



TOWN AND COUNTRY PLANNING ACT 1990 (As Amended)

**TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND)
RULES 2000**

Appeal by Persimmon Homes Severn Valley against the non-determination of the outline planning application for up to 190no. homes (including 50% affordable homes) to include flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre, up to 500sqm of Class E floorspace, allotments, car parking, earthworks to facilitate sustainable drainage systems, orchards, open space comprising circa 70% of the gross area including children's play with a minimum of 1no. LEAP and 2no. LAPS, bio-diversity net gain of a minimum of 20% in habitat units and 40% in hedgerow units, and all other ancillary infrastructure and enabling works with means of access from Shiners Elms for consideration. All other matters (means of access from Chescombe Road, internal access, layout, appearance and landscaping) reserved for subsequent approval.

Land at Rectory Farm (north), Chescombe Road, Yatton, North Somerset

**PLANNING OBLIGATIONS COMPLIANCE STATEMENT
13th November 2024**

PLANNING INSPECTORATE REFERENCE: APP/D0121/W/24/3343144

NORTH SOMERSET COUNCIL REFERENCE: 23/P/0664/OUT

Legislative Framework

1. The legislative framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990 and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (“the CIL Regulations”). Government Policy on planning obligations is set out in paragraphs 55-58 of the NPPF.
2. Regulation 122(2) of the CIL Regulations states that a planning obligation: *“may only constitute a reason for granting planning permission for the development if the obligation is—*
 - (a) necessary to make the development acceptable in planning terms;*
 - (b) directly related to the development; and*
 - (c) fairly and reasonably related in scale and kind to the development.”*
3. Paragraph 55 of the NPPF says: *“Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition”*. Paragraph 57 of the NPPF emphasises that planning obligations must only be sought where they meet all tests in Regulation 122(2) of the CIL Regulations.

The Development Plan

4. Policy CS34 (*‘Infrastructure delivery and development contributions’*) of the North Somerset Core Strategy and Policy DM71 (*‘Development contributions, Community Infrastructure Levy and viability’*) of the North Somerset Sites and Policies Plan Part 1 (Development Management Policies) set out the requirement and mechanism to seek developer contributions to mitigate the impacts of a development proposal.
5. Policy CS34 says development contributions will be collected through Section 106 agreements or through a Community Infrastructure Levy. Policy DM71 says: *“Section 106 Agreements will be sought in line with the appropriate regulations and will seek to deliver or address matters that are necessary to make the development proposal acceptable in planning terms and to ensure that new development is supported by the necessary investment in and/or provision of infrastructure and services to meet any additional demand.”* Policy DM71 repeats the planning obligations tests set out in paragraphs 2 and 3 of this statement.
6. The Council’s *‘Development Contributions’* Supplementary Planning Document January 2016 adds further detail to implement policies CS34 and DM71.
7. While policies CS34 and DM71 are the basis and mechanism to secure planning obligations, other planning policies from the development plan apply

to subject-specific matters and the requirements that are necessary to make the development acceptable in planning terms.

8. The planning obligations in the final engrossment copy of the Section 106 Agreement (for the avoidance of doubt, the version sent by Mr Charlton for the appellant to Mr Pridmore for the LPA on Tuesday 5 November 2024) comprise the following topics:
 - i) 50% of the dwellings to be as 'affordable housing' to be on site as part of the development (noting this is split between what has been defined as 'policy affordable housing units' and 'additional affordable housing units').
 - ii) Open space (as defined in the second schedule of the agreement)
 - iii) Contribution of £180.00 per dwelling (£34,200.00) to be flexibly spent on travel information packs, bus/train taster tickets for residents and/or towards a bike/cycling equipment.
 - iv) Contribution of £707,393.13 towards home to school transport costs
 - v) Contribution of £160,000.00 for public transport improvements
 - vi) Contribution of £44,000.00 for improvements to the Strawberry Line
 - vii) Contribution of £3,400.00 for a Traffic Regulation Order
 - viii) Contribution of £2,200.00 to improving the lining at local junctions linked to the site
 - ix) Contribution of £5,500.00 towards traffic calming measures on Mendip Road
 - x) Contribution of £1,048 towards the cost of monitoring contributions
9. The Council's Community Infrastructure Levy (CIL) became operational on 18 January 2018. The application is also liable for CIL.

Summary of Planning Obligations

10. The table below summarises the planning obligations that are included in the Section 106 Agreement and sets out the relevant planning policies and Supplementary Planning Documents that form the justification for the obligation.

Infrastructure requirement	Specific relevant development plan policies	Relevant Supplementary Planning Documents
Affordable Housing	CS16: Affordable Housing DM34: Housing Type and Mix CS34: Infrastructure Delivery DM70: Development Infrastructure DM71: Development contributions	Affordable Housing SPD 2013 Development contributions SPD 2016
Provision of public open space	CS9: Green Infrastructure DM8: Nature Conservation DM9: Trees and Woodland DM10: Landscape	Development contributions SPD 2016 Biodiversity and Trees SPD 2005
Contribution towards public transport taster/cycle provision	CS10: Transport and Movement DM24: Safety, traffic and provision of infrastructure associated with development CS34: Infrastructure Delivery DM70: Development Infrastructure DM71: Development contributions	Development contributions SPD 2016
Contributions towards School Travel for Secondary School Pupils and SEN pupils	CS25: Children, Young People and Higher Education CS34: Infrastructure Delivery DM70: Development Infrastructure DM71: Development contributions	Development contributions SPD 2016
Contributions towards Public Transport service provision	CS10 (Transport and Movement) of the CS and DM24 (Safety, traffic, and provision of infrastructure, etc. associated with development) and DM27 Bus Accessibility criteria	Development contributions SPD 2016
Contribution towards Strawberry Line improvements	CS10 (Transport and Movement) of the CS and DM24 (Safety, traffic, and	Development contributions SPD 2016

	provision of infrastructure, etc. associated with development)	
Contribution towards a traffic regulation order	CS10: Transport and Movement DM24: Safety, traffic and provision of infrastructure associated with development CS34: Infrastructure Delivery DM70: Development Infrastructure DM71: Development contributions	Development contributions SPD 2016
Local lining improvements contribution	CS10: Transport and Movement DM24: Safety, traffic and provision of infrastructure associated with development CS34: Infrastructure Delivery DM70: Development Infrastructure DM71: Development contributions	Development contributions SPD 2016
Traffic calming measures	CS10: Transport and Movement DM24: Safety, traffic and provision of infrastructure associated with development CS34: Infrastructure Delivery DM70: Development Infrastructure DM71: Development contributions	Development contributions SPD 2016

Infrastructure requirement assessed against CIL tests

11. The following table sets out how the planning obligations comply with the three tests set out in Regulation 122 of the CIL regulations and repeated in the NPPF.

Topic	Test criteria		
	<i>Necessary to make the development acceptable in planning terms</i>	<i>Directly related to the development</i>	<i>Fairly and reasonably related in scale and kind to the development</i>
Affordable Housing	Without a planning obligation to secure affordable housing the proposal would fail to meet the housing needs of the district and the requirements of the development plan and SPD policy.	The provision of on-site affordable housing means the provision is directly related to the proposal.	The level of affordable housing accords with the requirements of the relevant policies. It should be noted that Policy CS16 sets 30% as a benchmark and that there is no upper limit to the potential affordable housing contribution in policy.
Provision of public open space	This provision is necessary to secure the proposed public open space for public use and to ensure its long terms maintenance and retention.	The proposed open space is part of the public benefits offered as part of the development	Without securing the long term future of this part of the site it would be a remnant without any function. Public open space is an appropriate use for it that would go a small way to off-setting other harms identified as arising from the proposal.
Contribution towards public transport taster/cycle provision	To incentivise greater use of sustainable travel for residents of the proposed development.	For the direct benefit of residents of the proposed development and to minimise the carbon emissions emanating from	The sums are proportionate and will encourage residents to travel on public transport.

		use of private motor vehicles.	
Contributions towards School Travel for Secondary School Pupils and SEN pupils	Without this planning obligation secondary school and SEN pupils may be unable to access school via public transport which could render the development unsustainable. The contribution is required to accord with adopted development plan and SPD policy.	Contributions towards School Travel for Secondary School and SEN Pupils who would be resident in the development.	Without this planning obligation secondary school and SEN pupils may be unable to access school via public transport which could render the development unsustainable. The contribution is required to accord with adopted development plan and SPD policy.
Contributions towards Public Transport service provision	To encourage greater use of sustainable travel by providing support to and enhancement of local bus services that will be attractive to occupants of the proposed development, for a variety of travel reasons.	The contribution would directly benefit future residents of the scheme, allowing them access to a greater choice of public transport.	The contribution would increase the frequency of local bus services for the foreseeable future and provide improved bus stop infrastructure.
Contribution towards Strawberry Line improvements	The enable future residents of the development to have easy access by foot and cycle to Yatton Station in all weathers, thereby encouraging sustainable forms of transport.	The section of the Strawberry Line between Yatton Railway Station and proposed southern connection is in a poor condition and requires necessary improvements to ensure it is a useable link for future residents.	The contribution would be sufficient to improve the relevant section of the Strawberry Line for the benefit in particular of future residents of the scheme.

Contribution towards a traffic regulation order	Without this planning obligation the access to the new development may be obstructed and/or rendered unsafe. The contribution is required to accord with adopted development plan and SPD policy.	To amend/extend traffic restrictions and waiting times where necessary.	This is a need arising from the development that would not otherwise occur and is directly related to the known costs of consulting on, and processing, a TRO and associated measures.
Local lining improvements contribution	Without this planning obligation the access to the new development may be obstructed and/or rendered unsafe. The contribution is required to accord with adopted development plan and SPD policy.	Lining improvements at Heathgate, Chescombe Road, Grassmere and Mendip Road would promote safe vehicle movements to and from the site.	Due to the intensification of the roads around the site, this will result in an earlier deterioration of the lining at surrounding junctions.
Traffic calming measures	Without this planning obligation the access to the new development may be obstructed and/or rendered unsafe. The contribution is required to accord with adopted development plan and SPD policy.	The development would result in increased vehicles and potentially speeds along Mendip Road.	The traffic calming would be in the vicinity of the site and address increased vehicle movements associated with it.

Matters in dispute between the parties

12. During the inquiry and at the roundtable session the home to school transport contributions amount was in dispute. These have since been agreed. A detailed note on this matter is attached as Appendix A.
13. The parties had reached agreement in respect of affordable housing provisions within the draft agreement. After the roundtable session the appellant introduced a cascade provision that would prioritise those with a local connection. The LPA do not agree that this provision is acceptable for the reasons clearly set out in Inquiry Document ID35: Council's note on cascade provisions 14 October 2024. The content of that note is not repeated here, however Appendix B contains further comments, dealing with the wording in the final agreement.
14. Finally, the Council's solicitor has raised issues relating to ownership and lack of control of land. These were communicated to the appellant and Inspector by email on Friday 8 November 2024 and are attached for completeness as Appendix C.

Appendix A

Home to School Transport Contributions Request and Justification

Land at Rectory Farm, Yatton - Home to School Transport Contributions request and justification

Introduction

The policy basis for requesting financial contributions to cover the costs of transporting pupils to and from an appropriate education setting from new developments can be found in the following policies:

Core Strategy:

Policy CS25: Children, Young People and Higher Education

Policy CS34: Infrastructure Delivery

Sites and Policies Plan Part 1: Development Management Policies

DM70: Development Infrastructure

DM71: Development Contributions


The adopted Development Contributions Supplementary Planning Document sets out more detailed steps, formula and calculations that will be applied to calculate costs.

This proposed development will include the erection of 190 dwellings if approved, with 50% of them being affordable housing units. The application is in outline form, but the anticipated housing mix is as follows.

Dwelling type	Number of market homes	Number of affordable homes
1 bed flat	10	10
2 bed flat	6	6
2 bed house	31	31
3 bed house	33	33
4 bed house	14	14
5 bed house	1	1
TOTAL	95	95

This housing mix is then fed into the pupil projections model to generate anticipated pupil yield figures.

It is anticipated that the development could commence in 2025. On that basis, the predicted number of school age pupils that could arise from the new development each year are set out in the table below.

Projected numbers and ratios	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35	2035/36	2036/37	2037/38	2038/39	2039/40	2040/41	2041/42	2042/43	2043/44	2044/45	2045/46	2046/47	2047/48	2048/49	2049/50
No. primary pupils	15	31	47	62	75	76	76	77	77	79	82	85	87	88	87	84	79	72	66	60	56	50	41	34	26
Ratio per 100 dwellings	40.7	40.8	40.8	40.9	39.6	39.9	40.1	40.3	40.5	41.5	42.9	44.6	45.8	46.1	45.6	44.2	41.3	38.0	34.6	31.7	29.6	26.3	21.8	17.8	13.9
No. secondary pupils	7	14	22	30	36	38	39	41	43	44	46	47	49	50	52	53	55	59	59	60	62	61	52	46	44
Ratio per 100 dwellings	18.3	18.7	19.1	19.5	19.1	19.9	20.8	21.6	22.4	23.3	24.1	24.9	25.7	26.5	27.2	27.8	29.2	30.9	31.0	31.8	32.4	31.9	27.1	24.4	23.1
Projected Year R pupils	2	5	8	11	13	13	13	12	10	9	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Projected number of pupils from the year after the development commenced that shows the most pupils who will require a school place at the same time													Year		Ratio per 100 dwellings										
Primary													2038/39		46.1										
Secondary													2045/46		32.4										

In addition, the Council's modelling assumes an average of 1 student with special educational needs (SEN) per 100 dwellings.

The following sections of this paper provide detailed breakdowns of the financial contributions requested for this proposed development site.

Primary school pupils

The closest primary school provision to the development is Yatton Infant and Junior Schools. These schools are less than a mile away from the site and are therefore within the statutory walking distance of 2 miles for students aged under 8 and 3 miles for students aged 8 and over, and the routes are considered safe.

In addition, Chestnut Park Primary School is also within safe walking distance of the site, 1.5 miles away.

It is anticipated that all primary aged pupils that would be generated from this development can likely be accommodated across these settings and therefore no contribution is requested for primary school travel costs.

Secondary school pupils

The catchment school for secondary aged pupils who lived on this site would be Backwell School, which is over 5 miles away. This is beyond the statutory walking distance of 3 miles for pupils of this age. It should also be noted that Backwell School is currently oversubscribed, leaving the potential that any new pupils arising from this site would need to be transported to alternative schools.

The Council currently has contracts that provide 4 coaches transporting pupils from Yatton to Backwell School. These are 70 seat coaches, amounting to 280 spaces overall. At the time of writing there are 14 seats available across these services. Two of the contracts are due to expire

in 2026 and the remaining two are in place until 2029. The Council also places pupils in year groups 10 and 11 on the train service that operates between Yatton and Backwell. 129 students currently use this service.

A financial contribution towards transporting pupils to secondary school is therefore deemed necessary. The amount requested is calculated by considering the number of pupils assumed to arise from the development each year for a period of ten years from first occupation, as calculated by the North Somerset School Admissions Team.

Recognising the fact that year 10 and 11 students can travel by train

The Home to School Transport team then provide the daily costs of an appropriately sized vehicle for the morning and afternoon routes for 60% of the pupils (those in year groups 7 – 9). This is then multiplied by 190 academic days in each school year as set out below.

Start Year:	2025/26		Academic Days:	190		Dwellings:	190	
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	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
Secondary Pupils	4	8	13	18	22	23	23	25	26	26
Secondary Vehicle 1:	Taxi (up to 6)	Minibus (up to 8)	Minibus (up to 16)	Coach (up to 35)	Coach (up to 35)	Coach (up to 35)	Coach (up to 35)	Coach (up to 35)	Coach (up to 35)	Coach (up to 35)
Secondary Vehicle 2:										
Secondary Vehicle 3:										
Secondary Daily Cost:	£102.25	£141.57	£188.76	£298.87	£298.87	£298.87	£298.87	£298.87	£298.87	£298.87
Total Yearly:	£12,951.03	£26,898.30	£35,864.40	£56,785.30	£56,785.30	£56,785.30	£56,785.30	£56,785.30	£56,785.30	£56,785.30
Total 10 Years:	£473,210.83									

This generates a total cost of £473,210.83

Recognising the fact that year 10 and 11 students can travel by train, it is assumed that 40% of the students arising from the development would be in these year groups. For those pupils it is reasonable to request a contribution to cover the costs of annual rail tickets, rather than placing them on a contracted transport service. An annual rail ticket covering travel during the academic year between Yatton and Backwell currently costs £316.80.

The table below provides an annual breakdown of these costs.

2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
3	6	9	12	14	15	16	16	17	18
£950.40	£1,900.80	£2,851.20	£3,801.60	£4,435.20	£4,752.00	£5,068.80	£5,068.80	£5,385.60	£5,702.40
Total: £39,916.80									

The total cost to cover rail fares for students in years 10 and 11 would therefore be £39,916.80.

Taken together, the total request to cover appropriate home to school transport provision for secondary aged pupils (aged 11-16) is £513,127.63.

This request is necessary to make the development acceptable in planning terms. It is directly related to the development and fairly and reasonably related in scale and kind to the development.

Pupils with Special Educational Needs (SEN)

SEN school allocations are not made based on the nearest school, they are made by taking into account student needs and availability of places. This makes it difficult to predict future needs and is why an assumed level of need is applied to new developments – at a rate of 1 pupil per 100 homes.

SEN pupils will have an Educational Health Care Plan (EHCP). The EHCP will name the school which best meets the pupils needs. This can be within North Somerset or beyond. The majority of students with additional needs are eligible for transport assistance to and from school and the Council are required by Department for Education policy to ensure free transport from home to their named school from the age of 5 years old. SEN students often require not just vehicular transport, but additional assistance whilst on the vehicle. The following table provides a detailed breakdown of the costs of transporting one SEN pupil to school by taxi for a period of 10 years.

Start Year:	2025/26		Academic Days:	190		Dwellings:			190	
	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
SEN Pupils	1	1	1	1	1	1	1	1	1	1
SEN Vehicle:	Taxi (up to 6)	Taxi (up to 6)	Taxi (up to 6)	Taxi (up to 6)	Taxi (up to 6)	Taxi (up to 6)	Taxi (up to 6)	Taxi (up to 6)	Taxi (up to 6)	Taxi (up to 6)
SEN Daily Costs	£102.25	£102.25	£102.25	£102.25	£102.25	£102.25	£102.25	£102.25	£102.25	£102.25
Total Yearly:	£19,426.55	£19,426.55	£19,426.55	£19,426.55	£19,426.55	£19,426.55	£19,426.55	£19,426.55	£19,426.55	£19,426.55
Total 10 Years:	£194,265.50									

The request for £194,265.50 for transporting one SEN pupil to an appropriate school is necessary to make the development acceptable in planning terms. It is directly related to the development and fairly and reasonably related in scale and kind to the development.

Conclusion

The Council require a total contribution of £707,393.13 to cover the cost of transporting secondary aged and SEN pupils to school for a period of ten years. This has been calculated using the methodology set out in the adopted Development Contributions SPD and meets the tests for planning obligations set out in national policy.

Appendix B

Further comments regarding the affordable housing cascade provisions

The Council's position remains as set out in the note produced on 14 October 2024 (Inquiry Document ID35) – the cascade provision is not appropriate nor justified on the basis of a lack of local priority need, and therefore the appellant's clause does not comply with CIL regulation 122 and cannot rank as a material consideration in the determination of the appeal.

Turning to the detailed wording of the clause, the first schedule of the S106 agreement deals with affordable housing provisions. This schedule provides a definition of "criteria". This offers two alternative provisions. It states:

Means people who immediately prior to occupation have a local connection to the District of North Somerset as defined in the Council's Nomination Policy

(UNLESS the Inspector in his decision letter expressly states that Criteria should instead have the following alternative meaning:

"means people who at the point at which the Affordable Housing Unit is advertised:

- Live within the Parish of Yatton or,***
- Are permanently employed within the Parish of Yatton or,***
- Are the parent, sibling or child of a person presently permanently resident within the Parish of Yatton***

Provided That if no person can be found who meets the above Criteria within 6 weeks of the Affordable Housing Unit being advertised as available then a person who has a local connection to the District of North Somerset as defined in the Council's Nomination Policy shall be deemed to meet the Criteria", in which case the latter meaning shall apply instead of the first meaning)

The parties have communicated at length over the detailed wording. The Council's concerns on the appellant's alternative meaning can be summarised as follows.

1. We do not hold information on siblings or children

The Council do not have a mechanism to establish whether an applicant for a dwelling has a qualifying relative permanently resident within the parish of Yatton. This will lead to time, resource and cost implications for checking, monitoring and approving compliance of the criteria.

2. It could take at least 6 weeks to verify or disprove claims to a connection to Yatton.

The provision is worded assuming that the Council could verify any claims of a connection to Yatton within 6 weeks. This is a challenging time frame and also this would likely be unacceptable to Registered Providers as the Council would not cover rent for an extended void period

3. The provision contains no form of prioritisation between bands.

Linking back to the substantive objections to a local lettings policy in this location (as set out in Inquiry Document ID35), on the basis of the evidenced lack of needs this would mean in reality that residents, employees or relatives of residents, of Yatton in Band D (having demonstrated no need) would be offered a dwelling rather than a North Somerset resident in Band A (priority need). This is unacceptable.

Appendix C

Note on issues relating to ownership and lack of control of land

ISSUES RELATING TO OWNERSHIP AND LACK OF CONTROL OF LAND

In the beginning, back in March 2023, the planning application form included a Certificate C in respect of ownership:

“I certify/The applicant certifies that:

- **Neither Certificate A or B can be issued for this application**
- **All reasonable steps have been taken to find out the names and addresses of the other owners (owner is a person with a freehold interest or leasehold interest with at least 7 years left to run) of the land or building, or of a part of it, but I have/the applicant has been unable to do so.”**

The certificate should have provided details of the steps taken (to ascertain the names and addresses of owners) prior to a newspaper notice which is claimed to have been published on 15th March 2023. A copy of such newspaper notice should also have been provided to the Council.

On 13th August 2024, the following details were sought:

“While on the subject of title, I note that Certificate C (re ownership) was used in the planning application form dated 27 March 2023. Please would you clarify what steps were taken to ascertain the names and addresses of owners. Please would you also provide a copy of any newspaper notices that your client has given in the application and appeal in connection with Certificate C.”

Unfortunately, we still do not know what steps were taken prior to the newspaper notice. Nor have we received a copy of such newspaper notice. Nor have we received a copy of any newspaper notice given in the appeal in connection with Certificate C.

There is an argument that, if section 65 of the Town and Country Planning Act 1990 precluded entertainment of the application in the first place, then an appeal arising from non-determination of that application is itself unentertainable (which is separate and distinct from the argument that an appeal cannot be entertained if it has not been made by a legal person). Of relevance to this issue is a letter from a resident of Grace Close. That resident claims partial ownership of the Williams Rhyne and also queries whether statutory obligations have been complied with in the application and in the appeal.

It is also unfortunate that a copy of a conveyance dated 8th August 1986 and transfer dated 26th April 2013 have not been forthcoming. And while a copy of a potential licence in relation to land to the west of the Strawberry Line has been forthcoming, a copy of the option/contract documentation from which this stems has not been provided.

The limited extent of the land to be bound by the s106 agreement

We are in a situation in which the only land to be bound by planning obligations, and for which a title warranty will be forthcoming, is as follows:

- The land shown edged red on title plan AV125643 (Matthews)
- The land shown edged red on title plan ST359846 (Pratt and Hodge)
- The land shown edged red on title plan AV101173 (Pratt and Hodge)

These comprise a smaller area than that shown on the amended plan which was submitted to the Inspector on 11th October 2024, which in turn was a smaller area than that shown on the appeal site plan.

Some sensitivities, including features shown on the Habitat Map inhabiting page 8 of the shadow HRA

It would appear that sensitive areas shown on page 8 of the shadow HRA (Habitat Map), such as hedgerows and ditches, are not within the red edging shown on the three title plans. The bullet points on pages 5 and 6 of the shadow HRA, such as the following, should be noted:

- **“Existing hedgerows totalling 266m (H1, H6, H7 and H11) will be enhanced through infill planting and sympathetic management.**
- **858 linear meters of new species-rich hedgerow with trees and new species-rich hedgerow with trees associated with a bank or ditch will also be planted (579 linear meters of which will be available to horseshoe bats)”**

One point which has been raised is that H11, H12, H13, H14 and H15 appear to be within Caution Title ST308582; which suggests that an Anthony Williams, a Robert Williams and a Terence Charles Richard have an interest in such land.

The inappropriate nature of the proposed Licence of mitigation land to the west of the Strawberry Line

The form of licence which Mr Matthews proposes to grant to the developer does not commend itself. For example:

- It would be a mere licence which confers non-exclusive rights. The licensor and his employees, servants and agents would retain use and ownership of the land.
- The licence would be personal to the licensor and licensee and would not be enforceable by the Council. For example, the Council would not be able to prevent termination of the licence under clauses 7.1.1 or 7.1.2.

- Clause 5.2 suggests that Mr Matthews could grant leases to third parties for periods of seven years and such tenants would not be bound by the terms of the licence.
- By clause 7.1.1, the licensee could simply terminate the licence at any time. This would not secure long-term management of the mitigation land.
- Termination could also be arranged under clause 7.1.2. Again, this would not secure long-term management.

Conclusion

Sensitive land will not be bound by planning obligations. This includes land at the appeal site; and land to the west of the Strawberry Line, which Mr Matthews does not wish to be bound by planning obligations.

The issues about ownership and lack of control of land reinforces the importance of appropriate and enforceable planning conditions. It is very doubtful, however, that Grampian conditions would work and be appropriate for **long-term management** of sensitive habitat - i.e. over a period of decades and well after development has commenced and the dwellings have been occupied.

The appeal should accordingly be refused.