



Please ask for: Caroline Britt
Direct Dial: (01892) 554
E-mail: Carolie.britt@tunbridgewells.gov.uk
Reference:
Date: Wednesday 24 June 2020

Dear All

CABINET - THURSDAY, 25TH JUNE, 2020

I am now able to enclose an urgent report below for consideration at the next Cabinet meeting on Thursday 25 June 2020.

Agenda No Item 24

- 24 **Affordable Housing Commuted Sums - Former Council Offices in Cranbrook**
(Pages 3 - 42)

Kind regards,

Caroline Britt
Democratic Services Officer

Encs

This page is intentionally left blank

Cabinet Decision

25 June 2020

Is the final decision on the recommendations in this report to be made at this meeting?	Yes
---	------------

Affordable Housing Commuted Sums – Former Cranbrook Council Offices

Final Decision-Maker	Cabinet
Portfolio Holder(s)	Cllr Carol Mackonochie
Lead Director	Paul Taylor – Director of Change & Communities
Head of Service	Gary Stevenson – Head of Housing & Environment
Lead Officer/Author	Sarah Lewis Housing Register & Development Manager
Classification	Non-exempt
Wards affected	Culverden & Cranbrook

This report makes the following recommendations to the final decision-maker:

1. That Cabinet’s attention is drawn to the contents of the Cabinet report dated 1 December 2016, which is attached at Appendix A, with particular reference to point 3 of the recommendations, which stated:

‘That the sum of £313,526.64 is subsequently transferred from as yet uncollected Section 106 Developer funding for affordable housing due from the former Kent and Sussex hospital development, (planning permission TW/10/04041 applies) in early 2018 for the provision of affordable housing in Cranbrook.’

2. That whilst all of the s106 funding for affordable housing received for the development of the former Cranbrook Council Offices (TW/13/02502) has either been spent or is being committed to affordable housing in the Borough, the sum of £263,000, spent outside of Parish of Cranbrook, is transferred back to the former Kent & Sussex hospital contribution and will be earmarked for the provision of affordable housing in the Parish of Cranbrook.

Call-in and Urgency:

In accordance with the provisions of Overview and Scrutiny Procedure Rule 14 in Part 4 of the Constitution, the Chairman of the Overview and Scrutiny Committee hereby gives prior agreement that this decision is urgent and will not be subject to call-in as delay would seriously prejudice the Council’s or the public’s interest.



Councillor Chris Woodward
Chairman of the Overview and Scrutiny Committee

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- A Prosperous Borough – Affordable housing built as part of a Section 106 mixed tenure housing scheme assists in enhancing the built environment of our rural towns.
- A Confident Borough - Providing affordable housing assists in addressing social deprivation in the Borough.
- Providing affordable housing solutions for homeless and vulnerable households at rents they can afford.

Timetable	
<i>Meeting</i>	<i>Date</i>
Agreed for publication by Portfolio Holder	23 June 2020
Agreed for publication by Head of Service	24 June 2020
Cabinet	25 June 2020

Tunbridge Wells Committee Report, version: March 2019

Affordable Housing Commuted Sums – Former Cranbrook Council Offices

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 To approve the transfer of £263,000 from the former Cranbrook Council Offices s106 contribution to the Kent & Sussex s106 contribution.
-

2. INTRODUCTION AND BACKGROUND

- 2.1 The former Council Offices in Cranbrook were sold for redevelopment and the planning consent included a Section 106 Agreement reference 13/02502 at Appendix B.
- 2.2 Due to viability issues on the site and the lack of need for rented sheltered housing in the area, the sum of £313,526.64 was collected in lieu of providing affordable housing on the site, to be enforced via the Section 106 Agreement.
- 2.3 The Agreement did not specify that the contribution should be spent in the Parish of Cranbrook but the Housing Service intended that the sum would be used for the provision of affordable housing in this part of the Borough.
- 2.4 During the time that the Council have held the funds there has not been a project in the Cranbrook Parish to spend the sum on.
- 2.5 However, two projects were identified that did require subsidy to proceed. One was at the Friends Meeting House in Grosvenor Park, Tunbridge Wells, providing housing for vulnerable young people; the second scheme was for affordable housing located in Paddock Wood.
- 2.6 A decision was taken by Cabinet on 1 December 2016 to release the Cranbrook funds for the two projects above, (see Appendix A). This was on the condition that, once s106 contributions from the Kent and Sussex development were received by the Council, the sum of £313,526.64 would be transferred and made available for the provision of affordable housing in Cranbrook.
- 2.7 The reason the Housing Service put this recommendation forward to Cabinet at the time was to acknowledge that this contribution had originated in Cranbrook, and to commit to spending it on Cranbrook based affordable housing schemes in the future if at all possible.
- 2.8 In 2016 the Council transferred £250,000 to Habitat for Humanity. It also committed £63,526.64 to Habinteg Housing Association which eventually did not go ahead. In 2018, the Housing Service used £13,000 of this to part fund a Borough wide Housing Needs Study. A Portfolio Holder report has recently been published, which seeks authority to release the remaining £50,526.64 to

subsidise affordable housing at Brick Kiln Farm in Cranbrook, (see Appendix C).

- 2.9 Whilst all the £313,526.64 from the Cranbrook Council Offices has been spent or allocated, we have recently received legal advice to suggest that having moved funding to match this amount from the Kent and Sussex development s106, the Council could be at risk of appearing not to have committed or spent the former Cranbrook Council offices contribution within the five year timescale, which expired on 22 June 2020. This could result in the developer requesting that the Council repay the contribution.
- 2.10 This report seeks authority to transfer the £263,000 spent outside of Cranbrook back to the Kent and Sussex contribution.
- 2.11 This report also provides the opportunity to reiterate that the net sum of £263,000 for funding (the original 313,526.64 minus the £50,526.64 for the Brick Kiln projected in Cranbrook) is ear marked for affordable housing projects in Cranbrook.
-

3. AVAILABLE OPTIONS

- 3.1 One option would be to 'do nothing'. The £313,526.64 collected from the Cranbrook Council offices site has already been spent or committed in accordance with the five year deadline in the s106 Agreement. However, as explained above, because of the transfer from the Kent and Sussex development fund, there is a risk that this sum could potentially be claimed to be unspent/committed by the developer who provided the section 106 funding from former Cranbrook Council offices development.
- 3.2 Option 2. To transfer £263,000 back to the Kent & Sussex contribution, there can then be no question that the whole of the Cranbrook Council Offices contribution totalling £313,526.64 has been spent/committed in accordance with the s106 agreement. £263,000 of the Kent and Sussex contribution will be earmarked for the provision of affordable housing in the Parish of Cranbrook.

4 PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 By agreeing to proceed in accordance with Option 2, there is no doubt that the conditions of the Section 106 Agreement for the Cranbrook Council Offices site are fulfilled.

5 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 Ward Members for Cranbrook have been consulted as part of the Portfolio Holder report to commit the sum of £50,526.64 for the Brick Kiln development.
-

6 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 If approval is given, Finance will transfer £263,000 from the former Cranbrook Council Offices s106 to the Kent and Sussex s106.
- 6.2 The Housing Service will continue to identify a project(s) in Cranbrook that can deliver affordable housing using the contribution available. This will be reported to Cabinet or the Portfolio Holder in the usual way.

7 CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	Section 106 planning obligation agreements provide a mechanism for collecting contributions from developers through the planning process. Section 106 contributions can only be used for the purpose specified in the agreement. The use of the contributions as detailed in the report was in accordance with the terms of the relevant agreement and the sums were spent within the five year timescale specified agreement.	Keith Trowell, Team Leader (Corporate Governance), MKLS 23.06.20
Finance and other resources	This reports recommends the transfer of funding between relevant section 106 accounts and protects the Council's position.	Jane Fineman Head of Finance, Parking and Procurement 24/06/20
Staffing establishment	There are no staffing implications	Sarah Lewis Housing Register & Development Manager 24/04/20
Risk Management	This report provides clarity over the usage of the Section 106 contributions from the former Council Office site in Cranbrook. It also highlights that an element of the section 106 contribution from the former Kent and Sussex Hospital site is earmarked for use for affordable housing in Cranbrook.	Sarah Lewis Housing Register & Development Manager 22/06/2020
Data Protection	There are no Data Protection implications	Sarah Lewis Housing Register & Development

		Manager 22/06/2020
Environment and Sustainability	There are no implications as the scheme in which the money is to be spent already has full planning approval	Sarah Lewis Housing Register & Development Manager 22/06/2020
Community Safety	There are no implications as the scheme in which the money is to be spent already has full planning approval	Sarah Lewis Housing Register & Development Manager 22/06/2020
Health and Safety	There are no implications	Sarah Lewis Housing Register & Development Manager 22/06/2020
Health and Wellbeing	The provision of good quality affordable housing has a positive impact on the health and wellbeing of the occupiers.	Sarah Lewis Housing Register & Development Manager 22/06/2020
Equalities	The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.	Sarah Lewis Housing Register & Development Manager

8 REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Cabinet Report dated 1 December 2016 'Affordable Housing Commuted Sums Expenditure'
- Appendix B: Section 106 Agreement former Council Offices in Cranbrook
- Appendix C Portfolio Holder Report 'Spending of former Cranbrook Offices Affordable Housing Commuted Sum'

9 BACKGROUND PAPERS

None

This page is intentionally left blank

Cabinet**1 December 2016**

Is the final decision on the recommendations in this report to be made at this meeting?

Yes**Affordable Housing Commuted Sums Expenditure**

Final Decision-Maker	Cabinet
Portfolio Holder(s)	Councillor Lynne Weatherly – Portfolio Holder for Communities and Wellbeing
Lead Director	Paul Taylor – Director of Change and Communities
Head of Service	Adam Chalmers – Head of Partnerships and Engagement
Lead Officer/Report Author	Sarah Lewis – Housing Register and Development Manager
Classification	Non-exempt
Wards affected	Benenden & Cranbrook, Culverden, Paddock Wood East and Paddock Wood West

This report makes the following recommendations to the final decision-maker:

1. To release Section 106 funding for affordable housing totalling £313,526.64 held by the Council in lieu of affordable housing provision on site at the former Council offices, Cranbrook, (Planning permission TW/13/02502 applies);
2. That the sums are used as grant funding for two affordable housing projects, one at the Quakers Meeting House, Grosvenor Park and the other for affordable rented housing provision in Paddock Wood to be owned and managed by Habinteg; and
3. That the sum of £313,526.64 is subsequently transferred from as yet uncollected Section 106 Developer funding for affordable housing due from the Kent and Sussex development, (planning permission TW/10/04041 applies) in early 2018 for the provision of affordable housing in Cranbrook.

This report relates to the following Five Year Plan Key Objectives:

- A Prosperous Borough
The provision of affordable rented housing allows local households on low incomes to continue to live in the Borough and contribute to local prosperity
- A Green Borough
The housing projects are both centrally located close to all local amenities and public transport
- A Confident Borough
Households have appropriately priced housing allowing them to access employment and training

Appendix A

Timetable	
<i>Meeting</i>	<i>Date</i>
Management Board	26 October 2016
Discussion with Portfolio Holder	17 September 2016
Cabinet Advisory Board	16 November 2016
Cabinet	1 December 2016

Tunbridge Wells Committee Report, version: September 2016

Affordable Housing Commuted Sums Expenditure

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 To obtain Cabinet approval for affordable housing commuted sums to be released to assist in the provision of eight, bedsit flats for young people at Grosvenor Park, Tunbridge Wells and three, two bed houses for affordable rent, Paddock Wood
-

2. INTRODUCTION AND BACKGROUND

- 2.1 The background issues that need to be addressed are a lack of affordable well managed shared accommodation homes for young people in the town centre and increasing the provision of affordable rented family housing.
- 2.2 We continue to see an increase in the numbers of households needing social rented housing on the TWBC Housing Register, (currently around 1000 applicants) and households approaching the Council as homeless. Currently we rely on housing associations to deliver additional affordable housing to meet these needs.
- 2.3 Traditionally capital funding has been available for housing associations to develop rented housing from the Homes and Communities Agency, (HCA). However the programme of funding for the next 5 years is only available for shared ownership and other low cost home ownership products.
- 2.4 In addition there have been enforced rent reductions across housing association stock, (-1% per annum), restricting their ability to develop new housing.
- 2.5 Due to an over supply of affordable rented sheltered housing in the Borough the Planning Policy requirement of 35% affordable housing was not sought on the Cranbrook Council offices site.
- 2.6 Instead the Council negotiated an off site affordable housing sum to provide affordable housing elsewhere in the Borough secured through the planning obligation agreement, (S106), attached at Appendix A.
- 2.7 We have been approached by two small housing associations who have requested a grant from the Council to enable them to bridge the gap in funding they have experienced due to the rent reductions and lack of government grant for rented homes. The viability of the schemes has been carefully examined and we are satisfied that the projects have progressed sufficiently to be completed in the required time scale for the spending of the S106 funding.

Project One

- 2.8 Housing and Planning Officers have been working for a number of years on an affordable housing project with the West Kent Quakers , Habitat for Humanity and the West Kent YMCA at the Friends Meeting House, Grosvenor Park
- 2.9 The West Kent Quakers own the building in which they worship in the centre of the town. However the building is Victorian and in a conservation area and the Quakers were finding it increasingly difficult to fund the maintenance of the building. They approached the Council to discuss their requirements for a new, smaller meeting hall and wanted to use the rest of the building to provide affordable housing and in particular for young, homeless households in Tunbridge Wells
- 2.10 The Quakers formed a partnership with West Kent YMCA who already provide and manage supported housing for vulnerable young homeless households at Ryder House.
- 2.11 Planning permission was subsequently sought and approved, (Appendix B refers) to provide eight bedsit flats for affordable housing together with new facilities for the Quakers
- 2.12 The bedsits will provide affordable rented housing with shared bathrooms for young people who have been living at the YMCA Ryder House supported housing and who are now ready to move into independent accommodation
- 2.13 The project has taken several years to develop. Appendix B is the Section 106 Agreement securing affordable housing following the grant of planning permission and Appendix C is the most recent letter of support for the management of the project by the YMCA
- 2.14 The scheme will not be as intensively managed as Ryder House but the YMCA facilities are close enough for them to continue to provide support to these young households in their first tenancies.
- 2.15 Rental values in the town are very high and this, combined with a lack of social housing, makes moving on from Ryder House very difficult. There is therefore a resultant lack of spaces at Ryder House.
- 2.16 The accommodation provided at Ryder House is regularly used by the Housing Needs department for placing young homeless households approaching us for assistance and is an extremely valuable resource. Having move-on accommodation will allow us to place further homeless young people.
- 2.17 The whole project, including the accommodation and new hall, is being developed by a charitable housing association, Habitat for Humanity as neither the Quakers or the YMCA have the skills or financial backing to undertake this type of re-development.
- 2.18 Habitat for Humanity has presented their appraisal for the project to us. The Quakers have raised £52,000 to assist with costs and Habitat for Humanity is contributing charitable reserves amounting to £200,000. However there is still a

shortfall in the costs mainly because the project is one of refurbishment in a conservation area therefore making it considerably more expensive

- 2.19 Grant of £250,000 will enable Habitat for Humanity to gain Board approval to progress works on site in January 2017 with expected completion one year later

Project Two

- 2.20 The second project has been presented to us by Habinteg Housing Association. Habinteg are a national association who own approximately 40 units of housing in the Borough. Their stock is mainly for disabled households which are built to exceptionally high standards in order to provide full accessibility for wheelchair users. We provide regular nominations to Habinteg properties for those needing this type of housing on the Housing Register
- 2.21 Habinteg have already purchased a site adjacent to their housing in the Old Kent Road, Paddock Wood and have planning permission to build three, two bedroom houses and one, two bedroom disabled adapted bungalow, (Appendix D)
- 2.22 The appraisal for the scheme from Habinteg was prepared prior to the changes to capital; funding from the HCA and the rent reduction mentioned previously at 2.3 and 2.4. The current scheme appraisal has been presented to us. Without the provision of £63,526 as a subsidy it is unlikely that Habinteg can proceed with the development
- 2.23 The grant required from TWBC amounts to £21,175 per two bedroom house, (they are not requesting a subsidy for the building of the wheelchair adapted bungalow) Habinteg themselves will also be providing a £400,000 internal subsidy
- 2.24 The Council will have full nomination rights to the homes when built via the housing register from Habinteg. There are currently fifty-five households registered for two bedroom social housing in Paddock Wood. With little prospect of other housing associations developing in the area then spending the affordable housing commuted sum represents an excellent opportunity for the Council to subsidise affordable housing and support local families.

3. AVAILABLE OPTIONS

- 3.1 **Option 1 'Do nothing'**- Appendix A of this report includes the Section 106 agreement for the former Cranbrook Council Offices. This states that the affordable housing contribution is to be used for the purpose of providing affordable housing in the Borough. The funds must be spent for this purpose within the specified five years, (by 2020), or be returned, with interest, to the developer. The funds therefore need to be spent or there is a risk of return to the developer with no additional affordable housing gained by the Council.

- 3.2 **Option 2** - wait for an affordable housing project to be available in Cranbrook. Having spoken with our housing association partners in the area and with planning colleagues, there are no projects sufficiently progressed in Cranbrook to achieve the deadline for spending the affordable housing sum by 2020. This option could also result in a return of funds to the developer and no gain in affordable housing.
- 3.3 **Option 3** - use the commuted sum of £313,526, received from the Cranbrook Council offices, to provide funding for affordable housing at Grosvenor Park and Paddock Wood, and to transfer the same sum from the expected commuted sums for the Kent & Sussex site for affordable housing in Cranbrook.
-

4. **PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 The two affordable housing schemes proposed are not financially viable without capital funding subsidy. As previously mentioned grant funding for affordable housing was traditionally provided by the Homes and Communities Agency, (HCA). However funding has been significantly reduced over the past five years and currently the only schemes being funded are those that are for subsidised home ownership products such as shared ownership.
- 4.2 New rented affordable housing provision over the last 5 years has contributed substantially to assisting the Council in its Corporate priorities and fulfilling its statutory duties in tackling homelessness and reducing the numbers of households waiting for social housing.
- 4.3 By assisting in funding the two projects at Grosvenor Park and Paddock Wood the Council can assist in tackling homelessness and meeting local need for affordable rented housing for households on the Housing Register.
-

5. **CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 5.1 The relevant Ward Members have been informed of these proposals

RECOMMENDATION FROM CABINET ADVISORY BOARD

- 5.2 The Communities Cabinet Advisory Board were consulted on this decision on 16 November 2016 and agreed the following recommendation:

That the recommendations set out in the report be supported subject to the following issues being taken into account by the Cabinet:

- That the report explain the extent to which Section 106 funds could be recovered should the recipients cease operating or the properties come onto the open market and that suitable legal agreements are put in place.

- 5.3 Paragraphs 6.2 and 6.3 have been subsequently added to the report
-

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 Should Cabinet agree to the proposals outlined then the capital sum of £250,000 will be paid to Habitat for Humanity for the Grosvenor Park scheme and £63,526 will be paid to Habinteg Housing Association from the commuted sum held. 60% of the funds will be paid at the start on site and the remaining 40% on completion of the projects
- 6.2 In response to the comments by Councillors at the Communities Cabinet Advisory Board a 'grant agreement' has been drafted by both parties to secure that the Section 106 monies will be used for affordable housing including a 'clawback' period of 15 years paid. We are obtaining internal legal advice on the agreement which will be in place prior to Section 106 funding being released to the two associations.
- 6.3 The grant agreement includes clauses to ensure that the accommodation is used for local people

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	<p>Section 106 planning obligation agreements provide a mechanism for collecting contributions from developers through the planning process. Section 106 contributions may only be used for the purpose specified in the agreement. The proposed use for the contributions in this instance are in accordance with the terms of the relevant agreements and the funding can be utilised as proposed.</p> <p>There are no consequences arising from the recommendation that adversely affect or interfere with individuals' rights and freedoms as set out in the Human Rights Act 1998.</p>	<p>Keith Trowell Senior Lawyer (Corporate Governance) 17/10/16</p>
Finance and other resources	<p>The funding is from Section 106 monies which are specifically allocated for affordable housing.</p> <p>The additional affordable housing will assist the Council in its statutory homelessness duty, reducing the need for emergency B & B housing and assist in managing local social housing demand.</p> <p>The project will be managed through existing budgets as part of the role of the Housing Development Manager working with the Service Accountant.</p>	<p>Jane Fineman Head of Finance and Procurement 21/10/16</p>

Appendix A

Staffing establishment	There are no staffing implications.	Sarah Lewis Housing Register and Development Manager 10/10/16
Risk management	This matter is not featured in the Risk Register. The risks of the project would be that the schemes don't get built. These risks will be minimised by releasing the S106 monies only when the project starts on site, (60%) and then the remainder when the project is complete	
Environment and sustainability	There are no implications because both projects already have planning permission where environmental implications would have been taken into account. Neither project are in the AONB.	
Community safety	There are no implications under the Crime and Disorder Act 1998. The young persons project should have a positive impact as it will provide good quality housing for young people managed by the YMCA.	
Health and Safety	There are no health and safety implications.	
Health and wellbeing	No implications. Providing affordable housing for both young people and families can have a positive impact on their mental health. Both projects are located in central areas which means that households can make healthy lifestyle choices by walking to local shops, schools and using public transport alongside contributing to the local community. The projects will improve the living conditions of residents who need access to more affordable homes.	
Equalities	Decision-makers are reminded of the requirement under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups. The decisions recommended through this paper could contribute towards advancing equality of opportunity by taking steps to meet the needs of young people on low incomes who require affordable housing.	Sarah Lavallie West Kent Equalities Officer 18/10/16

8. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Section 106 Agreement for Cranbrook Council Offices
 - Appendix B: Section 106 Agreement for Friends Meeting House, Grosvenor Park
 - Appendix C Letter from YMCA dated 11th October 2016
 - Appendix D: Planning Permission for Habinteg scheme at Old Kent Road, Paddock Wood
-

9. BACKGROUND PAPERS

- None

This page is intentionally left blank

DATED 11th February

2014

- (1) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED
- (2) TUNBRIDGE WELLS BOROUGH COUNCIL

Planning obligation under section 106 of the Town and Country Planning Act 1990 relating to the land at the former Council Offices, High Street, Cranbrook

26 - Retirement apartments.

Lester Aldridge LLP
Solicitors
Real Estate Team
Aileyn House
Carlton Crescent
Southampton
Hampshire
SO15 2EU

Tel: 02380 827400
Fax: 02380 827410
E mail: enquiries@la-law.com
Ref: RBA.MCC.33.1303

THIS AGREEMENT is made the 11th day of February 2014

BETWEEN

- (1) **MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED** : incorporated and registered in England and Wales with company number 06622231 whose registered office is at Homelife House, 26-32 Oxford Road, Bournemouth, BH8 8EZ
("The Owner")

AND

- (2) **TUNBRIDGE WELLS BOROUGH COUNCIL** : of Town Hall, Royal Tunbridge Wells, Kent, TN17 1RS

BACKGROUND

- (1) The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Land is located and the local planning authority by whom the planning obligations in this Agreement are enforceable.
- (2) The Owner is the freehold owner of the Land.
- (3) The Council has granted the Planning Permission for the Development on the understanding that the planning obligations herein will be entered into by the Owner.
- (4) The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to Section 106 of the Act and agrees to be bound by and observe and perform the covenants agreements conditions and stipulations hereafter contained.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 the following words and expressions shall have the following meanings unless otherwise stated:

"Agreement" : this document, including the schedules, as amended, modified or supplemented from time to time in accordance with its terms.

"Act" : means the Town and Country Planning Act 1990 (as amended).

"Adult Social Services Contribution" : means the sum of one thousand nine hundred and fourteen pounds eighty nine pence (£1,914.89) Index Linked to be applied towards the provision of adult social services

- within the locality of Tunbridge Wells.
- “Affordable Housing”** : subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market.
- “Affordable Housing Contribution”** : means the sum of three hundred and nine thousand four hundred pounds (£309,400) Index Linked to be applied towards the provision of Affordable Housing within the locality of Tunbridge Wells.
- “Commencement of Development”** : means 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 pursuant to the Planning Permission granted in respect of the Planning Application other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and Commence Development and Commenced Development shall be construed accordingly.
- “Community Learning Contribution”** : means the sum of one hundred and thirty one pounds twenty three pence (£131.23) Index Linked to be applied towards the provision of community learning facilities within the locality of Tunbridge Wells
- “Development”** : means the development of the Land to form 26 later living retirement apartments (category II type) with associated communal facilities and car parking as more particularly described in the Planning Application
- “Dwelling”** : any dwelling (including a house flat or maisonette) constructed pursuant to the Planning Permission
- “Index”** : means :
- (a) in respect of the Affordable Housing Contribution only, the General Cost Build

Index as published by the BCIS on behalf of the RICS; and

(b) in respect of the Adult Social Services Contribution, Community Learning Contribution Local, Libraries Contribution and the Traffic Regulation Order Contribution, the Retail Prices Index as published by the Office for National Statistics

or any successor (or equivalent index should the Index cease to be compiled) and if the reference base used to compile that Index changes after the change is to be the figure that would have been shown in that Index if the reference base current at the date of this Agreement has been retained.

- "Index Linked"** : Any sum expressed to be Index Linked shall be increased proportionately in line with the amount (if any) by which the relevant Index for the month preceding the date on which any sum is required by this Deed to be paid exceeds the Index for the month preceding the date hereof.
- "Land"** : the land against which this Agreement may be enforced at the former Council Offices, High Street, Cranbrook, Kent, TN17 3EN currently registered at the Land Registry under title number K919966 and shown for the purposes of identification edged red on the Plan attached to this Agreement.
- "Local Libraries Contribution"** : means the sum of two hundred and thirty six pounds and twenty nine pence (£236.29) Index Linked to be applied towards the provision of library facilities within the locality of Tunbridge Wells
- "Monitoring Fee"** : means the sum of fifteen thousand seven hundred and nine pounds and twelve pence (15,709.12)
- "Occupation" and "Occupied"** : means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing and Occupy shall be construed accordingly.

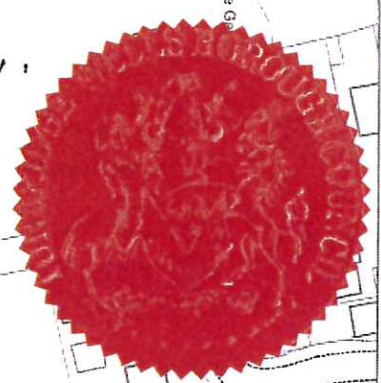
- “Planning Application”** : The application for full planning permission submitted to the Council for the Development and allocated reference number 13/02502/FULMAJ
- “Planning Permission”** : means planning permission for the Development subject to conditions to be granted by the Council pursuant to the Planning Application.
- “Plan”** : means the plan attached to this Agreement.
- “Reasonable Endeavours”** : all those reasonable steps which a prudent and determined person or company acting in his or its best interests and anxious to achieve the stated objective would take (save where the Agreement otherwise indicates)
- “Traffic Regulation Order Contribution”** : means the sum of two thousand five hundred pounds (£2,500) Index Linked to be applied towards the regulation of traffic within the locality of Tunbridge Wells.
- “Working Day”** : any day from Monday to Friday (inclusive) that is not Christmas Day, Good Friday or a statutory Bank Holiday.

2. CONSTRUCTION OF THIS AGREEMENT

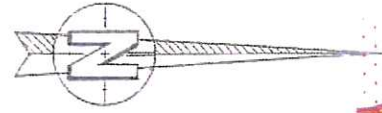
- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Clause headings shall not affect the interpretation of this Agreement.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.6 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.



[Handwritten Signature]
 Authorised Signatory
[Handwritten Signature]
 Authorised Signatory



SEAL BOOK REFERENCE NUMBER:- 888



[Handwritten Signature]

HERE

<p>Site No: 10-1897-101.1 Date: 14/04/2013 Drawn by: [Name] Checked by: [Name]</p>	<p>Project Title: PROPOSED RETIREMENT LIVING ACCOMMODATION FOR FORMER COUNCIL OFFICES HIGH STREET CRANBROOK</p>	<p>© McCarthy & Stone Retirement Living Ltd All rights reserved. This information is for your information only and does not constitute an offer of any financial product. It is intended to provide a general overview of the services provided by McCarthy & Stone Retirement Living Ltd.</p>	<p>Client: McCarthy Stone Lower Link, Glasgow, G3 7LN</p>	<p>THE PLANNING AIRPORT LIMITED Paul Finlay - Architect</p>	<p>Steve Gillingham B.Arch, R.I.B.A. Regional Design Director 100 West Street, 10th Floor Bristol, Bristol, BS1 1JG Telephone: 0117 325 1111 Email: Steve.Gillingham@plaltd.com</p>
---	--	---	---	--	--

2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.8 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

2.9 The headings and contents list are for reference only and shall not affect construction.

3. THE PLANNING OBLIGATIONS

3.1 The obligations set out in Schedule 1 of this Agreement constitute planning obligations for the purpose of section 106 of the Act and the planning obligations are to be discharged by the Owner and are enforceable against them and any person deriving title from them (subject to clause 5.1).

3.2 This Agreement shall come into effect upon the grant of the Planning Permission with the exception of the obligations contained in clauses 7 and 12 which shall come into effect on the date of this Agreement.

4. COVENANTS TO AND BY THE COUNCIL

4.1 The Owner covenants with the Council and County Council to observe and perform the covenants and obligations on their part contained within Schedule 1.

4.2 The Council covenants with the Owner to observe and perform the covenants and obligations on its part contained within Schedule 2.

5. ENFORCEABILITY

5.1 No person shall be liable for breach of a covenant, restriction or obligation contained in this Agreement after parting with its interest in the Land except in respect of any breach subsisting prior to parting with such interest and neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute the retention of an interest for the purposes of this clause.

5.2 This Agreement shall not be enforceable against a statutory undertaker (within the meaning of section 262 of the Act) after the transfer of any freehold or leasehold interest in the Land by the Owner to that statutory undertaker as appropriate.

6. DETERMINATION OF AGREEMENT

6.1 The obligations in this Agreement shall cease to have effect (insofar only as it has already been complied with) if prior to the Commencement of Development, the Planning Permission:

6.1.1 expires;

6.1.2 is varied or revoked other than at the request of the Owners; or

6.1.3 is quashed or otherwise withdrawn.

7. LOCAL LAND CHARGE

7.1 This Agreement is a local land charge and shall be registered as such by the Council.

7.2 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith upon written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

8. FUTURE PERMISSIONS

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

9. NOTICES

9.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address or as otherwise specified by the relevant person by notice in writing to each other person.

9.2 Any notice shall be deemed to have been duly received:

9.2.1 if delivered personally, when left at the address set out in this Agreement;

9.2.2 if sent by pre-paid first class post or recorded delivery, on the second Working Day after posting; or

9.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

10. MISCELLANEOUS

Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

11. COSTS

The Owner shall pay the Council one thousand five hundred pounds £1,500 towards the Council's reasonable legal fees incurred in the negotiation

preparation and execution of this Agreement on completion of this Agreement.

12. CHANGE OF OWNERSHIP

The Owner covenants to give the Council written notice within 10 days of any change in ownership of any of its interests in the Land occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan save for the transfer of any individual Dwelling.

13. THIRD PARTY RIGHTS

No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

14. SEVERANCE

Insofar as any clause or clauses of this Agreement 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 Agreement.

15. VAT

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

16. JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

17. DELIVERY

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

IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and the year first before written.

SCHEDULE 1 – COVENANTS BY THE OWNER

The Owner covenants with the Council as follows –

1. AFFORDABLE HOUSING CONTRIBUTION

- 1.1 to pay the Affordable Housing Contribution to the Council prior to the first Occupation of a Dwelling
- 1.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Affordable Housing Contribution has been paid to the Council.

2. TRAFFIC REGULATION ORDER CONTRIBUTION

- 2.1 to pay the Public Traffic Regulation Order Contribution to the Council prior to the first Occupation of a Dwelling.
- 2.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Traffic Regulation Order Contribution has been paid to the Council.

3. COMMUNITY LEARNING CONTRIBUTION

- 3.1 to pay the Community Learning Contribution to the Council prior to the first Occupation of a Dwelling
- 3.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Community Learning Contribution has been paid to the Council.

4. ADULT SOCIAL SERVICES CONTRIBUTION

- 4.1 to pay the Adult Social Services Contribution to the Council prior to the first Occupation of a Dwelling.
- 4.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Adult Social Services Contribution has been paid to the Council.

5. LOCAL LIBRARIES CONTRIBUTION

- 5.1 to pay the Public Local Libraries Contribution to the Council prior to the first Occupation of a Dwelling.
- 5.2 not to Occupy or permit Occupation of any Dwelling until the whole of the Local Libraries Contribution has been paid to the Council.

6. MONITORING FEE

- 6.1 to pay the Monitoring Fee to the Council prior Commencement of Development
- 6.2 not to Commence Development until the whole of the Monitoring Fee has been paid to the Council.

7. NOTIFICATIONS

To notify the Council one month in advance of:

- 7.1 the Commencement of Development; and
- 7.2 the first Occupation of a Dwelling

SCHEDULE 2 – THE COUNCIL'S COVENANTS**1. REPAYMENT OF CONTRIBUTIONS**

- 1.1 The Council hereby covenants with the Owner to use the Affordable Housing Contribution received from the Owner within the district in which it operates and for the purposes specified in this Agreement.
- 1.2 The Council hereby covenants with the Owner to use its Reasonable Endeavours to ensure the Adult Social Services Contribution, the Community Learning Contribution, the Local Library Contribution and the Traffic Regulation Order Contribution received from the Owner is spent for the purposes specified in this agreement.
- 1.3 The Council hereby covenants with the Owner to use its Reasonable Endeavours to ensure all sums received in respect of the Affordable Housing Contribution, the Traffic Regulation Order Contribution, the Community Learning Contribution, the Adult Social Services Contribution and the Local Libraries Contribution are used within 5 years of receiving them and to use its Reasonable Endeavours to ensure any monies which remain unspent or uncommitted after 5 years are repaid to the party that paid the relevant contribution together with accrued interest from the date of receipt until and including the date of repayment.
- 1.4 The Council shall use its Reasonable Endeavours to provide the Owner with such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid under this Agreement.

2. DISCHARGE OF OBLIGATIONS

At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.

EXECUTED as a deed by MCCARTHY)
& STONE RETIREMENT)
LIFESTYLES LIMITED acting by one)
director in the presence of)

[Handwritten Signature]
.....
Director

[Handwritten Signature]
.....)

Witness Name: H. J. HOMER

Witness Address: 26-32 OXFORD RD
BOURNE MOUTH
BH8 8EZ

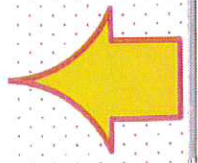
Witness Occupation: LEGAL ASSISTANT

EXECUTED as a deed by affixing the)
COMMON SEAL of TUNBRIDGE)
WELLS BOROUGH COUNCIL in the)
presence of)

[Handwritten Signature]
.....
Authorised Signatory



[Handwritten Signature]
.....
Authorised Signatory



SEAL BOOK REFERENCE
NUMBER:- 8888

Delegated Portfolio Holder Decision

Is the final decision on the recommendations in this report to be made via this function?

Yes

Spending of former Cranbrook Offices Affordable Housing Commuted Sum

Final Decision-Maker	Delegated Portfolio Holder Decision
Portfolio Holder(s)	Cllr Carol MacKonochie
Lead Director	Paul Taylor – Director of Change & Communities
Head of Service	Gary Stevenson – Head of Housing and Environment
Lead Officer/Author	Sarah Lewis Housing Register & Development Manager
Classification	Non-exempt
Wards affected	Cranbrook

This report makes the following recommendations to the final decision-maker:

1. It is noted that the sum of £313,526.64 was received in lieu of on site affordable housing in June 2015 from the former Cranbrook Offices site, (Planning permission TW/13/02502). As per the approved 2016 Cabinet Report, £250,000 was spent on the Friends Meeting House project in May 2017.
2. £13,000 from the affordable housing contribution received for the former Cranbrook Offices development was used to contribute to the funding of the Housing Needs Study 2017.
3. It is recommended in this report that £50,526.64 from the Cranbrook Offices Site contribution held by the Council in lieu of affordable housing is committed to affordable housing provision at Brick Kiln Farm, Cranbrook, (16/502860/OUT)

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- A Prosperous Borough – Affordable housing built as part of a Section 106 mixed tenure housing scheme assists with affordability pressures in the Borough.
- A Confident Borough - Providing affordable housing assists in addressing social deprivation.
- Providing affordable housing solutions for homeless and vulnerable households at rents they can afford.

Timetable

Meeting	Date
Agreed for publication by Portfolio Holder	16 June 2020
Agreed for publication by Head of Service	12 June 2020

Appendix C

Other committee(s)	N/A
Report published	19 June 2020
Decision due not before	29 June 2020

Tunbridge Wells PH Decision Report, version: December 2

Spending of former Cranbrook Offices Affordable Housing Commuted Sum

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The Council received an affordable housing commuted sum of £313,526.64 in June 2015 in lieu of on site affordable housing from McCarthy & Stone developers.
- 1.2 At Cabinet in December 2016 a decision was taken to release the sum towards subsidising two affordable housing projects – one at the Friends Meeting House built by Habitat for Humanity and the other an affordable housing scheme to be built by Habinteg Housing.
- 1.3 The Friends Meeting House sum of £250,000 was released to Habitat for Humanity in September 2017 for move-on accommodation for young people and has now been spent.
- 1.4 The Habinteg project, for which the council committed the remaining £63,526.64, did not go ahead.
- 1.5 £13,000 of the remaining £63,526.64 Cranbrook S106 sum was spent to part fund a Housing Needs study.
- 1.6 The remaining unspent sum of £50,526.54 needs to be committed to an affordable housing project within five years from the date of receipt. This expires therefore in June 2020.
- 1.7 Portfolio Holder agreement is sought for the remaining sum of £50,526.64 to be released to provide affordable housing at Brick Kiln Farm, Cranbrook.

2. INTRODUCTION AND BACKGROUND

- 2.1 Where new development projects are not able to provide affordable housing on site, planning policy allows for a commuted sum to be collected from the developer to provide affordable housing on an alternative site.
- 2.2 The sum of £313,526.64 was negotiated as an off site affordable housing contribution at the former Cranbrook Council offices, to be committed to the provision of affordable housing on an alternative site within 5 years of receipt: (June 2015.)
- 2.3 Two projects were identified to use the funding and gained Cabinet approval in December 2016. Subsequently only one of these projects went ahead - the Friends Meeting House development

- 2.4 In 2017 the Housing and Planning Policy teams jointly commissioned a Borough wide Housing Needs Study. This has been used to provide an evidence base for the emerging new Local Plan and in particular to strengthen future affordable housing policy. £13,000 of S106 funding from the Cranbrook Council Offices was used to part fund the study, given that accurate data on housing need helps inform affordable housing provision going forward.
- 2.5 Permission is sought to release the remaining funding of £50,526.64 to subsidise the provision of affordable housing at Brick Kiln Farm in Cranbrook. The funding would be used to convert the tenure of one of the homes being built from an affordable rent to a social rent. Social rents are lower than affordable rents, and given that the majority of our housing register applicants are on incomes of less than £1500 per month, a social rented property will be more affordable for local residents in housing need.
- 2.6 Brick Kiln Farm has planning permission for 165 homes, of which 58 will be affordable housing. The Section 106 Agreement reference 16/502860/OUT is included at Appendix C.
- 2.7 The site, which is to be developed by Persimmon, does not yet have a Registered Provider (RP) partner to deliver the affordable housing.
- 2.8 This report seeks approval for the remaining £50, 526.64 to be used to assist in subsidising whichever RP is successful in winning the affordable housing contract with Persimmon to provide social rented housing.

3. AVAILABLE OPTIONS

- 3.1 'Do nothing' This would risk the remaining S106 funding, (£50,526.64) being returned to the developer unspent.
- 3.2 Wait for a project to be available for spending the remaining funding. This would risk the funds remaining being unspent within the deadline of June 2020.
- 3.3 Commit the funding to the Brick Kiln Farm scheme. Whilst the development at Brick Kiln Farm does not yet have an RP partner, it is a firm scheme with planning permission and therefore will fulfil the requirements of the S106 agreement – namely, that the funds are committed within a five year period.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The option at 3.3 is the only course of action to avoid risking the unspent £50,526.64 being returned to the developer, McCarthy & Stone.

- 4.2 Once Portfolio Holder agreement is received we will contact all the RP Partners and Persimmon to get an update on progress for the affordable housing contract at Brick Kiln Farm.
- 4.3 The subsidy of £50,526.64 will be paid to the RP Partner to be used to subsidise a social rented unit to which the Council will have nomination rights.
- 4.4 A grant agreement will be drawn up between the RP and TWBC Legal Services to ensure the spending and monitoring of the sum for affordable housing.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 Prior to the Cabinet report in 2016, consultation with Ward Members in Cranbrook was undertaken to ensure that Members were aware that the affordable housing contribution was to be spent in another part of the Borough from where the contribution was collected.
- 5.2 Ward Members in Culverden and Paddock Wood were also consulted on the affordable housing projects that the subsidy was to be spent on.
- 5.3 It is planned that Ward Members in Cranbrook will be informed of this report in the time leading up to publication.

6. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	Section 106 planning obligation agreements provide a mechanism for collecting contributions from developers through the planning process. Section 106 contributions can only be used for the purpose specified in the agreement. The proposed use for the contributions in this instance are in accordance with the terms of the relevant agreement and the funding can be utilised as proposed. Under the terms of the agreement if the funding is not committed before 22 June 2020 it will have to be returned to the developer	Keith Trowell, Team Leader Corporate Governance, MKLS
Finance and other resources	There are no implications for the Housing budget as this is money already held by the Council in lieu of affordable housing provision This project will be added to the capital programme once approval has been given	Jane Fineman Head of Finance Procurement & Parking 19/06/20
Staffing	There are no staffing implications	Sarah Lewis

Appendix C

establishment		Housing Register & Development Manager 03/06/20
Risk Management	The majority of the commuted sum has been spent within the given timescale of 5 years from receipt at clause 1.3 of the Council's Obligations. The timescale expires on 22 nd June 2020 however so there is a risk that McCarthy & Stone ask for the remaining sum of £50,526 to be returned.	Sarah Lewis Housing Register & Development Manager 03/06/20
Data Protection	No implications.	Sarah Lewis Housing Register & Development Manager 03/06/20
Environment and Sustainability	There are no implications as the scheme in which the money is to be spent already has full planning approval	Sarah Lewis Housing Register & Development Manager 03/06/20
Community Safety	There are no implications as the scheme in which the money is to be spent already has full planning approval	Sarah Lewis Housing Register & Development Manager 03/06/20
Health and Safety	Not applicable	Sarah Lewis Housing Register & Development Manager 03/06/20
Health and Wellbeing	Not applicable – Health and Wellbeing will be promoted by the inclusion of affordable housing.	Sarah Lewis Housing Register & Development Manager 03/06/20
Equalities	The inclusion of affordable housing will have a positive impact on the Council's Equality Duty as it ensures that households in housing need can access good quality housing.	Sarah Lewis Housing Register & Development Manager

		03/06/20
--	--	----------

7. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Section 106 Agreement for former Cranbrook Council Offices
 - Appendix B: Cabinet Report Dated December 2016
 - Appendix C: Section 106 Agreement for Brick Kiln Farm
-

This page is intentionally left blank