensure that the opportunity to provide a new medical centre for the residents of Emsworth is not lost.

Primary Care Surveyors additional information:

1. Demand/need for the new medical centre

Emsworth Surgery is a partnership of 7 doctors with a non-weighted patient list size of 12,745 (*December 2017*). With a Full-Time Equivalent (FTE) GP count of 5.75, this represents a ratio of 2,216 patients per GP. The upper limit for the GP/patient ratio in England is 1,800 patients per GP (*source: NHS Choices*), putting Emsworth Surgery far beyond the upper limit.

Population growth for Emsworth is predicted at approximately 150 persons per year over the next 10 years (*source: HBC*). However, the practice's patient list is expected to increase to in excess of 15,000 by 2026 and to circa 20,000 by 2036 (*source: Emsworth Surgery Options Assessment document*), representing a patient population growth of 2,255 over 10 years or 7,255 over 20 years. This predicted growth results from the *Havant Borough Council Draft Local Plan* commitment to build 2,560 new homes in the Emsworth area by 2036, which is projected to generate upwards of 5,888 new residents in Emsworth, based on 2.3 persons per dwelling (*source: ONS 2011*).

Reflecting requirements in the government's *National Planning Policy Framework*

(*NPPF*), a total of 9,549 new homes in the Havant Borough is proposed between 2016 and 2036. The 6,989 new homes that will be built in areas surrounding Emsworth (including Havant, Bedhampton, Leigh Park and Hayling Island) are projected to generate an additional 16,075 new residents, putting additional pressure on local healthcare infrastructure.

GP practices are obliged to accept new patients, unless there are reasonable grounds to refuse doing so which must be provided in writing and can include the practice having no capacity to take on new patients. With 2,216 registered patients per GP, Emsworth Surgery is already operating at above capacity and would be justified in refusing to accept new patient registrations; however, this would not be in the interests of best practice nor of the patient population of Emsworth, so it is not a measure the practice has decided to take, despite being in premises significantly undersized for the patient list.

Emsworth Surgery is the only GP practice in Emsworth, and the only surgery within 2 miles of the housing development planned at Hampshire Farm, to the north of Emsworth, which is anticipated to generate 280 new homes (644 new residents) and which will, along with other local housing developments, increase the local population far beyond what has been projected for organic population growth. The additional, unsustainable pressure that would be placed on the practice in its current premises to accommodate the population rise projected as a result of local housing development including that at Hampshire Farm, is the reason the doctors at Emsworth Surgery are applying for EMTF funding (**Officer Comment:** NHS England's Estates and Technology Transformation Fund) in order to build a new medical centre to accommodate the practice and its current and future patient population.

Several options having been investigated, analysed and deemed to be unviable, the practice identified the land at Hampshire Farm, which lies to the north of Emsworth, as being a suitable site for the construction of a new medical centre that will be located less than 1 mile from the current main surgery and 0.5 miles from the branch surgery, minimising disruption and inconvenience to patients.

2. Intention of NHS approval for the Emsworth Surgery relocation scheme

The Emsworth Surgery relocation scheme has the backing of Havant and Emsworth MP Alan Mak, who has organised and chaired a series of high-level meetings and has met with the Health Minister to ensure that the Emsworth Surgery development is firmly on the Department of Health's National Agenda.

South Eastern Hampshire Clinical Commissioning Group has also identified that the scheme is consistent with its clinical strategy and is its second priority for capital investment in the whole of South East Hampshire.

At a meeting on 16 April 2018, the Full Business Case (FBC) requesting EMTF funding for the creation of a new medical centre at Hampshire Farm was discussed by the doctors, their specialist advisors, and representatives of South Eastern Hampshire CCG and NHS England, who were vocal in their support of the scheme and sought clarification on a number of aspects of the project, with the aim being to strengthen the FBC and the application for funding of the project. Procurement options were put forward and the meeting culminated with a number of actions being distributed to all parties, relating to tidying up the FBC ready for submission to the CCG and to NHS England.

All other options explored by the practice for the relocation or siting of a new medical

centre have been acknowledged by the CCG as being either unviable or undeliverable. With the allocation of Hampshire Farm being for community use (including healthcare) all efforts are being made by the practice with the support of the CCG to bring about the delivery of the medical centre at this location.

3. Timeline in relation to progress made and future timescales

Please find below the timeline of agreed actions thus far, relating to relocation of Emsworth Surgery to a new, purpose-build medical centre on the Hampshire Farm site and to the Full Business Case in which the practice's bid for ETTF funding towards the project is detailed:

Completed	PID submitted and approved
Completed	Agree Heads of Terms for purchase
Completed	Architects appointed
Completed	Rent/development appraisal
Completed	Submit appraisal to CCG
Completed	District Valuer appointed
Completed	Submit Outline Business Case
Completed	District Valuer to submit report
Completed	Architects to take client brief and prepare design concept layout drawings
Awaiting	District Valuer negotiations
Shortly to be submitted	Submit planning application
May 2018	Appoint party to conduct Post-Project Evaluation
June 2018	Appoint Quantity Surveyor
June 2018	Quantity Surveyor to refine fit-out costs
June 2018	Submit Full Business Case
June 2018	Submit pre-budget cost application(s)
June 2018	Architects' concept layout drawings finalised
June 2018	Approval of Heads of Terms by NHS
June 2018	Architects to provide specification and room data sheets
June 2018	Planning application decision due
July 2018	Instruct solicitors to prepare agreement for lease
July 2018	Approval of Full business Case and pre-budget costs
July 2018	Procurement tendering (4-6 weeks)
August 2018	Analyse tenders (Project Manager to conduct value engineering if necessary)
September 2018	Appoint building contractor
October 2018	Construction phase commences
March 2019	Works finish
April 2019	Building operational
June 2019	Post-project evaluation commences (3 months)

Officer Comment: The above table is for information only it should be noted that at present no planning application has been submitted in relation to the provision of the Doctors Surgery and Pharmacy.

Emsworth Residents Association:

The future of this site is of such great importance to the future of the town. Current Emsworth Surgery is now far too small to provide an adequate service for the growing list of its patients. It has insufficient rooms for enough doctors and nurses to consult at one time to meet demand, the space for administration and meetings is

inadequate, and there is no space to deliver modern community health services delivered by a primary care team. At times the practice struggles to be a viable unit that can attract and retain staff and partners.

A new building on the Redland's Grange site would be large enough to provide services for the current patients, and crucially would be capable of expansion as the population grows with the new planned developments in North Emsworth. It will also have parking for patients and staff, and space could also be built for community health services if funding was available later.

A general practice is essential for a community and as you know there have been arguments that a new surgery should be built in the centre of Emsworth. However the majority of the practice's patients already live north of the A27, and all the new planned development is in the north. It is not in anyone's long term interests to replicate the current difficulties caused by building a new surgery on another restricted site with little parking.

Many of the objections could be overcome by improving public transport between the North and the centre of Emsworth. This would not only ensure that people could get to the new surgery, but could also increase the footfall in the centre which is so important to the future of Emsworth.

The doctors in the Emsworth Surgery have been involved in endless meetings with various NHS bodies over a number of years, while also having to do the day job. They have been caught up in the fragmentation and underfunding the NHS, with no fault of their own. They need to be supported by the community and by their local council.

It is essential that the application from Bellway Homes to remove or vary the Section 106 requirement that the Redlands Grange site should be used for a surgery should be rejected. The doctors should be given another two years to prepare plans and obtain NHS funding for the new surgery that the people of Emsworth so badly need.

Third Party Objections:

If the words "to discharge their obligation" means that the developers, Bellway and Bloor, no longer need to provide the surgery then I strongly object.

I was involved, as a member of the public, in the Hampshire Farm planning process from the beginning. At an early stage the developers offered to build the Doctors surgery, possibly as an incentive to encourage the granting of planning permission. Also, (and here I am not sure of my facts), I understood that when planning permission was given that they were obliged to build the surgery, if requested, within a certain number of years.

I re-iterate. If the developers will not fulfil their original promise then this application should be rejected, hence forcing them to build the surgery.

As every day passes with increasing local population the need for local doctors facilities increases I therefore object to the proposal that this application be allowed to discharge its obligations to provide such facilities.

This application should therefore be rejected.

6.2 Support:

Third Party:

I support the application by the developer to be discharged from the responsibility of holding the land for a doctor's surgery to cover both Westbourne and Emsworth.

There are already surgeries in Westbourne and Emsworth and most people surrounding Redlands Grange will be situated fairly close to one of them.

The site is not large enough to accommodate a combined, large surgery with the necessary car parking, bus stops and it will create a great deal of traffic because most people from south Emsworth will have to travel to Redlands Grange for doctor's services.

I CAN see a community use perhaps for a new surgery to replace the local Westbourne surgery and an additional service such as a nursery both of which will be the correct size for the site and would not create the traffic problems of a centralised surgery. This proposition would also allow the building to stay as a single storey rather than a two storey building.

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) The principle of the variation of the S106 legal agreement requirements
- (ii) Whether the requirements of the S106 legal agreement are still considered to serve a useful purpose
- (iii) If so what is the appropriate way of securing these requirements and determining the three applications for Deeds of Variation to the S016 Agreement (as amended)

7.2 (i) The principle of the variation of the S106 legal agreement requirements

The applications relate to the S106 Legal agreement (as varied) associated with planning application Reference: 10/74014/000 for *Outline application for demolition of existing dwelling and erection of 280No. residential dwellings, doctors surgery and pharmacy with associated parking and landscaping, improvements to roundabout, and realignment of southern section of Redlands Lane to provide access and provision of public open space with parking, landscaping and construction of balancing pond with some matters reserved.*

7.3 The S106 dated 12th May 2011 and as varied in particular by Deed of Variation dated 19th October 2017 includes within the Third Schedule The Owner's Covenants with the Council which state:

Community Facilities

2 The Owner and/or the Developer covenants and agrees:

2.1 Prior to expiry of 28 days after completion of the last Dwelling to provide and lay out the Community Facilities Land and to the Council's satisfaction for

the purpose of accommodating the Community Facilities (council acknowledging that the same shall be used in the interim as a construction compound)

2.2 shall prior to 1 December 2017 use all commercially reasonable endeavours to procure that the Community Facilities are provided on the Community Facilities Land

2.3 In the event that the Community Facilities shall not have been provided by 1 December 2017 then and in that event to transfer the Community Facilities Land to the Council for use for Community Use at nil cost to the Council within 56 days of the expiry of that said period in accordance with the provisions of the Seventh Schedule Part 11.

7.4 The definitions relevant to these clauses in the S106 Agreement are as follows:

Community Facilities: Means the provision of a doctors surgery and pharmacy as shall be agreed with the local planning authority, as provided in paragraph 2 of the third schedule.

Community Use: Means a use falling within Use Class D1 non residential institutions.

Community Facilities Land: Means the site of the Communities Facilities shown for identification purposes only hatched black on Plan 2 and referred to in paragraph 2 of the Third Schedule.

Officer Comment: The land is shown at **Appendix C** of this report.

7.5 In relation to the planning history for the wider development it is important to consider the background to the proposal for a Doctors Surgery and Pharmacy in association with the Hampshire Farm development.

7.6 The Outline Planning Permission reference 10/74014/000 included '*doctors surgery and pharmacy*' within the description of the proposed development. In addition the Illustrative Site Layout showed '*Proposed Doctors Surgery Building and Associated Parking 54 spaces.*'.

7.7 The Officers report to Development Management Committee on the 18th November 2010 stated the following in relation to Community/Health Facilities:

(xi) Community/Health Facilities

Health Provision

7.86 The proposal includes the provision of a Doctors Surgery and Pharmacy. The Doctors Surgery would be located at the entrance to the site. A total of 54 parking spaces would be provided for the Surgery with appropriate disabled spaces. Saved Policy CS1 of the HBDWLP 1996-2011 which forms part of the HBLDF states that buildings for community use will be permitted where a need has been identified or where development would improve existing provision. Local Surgeries exist in the centre of Emsworth (1.6km to the south of the site) and at Westbourne (0.7km to the east), neither of which are modern facilities, and the Emsworth Surgery is overcrowded and in need of refurbishment. The proposed development would increase the catchment population of the existing Emsworth/Westbourne surgeries by approximately 616 patients.

7.87 The Council has consulted NHS Hampshire on the proposal and their comments are set out in full above. The additional demand arising from the proposed development gives rise to a need for additional GP workforce equating to 3-4 sessions a week. The Primary Care medical facilities in Emsworth are currently under review by NHS Hampshire with the existing Emsworth GP practice looking to develop their premises to increase to capacity care for existing local residents. NHS Hampshire support the proposal but have reiterated that although there is a potential for a GP Practice within Emsworth to relocate to this site, there has been no approval for such a scheme or a new pharmacy at this time. There is no objection by NHS Hampshire and in planning terms to the proposal as there is a proven need for the development and as such the development accords with saved Policy CS1 of the HBDWLP 1996-2011 which forms part of the HBLDF. Provision of this part of the site for the facility would be included within the Section 106 Agreement.

7.88 The scale, layout and design of the Doctor's Surgery would be agreed at the reserved matters stage.

7.8 NHS Hampshire at the time of the original Outline Planning Permission stated:

NHS Hampshire

280 dwellings at the proposed development would equate to potentially 616 new patients requiring primary care services and giving rise to a need for additional GP workforce for 3-4 sessions per week with associated ancillary and nursing staff. The Primary Care medical facilities in Emsworth are currently under review with the GP practice looking to develop their premises to increase capacity to care for existing local residents. The potential additional population would create an increased pressure on the Primary Care medical premises within the area. The most local surgery to the proposed development has restricted accommodation with difficulty complying with DDA in their Listed Building.

NHS Hampshire would like to support the practice with their aspirations to develop their premises. The practice has been in negotiation with the developer to gain some benefit from the proposed development which the PCT would support if the GP practice were enabled to develop their premises with a cost neutral scheme.

Therefore NHS Hampshire would like to request a Section 106 financial contribution to facilitate premises development within Emsworth, as the current premise will not be able to support the additional levels of services required. I would like to reiterate that although there is potential for a GP Practice within Emsworth to relocate to this site, there has been no approval for such a scheme at this present time.

7.9 Appendix B to the officers report to Committee included Heads of Terms for the S106 Agreement including:

Provision of Health centre

- Agreement on the provision of land for the proposed doctor's surgery and pharmacy within an identified timeframe.

7.10 The minutes to the Committee consideration state that Mr Hawthorne (Linden Homes) commented in relation to the Doctors Surgery that 'The application was in accordance with the Council's policies and the doctors' surgery had been provided in accordance with the development brief.'

7.11 In an addendum item to the Committee issued 22nd November 2010 from WYG

(applicants agents) it was confirmed that:

Doctors Surgery: *As stated at the committee the plans as submitted are fully in line with the Doctor's aspirations for a new surgery and have the support of the Hampshire NHS PCT (a single entity). As stated at the committee, this is the planning stage of the process and we are planning to make sure that we provide for the Doctor's requirements. It is important to state that these plans are not limited to the space necessary to rectify the existing and accepted deficiencies in provision but also to do precisely what Councillors appeared to question ie they improve upon existing facilities so that a wider range of NHS services can be provided including those that may currently only available at QA Hospital or other more distant clinics.*

The situation in terms of delivering the surgery is complicated. As we understand matters, having consulted the NHS Surveyor, there is currently no additional funding to support an increase in the rents paid by the PCT to surgeries. At present Linden Homes are looking to provide the land and to build the surgery and lease it to the Doctors and will need to factor in the available funding levels as part of these negotiations. However, despite the site allocation policy only requiring Linden Homes to explore the provision of a surgery they have agreed to honour the promise they have made since the last Local Plan Inquiry and throughout this application: to plan for the new surgery. There exist draft heads of terms for an agreement with the Doctors in line with what we believe will facilitate the new surgery. Officers have informed us that in similar circumstances other authorities have requested a clause in a S106 that the land in question be reserved for this use for a period of 7 years to prevent it coming forward for any other use. I recall Councillors mentioning that, elsewhere, it had taken four years to complete the process. Linden Homes are committed to honouring their promise and working with the Doctors and Hampshire NHS PCT to deliver this surgery and therefore I am pleased to confirm that we are happy for such a clause to be included in the S106.

- 7.12 The subsequent application for Reserved matters APP/11/01089 excluded the Doctors Surgery stating on the approved Residential Site Layout: *Doctors Surgery Site Subject to Separate Reserved Matters Planning Application*. The Officer report to the Development Management Committee commented on this as follows:

The issue of the Doctors Surgery is not a matter for consideration at this stage (it does not form part of this application), however the Section 106 legal agreement with the outline planning permission offers a robust mechanism for what would happen in the event the surgery is not brought forward.

- 7.13 As stated above the requirements in relation to the provision of a Doctors Surgery and Pharmacy were secured via the S106 Agreement dated 12th May 2011.

- 7.14 Under Section 106A of the Town and Country Planning Act 1990 it is possible for an applicant to seek to vary the terms of a S106 Agreement. Where such an application is made to an authority the authority may determine:

(a) that the planning obligation shall continue to have effect without modification;

- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
 - (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- 7.15 If such an application is refused and the S106 remains un-modified the applicant has a right of appeal to the Secretary of State.
- (ii) Whether the requirements of the S106 legal agreement are still considered to serve a useful purpose
- 7.16 The S106 Agreement was entered into by the Parties prior to the determination of the outline planning permission 10/74014/000 and the provision of a Doctors Surgery and Pharmacy formed part of the approved description of the development. As set out above at the time of the determination of the planning application the legal agreement requirements to secure this provision served a useful purpose.
- 7.17 The applicants have stated that it is their clients position in relation to **Application 1** that the obligation to deliver the Community Facilities is unreasonable and there is not any valid reason to require this in planning terms. In support of this position the agent states that the obligation is not supported by any planning policy that applied at the time the outline application was determined, or any applicable planning policies today. Further to this, the obligation was not required to make the planning application acceptable or to mitigate a specific impact identified as arising from the development.
- 7.18 Whilst it is not considered to be appropriate to re-assess the determination of the original application in detail, it is clear, as set out above that the S106 requirements were fully considered and justified in the Development Management Committee Report and subsequent addendum's and minutes. The S106 agreement was entered into and the planning permission subsequently issued. The comments from the Councils Policy Section and on behalf of Primary Care Surveyors demonstrate the ongoing need for the Community Facilities.
- 7.19 The agent has reviewed NHS choices website and states that 9 out of 10 of the nearest GP surgeries to Hampshire Farm are currently accepting new patients and this does not therefore suggest there is a shortfall in the availability of doctors within the locality which would require the provision of a new doctors surgery on the Hampshire Farm Site. It is also stated that Hampshire Farm has already been completed and residents have been able to register with other surgeries and therefore there is no need to provide a new doctors surgery on the Hampshire Farm site to meet the needs of the occupants. Whilst there is the possibility of further residential development in Emsworth in the future, it is not considered appropriate to expect the Hampshire Farm site to provide any additional GP services that may be required as a result of this potential future development which may not come forward. The requirement for the provision of a doctors surgery should only be assessed against the needs of the site itself and any additional pressure it may put on existing services but this has not been demonstrated and residents have been easily accommodated by the current level of GP services in the local area.
- 7.20 During the course of the consideration of the three applications the requirements or otherwise for these facilities have been considered further and this consideration is also linked to the wider infrastructure review taking place in relation to the Havant Borough Local Plan 2036.

- 7.21 As set out in part 5 and 6 of this report, Planning Policy and the Primary Care Surveyors (appointed by the doctors of Emsworth Surgery) have provided detailed comments in relation to the proposed doctors surgery. These essentially confirm the inadequate nature of the existing Emsworth Surgery site due to the nature and size of the premises. They confirm that the Emsworth Surgery is operating at or above capacity with the Primary Care Surveyors stating that Emsworth Surgery is a partnership of 7 doctors with a non-weighted patient list size of 12,745 (December 2017). With a Full-Time Equivalent GP count of 5.75, this represents a ratio of 2,216 patients per GP. The upper limit for the GP/patient ratio in England is 1,800 patients per GP putting Emsworth Surgery far beyond the upper limit. It should be noted that this is before further planned development in the area highlighted by the Planning Policy consultation response.
- 7.22 The Primary Care Surveyors comment in relation to taking on new patients that *GP practices are obliged to accept new patients, unless there are reasonable grounds to refuse doing so which must be provided in writing and can include the practice having no capacity to take new patients. With 2,216 registered patients per GP, Emsworth Surgery is already operating at above capacity and would be justified in refusing to accept new patient registrations, however, this would not be in the interests of best practice nor the patient population of Emsworth, so it is not a measure the practice has decided to take, despite being in premises significantly undersized for the patient list.*
- 7.23 It is clear from the Primary Care Surveyors comments that the Emsworth Surgery are actively pursuing a relocation to the site at Hampshire Farm, they state that South Eastern Hampshire Clinical Commissioning Group has also identified that the scheme is consistent with its clinical strategy and is its second priority for capital investment in the whole of South East Hampshire. All other options explored by the practice for the relocation or siting of a new medical centre have been acknowledged by the CCG as being either unviable or undeliverable.
- 7.24 It is considered that the originally negotiated S106 Agreement associated with the outline planning permission 10/74014/000 in relation to the Community Facilities continues to serve a useful purpose as set out above.
- (iii) If so what is the appropriate way of securing these requirements and determining the three applications for Deeds of Variation to the S016 Agreement (as amended)
- 7.25 Given that the original S106 Community Facilities clauses are considered to continue to serve a useful purpose it is necessary to consider the impact of the proposed applications for Variation of the Section 106.
- 7.26 The effective 'fall back position' in relation to the provision of the Community Facilities is provided in the S106 agreement Third Schedule at paragraph 2.3, this states:
- In the event that the Community Facilities shall not have been provided by 1 December 2017 then and in that event to transfer the Community Facilities Land to the Council for use for Community Use at nil cost to the Council within 56 days of the expiry of that said period in accordance with the provisions of the Seventh Schedule Part 11.*

Application No1. Ref: APP/18/00120

Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to discharge the obligation to provide community facilities (doctors surgery and pharmacy) on the community facilities land or transfer the land to the Council for

Community Use (use falling within use class D1 non-residential institution).

- 7.27 The effect of this variation would be to remove any obligations imposed by the S106 Agreement on the land. Therefore there would be no requirement to either:
1. Provide and lay out the Community Facilities Land for the purpose of providing the Community Facilities (Doctors Surgery and Pharmacy)
 2. Transfer the Community Facilities Land to the Council for use for use for Community Use (Use falling within Use Class D1 non residential institutions)
- 7.28 Given the assessment above in relation to the ongoing need for Community Facilities and the 'fall back position' incorporated into the Legal Agreement where the land reverts to the Council for a Community Use which could include a Doctors Surgery and Pharmacy, it is not considered that the removal of the relevant S106 requirements can be supported.

Application No.2. Ref: APP/18/00121

Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to extend the period to procure that the Community Facilities (doctors surgery and pharmacy) on the community facilities land for a further two years until 1st December 2019.

- 7.29 The effect of this variation would be to extend period of time for the applicant to meet the relevant requirements of the S106 agreement to allow for a further 2 year period.
- 7.30 The applicants agent has stated that if the Local Planning Authority takes the view that the Community Facility are indeed still required, Application 2 seeks to agree an extended period of two years to allow additional time for a suitable occupier to be secured and details efforts made to progress matters with Emsworth Surgery, however these had proven to be unproductive. Matters changed in June 2017 when, upon submission of the second Deed of Variation request Bellway Homes and Bloor Homes were approached by the Primary Care Surveyors who advised Hampshire Farm site had emerged as the preferred site for the replacement surgery. Since June 2017, meetings have taken place and a draft contract has now been agreed between the relevant parties. Due diligence has been undertaken and an application to the NHS Estates and Technology Transformation Funding has been agreed in principle subject to contract and valuation. At present, the process is being held up by an outstanding financial appraisal being prepared by the District Valuer with more time required to complete this process.
- 7.31 Whilst the requirements of the provision of the Community Facilities are no doubt complex and subject to detailed procurement processes for the NHS and Emsworth Surgery, the period of time allowed for the relevant requirements of the S106 have been previously extended under application APP/17/00300 until 1st December 2017. This extension of time was considered to be a reasonable additional period of time.
- 7.32 Given that the requirements in relation to the Community Facilities have still not been realised beyond the extended period of time, that the clauses continue to serve a useful purpose which it is considered could not be served equally well with this modification and that the S106 includes within it the clause where the land is required to be transferred to the Council for Community Use the further extension of the compliance period is not considered to be necessary or acceptable.

Application No.3. Ref: APP/18/00122

Variation of Section 106 Agreement dated 12 May 2011 associated with 10/74014/000, to vary the definition of the community facilities from specifically a doctors surgery and pharmacy to any use within Use Class D1 (non-residential institution) and to extend the period to procure the use for a further two years until 1st December 2019.

- 7.33 This application seeks to extend the range of Community Facilities that could be provided at the site and to seek a further two year period to secure their provision.
- 7.34 The applicants agent whilst recognising that the Emsworth Surgery may wish to relocate to Hampshire Farm (and discussions are ongoing) it is not definite that they wish to and are able to relocate to the Hampshire Farm site. There has also been interest expressed in relation to a children's nursery (a potential requirement in Emsworth identified in the Councils Draft Infrastructure Delivery Plan Dec 2017).
- 7.35 The Primary Care Surveyors working for the surgery set out their position in detail in part 6 of this report and this indicates that this is clearly the preferred site and that they are working closely with the CCG to secure the necessary agreements to enable this to happen.
- 7.36 The original consent clearly anticipated the provision of a Doctors Surgery and Pharmacy on the Hampshire Farm site, as set out above and there is every indication that this is moving towards being secured. This aspiration could be harmed by the widening of the definition of Community Facilities to include any D1 use in a situation where the land owner may be looking to secure a greater financial return from an alternative use, potentially less widely beneficial to the public.
- 7.37 It is recognised that the transfer of the Community Facilities land to the Council as required by clause 2.3 would allow for a Community Use (a use falling within Use Class D1 non residential institutions), however, the transfer would allow the Council to exercise control over the use. Therefore the use of the land for a Doctors Surgery and Pharmacy could still be set as a preferred option as originally envisaged and as supported in the Planning Policy consultation response in part 5 of this report.
- 7.38 In relation to Application 3 it is considered that the original relevant clauses in relation to the S106 agreement continue to serve a useful purpose and that these could not be served equally well with the proposed modifications.

8 Conclusion

- 8.1 In conclusion, it is considered that the existing S106 requirements which were agreed to and signed in relation to the original planning permission continue to serve a useful purpose which would not be equally well served by the proposed Deeds of Variation as they would result in increased uncertainty and be harmful to the clear requirements of the original S106 agreement.
- 8.2 The Council are considered to have acted reasonably in extending the original timescales for the relevant parts of the S106 Agreement and the land transfer. It is now considered that the requirements of the agreement should be pursued with the Council taking control to make this happen as was expected in the original S106 agreement. It is recommended that the three applications seeking to vary the S106 Agreement are refused as set out below.

- 8.3 Subject to the Committee's decision, and given the content of this report, it is further recommended that the Council's Head of Legal Services be instructed to take all legal steps required to ensure the transfer of the land to the Council as set out in the S106 Legal Agreement. The reason being failure to comply with the s106 Legal Agreement in relation to the provision of the doctor's surgery (despite completing a Deed of Variation extending the original time for delivery by 6 months).
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9 RECOMMENDATION:

Application 1

That the Head of Planning be authorised to **REFUSE PERMISSION** for application APP/18/00120 in relation to the Deed of Variation

(A) for the following reason

The proposed variation of the S106 Agreement (as modified) would fail to secure the provision of the Community Land for the purpose of providing the Community Facilities (Doctors Surgery and Pharmacy) and the transfer of the Community Facilities Land to the Council for Community Use (Use falling within Use Class D1 non residential institutions). The proposal would therefore fail to meet the infrastructure requirements identified at the time of the associated planning application reference 10/74014/000. The proposal is therefore contrary to policies CS7, CS19 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

Application 2

That the Head of Planning be authorised to **REFUSE PERMISSION** for application APP/18/00121 in relation to the Deed of Variation

(A) for the following reason

The proposed variation of the S106 Agreement (as modified) would significantly extend the period of time to secure the provision of the Community Land for the purpose of providing the Community Facilities (Doctors Surgery and Pharmacy) and the transfer of the Community Facilities Land to the Council for Community Use (Use falling within Use Class D1 non residential institutions). The proposal would therefore fail to meet the infrastructure requirements identified at the time of the associated planning application reference 10/74014/000. The proposal is therefore contrary to policies CS7, CS19 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework

Application 3

That the Head of Planning be authorised to **REFUSE PERMISSION** for application APP/18/00122 in relation to the Deed of Variation

(A) for the following reason

The proposed variation of the S106 Agreement (as modified) would significantly extend the period of time to secure the provision of the Community Land for the purpose of providing the Community Facilities (Doctors Surgery and Pharmacy) or for Community Uses (Use falling within Use Class D1 non residential institutions) and the transfer of

the Community Facilities Land to the Council for Community Use. This would also reduce the likelihood of the Doctors Surgery and Pharmacy being provided at the site. The proposal would therefore fail to meet the infrastructure requirements identified at the time of the associated planning application reference 10/74014/000. The proposal is therefore contrary to policies CS7, CS19 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework

Forth Recommendation:

That the Council's Head of Legal Services be instructed to take all legal steps required to ensure the transfer of the land to the Council as set out in the S106 Legal Agreement.

Appendices:

Appendix A: Location Plan

Appendix B: Community Facilities Land Plan

Appendix C: S106 Community Facilities Plan