

AGENDA

Meeting: Southern Area Planning Committee
Place: Alamein Suite - City Hall, Malthouse Lane, Salisbury, SP2 7TU
Date: Thursday 21 June 2012
Time: 6.00 pm

Please direct any enquiries on this Agenda to Pam Denton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line (01225) 718371 or email pam.denton@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Richard Britton	Cllr Ian McLennan
Cllr Brian Dalton	Cllr Paul Sample
Cllr Christopher Devine	Cllr John Smale
Cllr Jose Green	Cllr Ian West
Cllr Mike Hewitt	Cllr Fred Westmoreland
Cllr George Jeans	

Substitutes:

Cllr Ernie Clark	Cllr Christopher Newbury
Cllr Mary Douglas	Cllr Stephen Petty
Cllr Russell Hawker	Cllr Leo Randall
Cllr David Jenkins	Cllr Ricky Rogers
Cllr Bill Moss	Cllr Graham Wright

AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies for Absence**

2 **Minutes** (*Pages 1 - 10*)

To approve and sign as a correct record the minutes of the meeting held on 10 May 2012 (copy herewith).

3 **Declarations of Interest**

To receive any declarations of personal or prejudicial interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

5 **Public Participation and Councillors' Questions**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register in person no later than 5.50pm on the day of the meeting.

The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered. The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in

particular, questions on non-determined planning applications. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on Thursday 14 June 2012. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Planning Appeals** (*Pages 11 - 12*)

To receive details of completed and pending appeals (copy herewith).

7 **Planning Applications**

To consider and determine the following.

7a **Land At Hampton Park/Bishopdown Farm, Salisbury - S106a
Application S/2012/552** (*Pages 13 - 34*)

8 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency

Part II

**Items during whose consideration it is recommended that the public
should be excluded because of the likelihood that exempt
information would be disclosed**

None

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SOUTHERN AREA PLANNING COMMITTEE

**DRAFT MINUTES OF THE SOUTHERN AREA PLANNING COMMITTEE MEETING
HELD ON 10 MAY 2012 AT ALAMEIN SUITE - CITY HALL, MALTHOUSE LANE,
SALISBURY, SP2 7TU.**

Present:

Cllr Richard Britton, Cllr Christopher Devine, Cllr Jose Green (Vice Chairman),
Cllr Mike Hewitt, Cllr George Jeans, Cllr Ian McLennan, Cllr John Smale,
Cllr Ian West and Cllr Fred Westmoreland (Chairman)

28 Apologies for Absence

Apologies were received from Cllr Brian Dalton

29 Minutes

The minutes of the meeting held on 29 March 2012 were presented.

Resolved:

To approve as a correct record and sign the minutes.

30 Declarations of Interest

Cllr Richard Britton declared a personal interest in S/2012/0312/OUT Out of The Way, Southampton Road, Alderbury, as the applicant was a friend of a close family member and he had met him on several occasions.

31 Chairman's Announcements

The Chairman explained the meeting procedure to the members of the public.

32 Public Participation and Councillors' Questions

The committee noted the rules on public participation.

33 **Planning Appeals**

The committee received details of the following appeal decisions:

- S/2011/1411 - The Stables, Hindon Road, Dinton – delegated - dismissed
- S/2011/1649 - Catering Van, Scotland Lodge, Winterbourne Stoke – delegated-allowed
- S/2011/0181 - Ferndale, Ware Farm, Farley – committee - allowed
- S/2011/1570 - Shergolds, Swallowcliffe – delegated- allowed
- S/2011/1280 - Court Hay, Lower Road, Charlton-All-Saints – committee - allowed
- S/2011/1471 - Co-Op, Salisbury Street, Amesbury – delegated- dismissed

And forthcoming appeals as follows:

- S/2011/1429 – Dorothy May, Larkhill Road, Durrington
- S/2011/1011 - 1 Field Building, Cottages, Manor Farm, Teffont
- S/2011/1746 - The Heather, Southampton Road, Alderbury
- S/2011/1354 - Unit 3, Landford Manor
- S/2011/0524 - Sheepwash, MeadEnd, Bowerchalke

34 **Planning Applications**

34a **S/2012/0028/Full - 45 Ladysmith Gomeldon Salisbury**

Public participation:

- Mr Andy Kettlety spoke in objection to the application
- Mr James Bravery spoke in support of the application
- Mr Peter Bravery spoke in support of the application
- Mrs Emma Bravery spoke in support of the application

The planning officer introduced the report and drew attention to the late correspondence. He explained that there were two parts to the application, the first to demolish part of the existing house and the second for the erection of a semi-detached dwelling. During the debate issues regarding the design of the proposed dwelling and its proximity to neighbouring dwellings were discussed in detail.

Resolved:

Planning Permission be REFUSED for the following reasons:

1. The proposed house, by reason of its uncharacteristically narrow plot and resulting cramped appearance, and by reason of its size, design and massing, would detract from the appearance of the street. This is contrary to Policies H16 and D2 of the Salisbury District Local Plan (which are 'saved' policies of the adopted South Wiltshire Core Strategy).
2. **The proposed house, by reason of its proximity to the side boundary of the site with no. 47a Ladysmith, its size and its design (incorporating a first floor window in the side elevation), would both have an overbearing impact on and overlook no. 47a Ladysmith to the detriment of the occupiers' amenities and privacy. This is contrary to Policy G2 of the Salisbury District Local Plan (which is a 'saved' policy of the adopted South Wiltshire Core Strategy).**
3. The application does not make provision for the increase in pressure on recreational open space facilities and affordable housing stemming from the additional house. This is contrary to Policy R2 of the Salisbury District Local Plan (which is a 'saved' policy of the South Wiltshire Core Strategy) and Core Policy 3 of the South Wiltshire Core Strategy.

INFORMATIVE:

It should be noted that the reason for refusal 3 given above relating to Policy R2 and Core Policy 3 of the South Wiltshire Core Strategy could be overcome if all the relevant parties agree to enter into a Section 106 legal agreement, in accordance with the standard requirement for recreational public open space and affordable housing provision.

34b **S/2012/0312/OUT - Out of The Way Southampton Road Alderbury**

Public participation:

Mr Ivor Cottrell spoke in support of the application
Mr Colin Trickett spoke in support of the application

The planning officer introduced the report which was for outline consent to demolish Out of the Way and erect three dwellings. During the debate members discussed the fact that many of the issues related to previous application appeared to have been overcome.

Resolved:

Planning Permission be GRANTED for the following reasons:

The proposed outline development of three dwellings (and demolition of Out of the Way) would be in accordance with the saved policies G2, D2, H16, C6, C8, C12 and R2 of the Salisbury District Local Plan and policy CP3 of the South Wiltshire Core Strategy, including the saved policies in Appendix C.

The erection of three dwellings within spacious plots would not harm the existing character of the area, which lies within the Housing Policy Boundary for Alderbury (Policy H16 and D2).

Provided the dwellings are single storey, with no windows above eaves level, neighbouring amenities would not be unduly disturbed in terms of overlooking, loss of privacy, or dominance. Provided existing boundary trees and fences are retained, there would be no undue disturbance to neighbouring occupiers resulting from the use of the access for three dwellings or use of the gardens by the occupiers (Policy G2 and D2)

Subject to conditions relating to access and visibility, the development would not be detrimental to existing highway safety arrangements for Southampton Road, or the access itself (Policy G2).

Existing and protected trees and nature conservation interests such as bats and their roosts would not be adversely affected by the development, subject to conditions (Policy C8, C6 and C12).

Affordable housing and public open space provision could also be made in accordance with Policy CP3 and R2, subject to a condition requiring the applicant to enter into a legal agreement at the full planning or reserved matters stage.

And subject to the following conditions:

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been

submitted to, and approved in writing by, the Local Planning Authority:

- (a)The scale of the development;
- (b)The layout of the development;
- (c)The external appearance of the development;
- (d)The landscaping of the site;
- (e)The means of access to the site.

The development shall be carried out in accordance with the approved details.

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995.

3. An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

4. The buildings hereby permitted shall be of single storey construction only (with no windows, rooflights or dormer windows above eaves level).

REASON: In the interests of amenity having regard to the characteristics of the site and surrounding development.

POLICY- G2 General Principles for Development and D2 design

5. No development shall take place until details of provision for offsite affordable housing and recreational open space in accordance with Core Policy 3 of the South Wiltshire Core Strategy and saved policy R2 of the Salisbury District Local Plan have been submitted to and agreed in writing by the Local Planning Authority.

REASON: To ensure that the development makes appropriate off site provision for public open space and affordable housing.

POLICY Local Plan policy R2 and Core Policy 3.

6. The development hereby permitted shall not be first occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

POLICY- G2 General Principles for Development

7. No development shall commence until details of vehicle parking and turning, for each dwelling, has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be first occupied until the said parking and turning spaces have been completed in accordance with the approved details. Such parking and turning space shall thereafter be retained for these purposes in perpetuity.

REASON: To ensure sufficient parking provision is accommodated on site and to enable all vehicles to enter and leave the site in forward gear in the interests of highway safety.

POLICY- G2 General Principles for Development

8. No development hereby approved, including site clearance, shall commence until the visibility splays shown on the approved plan (08/470/B/02 dated Dec 11 and received 21/2/12) have been provided with no obstruction to visibility at or above a height of 600mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON: In the interests of highway safety

POLICY- G2 General Principles for Development

9. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

POLICY- G2 General Principles for Development

10. The mitigation measures in Section 3.0 of the approved Ecological Assessment (The Whitelands Project, Visual & Evidence Based Bat Survey for Probuild Ltd, Feb 2012) shall be carried out in full in accordance with the approved timetable detailed in the Ecological Assessment.

REASON: To mitigate against the loss of existing biodiversity and nature habitats.

POLICY: Planning Policy Statement 9: Biodiversity and Geological Conservation and Policy C12.

11. Notwithstanding the provisions of Classes A, B, C and E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no enlargement, additions or extensions to any building forming part of the development hereby permitted. No garages, sheds, greenhouses or other ancillary domestic outbuildings shall be erected other than those expressly approved on the plans.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

POLICY- G2 General Principles for Development and D2 Design

12. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:

- (a) indications of all existing trees and hedgerows on the land;
- (b) details of any to be retained, together with measures for their protection in the course of development;
- (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
- (d) finished levels and contours;
- (e) means of enclosure, including an acoustic fence for the boundary with Forest View;
- (f) other vehicle and pedestrian access and circulation areas;
- (g) hard surfacing materials;
- (h) proposals for new and replacement tree planting

The development shall be implemented in accordance with the approved scheme, before there is any occupation of the dwellings.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

POLICY- C6 and C8 Trees and Landscape

13. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard

landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

POLICY- C6 and C8 Trees and Landscape

14. The development, including site clearance, shall not commence until a full tree survey has been undertaken and all trees that have a Root Protection Area (calculated in accordance with BS5837:2005) encroaching into the site, have been identified. This includes the proposed visibility splay. This information shall be used to provide a Tree Protection Plan which shall be submitted to the Local Planning Authority and approved in writing, before development commences. The Tree Protection Plan shall emphasise in particular the importance of the trees and tree belts on and immediately adjacent to the boundaries of the site.

The Tree Protection Plan must include any necessary fencing, in accordance with the relevant British Standard (Guide for Trees in Relation to Construction, BS.5837: 2005). It must also include any other means needed to ensure that all of the trees to be retained will not be harmed during the development, including damage to their root system. These 'other means' shall include a method statement setting out how above ground surfacing techniques will be used to construct parking areas and driveways within root protection areas.

The trees must be protected in accordance with the agreed Tree Protection Plan throughout the period of development, unless the Local Planning Authority has given its prior written consent to any variation.

REASON: To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990, so as to ensure that the amenity value of the most important trees, shrubs and hedges growing within or adjacent to the site is adequately protected during the period of construction.

15. No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

POLICY- D2 Design

16. No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 on weekdays and 08:00 to 13:00 on Saturdays.

Reason: In the interests of neighbouring amenities

POLICY- G2 General Principles for Development and D2 Design

17. The development shall be implemented in accordance with the following plans and documents hereby approved:

Design & Access Statement, received 21/2/12

The Whitelands Project, Visual & Evidence Based Bat Survey for Probuild Ltd, Feb 2012, received 21/2/12

Access and visibility splay shown on 08/470/B/02 dated Dec 2011, received 21/2/12

Red and Blue line Location Plan, 08/470/B/01 dated Dec 11, received 21/2/12

Reason: For the avoidance of doubt and in the interests of proper planning.

Informatives:

1. The applicant's attention is drawn to the letter from Wessex Water dated 5th March 2012, regarding easements, water supply and sewer connections.
2. This decision is taking in accordance with Policy G2, D2, H16, C6, C8, C12 and R2 of the Salisbury District Local Plan which are saved by Appendix C of the South Wiltshire Core Strategy, Policy CP3 of the SWCS and the guidance in the National Planning Policy Framework.
3. Prior to the demolition of the existing house, 'Out of the Way', the applicant is advised to consult the Council's Environmental Health Team for advice in view of the statements made about the potential health hazards associated with this work.

35 Urgent Items

There were no urgent items

(Duration of meeting: 18.00 – 19.25)

The Officer who has produced these minutes is Pam Denton, of Democratic Services,
direct line (01225) 718371, e-mail pam.denton@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

APPEALS

Appeal Decisions

Application Number	Site	Appeal Type	Application Delegated/ Committee	Appeal Decision	Overturn	Costs
S/2011/0132	Boot Inn, HighStreet Tilshead	WR	Delegated	Dismissed	No	Refused
S/2011/0645	Rear VogueCottage North Street Mere	WR	Delegated	Dismissed	No	No
S/2011/1411	The Stables Hindon Road Dinton	WR	Delegated	Dismissed	No	No
S/2011/1649	Catering Van, Scotland Lodge, WinterbourneStoke	WR	Delegated	Allowed	No	No
S/2011/0181	Ferndale, Ware Farm Farley	WR	Committee	Allowed	Yes	No
S/2011/1570	Shergolds, Swallowcliffe	WR	Delegated	Allowed	No	No
S/2011/1280	Court Hay, Lower Road, Charlton-All-Saints	HH	Committee	Allowed	Yes	No
S/2011/1471	Co-Op, Salisbury Street Amesbury	WR	Delegated	Dismissed	No	No

New Appeals

Application Number	Site	Appeal Type	Application Delegated/ Committee		Overturn	Costs Applied for?
S/2011/1873	The Granary MilfordMillRoad Salisbury	WR	Delegated		No	No
S/2012/0214	58 Cheverell Ave Salisbury	HH	Delegated		No	No
S/2011/1429	DorothyMay Larkhill Road Durrington	WR	Delegated		No	No
S/2011/1011	1 FieldBuilding Cottages Manor Farm Teffont	WR	Delegated		No	No
S/2011/1746	The Heather, Southampton Road Alderbury	WR	Committee		YES	No

S/2011/1354	Unit 3 Landford Manor	WR Linked to 2011/1344	Delegated		No	No
S/2011/0524	Sheepwash, MeadEnd Bowerchalke	WR	Delegated		No	No

WR Written Representations
HH Fastrack Householder Appeal
H Hearing
LI Local Inquiry
ENF Enforcement Appeal

11th June 2012

Wiltshire Council

Southern Area Planning Committee

21 June 2012

**Subject: Land At Hampton Park/Bishopdown Farm, Salisbury - S106a
Application S/2012/552**

Local members: Cllr Ian McLennan, and Cllr Bill Moss

REASON FOR REPORT TO MEMBERS

Cllr McLennan has requested that this matter be considered by Area Committee due to the public interest in the Hampton Park 2 development and the site allocation within the South Wiltshire Core Strategy, and to enable Council Members to consider issues imposed by Committee previously. The Director of Development Services has also indicated that he wishes the matter to be considered by Area Committee.

1. Purpose of report

The applicant has submitted a S106A application to discharge two planning obligations in so far as they relate to a defined area of land. Please see attached:

- a) letter from the applicant justifying his request,
- b) the attached site plan showing the area affected
- c) Copies of both legal agreements

The area of land in question is that corresponding to the red line surrounding the strategic allocation of Hampton Park 2 in the south Wiltshire core strategy, (and that submitted as part of the Hampton Park 2 planning application ref S/2009/1942). The reason the applicants wish to discharge these two agreements is that they restrict the use of the land (see elsewhere in the report), and relate to areas of land which are now the subject of a specific allocation in the adopted South Wiltshire Core Strategy, (and subject of planning permission S/2009/1943 relating to the development of 500 dwellings and a country park, known as Hampton Park 2).

Copies of both agreements subject of this application are attached as appendices to this report. The relevant clauses of the agreements are considered to be respectively, section 3.1.2, which limit the development of the land and retain its open character, and section 3.2, which relates to the protection of the area of water meadow forming part of the relevant site.

2. Background

Planning permission S/1991/1666 relates to the creation of a golf course and associated clubhouse and works on land to the north of what is now the existing Bishopdown farm

housing estate. The permission also related to the improvement of the road system in this area, including the A30 London Road roundabout, and the construction of part of what was then intended to be a northern link bypass road between London Road and the A345 Amesbury road. Whilst the golf course element of the permission was never implemented, the roadworks were indeed implemented, resulting in the current road configuration we see today, including the Pearce Way road, which runs to the north of (and serves as an access to) the Bishopdown Farm housing area.

The historic planning records show that the Local Planning Authority was also dealing with two other planning applications at or around the same time as S/1991/1666, namely application no. S/1991/1664, which related to the provision of a “motor trade park” on land in the immediate area, (which was not built out and which subsequently is now known as the Salisbury retail park site on which there is an extant planning permission to construct a bulky goods retail park and car park), and secondly, application no. S/1992/907 which relates to the development of housing in the immediate area (which subsequently became part of the Bishopdown Farm estate).

These two applications are relevant in so far as the applications appear to have been considered concurrently by the Council in the early 1990’s, and hence, a total of five legal agreements were apparently completed together, with two of the five legal agreements being subject of this report.

One of the obligations relates and refers directly to planning permission S/1991/1666, and deals with an area of land labelled “green” land (this being the golf course land). The other legal agreement does not explicitly refer to a planning application, but relates to the protection of land adjacent and to the east of the golf course land. This area is labelled the “orange” land.

3. Main legislative considerations for the Council

Section 106A of the Town and Country Planning Act (the Act) allows applicants to apply to modify a previous legal agreement. The Act also sets out the test that the Local Planning Authority needs to apply to any such application.

In accordance with Section 106A of the Act, where such an application is made the LPA shall consider whether the obligation continues to serve a “*useful purpose*”. If the obligation no longer serves a useful purpose the Act requires that the obligation shall be discharged. If it is considered by the LPA that the obligation does continue to serve a “useful purpose” the planning obligation shall continue to have effect without modification.

When considering if a useful purpose is being served by the obligation, case law states that issues to be taken into account include current planning policies and whether the overall planning circumstances of an area have changed since the obligations were first imposed.

The National Planning Policy Framework (NPPF) states that where obligations are being revised, local planning authorities should take account of changes in market conditions over time and, where appropriate, be sufficiently flexible to prevent planned development being stalled.

As a result, the applicants request to discharge the aforementioned obligations must be tested against the statutory provisions of Section 106A of the Act and guidance within the NPPF.

4. Third Party comments

Laverstock and Ford Parish Council – Raised objections to the discharging of the agreements. Recommend that the Clauses remain until after the ongoing high court challenge has been resolved.

Salisbury City Council – No objections subject to the proposals being in accordance with the objectives of the core strategy

Bishopdown Farm Residents Association – 1993 obligations were put in place for a valid reason. The land should be preserved as open land to ensure that the Salisbury Landscape is preserved from further urban sprawl. No decision should be taken until the outcome of the legal challenge is known.

Resident – The 1993 obligations provide much needed protection to the Salisbury landscape and the inadequate infrastructure in this area. This application should not be approved until the legal challenge to HP2 is resolved.

5. Considerations

5.1 What do the legal agreements restrict ?

The legal agreement related to the “green” land (the golf course area) stipulates that the identified area of land shall not be used; “..except for one or more of the following purposes or any combination thereof or any purpose ancillary thereto namely:

- 1) *Agriculture as defined in the Act*
- 2) *Public or other open space*
- 3) *Leisure sport or recreation for which planning permission shall have been granted*
- 4) *Purposes authorised by Planning Permission reference S/91/1666/TP issued by the District Council or other golf related developments for which planning permission shall have been granted*
- 5) *The construction and use of footpaths and roadways with planning permission (where required by law)”*

The second legal agreement relates to the “orange” land stipulates that:

“3.2 the Owner shall provide reasonable safeguards for the protection of the water meadows within the boundaries of the Land and for the avoidance of doubt...3.2.1 nothing whatsoever in connection with any development on the land ...shall encroach on the Land”

The agreement then goes on to list a variety of works which are not permitted:

3.2.2 no traffic in connection with such development shall use the Land

3.2.3 no work huts or compounds in connection therewith shall be situated on the Land

3.2.4 no tipping shall take place thereon in connection therewith

3.2.5 no disturbance shall be caused thereto

Save that the Owner shall be entitled to encroach onto the Land with or without construction traffic for the purposes of carrying out works to or in connection with the construction of the proposed Salisbury northern link road and/or the roundabout at the junction of that road with the A30 road or any part thereof.....”

5.2 Why were the clauses imposed ?

At the time of the creation of the legal agreements (1991-1993) subject of this report, it appears that the land on which the existing Bishopdown Farm housing area now sits was open farmland at the edge of Salisbury, which had just been subject of a housing allocation in the draft Local Plan. A series of planning applications had also been submitted for the development of the area (as listed elsewhere in this report).

The suggested developments clearly represented a set of major development proposals at the time, and it appears from a perusal of the historic application file S/1991/1666 that the imposition of a legal agreement on this and the related applications was a significant issue at the time. There is some evidence on the file which indicates that the determination of the application at that time was deferred to allow prolonged consideration and negotiation with the applicant and with council members. Hence the apparent joint consideration of several applications together.

It appears from the information remaining on the historical planning files that the Council may have been concerned at the time that the various developments being permitted as part of the three applications may result in the land area subject of the golf course application being used for the storage of plant, machinery and other associated paraphernalia associated with not only the golf course works, but also that associated with the housing, roadworks, and the motor park schemes. Elsewhere, the officers report to the relevant area committee indicates that a legal agreement was required “..which safeguards the land should the golf course fail, meaning it would revert to open use”.

A surviving extract of the minutes of the relevant Council meeting (on the planning file) which approved application S/1991/1666 simply indicates that any S106 agreement should contain a clause “..that the area comprising the golf course will remain open in nature and free of built development “, and a clause for the “...provision of safeguards for the retention of the water meadows..”.

Hence, it appears from the existing evidence that the Council considered it necessary at the time to impose restrictions on the use of the land, in order to limit the impact of any development works on the water meadows, and/or to ensure that should the golf course use cease operation, then the land would be return to an “open state” of some kind.

5.3 Are the clauses and restrictions still required ?

The actual wording of the completed legal agreements do not limit the various restrictions on the use of the land to a finite time period, but appear to be open ended, in that the restriction appears to remain in force today, long after the various housing and roadworks developments have been completed.

However, the areas adjacent to the land to which both agreements relate have changed significantly since 1993. The Bishopdown Farm estate was completed some years ago, as was the relevant section of the link road, now called Pearce Way. Whilst the land to which the “green” land S106 relates remains open agricultural land, this land is now subject of both a formal housing allocation in the SWCS and subject of a planning approval for 500 dwellings and a country park. The “orange” land also remains largely undeveloped apart from its south eastern section, on which now exists the hotel and restaurant complex.

As a result, officers advise that the original intention of the S106 clauses has now been superceded by events. The clauses related to the “green” land sought to ensure that should the golf course proposal cease to operate, the land would either revert to agricultural use, and be used for other recreational or leisure purposes. Following the housing and country park allocations and recent planning permission on the land, officers advise that it would now be difficult to retain the existing clauses as the restrictive purpose they were intended for has been superceded by the Council’s own wish to see development of the land.

Likewise, in respect of the “orange” land S106. It is also noted that whilst only this second agreement referred to the protection of the water meadows, the permitted housing and country park planning permission (and the allocation development template itself) contain measures to protect the river system.

As a result, it is officers advice that, given that the principle of the development of the land has now been accepted subject to suitable mitigation measures, the restrictive clauses contained within either agreement would not serve a useful purposes or be necessary if or when the approved development of the land is commenced.

5.4. Hampton Park 2 Legal agreement

Notwithstanding the above, the advice of the Council legal department is that paragraph 4.13 of the legal agreement associated with the Hampton Park 2 scheme subject of S/2009/1943 already provides for the discharge of the two agreements subject of upon commencement of the Hampton Park housing development.

6. What if the planned housing development does not commence ?

Whilst the land is indeed subject of a large allocation of housing and country park area in the adopted South Wiltshire Core Strategy, development has yet to commence on site, and the approved planning application is subject of a high court challenge at the time of writing. As a result, there remains a possibility that the development of the land may not occur as currently permitted by application S/2009/1943.

If this were to be the case, the landowners and any developers cannot simply use land in the way they see fit, but are either controlled through limited “permitted development rights”, restricted to temporary usage of land, or need to apply for formal planning permission to more permanently affect or otherwise develop land. Any unauthorised development may

also be subject of the enforcement process, and therefore controlled. Likewise, any harm or damage to the water meadows area could be the subject of enforcement by the Local Planning Authority and/or the Environment Agency/Natural England.

It is therefore officer's opinion that even without the restrictive clauses within the Agreements, the kinds of development suggested by the clauses (ie to keep the land open and to protect the water meadows) would not be able to be undertaken without some form of permission being granted. In this context, the clauses within the agreements are no longer appear to serve a "useful purpose".

7. Options and Conclusion

Members could find the obligations do serve a useful purpose and choose not to discharge the agreements. However, this results in two further options. Either leave the agreements in place, or consider modifying the agreements in some way. However, if the agreements are left in place, it appears that the obligations will be superceded once development commences on the approved housing scheme. If Members wish to modify the obligations in some manner, it is considered that the matter should be deferred to allow further discussion with the applicant about what form any modifications should take.

However, Officers advise that the planning obligations subject of this current S106A application no longer serve a useful purpose. As a result, in such circumstance, the law dictates that the obligations must be discharged.

8. Recommendation: That the legal agreements subject of this application no longer serve a useful purpose, and can be DISCHARGED.

9. Appendices

- a) Applicant request letter outlining case
- b) Plan of area land affected
- c) Legal agreements related to land subject of application

Report Author: Richard Hughes, Team Leader, South Hub Development Services - Telephone 01722 434382

Date of report: 30th May 2012



REPLY TO WESTERN OFFICE

T: 0843 221 8810

E: hq@insight-plan.co.uk
www.insight-plan.co.uk

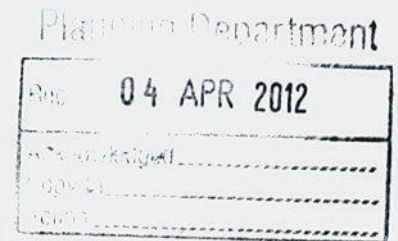
S/12/0552

Director: **Mark Flood**
BA (Hons) DipTP MRTPI

Andrew Guest
Area Development Manager (South)
Development Management Planning
Wiltshire Council
PO Box 2281
Bourne Hill
Salisbury, SP1 2HX

3 April 2012

Dear Mr Guest



**Land at Bishopdown, Salisbury
Hampton Park II
Discharge of 1993 Planning Obligations**

I am writing in relation to the above, and on behalf of Mr G W B Todd and Mr W A Jeffries, the owners of the land.

Land at Bishopdown Farm was made the subject of two planning obligations dated 22 December 1993, one of which related to land west of Green Lane (referred to as the "Green land") and one of which related to land east of Green Lane (referred to as the "Orange land"). I refer to them as Obligations A and B respectively.

Obligation A relates to a grant of planning permission for a golf course reference S/91/1666/TP. Obligation B, although entered into concurrently, does not specify that it relates to the planning permission, although clearly it was prompted by it.

I enclose a formal application for discharge of these obligations insofar as they relate to the land edged in red on attached site location plan L034. The application comprises the following:-

- Completed 1APP form
- Location plan L034
- Copy of Obligation A
- Copy of Obligation B

Section 106A of the Town and Country Planning Act 1990 provides for application for the discharge of planning obligations, and subsection (6)(b) states that *where an obligation no longer serves a useful purpose*, it shall be discharged.

Section 122 of the Community Infrastructure Levy Regulations 2010 (CIL) provides that planning obligations must meet three tests, namely that they are:-



RTPI

mediation of space - making of place

- Necessary to make the development acceptable in planning terms
- Directly related to the development and
- Fairly and reasonably related in scale and kind to the development.

An obligation that does not meet these three tests is to be regarded as unlawful.

There are three key reasons why it is appropriate to discharge the 1993 obligations insofar as they relate to the red land. These reasons provide a proper basis for discharge either individually or jointly.

Reason for Discharge 1

The red land is the subject of an allocation for development of 500 houses and a country park within the Adopted South Wiltshire Core Strategy. The period for legal challenge to the adoption of the Core Strategy has now passed, and it carries the full weight of s38(6) of the Planning and Compulsory Purchase Act 2004. The Council's formal position is therefore that the development of this land for purposes other than those specified in the 1993 obligations is acceptable.

In light of this, and bearing in mind the presumption in favour of development that accords with an up-to-date development plan set out in the National Planning Policy Framework, the 1993 obligations serve no useful purpose.

Reason for Discharge 2

As you know, the decision of the Secretary of State last year to grant full planning permission for the erection of 500 houses plus country park is subject to an extant challenge. The permission is subject to a completed s106 obligation which states the following at paragraph 4.13:-

"On Commencement of Development all previous obligations entered into pursuant to section 106 of the 1990 Act in respect of the Land (which for the avoidance of doubt comprise two agreements entered into by Salisbury District Council David John Pearce and Lloyds Bank plc both on 22 December 1993) shall be deemed to be discharged insofar as they relate to the Land and shall not be enforced by the Council against the Owner (and such Commencement of Development and/or carrying out of any Excluded Operations shall not be taken to be a breach of any such section 106 obligation)."

In effect, this is a 'tidying up' provision that sets aside the 1993 obligations in light of the permitted development. The Council has already in effect confirmed that it is content with release from those obligations by signing a s106 that includes the paragraph I have quoted above. Although the Secretary of State's decision to grant planning permission is subject to challenge, and of course the s106 only takes effect if that challenge fails, the Council has nonetheless affirmed a position that the 1993 obligations serve no useful purpose.

Reason for Discharge 3

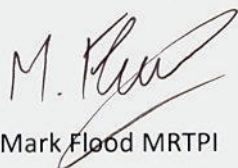
Obligation A is in any event unnecessary. It seeks to prevent unspecified development from taking place. However, any operational development or material change of use would require planning permission in any event, and it was not necessary for the obligation to be made to address this. Whilst permitted development rights are restricted by the obligation, such restriction should properly have been made the subject of a planning condition. In CIL terms, the obligation was not

necessary, directly related to the development or in scale and kind with it. It served no useful purpose then and it does not do so now.

Obligation B deals with management of the water meadows. This application seeks partial discharge of that obligation only insofar as it relates to the land allocated for development within the adopted Core Strategy.

I trust that this provides you with sufficient justification for the discharge as sought. I understand that the application is likely to be determined under delegated powers, and I therefore look forward to hearing from you with a positive determination as soon as possible.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Flood', with a stylized flourish underneath.

Mark Flood MRTPI

Enc

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S/12/05521



Planning Department

Rec. 04 APR 2012

Acknowledged

Copy ID

Action

No.	Revisions	By	Date
1		RB	13/04/11



PLANNING & REGENERATION
 Brunswick House, Brunswick Place, Southampton,
 Hampshire, SO8 4AL
 Telephone: +44 (0) 23 8071 3500
 Fax: +44 (0) 23 8071 3801

Client
 Barratt Southern Counties
 300
 Hampton Park II

Drawn By	Check By	Date
RB	CR	13.4.11
1/2500@A1	1034	

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DATED 22nd December 1993

Planning Department

Rec. 04 APR 2012

Acknowledged.....
Copy to.....
Action.....

- (1) SALISBURY DISTRICT COUNCIL
- (2) DAVID JOHN PEARCE ESQ
- (3) LLOYDS BANK PLC

DEED

containing Planning Obligations relating to land
forming part of Bishopdown Farm Salisbury

Orange Land

(Second Duplicate)

FREEDMANS
21 Whitefriars Street
London EC4Y 8JJ

Tel : 071 353 1330
Fax : 071 353 1533

Ref: RIMPearce\07SM4661.DE4

THIS DEED is made the 22nd day of December 1993

BETWEEN

- (1) SALISBURY DISTRICT COUNCIL of Bourne Hill Salisbury Wiltshire ("the District Council")
- (2) DAVID JOHN PEARCE of The Manor House Stratford-sub-Castle Salisbury aforesaid ("the Owner")
- (3) LLOYDS BANK PLC ("the Bank")

NOW THIS DEED made pursuant to Section 106 of the Act (as hereafter defined) WITNESSES as follows

DEFINITIONS AND INTERPRETATION :

1.1 In this Deed the following words and phrases shall have the following meanings :

1.1.1 the Act: the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991

1.1.2 the Land : all that land shown for the purposes of identification only edged orange on the Plan annexed hereto together with any buildings erected thereon situate at and being part of the property known as Bishopdown Farm Salisbury title to which is registered at H M Land Registry under Title Number WT120251

1.2 The paragraph headings do not form part of this Deed and shall not be taken into account in the construction or interpretation of it

1.3 The provisions of this Deed (other than this clause) shall not be effective until the same shall have been dated

RECITALS

2.1 The District Council is the Local Planning Authority for the purposes of the Act for the administrative area within which the Land is situated.

2.2 The Owner is the registered proprietor of the Land

2.3 The Owner has agreed to enter into this Deed and to be bound by and observe and perform the obligations hereinafter set out

2.4 The Bank is mortgagee of the Land under a Legal Charge made on the 28th January 1993 between the Owner (1) and the Bank (2)

THE OBLIGATIONS :

3. Subject always as provided in the Act the Owner COVENANTS and AGREES with the Councils:

3.1. to observe and perform the obligations set out in the next following sub-clause which are intended:

- (1) to constitute planning obligations as referred to in Section 106 of the Act and
- (2) to be enforceable by the District Council and any statutory successor of the District Council

3.2 the Owner shall provide reasonable safeguards for the protection of the water meadows within the boundaries of the Land and for the avoidance of doubt :

3.2.1 nothing whatsoever in connection with any development on the land within the aforementioned Title Number (other than the Land) shall encroach on the Land

3.2.2 no traffic in connection with such development shall use the Land

3.2.3 no work huts or compounds in connection therewith shall be situated on the Land

3.2.4 no tipping shall take place thereon in connection therewith

3.2.5 no disturbance shall be caused thereto

save that the Owner shall be entitled to encroach onto the Land with or without construction traffic for the purposes of carrying out works to or in connection with the construction of the proposed Salisbury northern link road and/or the roundabout at the junction of that road with the A30 road or any part thereof in accordance with details of such encroachment previously approved by the District Council (such approval not to be unreasonably withheld or delayed)

3.3 The Bank CONSENTS to the execution of this Deed and ACKNOWLEDGES that the Land shall be bound by it

RELEASES

4. In the event that the Owner shall following the date of this Deed :

4.1 dispose of the whole or a material part of the Land (being a part to which any of the Obligations shall have been annexed or part otherwise directly or indirectly affected by any of the Obligations) and

4.2 obtain a direct Deed from the disponent to the District Council to observe and perform those Obligations in a form and otherwise in terms previously approved by the District Council such approval not to be unreasonably withheld or delayed

then the Owner shall be released without any further act of the parties from any future breaches of any of the Obligations so covered by such direct Deed being breaches which shall occur upon the Land so disposed of at any time after that direct Deed shall have been completed

STATUTORY POWERS

5. Nothing contained or implied in this Deed shall prejudice or affect the right powers duties and obligations of the District Council in the exercise of its functions as Local Planning Authority and its rights powers duties and obligations under all or any public or private statutes byelaws and regulations all which may be as full and effectually exercised as if the District Council were not a party to this Deed

IN WITNESS whereof this Deed has been duly executed as a Deed by the parties hereto the day and year first before written

Signed as a Deed (and delivered) by DAVID JOHN PEARCE in the presence of :

ANNA VALLEY, ANDOVER

Executed as a Deed by the affixing of the Common Seal of SALISBURY DISTRICT COUNCIL in the presence of :

Principal Solicitor



SIGNED as a Deed (and delivered) by BRIAN DAVID THOMAS as attorney for and on behalf of LLOYDS BANK PLC in the presence of :

Planning Department
04 APR 2012
Action

S/12/0552

at

04 APR 2012

DATED *22nd December* 1992

Copy to
Action

- (1) SALISBURY DISTRICT COUNCIL
- (2) DAVID JOHN PEARCE ESQ
- (3) LLOYDS BANK PLC

DEED

containing Planning Obligations relating to land
forming part of Bishopdown Farm Salisbury

Green Land

(Second Duplicate)

FREEDMANS
21 Whitefriars Street
London EC4Y 8JJ

Tel : 071 353 1330
Fax : 071 353 1533
Ref: RIM\Pearce\07SM4661.DB5

04 APR 2012

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BETWEEN

- (1) SALISBURY DISTRICT COUNCIL of Bourne Hill Salisbury Wiltshire ("the District Council")
- (2) DAVID JOHN PEARCE of The Manor House Stratford-sub-Castle Salisbury aforesaid ("the Owner")
- (3) LLOYDS BANK PLC ("the Bank")

NOW THIS DEED made pursuant to Section 106 of the Act (as hereafter defined) WITNESSES as follows

DEFINITIONS AND INTERPRETATION :

- 1.1 In this Deed the following words and phrases shall have the following meanings :
 - 1.1.1 the Act: the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991
 - 1.1.2 the Land : all that land shown for the purposes of identification only edged in green on the Plan annexed hereto (but excluding the land shown hatched in green thereon) together with any buildings erected thereon situate at and being part of the property known as Bishopdown Farm Salisbury title to which is registered at H M Land Registry under Title Number WT120251
- 1.2 The paragraph headings do not form part of this Deed and shall not be taken into account in the construction or interpretation of it
- 1.3 The provisions of this Deed (other than this clause) shall not be effective until the same shall have been dated

RECITALS

- 2.1 The District Council is the Local Planning Authority for the purposes of the Act for the administrative area within which the Land is situated
- 2.2 The Owner is the registered proprietor of the Land
- 2.3 The Owner has agreed to enter into this Deed and to be bound by and observe and perform the obligations hereinafter set out
- 2.7 The Bank is mortgagee of the Land under a Legal Charge made on the 28th January 1993 between the Owner (1) and the Bank (2)

THE OBLIGATIONS :

- 3.1 Subject always as provided in the Act the Owner COVENANTS and AGREES with the Councils:

3.1.1 to observe and perform the obligations set out in the next following sub-clause which are intended:

- (1) to constitute planning obligations as referred to in Section 106 of the Act and
- (2) to be enforceable by the District Council and any statutory successor of the District Council

3.1.2 Notwithstanding the provisions of the Town and Country Planning (General Development) Order 1988 or any modification or re-enactment thereof the Land shall not be used except for one or more of the following purposes or any combination thereof or any purposes ancillary thereto namely :

- (1) agriculture as defined in the Act
- (2) public or other open space
- (3) leisure sport or recreation for which planning permission shall have been granted
- (4) purposes authorised by Planning Permission reference S/91/1666/TP issued by the District Council or other golf related developments for which planning permission shall have been granted
- (5) the construction and use of footpaths and roadways with planning permission (where required by law) (including the NLR)

3.2 The Bank CONSENTS to the execution of this Deed and ACKNOWLEDGES that the Land shall be bound by it

RELEASES

4. In the event that the Owner shall following the date of this Deed :

4.1 dispose of the whole or a material part of the Land (being a part to which any of the Obligations shall have been annexed or part otherwise directly or indirectly affected by any of the Obligations) and

4.2 obtain a direct Deed from the disponent to the District Council to observe and perform those Obligations in a form and otherwise in terms previously approved by the District Council such approval not to be unreasonably withheld or delayed

then the Owner shall be released without any further act of the parties from any future breaches of any of the Obligations so covered by such direct Deed being breaches which shall occur upon the Land so disposed of at any time after that direct Deed shall have been completed

STATUTORY POWERS

5. Nothing contained or implied in this Deed shall prejudice or affect the right powers duties and obligations of the District Council in the exercise of its functions as Local Planning Authority and its rights

powers duties and obligations under all or any public or private statutes byelaws and regulations all which may be as full and effectually exercised as if the District Council were not a party to this Deed

PLANNING PERMISSION

6. The exclusion of the land shown hatched green on the Plan from the Obligations set out in this Deed does not convey or imply any confirmation on the part of the Councils or either of them that the said land is suitable for development for any purposes nor that planning permission for any development will or should be issued at any time hereafter in relation thereto.

IN WITNESS whereof this Deed has been duly executed as a Deed by the parties hereto the day and year first before written

Signed as a Deed (and delivered) by DAVID JOHN PEARCE in the presence of :

Executed as a Deed by the affixing of the Common Seal of SALISBURY DISTRICT COUNCIL in the presence of :



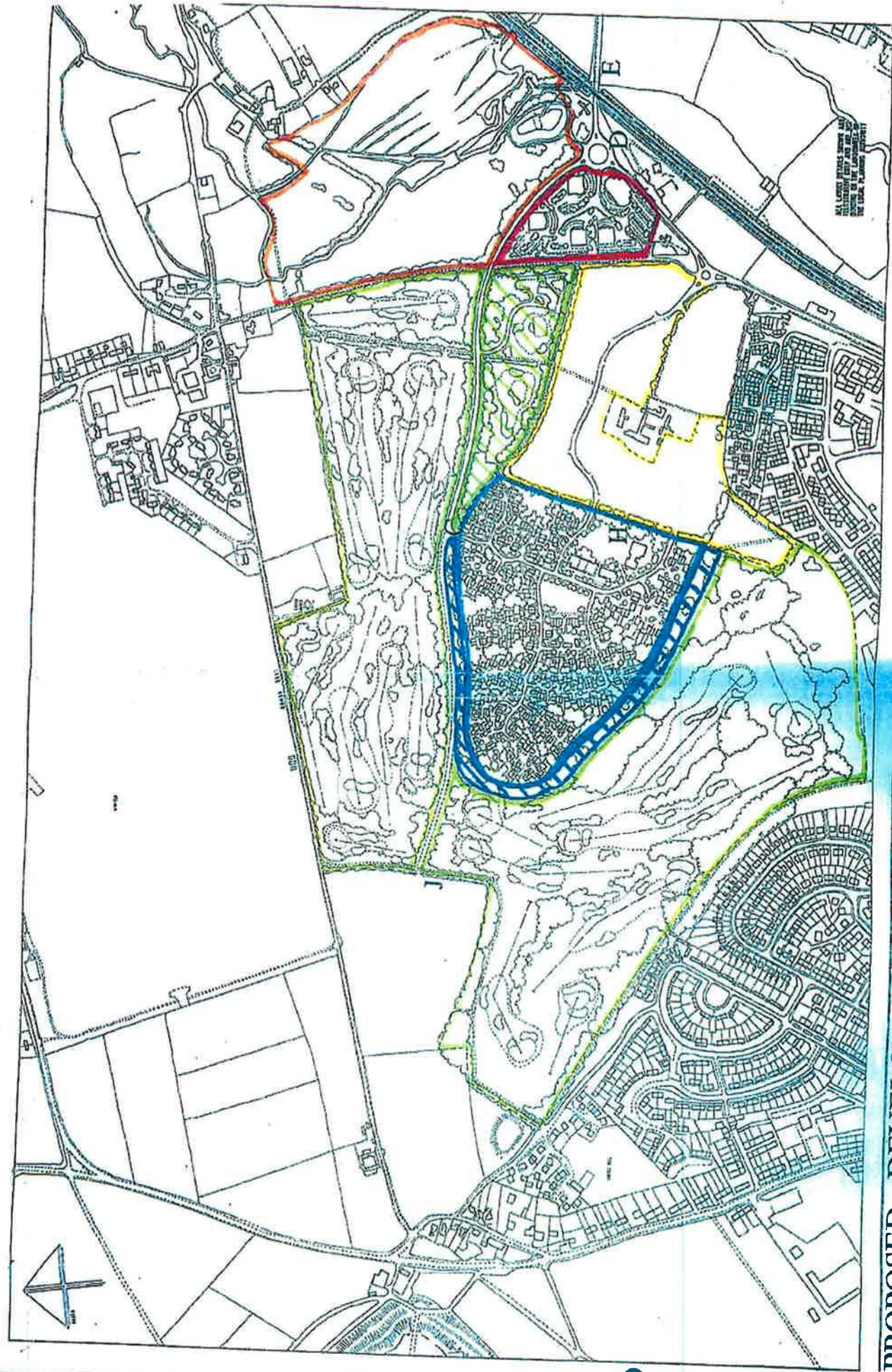
Principal Solicitor

16585

Signed as a Deed (and delivered) by BRIAN DAVID THOMAS as attorney for and on behalf of LLOYDS BANK PLC in the presence of :

Pl. Department

3 Rec. 04 APR 2012



PROPOSED DEVELOPMENT LAYOUT
Bishopdown Farm
Salisbury

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