

REPORT OF MRS JENNY CLIFFORD, THE HEAD OF PLANNING, ECONOMY AND REGENERATION

S106 MATTERS, APPLICATIONS COMPRISING PHASE 1 OF DEVELOPMENT AT NW CULLOMPTON URBAN EXTENSION, RELATING TO APPLICATIONS 17/01170/MOUT, 17/01178/MFUL AND 17/01346/MOUT

(APPENDIX A TO INDIVIDUAL APPLICATION REPORTS WHICH FOLLOW).

Applicants:

- (1) Mr A Fieldman, Codex Land PCC Land Promotion Cell**
- (2) Mr B Smith, Persimmon Homes (South West) Ltd**
- (3) Mr J Turner, PM Asset Management**

Location:

- (1) Land at NGR 302186 108607, North of Rull Lane and to the West of Willand Road, Cullompton**
- (2) Land at NGR 302103 108277, West Of Willand Road, Cullompton**
- (3) Land at NGR 301536 107900, North of Tiverton Road, Cullompton**

Proposal:

- (1) 17/01170/MOUT Outline application for the erection of up to 200 dwellings, together with associated infrastructure and other works, including vehicular access, on land comprising northern portion of Phase 1 of the North West Cullompton Urban Extension**
- (2) 17/01178/MFUL Erection of 200 dwellings, formation of new access, provision of phase of link road, primary school site, open space, landscaping and associated works**
- (3) 17/01346/MOUT Outline hybrid planning application for the erection of 200 dwellings together with associated infrastructure and public open space and Full permission for portion of Link Road (land comprising southern portion of Phase 1 of North West Cullompton Urban Extension)**

REASON FOR REPORT:

To consider the overarching S106 package between the three planning applications currently under consideration, which together constitute the first phase of development at the NW Cullompton urban extension.

MATTERS FOR CONSIDERATION:

The heads of terms to be covered by the proposed S106 agreements that will be associated with these applications. Members should note that the S106 package set out in this report has not at this stage been apportioned between the applications in order to seek to equalise the S106 requirements. A further exercise to achieve this is required as some applications will contribute land for infrastructure (such as the land for the primary school and community facilities) whilst others will make financial contributions. In addition the route of the proposed road linking Tiverton Road and Willand Road runs through two of the three applications.

This apportionment of the overall S106 package between the three applications is also required due to the lack of an equalisation agreement between the applicants/ developers.

The negotiation of the S106 and its apportionment between the applications will also need to consider a fall-back position in the event that one or more of the planning permissions do not come forward for development. This fall-back position will need to prioritise the S106 package that could be secured should only one or two of the three applications be developed.

Delegated authority is sought to negotiate the apportionment of the S106 between the applications and how the S106 requirements are to be prioritised and apportioned as a fall-back position in the event that not all the applications come forward for development.

RECOMMENDATION:

- 1. That the Section 106 package of obligations to be applied in total across applications 17/01170/MOUT, 17/01178/MFUL AND 17/01346/MOUT, is agreed as follows:**
 - 1) 10% affordable housing across the whole of Phase 1**
 - 2) Timing, funding and delivery of a linking road between Willand Road and Tiverton Road including financial contribution towards its provision (latter, application 17/01170/MOUT)**
 - 3) Off-site highway works: improvements to J28 of the M5, pedestrian footway and crossing in Willand Road, traffic calming in Saxon Way, Plantagenet Way, Tudor Grove**
 - 4) Financial contribution of £3.0 million towards the Town Centre Relief Road**
 - 5) Transfer of 1.2 hectares of land for primary school (with access and servicing) and school sports pitch to Devon County Council**
 - 6) Financial contribution of £672,361 towards St Andrews primary school expansion**
 - 7) Financial contribution of £1,577,972 toward delivery of the new primary school**
 - 8) Financial contribution of £150,000 towards early years provision**
 - 9) Financial contribution of £795,072 towards secondary provision**
 - 10) Financial contribution of £87,339 towards special educational needs provision**
 - 11) Financial contribution of £231,224 towards expansion of doctors surgery**
 - 12) Provision and maintenance of Rull Hill green infrastructure to include landscaped areas, multi-use games area and play area**
 - 13) Upgrade to existing public rights of way (Goblin Lane and bridleway between Willand Road and Rull Lane)**
 - 14) Transfer of land to Culm Valley Integrated Health Centre (College Surgery) for a health garden**
- 2. That it be agreed that the following Phase 1 items be delivered in Phase 2 to aid viability:**
 - 1) Financial contribution of £1.2 million towards bus improvements**
 - 2) Financial contribution of £96,000 towards recycling facilities**
 - 3) Provision of land for community building at the beginning of phase 2 (community building itself in Phase 2)**
 - 4) Provision of additional sports pitch**
 - 5) Allotments and second community orchard**
- 3. That delegated authority be granted to the Head of Planning, Economy and Regeneration to negotiate the apportionment of the various obligations between**

the three individual Section 106 Agreements and the exact composition of the Rull Hill green infrastructure and enter into S106 agreements accordingly.

- 4. That delegated authority be granted to the Head of Planning, Economy and Regeneration in consultation with the Chair and Vice Chair of Planning Committee to negotiate and enter into a fall-back position in the S106 agreements that seeks to prioritise and apportion S106 requirements in the event that one or more of the planning applications in question do not come forward for development.**

RELATIONSHIP TO CORPORATE PLAN:

The effective operation of the planning function of the Planning, Economy and Regeneration Service including the processing of applications is central to achieving priorities in the Corporate Plan. The planning applications at NW Cullompton are part of a wider strategic development site, the delivery of which will contribute towards Corporate Plan priorities.

FINANCIAL IMPLICATIONS: The planning applications in question will make significant financial contributions towards on and off site infrastructure as part of the NW Cullompton urban extension. Negotiations over viability in connection with the applications have been taking place for some time.

LEGAL IMPLICATIONS: To secure on and off site infrastructure and ensure that these applications address the policy, S106 agreements will need to be entered into. The terms of these S106 agreements will need to meet the requirements of the legal tests within the Community Infrastructure Levy Regulations.

RISK ASSESSMENT: Planning policy sets out the basis upon which development at NW Cullompton is to come forward including the infrastructure required to make the development acceptable in planning terms. The three current planning applications that together constitute phase 1 of the wider urban extension are required to deliver a range of on and off site infrastructure which all the development will rely upon. The determination of these applications will therefore need to consider the infrastructure requirements across the whole suite of three applications as well as how they are to be delivered on an application by application basis for the benefit of all three. In the absence of a landowner/ developer equalisation agreement, this will need to be achieved via S106 agreement necessitating complexity to the agreement. In addition the applicants have indicated an unwillingness to submit either a single planning application for phase 1 or a single S106 agreement to cover all three applications. The S106 agreements for each of the applications must therefore ensure all the required infrastructure can be delivered whilst also being capable of standing alone in the event that one or more of the applications is not delivered. This will require a degree of complexity and coordination between them through a further negotiation process. The report seeks to establish the overall package of S106 measures to be delivered by the group of three applications and establish the approach to further negotiations over individual S106 agreements via delegated authority. A comprehensive approach to S106 agreements arising from these applications will reduce risk that the applications will not mitigate their impact as required by planning policies.

EQUALITY IMPACT ASSESSMENT: No equality issues identified for this report, with the exception that 10% affordable housing is proposed within these applications which comprise the first 600 dwellings out of an overall development allocation which proposes 1350 dwellings. This is significantly less than the policy requirement of 35% (28% in the Local Plan Review) and arises as a result of the frontloading of other essential infrastructure required by the development including significant highway works/ contributions. It is considered justified in this instance due to the need to secure the provision at an early stage in the overall urban extension of this essential infrastructure, which will benefit not only the

occupiers of the new development, but also the wider community. Viability assessment work undertaken anticipates greater affordable housing provision within the remainder of the urban extension which is proposed to come forward as a second phase.

1. INTRODUCTION

This report sets out the overarching Section 106 package of obligations in respect of the 3 applications. The infrastructure requirements to deliver the NW Cullompton urban extension are complex and are not confined to within the boundaries of the individual applications.

The approach being taken therefore is to define a total Section 106 “package” in respect of the whole of the Phase 1 development (the 3 applications). Members are requested to consider the package as a whole, rather than considering which elements of infrastructure are being delivered by each applicant.

Once the total package has been agreed, the obligations will be apportioned between the 3 applications and the agreed apportionments included within the 3 individual Section 106 Agreements.

2. PROPOSED DEVELOPMENT

Three applications have been submitted for 200 dwellings each with on and off-site infrastructure. Together these form Phase 1 of the NW Cullompton urban extension. Two of these applications are in outline and one is a full application. The Planning Committee Agenda includes separate reports on each of the three applications.

1. 17/01170/MOUT Outline application for the erection of up to 200 dwellings, together with associated infrastructure and other works, including vehicular access, on land comprising northern portion of Phase 1 of the North West Cullompton Urban Extension
2. 17/01178/MFUL: Full application for 200 dwellings on land to the south of Rull Lane to include the transfer of land for a new primary school and community building; and
3. 17/01346/MOUT: Outline application for 200 dwellings on land to the north of Tiverton Road. This application is a “hybrid” application being in outline except for the portion of the main spine road that meets the adjacent land parcel under reference 17/01178/MFUL.

All three applications are subject to the signing of Section 106 Agreements for the provision of infrastructure in respect of Phase 1. Whilst each applicant will enter into separate S106 Agreements in respect of their own applications, the S106 obligations have been considered as a whole across the 3 parcels of land and will then be apportioned between the parties in the absence of an applicant/ developer equalisation agreement. Once the overall S106 package between these 3 applications has been agreed, delegated authority is sought in relation to the apportionment between the S106 individual application S106 agreements and for their prioritisation and negotiation as a fall-back position in the event that one or more of the 3 application do not come forward for development.

3. BACKGROUND AND POLICY CONTEXT

The Mid Devon Allocations and Infrastructure DPD (Local Plan 2) was adopted in 2010 and allocates sites for development in order to meet the Core Strategy growth requirements.

North West Cullompton is the focus of the one of the two large strategic allocations in the

AIDPD. Policies AL/CU/1 to AL/CU/7 set out the criteria for development of this allocation. Policy AL/CU/1 allocates a site of 74.8 hectares for mixed use development to include 1,100 dwellings with 35% affordable housing and 5 pitches for gypsies and travellers, plus 4,000 square metres of B1 employment space. The policy includes provisions in respect of transport, environmental protection, community facilities, carbon reduction and air quality, phasing and masterplanning.

Policies AL/CU/2 to AL/CU/7 sets out specific requirements for the delivery of the urban extension in respect of transport (AL/CU/2), environmental protection and green infrastructure (AL/CU/3), community facilities (AL/CU/4), carbon reduction and low emissions (AL/CU/5), phasing (AL/CU/6) and masterplanning (AL/CU/7).

Following allocation of the site under the AIDPD, the North West Cullompton Masterplan was adopted as a Supplementary Planning Document in 2016. The SPD is a material consideration in determining planning applications on the site.

The adopted masterplan sets a strategic vision for the allocation and aims to guide development to achieve a high quality, distinctive and well integrated place. It sets out the major land uses and infrastructure to be accommodated on the site and provide consistency of approach in relation to design. The masterplan is intended to be flexible and to allow alterations to the policy provisions to reflect further analysis and studies.

Since adoption of the AIDPD, further analysis and public consultations have taken place. The adopted masterplan supports the AIDPD policies and sets out the following:

1. Boundary between the developable area and green infrastructure changed to allow the development of 1,200 houses and 32 hectares of green infrastructure.
2. Total floorspace of the employment area reduced to 10,000 square metres, in line with the recommendations in the Council's Employment Land Review 2013.
3. Route of the link road revised to follow the topography of the site and additional requirement for traffic calming measures in Willand Road included.
4. Sports pitch provision located close to the primary school with the third pitch being provided off-site.
5. Phasing of the development and timings of infrastructure provision set out.

The masterplan SPD sets out a number of guiding principles to be taken into account in any planning applications for development on the site. These guiding principles are grouped around a number of key concepts: urban design; movement and transport; landscape; open space and recreation; socially equitable; economy and employment; energy and resource efficiency; and character.

The masterplan SPD also sets out the infrastructure requirements and phasing/timing of delivery of infrastructure is set out below. The infrastructure delivery requirements are allocated to Phases 1 (first 500 dwellings) and 2 (remaining 620 dwellings). For the purposes of this report, where Phase 1 development is referred to, this is in respect of the first 600 dwellings the subject of the three applications, Phase 2 is the remainder of the development of 750 dwellings (increased total following the revised policies in the Mid Devon Local Plan Review).

The emerging Mid Devon Local Plan Review identifies Cullompton as an area for strategic growth. Policies CU1-CU6 allocates an extended area for the NW Cullompton allocation (100 hectares) to provide 1,350 dwellings with a reduced target for affordable housing of 28%. The revised policies also make changes to the phasing and timing for the provision of infrastructure and services. The Local Plan Review has been through examination but the Inspector's report has not yet been received at the time of writing this report and the Plan

has not yet been adopted. At the time of writing this report, the Local Plan Review carries only limited weight in consideration of planning applications.

The Phase 1 applications as submitted consist of 600 dwellings divided equally between 3 land parcels (200 dwellings each). Between them, the 3 applications will deliver a suite of Section 106 obligations in order to provide the necessary infrastructure to make the development acceptable in planning terms.

The applicants have also submitted a viability report to demonstrate the level of Section 106 obligations that the development can provide whilst remaining viable. Analysis of the report is set out in the viability section below.

A pre-submission version of the Neighbourhood Plan has been prepared for Cullompton and was the subject of public consultation in late 2017. The Plan has yet to be finalised and submitted for Examination and as such is currently considered to have little weight in the determination of these applications. The plan seeks to emphasise mitigation of development traffic impact through early highway infrastructure provision, pedestrian and cycle connectivity and flood attenuation. Timely and coordinated provision of infrastructure is sought to reduce impact upon existing infrastructure. The draft plan also seeks the required quota of affordable housing and for it to be visually indistinguishable from other housing types, will set parking standards and seeks to maximise public open space with provision for allotments, community orchards and composting in larger developments.

4. SECTION 106 HEADS OF TERMS

The masterplan SPD sets out infrastructure requirements for the urban extension as a whole and breaks these down into phases. The statutory consultees to the 3 applications have also requested/provided more detail on specific infrastructure requirements. The items are listed at the start of this report.

Members are requested to consider the package of Section 106 obligations across the three applications as a whole. Delivery of the infrastructure package is not equal on a site by site basis, for example the spine road between Tiverton road and Willand Road is in 2 of the 3 land parcels, and the school site is entirely within one land parcel. Therefore, the Section 106 obligations will need to be equalised between the 3 applicants.

Each applicant requires a stand-alone Section 106 Agreement, rather than one agreement for the whole of Phase 1. This means that the obligations will need to be apportioned between the 3 Section 106 Agreements. How the obligations will be apportioned between the 3 applicants is complex and will need to be subject to further, more detailed Section 106 negotiations. Members are requested to consider delegating these more detailed negotiations to the Head of Planning, Economy and Regeneration.

The Masterplan SPD sets out a number of Section 106 items and phasing of delivery.

| Item | Amount/delivery | Trigger |
|---|--|---|
| Affordable housing | On site delivery 35% subject to viability* | Phased with development |
| Provision of section of road from Willand Road to the primary school site | On site delivery | Before occupation of 50 dwellings or within 18 months of commencement |

| | | |
|---|---|---|
| Provision of section of road from primary school site to Persimmon/PMAM land boundary | On site delivery | Before occupation of 100 dwellings or within 30 months of commencement |
| Opening of full length of road linking Willand Road and Tiverton Road | On site delivery | Before occupation of 500 dwellings (sale of land intended to allow early delivery of link road - money to be paid into escrow account); non-ransom covenants to be included in Persimmon and PMAM S106s |
| Traffic calming Willand Road, footway and pedestrian crossing | Off-site delivery | Phase 1 |
| Traffic calming Saxon Way, Plantagenet Way, Tudor Grove | Off-site delivery | Phase 1 |
| Mitigation works to existing J28 | Off-site delivery | Phase 1 |
| Town Centre Relief Road | Financial contribution | Phased with delivery |
| Upgrade of existing PROWs | On/off-site delivery - design work being undertaken | Phased with delivery from occupation of 1st dwelling |
| <i>Bus service enhancements</i> | <i>Financial contribution - £1.2m / 5 years</i> | <i>Phased with development</i> |
| Bus stops/shelters on site | On site delivery | Phased with development |
| Transfer land for school site (2.1 ha) with legal right of access | Transfer to DCC | Before commencement of Phase 1 |
| Provision of construction access to school site | On site delivery | Within 6 months of commencement of Phase 1 |
| Provision of services to school site | On site delivery | Before occupation of 50 dwellings or within 18 months of commencement |
| Provision of primary school building (2nd 400 dwellings) | Financial contributions 2 x £788,986 towards delivery of new school | Prior to occupation of 50 dwellings |
| Provision of expansion of St Andrews primary school (1st 200 dwellings) | Financial contribution £672,361 towards expansion of St Andrews | Prior to occupation of 50 dwellings in Phase 1 |
| Provision of school playing pitch | Transfer of land to DCC | Before commencement of Phase 1 |
| Provision of Early Years facilities | Financial contribution £50,000 x 3 | Phased with development |
| Provision of expansion of secondary school | Financial contribution £265,024 x 3 | Phased with development |
| <i>Transfer of serviced and accessible land for community building</i> | <i>Land transfer</i> | <i>Before occupation of 50 dwellings or within 18 months of commencement</i> |

| | | |
|--|--|---|
| Rull Hill GI (<i>allotments, community orchard, MUGA, one equipped play area</i>) with maintenance | On site delivery | Phase 1 before occupation of 500 dwellings |
| <i>Rull Hill GI playing pitch with access and maintenance</i> | <i>On site delivery</i> | <i>Phase 1 before occupation of 500 dwellings</i> |
| On site GI and POS with maintenance | On site delivery | Phased with development |
| Surgery health garden | On site delivery | Phase 1 |
| Improvements to waste recycling facilities | Financial contribution £32,000 x 3 | Phased with development |
| NHS surgery expansion | Financial contributions Persimmon £86,024 Codex/PMAM £363 per dwelling (averaged as outline) | Phased with development |
| SUDS and drainage | On/off-site delivery | Before occupation in each phase |

* See Viability section below

Items in italics to be delivered in Phase 2 – See Viability section below

5. INFRASTRUCTURE REQUIREMENTS

a) Affordable housing

Policy AL/CU/1 of the Allocations & Infrastructure DPD sets a level of 35% affordable housing across the NW Cullompton urban extension allocation, subject to viability. This level of affordable housing requirement would be reduced to 28% once the Local Plan Review has been adopted.

Phase 1 of the development has a requirement to frontload the delivery of substantial items of infrastructure such as the primary school site and the entire linking road between Willand Road and Tiverton Road (see table above). The level of affordable housing to be provided on the development is subject to viability. Based on their own viability calculations, the applicants have offered to deliver 10% affordable housing across the 3 application sites, with an expectation that a higher percentage of affordable housing will be able to be delivered on Phase 2. The affordable housing would be delivered as 50% affordable rent and 50% discounted open market.

Your officers have appointed consultants to scrutinise the submitted viability report. Their conclusions are set out within the Viability section below. They have confirmed that a policy compliant level of affordable housing on Phase 1 is not viable.

Mid Devon's Housing Enabling officers have confirmed the need for affordable housing to be provided in Cullompton and have requested a split of 60% affordable rent and 40% affordable home ownership.

b) Linking road between Willand Road and Tiverton Road

The masterplan SPD sets a requirement to deliver the entire length of the linking road between Willand Road and Tiverton Road. The road would be delivered on site by the

developers of the southern and central parcels of land (PM Asset Management and Persimmon) but the cost apportioned between all 3 applicants.

Triggers in the Section 106 Agreement as set out in the masterplan SPD require the road to be delivered in phases:

- 1) from Willand Road to the primary school site prior to occupation of no more than 50 dwellings on Persimmon's land parcel, or within 18 months of commencement of development on this land, whichever is the sooner;
- 2) from the primary school site to the boundary of Persimmon's site with the land parcel controlled by PM Asset Management prior to occupation of no more than 100 dwellings on Persimmon's land parcel, or within 30 months of commencement of development on this land, whichever is the sooner;
- 3) the opening of a through route linking Willand Road to Tiverton prior to the occupation of no more than 500 dwellings.

It is anticipated that the road will be delivered in advance of the trigger of 500 dwellings, as the Section 106 Agreement will include provision for money from the sale of land to be paid into an escrow account and used to fund delivery of the road. The funding, timing of and arrangements for the delivery of the road would be secured through the S106 agreements.

The individual planning applications (Persimmon 17/01178/MFUL and PM Asset Management 17/01346/MOUT) contain full details of the road for its entire length through the Persimmon parcel and the first 105 metres into the PM Asset Management parcel, including details of the connection between the two parcels. The Section 106 Agreement will also include non-ransom provisions to ensure that the road can be delivered in its entirety across different land ownerships.

c) Off-site highway works

The masterplan SPD contains requirements for off-site highway works to be carried out to ensure the existing road network is not adversely affected by the development. These works comprise:

- 1) The provision of a pedestrian footway across the site frontage along Willand Road from the new link road access down to St George's View, with a crossing point at the bus stop near St George's View;
- 2) Traffic calming works in Saxon Way, Plantagenet Drive, and Tudor Grove, to prevent "rat-running";
- 3) Minor realignment works to the road leading to Junction 28 of the M5 motorway.

These off-site highway works will be delivered directly by the developers.

In addition, the applicants will be making a financial contribution of £3 million towards delivery of the Town Centre Relief Road, which would also be secured through S106 agreement. Policies set out the requirement for developer contributions towards the delivery of this road which will not only provide increased capacity at J28 of the M5, but also air quality and other environmental enhancement within the town centre, in accordance with the agreed Air Quality Action Plan for the Cullompton Air Quality Management Area..

d) Education

Policy AL/CU/4 of the Allocations & Infrastructure DPD requires 2.1 hectares of land to be transferred to Devon County Council for a new primary school and playing pitch, with legal

right of access at no cost to the Council. The trigger set out in the masterplan SPD for the transfer of the land is before commencement of any development.

The masterplan SPD provides for the primary school land to be provided with a construction access within 6 months of commencement of the development, and the site to be serviced before the occupation of no more than 50 dwellings on the Persimmon land or within 18 months of commencement of development on that land parcel, whichever is the sooner. The masterplan SPD provides for construction of the primary school to commence prior to the occupation of the final dwelling in Phase 1 (500 houses).

In addition to the transfer of the land, Devon County Council as Education Authority are seeking financial contributions totalling £1,577,972 towards the cost of provision of the school, being a proportion sought from the delivery of 400 dwellings, the remainder of the money for provision of the school being sought from other sources, including Phase 2 of the NW Cullompton urban extension. As the new school will not be delivered in time to provide pupil places for the first 200 dwellings, In order to ensure that school places are available for the initial 200 dwellings to be delivered on the site, a financial contribution of £672,361 is being sought for the expansion of St Andrews primary school.

The development will also increase the demand for Early Years facilities and for secondary school education and financial contributions are being sought for the expansion of Early Years places (£150,000) and expansion of Cullompton Community College (£795,072).

e) Green infrastructure and community facilities

Policy AL/CU/3 of the Allocations and Infrastructure DPD requires an area of 28 hectares for strategic green infrastructure (GI) to be provided, to include a mix of parkland and open space, as well as 0.7 hectares of children's play, 2.8 hectares of sports pitches and 0.7 hectares of allotments, as well as enhancement of existing public rights of way.

The masterplan SPD expands on the GI and community facilities to be provided within Phase 1 of the development (prior to the occupation of no more than 500 dwellings). The masterplan SPD specifies GI of 7.4 hectares at Rull Hill to include one sports pitch, 0.7 hectares of allotments, and an equipped play area (0.45 hectares), as well as other facilities such as mixed use games area (MUGA).

As a substantial financial contribution is required towards delivery of the Town Centre Relief Road, delivery of a policy compliant scheme is not viable (see viability section below). It is recommended that delivery of some of the recreational aspect of the Rull Hill GI is pushed back to Phase 2. It is anticipated that the Phase 1 applications will deliver a multi use games area (MUGA) and a play area and the Rull Hill GI will be landscaped. However, the exact mix and size of each of the components of the Rull Hill GI will need be agreed (in consultation with Cullompton Town Council) following submission of a GI Strategy.

The masterplan SPD provides for 1 hectare of serviced and accessible land for a community building adjacent to the school site to be transferred by completion of Phase 1 (500 dwellings), with construction commencing in Phase 2. As this building cannot be delivered until Phase 2 anyway, it is recommended that transfer of the land is delayed until the beginning of Phase 2.

In addition, an area of land adjacent to the Health Centre on the Persimmon land will be transferred to the Health Centre to be used as a community health garden. This is to be secured through S106 agreement.

Each individual application will provide areas of public open space and green infrastructure on site and ongoing maintenance of these areas will also need to be secured by Section 106 Agreement.

f) Other financial contributions

During the application process, requests were made by NHS England and Devon County Council for further financial contributions to be made towards the provision of infrastructure to serve the development.

NHS England requested a financial contribution of £231,224 towards expansion of doctors' surgeries in Cullompton to meet the demands of the development.

Devon County Council requested £96,000 towards the provision of improved waste recycling facilities to meet the additional demands on their services from occupation of the development. To aid the viability position, this contribution has also been delayed until Phase 2.

g) CIL Regulations

Under Regulation 122 of the CIL Regulations 2010, and as set out in Planning Practice Guidance, planning obligations should only be sought where they meet all of the following tests:

- 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.

The planning obligations set out in this report are considered to meet the Regulation 122 tests.

6. VIABILITY

The applicants have submitted viability reports that conclude the development is not viable with a policy compliant level of affordable housing (35%, or 28% in the Local Plan Review) if the Council's requirements for on and off-site infrastructure are delivered, including the spine road, provision of the primary school land and a contribution towards the Town Centre Relief Road (see table above). The viability reports conclude that the development can only support a level of 10% affordable housing across Phase 1. A viability exercise undertaken across the whole of the NW Cullompton allocation indicates an anticipated uneven spread to affordable housing provision between phases 1 and 2. It is anticipated that Phase 2 will be able to deliver more affordable housing as the infrastructure burden on the second phase is much less. It is anticipated that the NW Cullompton urban extension as a whole can deliver approximately 20% affordable housing across the whole site.

Your officers have commissioned consultants to check and evaluate the submitted viability reports. The Council's consultants have scrutinised the assumptions within the report and detailed negotiations have taken place between the parties. The consultants are in agreement over the majority of the inputs into the viability assessment work. There are two areas where agreement has not been reached: the value of revenues from the sale of the properties and benchmark land values. However, the offer from the applicants is reflective of the land values that the Council's consultants have specified as acceptable, and the two consultants are close on the revenues figure.

In accordance with the provision of the NPPF 2019, and in order to ensure delivery of the developments, viability must be considered. Whilst it is recognised that an affordable housing percentage of 10% is not policy compliant, the applications will support a significant amount of infrastructure considered to be critical including the new road linking Tiverton Road and Willand Road, other off site highway improvements including a financial contribution towards the delivery of the Town Centre Relief Road. This is important for delivery of the remainder of the NW Cullompton urban extension and other residential developments in Cullompton. Taken together, the package of infrastructure measures proposed as part of the phase 1 applications including significant contribution towards the town centre relief road is considered to weigh in favour of the applications even with a reduced affordable housing percentage at this first phase of development.

The delay of the specified community facilities and financial contributions, as well as delivery of a higher affordable housing percentage, to Phase 2 improves the overall viability of Phase 1 and maintains the affordable housing percentage at 10% for this Phase.

The viability assessments are available for Members to view before the committee date.

7. CONCLUSION

Whilst not policy compliant in terms of affordable housing, the Section 106 package as set out in this report is considered to be reasonable to support delivery of the developments and deliver essential infrastructure for the developments and the town. The planning balance section of each of the three separate reports on the agenda sets out the weight to be given to the Section 106 package for each of the applications.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.