

Date of Meeting	27 November 2014
Application Number	13/00636/FUL
Site Address	Brook Cottages Gasper Stourton Warminster Wiltshire BA12 6PY
Proposal	Construction of three two bedroom affordable houses; one three bedroom affordable house and a structure which would provide garaging for eight vehicles and bike and bin storage.
Applicant	Mr Nick Hoare
Town/Parish Council	STOURTON WITH GASPER
Division	MERE
Grid Ref	376230 133075
Type of application	Full Planning
Case Officer	Steven Banks

Reason for the item being considered by Committee

Application 13/00636/FUL was considered by the Southern Area Planning Committee held on the 3rd of July 2014. At that Meeting members resolved to grant planning permission for the development subject to the imposition of planning conditions and the applicant entering into a legal agreement concerning the allocation of the housing and a financial contribution towards public open space. It was further agreed that a draft Section 106 agreement and a draft set of conditions should be considered by a future Planning Committee before the Local Planning Authority issued a decision. Negotiations on the S106 were completed a few weeks ago and therefore the legal agreement and conditions are attached to this report for members consideration.

Attached as appendices to this report are the original officers report (A), the s106 agreement(B) and the proposed conditions(C)

Legal agreement

The attached legal agreement covers

1. The Housing distribution and occupational criteria
2. The Open space contribution

1.The legal agreement stipulates the following –

That there is no requirement to be on the Housing Register to rent a property.

That Applicants for the properties must have a local connection. (which is defined in the agreement)

Tenancies will only be granted to applicants who

- (i) Are unable to afford to buy a home in the village of Stourton; and
- (ii) Do not own any residential property; and
- (iii) Are able to pay rent and outgoings at time of letting from current earnings

The legal agreement has been negotiated between the local authority planning department, the parish council and the applicants over a number of months and has now been agreed with both parties.

2. The second part of the legal agreement requires that prior to first occupation of the dwellings the developer shall pay to the council the sum of £5524.00 in accordance with the council's saved policy R2 towards recreational open space.

RECOMMENDATION

It is recommended that following members resolution to grant planning permission at the committee of the 3rd July 2014 that members further approve the legal agreement at appendix B and the proposed conditions at appendix C.

Appendix A

Officer's report to the Planning Committee of the 03/07/2014

REPORT TO THE SOUTHERN AREA PLANNING COMMITTEE

Date of Meeting	03/07/2014
Application Number	13/00636/FUL
Site Address	Brook Cottages Gasper Stourton Warminster Wiltshire BA12 6PY
Proposal	Construction of three two bedroom affordable houses; one three bedroom affordable house and a structure which would provide garaging for eight vehicles and bike and bin storage.
Applicant	Mr Nick Hoare
Town/Parish Council	STOURTON WITH GASPER
Ward	MERE
Grid Ref	376230 133075
Type of application	Full Planning
Case Officer	Steven Banks

Reason for the application being considered by Committee

Cllr Jeans has requested the consideration of this planning application at a Planning Committee if the Case Officer's recommendation is not to grant planning permission for this proposal in order to consider the need for this local housing.

The Case Officer has recommended the refusal of the planning application and therefore the application is to be considered by a Planning Committee.

1. Purpose of Report

To consider the above application and the recommendation of the Area Development Manager that planning permission should be REFUSED for the reasons detailed below.

2. Report Summary

The main issues which are considered to be material in the determination of this application are listed below:

1. The principle of the proposal site being developed as a rural exception site
2. The provision of affordable housing and Wiltshire Council's allocations policy
3. Financial contributions towards the provision of recreational open space
4. The impact that the proposal would have on residential amenity
5. The impact that the proposal would have on the character and appearance of the area surrounding the proposal site
6. The impact that the proposal would have on highway safety

3. Site Description

This application relates to a piece of land which is located to the south of Gasper Street in Gasper. The site slopes gently from north down to south and is relatively overgrown. The surrounding area is predominantly rural in character. Two dwellings exist to the west of the site and further dwellings can be found in positions which are adjacent to Gasper Street. The proposal site falls within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty and outside of any Housing Policy Boundary.

4. Planning History

It is not considered that there is any planning history which is of relevance to this application.

5. The Proposal

The proposal is to: Construct three two bedroom affordable houses; one three bedroom affordable house and a structure which would provide garaging for eight vehicles and bike and bin storage.

6. Planning Policy

The following planning policies are considered to be relevant to the determination of this application.

National Planning Policy Framework (NPPF) 2012:

This Framework sets out the Government's planning policies for England. The Framework repeats that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Part 6, delivering a wide choice of quality homes, and part 7, requiring good design, of the NPPF are considered to be particularly relevant to the determination of this application.

The following policies are relevant to the determination of this application and are considered to align with the principles, aims, objectives and intentions of the NPPF. The following policies are therefore considered to carry significant weight.

Salisbury District Local Plan saved policies (which are ‘saved’ policies of the adopted South Wiltshire Core Strategy):

G2: General criteria for development

C5: Small scale development proposals within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty

TR11: The provision of off street car parking spaces

R2: Open space provision

H23: Residential Development outside Housing Policy Boundaries

South Wiltshire Core Strategy:

Core Policy 3 Meeting Local Needs for Affordable Housing

Wiltshire Core Strategy:

Core Policy 44 Rural exception sites

Core Policy 57 Ensuring high quality design and place shaping

Core Policy 61 Transport and New Development

Wiltshire Local Transport Plan Car Parking Strategy:

PS6 Residential parking standards

7. Consultations

Cranborne Chase and West Wiltshire Downs AONB Partnership Landscape and Planning, in their consultation response, expressed concerns regarding the appearance of the proposed dwellings. The AONB Group further expressed that they would wish to see sufficient internal storage space for household recycling and robust mechanisms to ensure that the properties remained affordable in perpetuity. They also expressed that they would wish to be assured that the proposals would comply with the AONB Group’s Position Statement on light pollution.

Wiltshire Council, Land Adoptions Department, Technical Officer, in their consultation response, considered that a financial contribution of £5,800.20 towards the cost of providing public recreational facilities should be sought in line with saved policy R2.

Stourton with Gasper Parish Council, in their consultation response, expressed their support for the application. It should be noted that reference was made to the proposed dwellings remaining available for local people to rent at an affordable price.

Wiltshire Council, New Housing Department, Development Officer, in their consultation response, considered that the proposed method of allocations is contrary to Wiltshire Council’s allocation policy and objected to the proposal.

Wiltshire Council Ecologist, in their consultation response, did not object to the proposal subject to the imposition of one condition and the attachment of one informative on any planning permission. The condition related to the retention of the trees and scrub which exists on the proposal site’s boundaries and the informative related to protected species.

Wiltshire Council highways Officer, in their consultation response, considered that the proposal would represent an unsustainable form of development and objected to the proposal.

8. Publicity

This application was advertised via site notice and letters of consultation.

22 letters of support and 1 letter of objection have been received.

In summary, the grounds of the objection related to the considerations that the proposal would be remote from facilities, public transport and activities, employment opportunities are low in the area, the additional traffic would harm highway safety and the proposed houses do not meet the housing type demand in the area.

In summary, the grounds of support related to the considerations that there is a need for affordable housing for local families, the proposal would be eco friendly, the proposal would use a brown field site and the proposal would have a minimal impact on the local environment.

9. Planning Considerations

9.1 The principle of the proposal site being developed as a rural exception site:

Saved Policy H23 of the Salisbury District Local Plan, Core policy 3 of the South Wiltshire Core Strategy and Core Policy 44 of the Wiltshire Core Strategy are considered to be the relevant policies of which to assess the principle of the proposal site representing a rural exception site.

Saved policy H23 of the Salisbury District Local Plan defines undeveloped land which falls outside of any Housing Policy Boundary as being countryside, where the erection of new dwellings will only be permitted where provided for by policies H26 or H27. Policy H26 relates to the provision of affordable housing and has been replaced by Core Policy 3 of the South Wiltshire Core Strategy, Saved policy H27 of the Salisbury District Local Plan relates to the provision of housing for rural workers. Core Policy 3 of the South Wiltshire Core Strategy expresses that exception sites, where affordable housing is provided outside of any housing policy boundary, should be sensibly and sensitively located within easy access to employment and services.

Core Policy 44 of the Wiltshire Core Strategy permits the development of small sites, which, amongst other factors, are located outside but adjoining the development limits of Local Service Centres and Large Villages, or are adjacent to the existing built area of Small Villages, where employment and services are easily accessible from the site, for the provision of affordable housing as an exception to normal policy where it can be demonstrated that a proposed development would meet a particular locally generated need that cannot be accommodated in any other way.

The piece of land to which this application relates falls outside of any Housing Policy Boundary and is therefore considered to be countryside. Material has been submitted as part of this planning application which expresses that the proposed four dwellings would be classified as affordable. Affordable housing is housing which is, "provided to eligible households whose needs are not met by the market" (NPPF).

The proposal site forms part of the open countryside which forms part of the Hamlet known as Gasper. It is considered that the proposal site does not adjoin the development limits of a Local Service Centre or Large Village where employment and services are easily accessible. It is also considered that the proposal site is not adjacent to the existing built area of a Small Village where employment and services are easily accessible.

The proposal site, by reason of its location, which is remote from services and employment, does not represent an exception site. Consequently, the principle of developing the proposal site as a rural exception site is not accepted. The proposal is therefore contrary to Core Policy 3 of the South Wiltshire Core Strategy, Core Policy 44 of the Wiltshire Core Strategy and saved policy H23 of the Salisbury District Local Plan.

9.2 The provision of affordable housing and Wiltshire Council's allocations policy:

It is stated in the NPPF that, "Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges where applicable)."

The Council's housing officer is concerned that the applicant proposes that the housing would not have to be registered with Homes4Wiltshire and would not have to be allocated through the Homes4Wiltshire allocations policy. This includes the proposal that the affordable housing could be offered to applicants who fall into the current Bronze band on the housing register, who will no longer be considered in housing need, or be eligible to register or bid for affordable rented properties when the new Allocations Policy takes effect later this year. These two issues do not conform with Wiltshire Council's current or emerging allocations policy. It was further considered that the proposed definition of local connection does not conform with Wiltshire Council's allocations policy.

Therefore, although, the proposed housing maybe offered at an affordable rent, as defined in the NPPF, it is considered that the proposal is contrary to Wiltshire Council's allocations policy.

It is therefore considered that the proposed housing would not function as affordable housing as defined in Wiltshire.

9.3 Financial contributions towards the provision of recreational open space:

On proposal sites where residential development is proposed, a financial contribution, under saved policy R2, is sought towards the provision of recreational open space. Legal agreements are entered into when applicants are willing to comply with the requirements of saved policy R2. As there is no R2 payment or agreement with this proposal. This forms a further reason for refusal.

9.4 The impact that the proposal would have on residential amenity:

Criterion (vi) of saved policy G2 of the Salisbury District Local Plan and criterion vii of Core Policy 57 of the Wiltshire Core Strategy are considered to be the relevant criterion of the policies against which to assess the impact, that the proposal would have on residential amenity.

Criterion (vi) of saved policy G2 requires new development to avoid harming the amenity of the occupants of adjoining dwellings and uses and criterion vii of Core Policy 57 of the Wiltshire Core Strategy requires new development to have regard to the compatibility of adjoining buildings and uses, the impact that the development would have on the amenity of existing occupants and to ensure that appropriate levels of amenity are achievable within the development itself.

The proposed structures, by reason of their size, in terms of their height, width and depth, and the separation distance between the proposed structures and the nearest properties and the views which would be possible from the proposed openings, would not harm the amenity of the occupiers of the properties nearest to the proposed works.

The proposed structures, by reason of their size, in terms of their height, width and depth and their positioning in relation to each other and the views which would be possible from the proposed openings, would ensure that appropriate levels of residential amenity would be achievable within the site.

The proposal is therefore considered to be in accordance with criterion (vi) of saved policy G2 and criterion vii of Core Policy 57 of the Wiltshire Core Strategy

9.5 The impact that the proposal would have on the character and appearance of the area surrounding the proposal site:

Good design forms an important theme in the NPPF. Paragraph 56 of the NPPF states that, "The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people." Paragraph 64 of the NPPF further states that, "Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions." Saved policy C5 of the Salisbury District Plan permits development within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty which would be sympathetic with the landscape, criterion (iv) of saved policy G2 of the Salisbury District Local Plan requires new development to respect the physical environment and criterion (i), (ii), (iii) and (vi) of Core Policy 57 of the Wiltshire Core Strategy requires new development to respect the physical environment.

The proposed development, by reason of its design, size, positioning and materials, would not undermine the character of the area.

The proposal is therefore considered to be in accordance with criterion (iv) of saved policy G2 of the Salisbury District Local Plan, criterion (i), (ii), (iii) and (vi) of Core Policy 57 of the Wiltshire Core Strategy and saved policy C5 of the Salisbury District Local Plan

9.6 The impact that the proposal would have on highway safety:

Part (i) of saved policy G2 of the Salisbury District Local Plan states that new development will be assessed against the provision of a satisfactory means of access and turning space within the site. Reference is also made to the provision of a sufficient level of parking. Saved policy TR11 of the Salisbury District Local Plan requires the provision of a sufficient level of off street parking spaces for development proposals, Wiltshire Local Transport Plan 2011 – 2026 Car Parking Strategy Document provides minimum residential parking standards and criterion ii of Core Policy 61 of the Wiltshire Core Strategy requires proposals to be capable of being served by a safe access to the highway network. Wiltshire Council's Highways Department did not object to the proposal on the grounds of an unsatisfactory means of access and turning space or an insufficient level of proposed parking and it is considered that a satisfactory means of access and turning space within the site and a sufficient level of parking is proposed. It is consequently considered that the proposal would not conflict with saved policy TR11 of the Salisbury District Local

Plan, part (i) of saved policy G2 of the Salisbury District Local Plan, Wiltshire Local Transport Plan 2011 – 2026 Car Parking Strategy Document or criterion ii of Core Policy 61 of the Wiltshire Core Strategy.

10. Conclusion

The proposal site, by reason of its location, in the open countryside, which is remote from services and employment, does not represent an exception site. The proposal is therefore contrary to Core Policy 3 of the South Wiltshire Core Strategy, Core Policy 44 of the Wiltshire Core Strategy and saved policy H23 of the Salisbury District Local Plan (which is a 'saved' policy of the adopted South Wiltshire Core Strategy).

The proposal, by reason of the lack of a financial contribution towards recreational open space, is contrary to saved policy R2 of the Salisbury District Local Plan (which is a 'saved' policy of the adopted South Wiltshire Core Strategy).

11. RECOMMENDATION

Planning Permission should be REFUSED for the following reasons:

1. The proposal site, by reason of its location, in the open countryside, which is remote from services and employment, does not represent an exception site. The proposal is therefore contrary to Core Policy 3 of the South Wiltshire Core Strategy, Core Policy 44 of the Wiltshire Core Strategy and saved policy H23 of the Salisbury District Local Plan (which is a 'saved' policy of the adopted South Wiltshire Core Strategy).
2. It is not intended to register the housing with Homes4Wiltshire, or to allocate the housing through the Homes4Wiltshire allocations policy and the proposed definition of local connection, is contrary to Wiltshire Council's allocations policy. The proposal is therefore contrary to Wiltshire Council's allocations policy and it is consequently considered that the proposed housing would not function as affordable housing as defined in Wiltshire. The proposal is therefore contrary to Core Policy 3 of the South Wiltshire Core Strategy, Core Policy 44 of the Wiltshire Core Strategy and saved policy H23 of the Salisbury District Local Plan (which is a 'saved' policy of the adopted South Wiltshire Core Strategy).
3. The proposal, by reason of the lack of a financial contribution towards recreational open space, is contrary to saved policy R2 of the Salisbury District Local Plan (which is a 'saved' policy of the adopted South Wiltshire Core Strategy).

Informatives:

1. In accordance with paragraph 187 of the National Planning Policy Framework (NPPF), this planning application has been processed in a proactive way. However, due to the proposal's failure to comply with the development plan as a matter of principle, the local planning authority has had no alternative other than to refuse planning permission.

2. It should be noted that the reason given above relating to policy R2 of the adopted Local Plan could be overcome if all the appropriate parties agree to enter into a Section 106 Agreement contributing to recreational open space provision.

Appendix B

Draft Section 106 Agreement

DATED

between

WILTSHIRE COUNCIL

and

STOURTON WITH GASPER PARISH COUNCIL

and

NICHOLAS COLT HOARE

Deed under Section 106 of the Town and Country Planning Act 1990

and all other enabling powers

relating to Land at Brook Cottages, Gasper, Stourton,

Warminster, Wiltshire BA12 6PY

**Head of Legal Services
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN
Ref: 104363**

THIS DEED is dated [DATE]

(1) **WILTSHIRE COUNCIL** of County Hall Bythesea Road Trowbridge Wiltshire BA14 8JN (**Council**).

(2) **STOURTON WITH GASPER PARISH COUNCIL** of 7 High Street
Stourton Warminster BA12 6QF

(2) **NICHOLAS COLT HOARE** of The Orchard Bridge Road Leigh Woods Bristol (**Owner**).

BACKGROUND

1. The Owner is the freehold owner and is seised in possession of the Land shown for the purposes of identification only edged red on the Plan
2. The Council is the local planning authority for the purposes of the Act, the highway authority, the education authority and the housing authority for the area in which the Land is situated
3. The Parish Council has agreed to undertake certain functions with regard to the allocation of the Affordable Housing Units
4. The Owner has submitted the Planning Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed without which the Planning Permission would not be granted
5. On 3 July 2014 the Council resolved to grant planning permission for the Development subject to conditions and the prior completion of this Deed in the interests of the proper planning of the area.

NOW THIS DEED WITNESSES AS FOLLOWS:

Definitions

The definitions and rules of interpretation in this clause apply in this deed:

“the Act”	the Town and Country Planning Act 1990
“Affordable Housing”	housing let in perpetuity to Qualifying Persons at a rent of no more than 80% of local Open Market Rents (including service charges, where applicable) at the time of letting which may be increased by no more than the All Items Index of Retail Prices plus 0.5% annually
“Affordable Housing Unit”	any of the Residential Units forming part of the Development, all such Residential Units comprising Affordable Housing
“Allocations Policy and Procedure”	the policy and procedure attached at Schedule 4 which sets out : <ol style="list-style-type: none">(i) the necessary criteria to be met

in order for person(s) to be allocated an Affordable Housing Unit; and

- (ii) the procedure to be followed by applicants, the Owner and the Parish Council on applications for an Affordable Housing Unit

“Commencement of Development” the date on which any material operation as defined in section 56(4) of the Act forming part of the Development begins to be carried out with the exception of investigation of ground conditions and remedial work archaeological work demolition and erection of hoardings and Commence and Commenced shall be construed accordingly

"Engineer" the Director of Highways and Transport or his appointed representative for the time being of the Council

“Development” any development permitted by the Planning Permission

“Director” the Associate Director of Economic Development and Planning or his appointed representative for the time being of the Council

“Index” All Items Index of Retail Prices issued by the Office for National Statistics

“Index Linked” increased in accordance with the following formula:

Amount payable = the Contribution x (A/B)

where:

A = the figure for the Index that applied immediately preceding the date of actual payment and

B = the figure for the Index that applied when the Index was last published prior to the date of this Deed

“Interest”	Interest at the rate of 4% above the base lending rate of the HSBC Bank Plc from time to time
“Land”	the land at Brook Cottages Gasper Stourton Warminster Wiltshire BA12 6PY
“Land Compensation Act”	In relation to clause 16 means the Land Clauses Consolidation Act 1845 the Land Compensation Act 1961 the Compulsory Purchase Act 1965 the Land Compensation Act 1973 and the Planning and Compensation Act 1991 and includes the Human Rights Act 1998 and any variation or enactment of the Land Compensation Acts on a date on or after the date of execution of this Deed which confers a right of compensation for the compulsory acquisition of land and/or the diminution in value of land as a result of the carrying out of or the use of public works
“Monitoring Sum”	the sum of £331.44 (three hundred and thirty-one pounds 44 pence)
“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction
“Open Market Rent”	means the rent calculated in accordance with the definition of "Market Rent" at Practice Statement 3.3 of the Royal Institution of Chartered Surveyors' Appraisal and Valuation Standards 6th Edition dated January 2008 as amended
“Open Space Contribution”	the sum of £5524.00 (five thousand five hundred and twenty-four pounds) as a contribution towards recreational open space in accordance with saved policy R2 of the Salisbury District Local Plan which is a saved policy of the South Wiltshire Core Strategy

“Plan”	the plan or drawing attached to this Deed and referenced 0253/101rev B which plan is for the purposes of identification only
“Planning Application”	the planning application for full planning permission for the construction of three two bedroom Affordable Housing Units; the construction of one three bedroom Affordable Housing Unit and a structure which would provide garaging for eight vehicles and bike and bin storage registered by the Council on 28 May 2013 and allocated reference number 13/00636/FUL
“Planning Permission”	the/any planning permission for the Development that may be granted pursuant to the Planning Application
“Qualifying Person”	an individual who fulfils the requirements of appendix 1 and appendix 2 of the Allocations Policy

Construction of this Deed

Words importing the masculine include the feminine and neuter gender and vice versa

Words importing the singular include the plural and vice versa

Words importing persons include companies corporations and vice versa and all such words shall be construed interchangeable in that manner

Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually

Insofar as different parts of or interests in the Land are owned by different persons each person Covenants with the Council and with one another to co-operate insofar as they are able to ensure that the Covenants herein on behalf of “the Owner/ Developer” are fulfilled as expeditiously as possible

The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed

Any reference to a clause paragraph schedule or plan is to one in to or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed

In the absence of contrary provision any reference to a Council document to be completed which is annexed or referred to in this Deed shall be the Council document which is current and in force at the date of its completion

In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it

References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council

Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done

Statutory provisions

This Deed is made pursuant to the following:

Section 106 of the Act

Section 111 of the Local Government Act 1972

Section 1 Localism Act 2011

and all other enabling powers

and has been entered into by the Council pursuant to those powers

The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act to the intent that it shall bind the parties and their respective successors in title to each and every part of the Land and are enforceable by the Council as local planning authority

Commencement

This Deed takes effect on the grant of the Planning Permission

The Owner shall notify the Council of the Commencement of Development and the date of Occupation of the first Residential Unit and the Owner agrees that no time shall run to the detriment of the Council if and so long as the Owner has failed to serve notice

If the Owner has not provided the information referred to in clause 1.15 above within 20 Working Days of its becoming available the Council shall have the right to obtain this information by other reasonable means and to charge the Owner its costs in obtaining this information subject to a maximum of one thousand pounds (£1,000) per time **PROVIDED THAT** the information is in fact obtained as aforesaid and reasonable evidence of this is provided by the Council to the Owner

The Owner's Covenants

1.17 The Owner will observe and perform the obligations set out in this Deed and the Schedules

The Parish Council's Covenants

1.18 The Parish Council will observe and perform its obligations as set out in the Allocations Policy and Procedure

The Council's Covenants

1.19 The Council covenants with the Owner as set out in the Second Schedule

General

The parties agree that:

1.20 Nothing in this Deed constitutes an obligation to grant planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function and nothing in this Deed constitutes and such approval, consent or permission.

1.21 This Deed does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council)

1.22 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest

1.23 Insofar as any clause or clauses or any part thereof of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

1.24 If before Commencement of Development the Planning Permission:

- a) expires within the meaning of Sections 91 92 or 93 of the Act; or
- b) is revoked, quashed or modified without the consent of the Developer;

this Deed shall cease to have effect

- 1.25 The Owner shall pay to the Council:(a) its proper and reasonable legal costs incurred in negotiating preparing and entering into this Deed upon completion of this Deed, and

(b) upon Commencement of Development to pay the Monitoring Sum
- 1.26 The Owner shall pay to the Council on the date hereof its proper and reasonable legal costs incurred in respect of the transfer or other disposal of any land or facility as required by this Deed.
- 1.27 This Deed shall be registerable as a local land charge by the Council
- 1.28 If required by the Council the Owner shall secure registration of this Deed in the Charges Register of the Registered Title to the Land at the Land Registry
- 1.29 Where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement consent approval or expression of satisfaction shall be given in writing on behalf of the Council by the Engineer or Director as appropriate
- 1.30 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 1.31 Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations
- 1.32 This Deed is governed by and interpreted in accordance with the law of England and Wales

Notices

- 1.33 Any notice or other communication given or made under this Deed shall be in writing and (unless otherwise herein provided) shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the address of the party specified in this Deed or to such other address (in substitution thereof) as may be notified in writing by that party from time to time for this purpose and in the case of the Council shall be addressed to the Head of Legal Services and quote reference 13/00636/FUL

Waiver

- 1.34 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

Change in Ownership

- 1.35 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged. Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation transferred by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of an individual Residential Unit

Indexation

- 1.36 All financial contributions payable to the Council under this Deed shall be Index Linked

Interest

- 1.37 If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of actual payment compounded annually.

VAT

- 1.38 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable in respect thereof
- 1.39 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

Indemnity

- 1.40 The Owner hereby undertakes and agrees with the Council that in the event of any claim or claims being made against the Council for any one or more of the following payments:
- a) Compensation (including any claim arising under the Land Compensation Acts)
 - b) Damages
 - c) Costs
 - d) Charges
 - e) any other payment

such claim arising in connection with or incidental to or in consequence of any failure on the part of the Owner to comply with its obligations under this Deed the Owner will hold the Council fully indemnified from and against each and every said claim

- 1.41 The Owner shall not be liable under this clause to indemnify the Council in respect of any claim only insofar as and to the extent that the said claim is found to have resulted from the negligent act or omission of the Council or its servants or agents save that for the purpose of this clause the Owner or persons acting on behalf of the Owner shall not be regarded as servants or agents of the Council

Delivery

- 1.42 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1: Covenants by the Owner to the Council and the Parish Council

The Owner covenants with the Council that

1. Affordable Housing

- 1.1 it shall ensure that the Affordable Housing Units are at all times occupied in accordance with the Allocations Policy and Procedure and at no more than 80% of the local Open Market Rent (including service charges where applicable at the time of letting) which may be increased by no more than the All Items Index of Retail Prices plus 0.5% annually
- 1.2 it shall not use the Affordable Housing Units other than for Affordable Housing let in accordance with the Allocations Policy and Procedure;
- 1.3 It shall cooperate with the Parish Council where necessary in the fulfilment of its obligations set out in the Allocations Policy and Procedure

2. Open Space Contribution

- 2.1 Prior to first Occupation to pay the Open Space Contribution to the Council.
- 2.2 Not to Occupy the Development until the Open Space Contribution has been paid to the Council

SCHEDULE 2: Covenants by the Parish Council to the Council and to the Owner

1. At all times and acting reasonably to comply with the Allocations Policy and Procedure
2. To cooperate with the Owner where necessary in the fulfilment of its obligations set out in the Allocations Policy and Procedure

SCHEDULE 3: Covenants by the Council to the Owner

Repayment of Contributions

The Council covenants with the Owner:

1. To use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid
2. To pay to the paying party such amount of any payment made by the Owner to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the Council of such payment on receipt of a written request from the Owner to do so

SCHEDULE 4: ALLOCATIONS POLICY AND PROCEDURE

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

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Purpose:

This policy ensures that the 4 new houses in Gasper Street built by Stourhead Western Estate ("SWE"), the Landlord, are let to tenants with local connection (as defined below), taking into account their housing need.

1 Eligibility to apply

1) All members of the public may apply.

There is no requirement to be on the Housing Register.

2 Other criteria to be met

(a) Applicants must have a local connection, as defined in section 3 below

(b) Occupation suitable to size of household

Houses will be allocated in accordance with the policy set out in Appendix 1.

(c) Financial criteria

Tenancies will only be granted to applicants who

- (i) Are unable to afford to buy a home in the village of Stourton; and
- (ii) Do not own any residential property; and
- (iii) Are able to pay rent and outgoings at time of letting from current earnings

Applicants will be asked to provide evidence of their income, debts, savings and capital assets.

3 Definition of Local Connection

To demonstrate a local connection, applicants must meet one or more of the three following requirements at the time of application:

(a) Local work

Either:

- At least one years' substantial and continuing employment in the village of Stourton; or
- At least one year of self employment or running a business operating to a substantial degree in the village of Stourton

(b) Local residency

Full time residence in Stourton for at least 5 of the preceding 10 years.

(c) Family connection

At least one parent resident in the village of Stourton, who has lived in the village full time for the preceding 10 years .

If there are more applicants meeting the Stourton local connection than vacancies, preference will be applied to those meeting the Local Work condition

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

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If there are fewer applicants than vacancies meeting the Stourton local connection conditions, the tenancies will be readvertised and Local Area extended to include Stourton and contiguous parishes (currently Zeals, Kilmington, Mere, Bourton, Charlton Musgrove, Brewham and Penselwood).

4 Housing need

If there is more than one applicant for a tenancy, meeting all other criteria and with equal degrees of local connection, the tenancy will be allocated to the applicant with the highest degree of housing need, as defined in Appendix 2.

5 Nominations

Homes will be advertised through appropriate local channels at the Landlord's expense.
Houses will be allocated strictly in accordance with this agreement. The applications will be made to the Landlord, who will make the initial decision.

The Landlord may seek references at its own expense to confirm that applicants meet the criteria in sections 1 2 and 3. Applicants meeting the conditions may nevertheless be vetoed according to the criteria set out in Appendix 3.

Any applicant will have the right to appeal to the Stourton Parish Council if they feel the policy or a veto has been wrongly applied.

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

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Appendix 1: Occupation criteria

Bedroom eligibility

Any expected child will be included as part of the household when calculating minimum bedroom requirements

Household make-up

Eligible for two bedroom home:

Single person
Couple
Single or Couple with 1 Child
Single or Couple with 2 Children (both under 10yrs)

Eligible for three bedroom home

Single or Couple with 1 Child
Single or Couple with 2 Children (both under 10yrs)
Single or Couple with 2 Children (one of which over 10yrs)
Single or Couple with 3 Children

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

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Appendix 2: Housing Need

The bands of housing need are listed from highest to lowest:

Gold: <i>Seriously Overcrowded</i>	Applicants living in overcrowded accommodation (in need of at least two additional bedrooms)
<i>Hazards</i>	Applicants living in a property assessed by the Private Sector Housing Team in accordance with the HHSRS as having 3 or more category 1 hazards that cannot be remedied.
<i>Insecurity of tenure</i>	Where an applicant is under written notice to leave their accommodation. Applicants assessed as being insecure in their accommodation will generally be under a 2 month or 93 day notice to vacate their accommodation.
<i>High welfare or support needs</i>	Where an applicant has an identified support or welfare need which cannot be alleviated in the current accommodation. Applicants may need to live closer to family or support networks to give or receive support. Consideration will be given to the obstacles relating to the applicants need, such as the distance and transport links between the two areas.
<i>Multiple needs</i>	Applicants meeting more than two needs criteria within silver band.
<i>Split households</i>	Applicants whose family have formerly lived together as a household unit, with dependent children or expecting a child, who are unable to live together because of factors beyond their control, and as a result are living in separate households.
Silver: <i>Serious Disrepair</i>	Applicants living in a property assessed by the Private Sector Housing Team in accordance with the HHSRS as having 1 or 2 category 1 hazards that cannot be remedied.
Overcrowded	Applicants living in overcrowded accommodation (in need of one additional bedroom).
Sharing Facilities	Applicants sharing facilities - e.g. kitchen, bathroom, and toilet - with people who are not included in the application This does not include applicants who choose to share their home with someone who is not included on the housing application.
Tied Accommodation	Applicants living in accommodation tied to their employment.
Bronze: <i>Adequately Housed</i>	Applicants who are currently housed in a property that is appropriate for their needs in terms of size and facilities.

Deliberately worsening circumstances

Where there is evidence that an applicant has deliberately worsened their circumstances in order to qualify for higher banding the application will be placed in Bronze band. For an applicant to have deliberately worsened their circumstances there must be evidence that it would have been reasonable for the applicant to have remained in their original accommodation..

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

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Bronze Adequately Housed

Applicants who are currently housed in a property that is appropriate for their needs in terms of size and facilities.

Deliberately worsening circumstances

Where there is evidence that an applicant has deliberately worsened their circumstances in order to qualify for higher banding the application will be placed in Bronze band. For an applicant to have deliberately worsened their circumstances there must be evidence that it would have been reasonable for the applicant to have remained in their original accommodation.

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

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Appendix 3: Grounds for veto of an application

Landlord reasons for rejecting an applicant

The Landlord may need to refuse an applicant for one of the following reasons. In that case, it is Landlord's responsibility to inform applicant of the reasons. The applicant may appeal to the Stourton Parish Council if it feels the rejection is unfair and not in accordance with this policy.

Area unsuitable/Anti-social behaviour

Where there is evidence that an applicant might endanger the health and safety or well being of neighbouring residents, the Landlord may refuse the right to offer them accommodation in that particular area.

Property unsuitable – Health and Safety

Where there is reasonable evidence to suggest a property is unsuitable for the applicant due to health and safety concerns.

For example, where the applicant has mobility needs that cannot be met without making considerable adaptations to the property.

Suspected fraudulent application

Where there is reasonable evidence that an applicant has provided false information in their application for housing, the Landlord reserves the right not to offer accommodation.

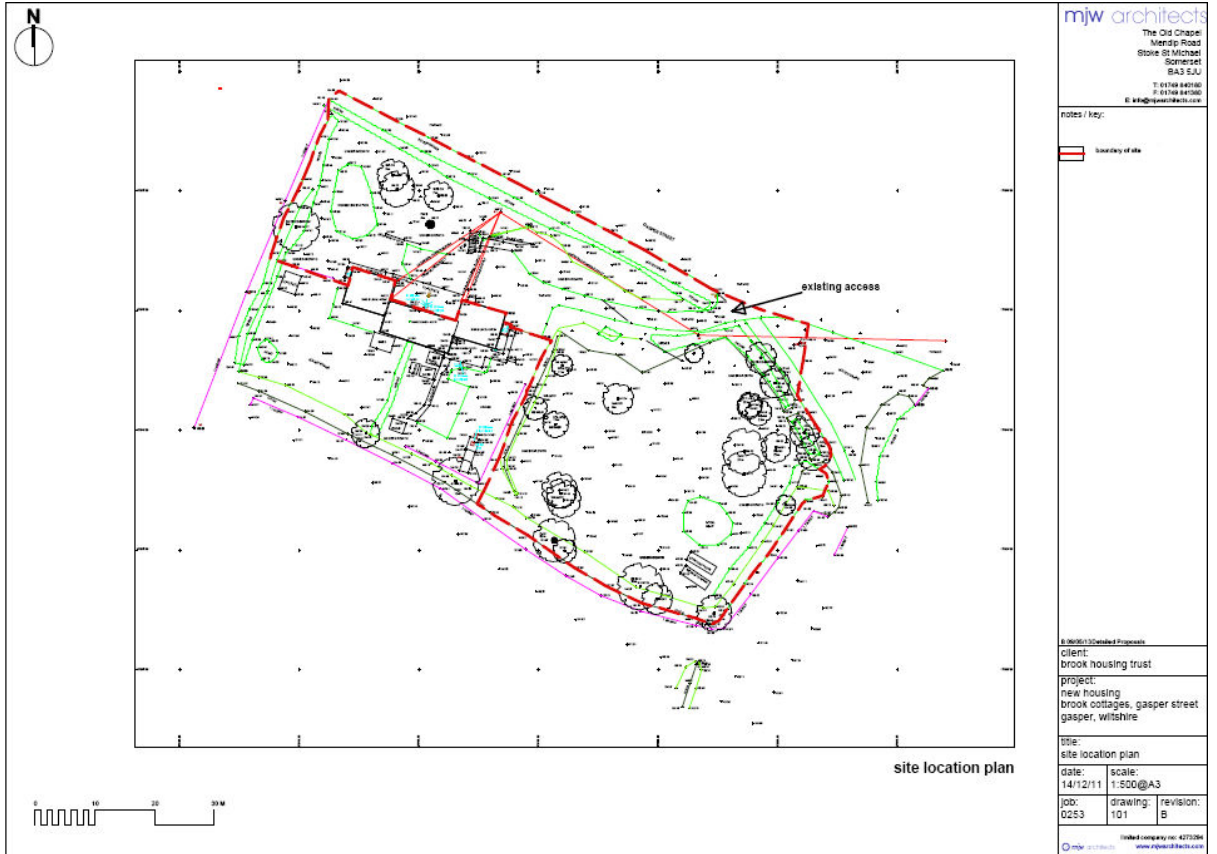
Rent arrears

Where the applicant has a history of uncleared rent arrears with any landlord, the Landlord may refuse the applicant.

No vacant possession guarantee

Where the Landlord has advertised a property which has since become unavailable.

Appendix 1: Plan



The common seal of WILTSHIRE COUNCIL
was affixed to this document in the
presence of:

Authorised signatory

Signed as a Deed by STOURTON WITH
GASPER PARISH COUNCIL acting by its
Chairman HARRY PARKER in the
presence of:

.....
Signature of Chairman

WITNESS SIGNATURE

WITNESS NAME

WITNESS ADDRESS

WITNESS OCCUPATION

SIGNED AS A DEED BY

NICHOLAS COLT HOARE Signature of Owner

IN THE PRESENCE OF:

SIGNATURE OF WITNESS

WITNESS NAME

WITNESS ADDRESS

WITNESS OCCUPATION

Appendix C

Draft conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 91 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 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.

3. No delivery of plant, equipment, materials, demolition or construction work or other building activity shall take place on Sundays or public holidays or outside the hours of 0800 & 1800 Monday to Friday and 0800 & 1300 on Saturdays.

Reason: In the interests of residential amenity.

4. No development shall commence on site until details of the proposed ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels details.

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

5. 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:

- location and current canopy spread of all existing trees and hedgerows on the land;
- full details of any to be retained, together with measures for their protection in the course of development;
- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- finished levels and contours;
- means of enclosure;
- all hard and soft surfacing materials;

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

6. 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 buildings 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.

7. 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.

8. Any gates shall be set back 4.5 metres from the edge of the carriageway, such gates to open inwards only.

Reason: In the interests of highway safety.

9. No work shall be undertaken which would result in the removal or long term degradation of the vegetated boundaries to the application site.

Reason: In the interests of ecology.

10. No part of the development hereby permitted shall be first occupied until the parking provision has been completed in accordance with the details shown on the approved plans. The parking provision shall be maintained for the purpose of parking at all times thereafter.

Reason: In the interests of highway safety.

11. No development shall commence on site until a scheme for the discharge of surface water from the site incorporating sustainable drainage details, to prevent surface water discharge onto the highway, 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.

12. The development shall be carried out in complete accordance with the following drawings:

Drawing reference: 109 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 15/05/2013

Drawing reference: 110 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 15/05/2013

Drawing reference: 110 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 15/05/2013

Drawing reference: 111 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 15/05/2013

Drawing reference: 113 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 15/05/2013

Drawing reference: 105 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 15/05/2013

Drawing reference: 106 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 15/05/2013

Drawing reference: 103 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 22/05/2013

Drawing reference: 104 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 22/05/2013

Drawing reference: 123 Revision B Date drawn: 14/12/11 Date received by Wiltshire Council: 22/05/2013

Reason: For the avoidance of doubt.

Informatives:

1. Ecology

The applicant should note that under the terms of the Wildlife and Countryside act 1981 (as amended) and the Habitats Regulations 2010, it is an offence to disturb or harm any protected species or to disturb or damage their habitat or resting place. Please note that this consent does not override the statutory protection afforded to any such species. In the event that your proposals could potentially affect protected species (e.g. through site clearance, tree felling and removal of dead wood) you should seek the advice of a suitable qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please see Natural England's website for further information on protected species.

2. Water supply and waste water connections

New water supply and waste water connections will be required from Wessex Water to serve this proposed development. Application forms and guidance information is available from the Developer Services web-pages at www.wessexwater.co.uk/developerservices

Please note that all sewer connections serving more than a single dwelling require a single adoption agreement with Wessex Water before the connection can be made.

Further information can be obtained from Wessex Water's New Connections Team by telephoning 01225 526222 for Water Supply and 01225 526333 for Waste Water.