

Planning Performance Agreement (MOU)

BULVERHYTHE HOUSING DEVELOPMENT

This Agreement is made on the 2ndrd December 2020

Between:

HASTINGS BOROUGH COUNCIL PLANNING SERVICES
Muriel Matters House Breeds Place, Hastings, East Sussex, TN34 3UY
(The Council)

And

HOUSING BOROUGH COUNCIL HOUSING OPTIONS
Muriel Matters House Breeds Place, Hastings, East Sussex, TN34 3UY
(The Applicant)

1. Recitals

- 1.1 Hastings Borough Council (the Council) is the Local Planning Authority for development within the area in which the site is located (Bulverhythe Housing Development Site). The Applicant is Hastings Borough Council Housing Department.
- 1.2 The Applicant has entered into formal pre-application discussions with the Council regarding the proposal to build around 190 new homes on land located off of Bexhill Road Hastings, The Applicant intends to submit an application to the Council for planning permission for the proposed development.

(the 'Application').

The Council and the Applicant are hereinafter referred to as the Parties

Additionally, the Applicant intends to submit an Environmental Impact Assessment Application (the 'EIA Application'; together with the Application, the 'Applications')

- 1.3 Both parties wish to ensure that the Applications are considered in a timely manner and as expeditiously as is practicable, having regard to the timetable set out in this Agreement and compliance with relevant statutory procedures.
- 1.4 This Planning Performance Agreement MOU ('Agreement') seeks to:
 - Agree requirements and timescales for consideration and determination of the Application for the purposes of providing the parties with a level of certainty as to the process and timescale to be followed, including, but not limited to the hiring of a Principal Planning Consultant;
 - Agree requirements and timescales for consideration and Determination of the EIA Application, and to agree the support mechanisms surrounding the EIA Application, including, but not limited to the hiring of a Principal Planning Consultant; and
 - Establish regular review mechanisms.
- 1.5 This Planning Performance Agreement is made pursuant to Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 93 of the Local Government Act 2003 and Part 1 of Chapter 1 of the Localism Act 2011.
- 1.6 This Agreement will not fetter the Council in exercising its statutory duties as

Local Planning Authority. It will not prejudice the outcome of the planning (and related) Applications or the impartiality of the Council.

- 1.7 This Agreement will not restrict or inhibit the Applicant from exercising the right of appeal under Section 78 of the Town and Country Planning Act 1990 (as amended)
- 1.8 The Council's Principal Planning Consultant will have conduct of this matter and will be the primary contact for the Council.

2 Term

- 2.1 This Agreement will be effective for the period up to either the determination date, if the application is refused, or to the date a resolution to grant is agreed at Planning Committee.
- 2.2 The term of this Agreement will be subject to review and may be extended if agreed in writing between the Applicant and the Council and at all times in accordance with clause 6.
- 2.3 The Agreement will be terminated where:
 - i. the Applicant submits an appeal in relation to the Application under Section 78 of the Town and Country Planning Act 1990 (as amended); or
 - ii. the Applications are called in by the Secretary of State
 - iii. the Applicant or Council fail to meet the terms of the PPA (MOU) and an extension of time is not agreed

3 Timescales and Mutual Obligations

- 3.1 The Parties will act with fairness and in good faith in respect of all matters related to the handling of the planning (and related) Applications and will work jointly in complying with their respective obligations under this Agreement.
- 3.2 The Parties will address expeditiously any requests for clarification and/or further information. For the avoidance of doubt, the Timetable attached to this PPA (MOU) set out working days within which to carry out certain actions for both Parties. If the provisions of this clause are triggered, then this Agreement will be extended by the period granted for response under this clause and the provisions of clause 6.
- 3.3 The Applicant will be required to proactively monitor the progression of the Applications, including, where relevant, the submission of consultation responses.
- 3.4 The Parties undertake to meet through Microsoft Teams and/or discuss

matters by telephone or e-mail in a spirit of co-operation and where necessary seek early resolution of any areas of misunderstanding or dispute.

- 3.5 The Applicant and the Council will use their reasonable endeavours to adhere to the timetable as detailed in Schedule 1 (the 'Timetable') for determination of the applications.
- 3.6 The Timetable will be reviewed between the Parties and amended in writing as necessary to take account of any relevant unforeseen matters that might arise. Any such amendment will be agreed by the Parties and in accordance with the provisions of clause 6.

4. The Council's Obligations

- 4.1 In addition to the Timetable and the preceding clause 3, the following clauses 4.2 – 4.7 shall apply.
- 4.2 The Council will advise the Applicant in a timely fashion of any issues that arise as a result of consultation responses received on the application(s) so that any matters arising can be addressed by the Applicant at the earliest opportunity.
- 4.3 The Council will appoint expeditiously any external consultants necessary to deal with aspects of the applications that the Council is unable to deal with internally.;
- 4.4 The Council will advise the Applicant and instruct the Council's Legal Department to progress the draft S106 Agreement in association with the Applicant's legal representative at the earliest opportunity, unless both parties agree otherwise;
- 4.5 The Council will seek to agree any pre-commencement conditions with the Applicant in accordance with the provisions of The Town and Country Planning (Pre-commencement Conditions) Regulations 2018, Section 100ZA(5). It is agreed that pre-commencement conditions shall only be used where there is a clear justification and the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission. Where possible the Council and the Applicant will work together to address these requirements at the application stage so as to minimise the use of pre-commencement conditions. Where an agreement cannot be reached, the application may be

refused.

- 4.6 The Council will report the application(s) to the relevant Planning Committee for determination within **[16]** weeks of receiving valid applications (as set out in the Timetable in Schedule 1), unless the extension provisions of clause 6.2 apply, or if not, then if the Parties agree otherwise in writing under the provisions of clause 6.1;

The Applicant's Obligations

- 4.7 The Applicant will review the Council's on-line application on a daily basis to check for consultation responses and any requirements associated with those responses.
- 4.8 The Applicant will pay the reasonable costs of external consultants appointed by the Council in addition to the Fee Cap set out at 5.1.

5. Fees

- 5.1 In consideration of this Agreement the Applicant agrees to pay the Council **costs at the rates set out at 5.2 up to the amount of £20,000 + vat(Fee Cap) for the 16 weeks and thereafter a rate of £50 per hour, if the application requires additional resource after the 16 week period has expired** to assist the Council in providing the level of service required to meet its obligations under this PPA (MOU) .

5.1.1 In the event that there is a delay in the submission of the application and the Principal Planning Officer is in position, the costs of such Principal Planning Officer time will be met by this agreement and the Fee Cap will increase accordingly.

5.1.2 The fees under 5.1 and 5.1.1 are in addition to the application fees payable under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, as amended.

5.2 Fees shall be charged on the basis of time spent at the following hourly rates

5.2.1 [REDACTED]

5.2.2 [REDACTED] per hour excl VAT (for between 3-5 hours per day) or as varied by the Parties in writing

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5.2.4 Other Costs set out within section 3.6

5.3 The Fee Cap referred to in clause 5.1 may be amended subject to a revised Fee Cap, agreed in writing between the Parties and following receipt of information from the third party to the S106. The Applicant will be required to pay the additional sums to the Council in respect of the legal services costs and the legal costs of the third party who will form a party to the S106 for the work conducted.

5.4 The Fee Cap referred to in clause 5.1 may also be amended if agreed in writing between the two parties in respect of external consultants' fees required in order to fully assess the applications.

6. Variation

6.1 No Variation to this Agreement is valid unless agreed by both Parties in writing and in the case of the Council, signed by an authorised signatory.

6.2 The provisions of clause 6.1 will not apply in the following specified situations where extensions are required:

- a. A re-consultation is required for amended plans;
- b. A re-consultation is required due to the submission of additional information; or
- c. If the external consultees do not respond within the 21 day consultation period
- d. If re publicity is required in respect of additional information received or amended plans submitted
- e. Additional information is required to make the application valid

6.3 It is agreed that the maximum extension permitted under clause 6.2 will be 21 days per extension.

6.4 Should a further extension be required in addition to 6.3 then the provisions of clause 6.1 will apply and each extension will need to be agreed in writing by the Parties.

7. Additional Provisions

7.1 The Parties shall comply with all relevant Acts of Parliament, Statutory Regulations, Codes of Practice and all legislation connected therein or made thereunder or any statutory modification or re-enactment thereof, including, but not limited to the Data Protection Act 2018.

7.2 This Agreement is governed and construed in accordance with the laws of England and Wales.

7.3 Notwithstanding any other provisions of the Agreement nothing in the Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

7.4 Nothing contained in this Agreement shall create a partnership within the meaning of the Partnership Act 1890 between the parties thereto or the relationship of principal and agent or the relationship of employer and employee between the parties.

7.5 This Agreement is for documentary purposes only and does not contain provisions which are intended to be legally enforceable.

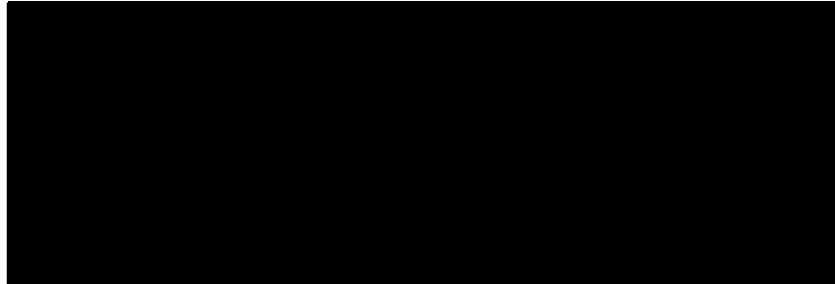
7.6 Any disputes between the Parties will be referred and decided upon by the Council's Chief Legal Officer.

7.6 The Council Officers to be consulted in respect of this project are as per Schedule Two

Schedule 1 – Timetable

SCHEDULE TWO

The council officers likely to be consulted in this application may include, but not be limited to:-

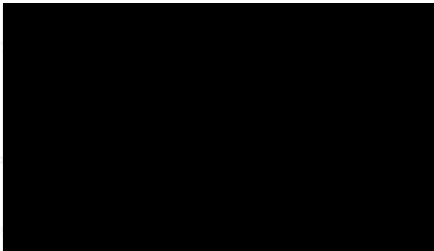


Signatures (One signed copy for each party)

Hastings Borough Council and the Applicant hereby agree to the content of this Planning Performance Agreement.

Hastings Borough Council (The Council)

Name:



Signature:

Position:

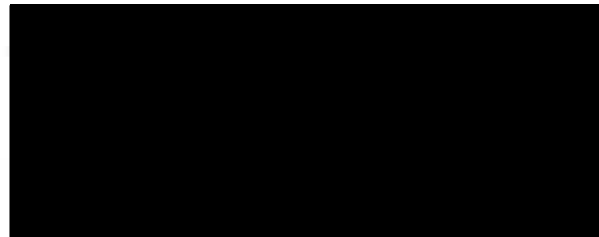
On Behalf Of:

Hastings Borough Council Planning Services
2.12.2020

Date:

Hastings Borough Council (The Applicant)

Name:



Signature:

Position:

On Behalf Of:

Hastings Borough Council Housing Options

Date:

2.12.2020

[REDACTED]

From: PlanningSSD <PlanningSSD@environment-agency.gov.uk>
Sent: 26 July 2021 13:27
To: [REDACTED]
Cc: DCComments
Subject: RE: Planning Consultation (Further Details):HS/FA/20/00966 - Bulverhythe Recreation Ground, Bexhill Road, St Leonards-on-sea

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear [REDACTED]

Thank you for re-consulting us on this application.

The document referenced below "Flood Risk Assessments: Climate Change Allowances" does not appear to be online. Please could you send this directly to us or let us know when it will be available online?

Also, whilst we appreciate the importance of this application and your request for a quick turnaround, we are unfortunately in a position with resources where the date of the 6th Aug might not be achievable. We will of course endeavour to provide a response as soon as we can but I would really appreciate it if we could agree an extension to this deadline so that we are able to fully review the documents and provide a full response.

If you have any questions, please do not hesitate to contact me.

Kind regards,

[REDACTED] | Environmental Planning and Engagement | Solent and South Downs
Environment Agency | Chichester Office, Oving Road, Chichester, West Sussex, PO20 2AG

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for people and wildlife**



From: DCComments@hastings.gov.uk [mailto:DCComments@hastings.gov.uk]
Sent: 23 July 2021 16:15
To: PlanningSSD <PlanningSSD@environment-agency.gov.uk>
Subject: Planning Consultation (Further Details):HS/FA/20/00966 - Bulverhythe Recreation Ground, Bexhill Road, St Leonards-on-sea

Dear Sir/Madam,

Application Number: **HS/FA/20/00966**
Site Address: **Bulverhythe Recreation Ground, Bexhill Road, St Leonards-on-sea**
Proposal: Redevelopment of site to provide 192 residential units and provision of associated landscaping, open space, access routes, parking and highway works

Planning Application Consultation

I refer to my previous letter regarding the above planning application, and write to ask whether you wish to add to or amend your consultation response based on the 20 July 2021 update to 'Flood Risk Assessments: Climate Change Allowances'. I would be pleased to receive your comments by 06 August 2021.

[REDACTED]
Development Management
Hastings Borough Council
Muriel Matters House, Breeds Place, Hastings, East Sussex, TN34 3UY
[REDACTED]
www.hastings.gov.uk/planning

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[REDACTED]

From: [REDACTED]
Sent: 17 June 2020 10:08
To: 'PlanningSSD@environment-agency.gov.uk'
Subject: FW: Planning Consultation:HS/EIA/20/00379 - Bulverhythe Recreation Ground, Bexhill Road, St Leonards-on-sea

Apologies for this, the documents are now available

From: [REDACTED]
Sent: 16 June 2020 13:59
To: [REDACTED]
Subject: RE: Planning Consultation:HS/EIA/20/00379 - Bulverhythe Recreation Ground, Bexhill Road, St Leonards-on-sea

Hi [REDACTED]

I just checked and the documents labelled as application form seems to have all the required information, it was originally made sensitive.

I have now changed it to public so they should be able to view it on the website.

[REDACTED]

From: [REDACTED]
Sent: 16 June 2020 13:14
To: [REDACTED]
Subject: FW: Planning Consultation:HS/EIA/20/00379 - Bulverhythe Recreation Ground, Bexhill Road, St Leonards-on-sea

They are right, there are no documents online – can you check and get back to them please?

From: PlanningSSD [mailto:PlanningSSD@environment-agency.gov.uk]
Sent: 16 June 2020 12:58
To: [REDACTED]
Cc: DCComments
Subject: RE: Planning Consultation:HS/EIA/20/00379 - Bulverhythe Recreation Ground, Bexhill Road, St Leonards-on-sea

Good afternoon,

Thank you for consulting us.

Please could you let me know where to access the documents for this application as there aren't any available online.

Kind regards,

[REDACTED] | Environmental Planning and Engagement | Solent and South Downs
Chichester Office, Oving Road, Chichester, West Sussex, PO20 2AG

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for people and wildlife



From: DCComments@hastings.gov.uk [mailto:DCComments@hastings.gov.uk]

Sent: 12 June 2020 13:30

To: PlanningSSD <PlanningSSD@environment-agency.gov.uk>

Subject: Planning Consultation:HS/EIA/20/00379 - Bulverhythe Recreation Ground, Bexhill Road, St Leonards-on-sea

Dear Sir/Madam,

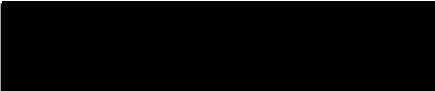

Application Number: **HS/EIA/20/00379**
Site Address: **Bulverhythe Recreation Ground, Bexhill Road, St Leonards-on-sea**
Proposal: Request for scoping test under Town and Country Planning (Environmental Impact Assessment) Regulations 2017 - Proposed development of 192 dwellings, 310 parking spaces and a new access off Freshfields

Planning Application Consultation

We welcome your comments and observations on the above Planning application which is available for inspection on our website at <http://publicaccess.hastings.gov.uk/online-applications/>.

Please email your comments to dccomments@hastings.gov.uk by 03 July 2020

If you require any further details to allow you to make your comments then please contact the case officer.


Development Management
Hastings Borough Council
Muriel Matters House, Breeds Place, Hastings, East Sussex, TN 3UY

www.hastings.gov.uk/planning

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