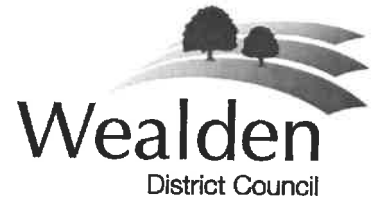


my reference KEN/ML003  
ask for - extension 7843  
date 7<sup>th</sup> March 2018

## MEMORANDUM

to Planning & Strategy  
FAO Mrs S Shepherd

your reference  
copies to Land charges



**Local Authority Legal Services for  
Wealden and Rother District Councils**

Council Offices, Vicarage Lane  
Hailsham, East Sussex BN27 2AX  
**T:** 01424 787843  
**F:** 01424 787879  
E: Karen.newton@wealden.gov.uk

### S.106 AGREEMENT – STRAND MEADOW

I advise you that the S.106 Agreement has now been completed, and I attach one copy for your file.

Karen Newton | Legal Officer  
Legal Services for Wealden & Rother District Councils  
Town Hall | Bexhill on Sea | East Sussex | TN39 3JX





**ROTHER DISTRICT COUNCIL (1)**

**and**

**RICHARD CHARLES KIRKHAM and CAROL CHRISTINE KIRKHAM (2)**

**and**

**RUSSELL BRETT BESWICK AND SHARON ANNE BESWICK (3)**

**and**

**EAST SUSSEX COUNTY COUNCIL (4)**

**PLANNING OBLIGATION BY AGREEMENT**

made pursuant to Section 106 of the Town and Country  
Planning Act 1990 relating to the development of  
Land to the south-west of Strand Meadow, Burwash, East Sussex, TN19 7BS

Planning Application: RR/2017/582/P

Wealden & Rother Shared Legal Service  
Council Offices  
Vicarage Lane  
Hailsham  
East Sussex BN27 2AX

Ref: 9/13/1003

DATED 7 March ..... 2018

This Deed is made between:-

- (1) **ROTHER DISTRICT COUNCIL** of Town Hall Bexhill-on-Sea East Sussex TN39 3JX ("the Council")
- (2) **RICHARD CHARLES KIRKHAM AND CAROL CHRISTINE KIRKHAM** both of East Lodge High Street Pembury Kent TN2 4PN ("the First Owner")
- (3) **RUSSELL BRETT BESWICK AND SHARON ANNE BESWICK** of Longwood The Midway Nevill Court Tunbridge Wells Kent TN4 8NJ ("the Second Owner")
- (4) **EAST SUSSEX COUNTY COUNCIL** of County Hall, St Anne's Crescent, Lewes, East Sussex BN7 1UE ("the County Council")

**INTRODUCTION**

- 1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- 2. The First Owner is the freehold owner of part of the Site under title nos ESX136123 and ESX17634
- 3. The Second Owner is the freehold owner of part of the Site under title no SX75040
- 4. The First Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed
- 5. The County Council is the local highway authority for the purposes of the 1980 Act and a planning authority for the purposes of the Act and a local authority for the purposes of the 1972 Act for the area within which the Site is situated
- 6. Saved Policy VL1 of the Rother District Local Plan allocates land at Strand Meadow Burwash for housing and recreational purposes
- 7. The Council resolved on 20 July 2017 to grant the Planning Permission subject to the prior completion of this Deed

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PART**

**1 DEFINITIONS**

1.1 For the purposes of this Deed the following expressions shall have the following meanings:

"1980 Act"	the Highway Act 1980 (as amended)
"1990 Act"	the Town and Country Planning Act 1990 as amended
"Affordable Housing"	housing including Affordable Rented Housing and Shared Ownership provided to specified eligible households whose needs are not met by the market . Affordable housing should: <ul style="list-style-type: none"><li>• meet the needs of eligible households including availability at a cost low enough for them to afford determined with regard to local incomes and local house prices</li><li>• include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted for the subsidy to be recycled for alternative affordable housing provision</li></ul>
"Affordable Housing Land"	that part of the Site upon which the Affordable Housing Units are to be constructed including any associated amenity land
"Affordable Housing Tenure Plan"	Affordable Housing Units showing <ul style="list-style-type: none"><li>i. which Dwellings are to be constructed as Affordable Housing Units</li><li>ii. which Dwellings shall be Affordable Rented Units and which shall be Shared Ownership Units</li><li>iii. the precise location of the Dwellings together</li></ul>

with floor plans and specifications

"Affordable Housing Units"

the Affordable Rented Units and the Shared Ownership Units

"Affordable Rented Housing"

a type of Affordable Housing provided at an affordable rent being a tenure which is referred to in the National Planning Policy Framework published in March 2012 as offering flexible tenancies at a maximum of 80% of gross local Market Rent as defined in the latest edition of the Red Book (the RICS valuation – Professional Standards 2012 or other such document amending consolidating or replacing it) which may be increased annually by any increase in the Consumer Prices Index plus 0.5% reflecting the properties' size and location as verified by a valuation in accordance with the Royal Institution of Chartered Surveyors Valuation and Appraisal Standards (Fifth Edition as updated and amended from time to time) and certified by a member of the Royal Institution of Chartered Surveyors and which shall be offered for rent by a Registered Provider in accordance with the terms of this Deed

"Affordable Rented Units"

8 units of Affordable Rented Housing comprising 4 x 1 bed flats 4 x 2 bed houses or such other tenure and mix as may be agreed between the Owners and the Service Manager- Community and Economy to be constructed as part of the Development

"Application"

means the application for outline planning permission dated 1 March 2017 submitted to the Council for the development of the Site and allocated reference number RR/2017/582/P as described in Schedule 2

"Choice Based Lettings System"

the national system of allocating tenancies by allowing persons on the Council's housing waiting list to bid for properties in the Council's administrative area or any similar system as may replace it from

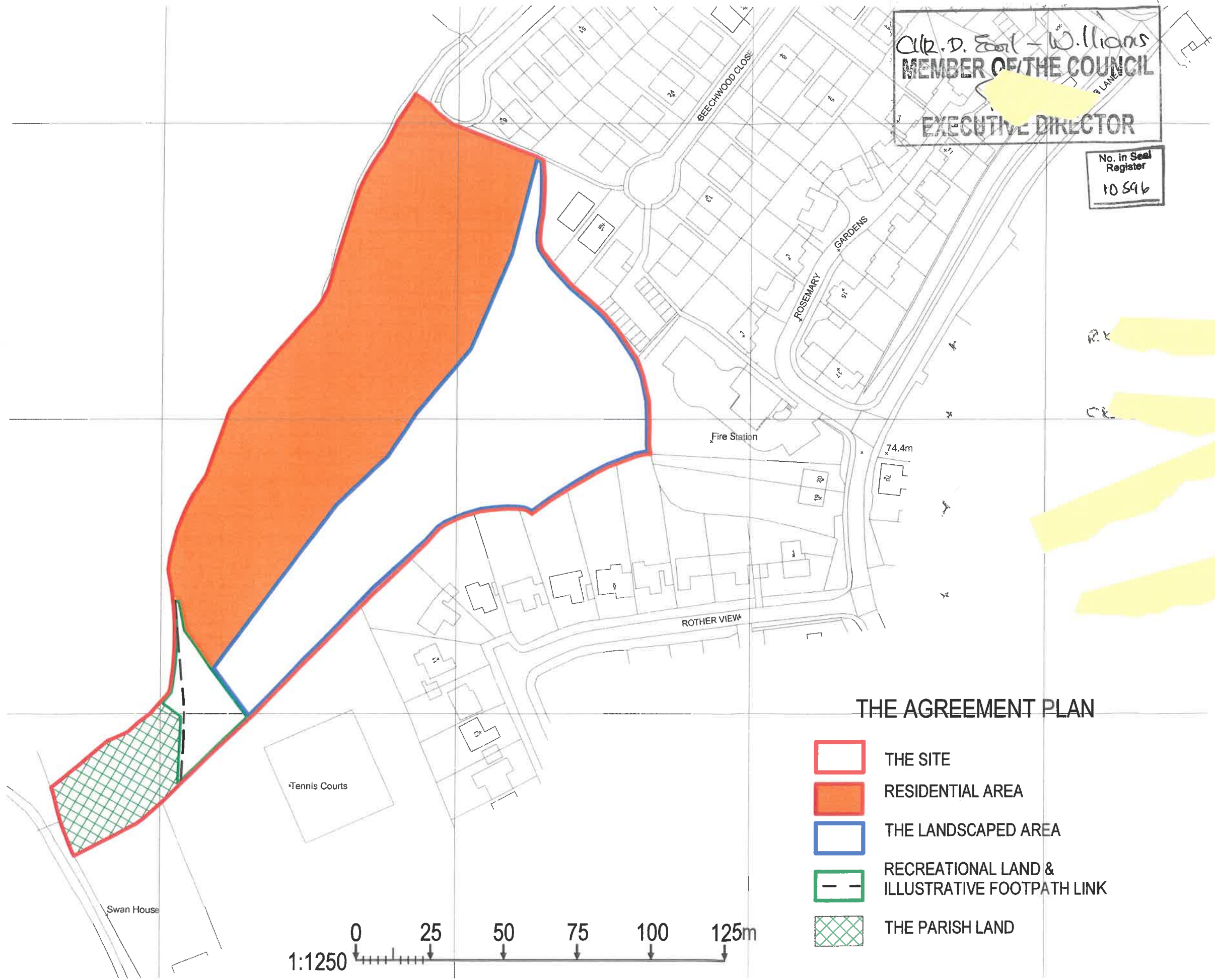
	time to time
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition 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" shall be construed accordingly
"Confirmation of Final Completion"	written confirmation by the Service Manager-Strategy and Planning that the Works have been finally completed
"Confirmation of Practical Completion"	written confirmation by the Service Manager-Strategy and Planning that the Works have been practically completed
"Definitive Map"	the statutory record of public rights of way in their area held and maintained by the County Council
"Development"	the development of the Site pursuant to the Planning Permission for Outline: proposed residential development with access from Strand Meadow
"Director"	the County Council's Director of Communities, Economy and Transport for the time being including his duly authorised agents and representatives and any successor of his
"Due Date"	means the date for payment in the relevant clause or paragraph or the date on which any obligation arising under this deed is due to be performed or if no date is

	specified then 21 days after the occurrence of the event triggering the payment or obligation
“Dwelling”	a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly
“Ecology Report”	the ecology report dated February 2017 submitted with the Application to the Council a copy of which is attached to this Deed in Schedule 9
“Footpath”	a footpath accessible by the public in the approximate location shown by black dashes on the Plan of not less than 2.5m in width to be provided and constructed from materials details of which are to be submitted to and approved by the local planning authority connecting the Residential Site
“HCA”	the Homes and Communities Agency for England being the national housing and regeneration agency formed on 1 December 2008 pursuant to the Housing and Regeneration Act 2008 and shall include any successor organisation to the HCA
“Highway Works”	means the works set out in Schedule 7 Part 2
“Index”	means the “all items” index figure of the Retail Prices Index published by the Office for National Statistics and if the name or basis of computation of such index should change any official replacement of the said index by the Office of National Statistics (or such other index as the County Council may reasonably nominate in the event that that index shall no longer be published or its name or methodology be materially altered)
“Indexed”	means increased in accordance with the Clause 12
“Inspection Fee”	the sum of ONE THOUSAND POUNDS (£1000)



“Interest”	interest at the rate of 4% above the base lending rate of the Bank of England for the time being
“Landscaped Area”	means the part of the Site shown edged blue on the Plan
“Local Housing Allowance”	the means tested benefit administered by the Council and paid to people who rent privately, with the eligible rent fixed for a household of a given size within the administrative area of the Council or such other similar allowance as may be substituted therefor
“Local Market Area”	the parish of Burwash and adjoining parishes in Rother District
“Long Lease”	a long lease of 125 years from the date of its grant at a peppercorn rent and with no unusual or otherwise unduly onerous or burdensome covenants on the lessee
“Management Company”	a management company or companies to be set up to carry out the obligations in Schedule 3 Part 2
“Maintenance Period”	the period of 12 months between Confirmation of Practical Completion and Confirmation of Final Completion during which the Owners will maintain the Works
“Nominations Agreement”	a nominations agreement substantially in the form set out in Schedule 5 together with any amendments as may be agreed between the parties thereto
“Occupy, Occupation” and “Occupied”	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 or display or occupation in relation to security operations
“Open Market Dwellings”	all of the Dwellings other than the Affordable Housing Units

“Owners”	the First and Second Owners together
“Parish Council”	Burwash Parish Council care of Parish Clerk, PO Box 61 Etchingam, East Sussex TN19 7YZ
“Parish Land”	the land to be transferred to the Parish Council to be used for recreation or allotments at the discretion of the Parish Council as shown cross hatched green on the Plan
“Payment Notice”	means the notice in the form contained in Schedule 12 to this Deed
“Plan”	the plan attached to this Deed Drawing Number 4702/17/106 Rev A
“Planning Permission”	the outline Planning Permission subject to conditions to be granted by the Council pursuant to the Application and this shall include in each case any permission granted pursuant to an application under section 73 of the Act to amend or vary the Planning Permission unless the Council decides that a new agreement under Section 106 of the Act is required
“Qualifying Person with a Local Connection”	a person who is in need of Affordable Housing and has a local connection with the District of Rother which shall mean in order of priority:- <ul style="list-style-type: none"> <li>i. has resided in the District of Rother for a period of at least 3 out of the preceding 5 years as their only or principal home (not in a caravan that is sited on an unlicensed, non permanent or holiday site)</li> <li>ii. has close relatives who reside in the District of Rother as their only or principal home and have done so for at least the previous 5 years (close relatives being parents, adult children or brothers or sisters, including corresponding step relationships)</li> </ul>



Alb. D. Earl - Williams  
**MEMBER OF THE COUNCIL**  
 EXECUTIVE DIRECTOR

No. in Seal  
 Register  
 10596

**GENERAL NOTES**  
 ALL DIMENSIONS TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF WORKS - PLEASE REPORT ERRORS OR OMISSIONS TO THE ARCHITECT.  
 THIS DRAWING HAS BEEN PRODUCED FOR THE PURPOSES OF PLANNING AND BUILDING REGULATIONS APPROVALS ONLY AND IS NOT INTENDED TO BE A FULL WORKING DRAWING.  
 THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ANY WRITTEN SPECIFICATIONS, SCHEDULES OF WORK AND STRUCTURAL ENGINEERS DETAILS AS APPROPRIATE.  
 THIS DRAWING IS THE COPYRIGHT OF PUMP HOUSE DESIGNS AND ANY FURTHER REPRODUCTION OF THE PLAN IS NOT PERMITTED WITHOUT OBTAINING PRIOR CONSENT.  
 © CROWN COPYRIGHT 2014 - LICENCE NO. 100032237

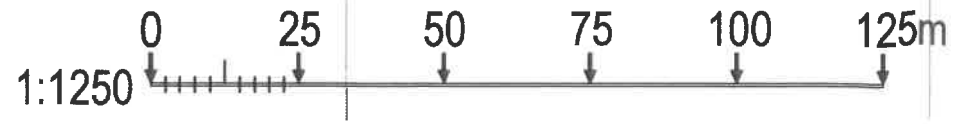


**PumpHouse**  
 DESIGNS

**Architectural Consultants**  
 Pump House Yard  
 The Green  
 Sedlescombe  
 East Sussex  
 TN33 0QA  
 info@pumphousedesigns.co.uk  
 www.pumphousedesigns.co.uk  
 T: 01424 871120  
 F: 01424 870198

**THE AGREEMENT PLAN**

- THE SITE
- RESIDENTIAL AREA
- THE LANDSCAPED AREA
- RECREATIONAL LAND & ILLUSTRATIVE FOOTPATH LINK
- THE PARISH LAND



F			
E			
D			
C			
B			
A	AMENDMENTS FOLLOWING COMMENTS FROM RDC	MG	15.12.17
<b>LAND TO THE SOUTH WEST STRAND MEADOW BURWASH for Park Lane Homes (S.E.) Ltd</b>			
SECTION 106 PLANNING OBLIGATION - (RR/2017/582/P)			
DRAWN BY - MATTHEW GERKEN			
DATE - NOVEMBER 2017			
SCALE - 1:1250 @ A3			
DRAWING No. 4702 / 17 / 106 / A			

- iii. Grandparents, grandchildren, aunts or uncles and non adult children will only be considered as a local connection in certain circumstances as agreed by the Service Manager- Community and Economy
- iv. has (or any family member included the application has) permanent paid employment (or a confirmed offer of such) in the District of Rother

"Recreation Land"	the land shown edged green on the Plan
"Recreation Ground"	the public recreation ground located to the south east of the Site and maintained by the Parish Council as at the date of this Deed
"Registered Provider"	any registered provider from the list set out in Schedule 6 who is registered with the HCA pursuant to the Housing and Regeneration Act 2008 and has not been removed from the Register and which is first approved in writing by the Council (such approval not to be unreasonably withheld or delayed)
"Residential Area"	the part of the Site shown coloured orange on the Plan
"Section 278 Agreement"	means the agreement substantially in the form set out in Schedule 11 with such amendments as may be agreed with the County Council and made under section 278 of the 1980 Act to secure the carrying out of the Highway Works;
"Service Manager–Communities and Economy"	the Council's Service Manager-Communities and Economy for the time being or such other person as may be appointed to carry out that function from time to time

"Service Manager- Strategy and Planning"	the Council's Service Manager-Strategy and Planning for the time being or such other person as may be appointed to carry out that function from time to time
"Shared Ownership"	a type of Affordable Housing which allows a purchaser to buy a share of a Shared Ownership Unit under a Long Lease in a form prescribed by the HCA to ensure that leases are mortgageable and which contains provisions whereby there is a limit on the initial equity share to be sold off and a restricted rent on the balance of the equity unsold as at the date of the grant of the Long Lease
"Shared Ownership Units"	the 4 Affordable Housing Units for Shared Ownership comprising 2 x 2 bed house and 2 x 3 bed houses or such other tenure and mix of units as shall be agreed in writing between the Owners and the Council prior to the Commencement of Development
"Site"	the land shown edged red on the Plan
"Specification"	<p>a written specification for the Works to be submitted to and approved by the Council to include:</p> <ul style="list-style-type: none"> <li>• a timetable for the carrying out of the Works</li> <li>• details of the layout landscaping and planting and any earth works, excavations, construction, drainage, fencing materials, accessible gates, surfacing, signage and biodiversity features as set out in the Ecology Report submitted with the Application and as subsequently amended;</li> <li>• -a management plan including costings for the long term management and maintenance of the Landscaped Area and the Recreation Land and the Footpath;</li> <li>• the identity (including name, address, memorandum and articles of association) of any Management Company appointed to be</li> </ul>

responsible for the long term management and maintenance of the Landscaped Area and Recreation Land and the Footpath;

- details of frequency and standard of maintenance;
- measures to replace any trees shrubs or turf which may die or become diseased following implementation of the maintenance of the Landscaped and Recreation Land, and Footpath; and
- details of how the costs of long term maintenance shall be funded

**“Standards”**

the nationally described space standards dated March 2015 as produced by the Department for Communities and Local Government Part M4(2) standards of the Building Regulations 2010 (as amended) save that where there is a conflict between the two the Building Regulations shall take precedence as well as any design and quality standards that may be required by the HCA or a Registered Provider as may from time to time be in force at the date of construction of the Affordable Housing Units and this shall include a reference to any replacement standards and documents published by that body or organisation or any successor body or organisation producing those standards

**“Traffic Regulation Order”**

means an Order pursuant to the Road Traffic Regulation Act 1984

**“Traffic Regulation Order Contribution”**

means the sum of Five Thousand POUNDS (£5000) save to the extent that this is altered by the provisions of clauses 6.14 and 12 being a financial contribution towards the cost of a Traffic Regulation Order to implement parking restrictions

"Utilities"	mains services including gas, electricity, potable water, drainage and telecommunications including superfast broadband
"Working Day"	any day other than a Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, Easter Monday or a day which is a holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom
"Works"	the works to be carried out and completed in respect of the Landscaped Area Footpath and Recreation Land in accordance with the Specification
"Zone Agent"	a Local HomeBuy Agent (or any other body appointed in substitution therefor) appointed by the HCA which acts as a first point of contact for families and single households seeking to buy a home through the HCA's HomeBuy affordable home ownership products in the South East of England the Agent first establishing whether applicants meet eligibility criteria before assessing their financial circumstances to ensure that they can afford home ownership longer term

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed 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 Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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 interchangeably in that manner.

- 2.4 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 against each individually unless there is an express provision otherwise
- 2.5 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
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory functions
- 2.7 The headings and contents list are for reference only and shall not affect construction

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 Section 278 of the Highways Act 1980 and all other powers so enabling the parties to enter into this Deed
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority for the area within which the Site is situated and by the County Council as planning authority and highway authority against the Owners
- 3.3 The obligations in this Deed comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

### **4 CONDITIONALITY**

This Deed is conditional upon:

- the grant of the Planning Permission; and
- the Commencement of Development

save for the provisions of Clauses 6.1, 13 14 Paragraph 1 and 2 of Part 1 Schedule 7 and Part 3 Schedule 7 and any other relevant provisions which shall come into effect immediately upon completion of this Deed



## **5 COVENANTS**

- 5.1 The Owners hereby jointly and severally covenant with the Council as set out in Schedule 3
- 5.2 The Owners hereby jointly and severally covenant with the County Council as set out in Schedule 7
- 5.3 The Council covenants with the Owners as set out in Schedule 4 and Schedule 8 Part 1
- 5.4 The County Council covenants with the Owners as set out in Schedule 8 Part 2

## **6 MISCELLANEOUS**

- 6.1 The Owners shall pay to the Council and the County Council on completion of this Deed their reasonable legal costs incurred in the negotiation, preparation and execution of this Deed
- 6.2 This Deed shall be registrable as a Local Land Charge by the Council
- 6.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Council and/or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Service Manager- Strategy and Planning and on behalf of the County Council by the Director any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 6.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 6.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 6.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) they are modified by any statutory procedure or expire prior to the Commencement of Development

- 6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission)
- 6.9 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise
- 6.10 The covenants and obligations given by any of the parties hereto shall attach to the Site and each and every part of it and shall bind their successors in title and assignees or any person claiming by, under or through them.
- 6.11 This Deed may be varied only by deed between the parties hereto or their respective successors in title and assigns provided that the Council and the County Council may approve changes or variations in writing where specifically provided for in this Deed and for the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 it is hereby AGREED AND DECLARED that the parties to this Deed (and their respective successors in title) may rescind or vary this agreement without the consent of any third party
- 6.12 The Owners hereby AGREE and DECLARE that permission shall be granted to authorised officers of the Council and County Council upon reasonable notice and request and at reasonable times (except in an emergency) and subject to any instructions which any contractor may give to ensure safety for officers of the Council and the County Council (or their nominated representatives) at their own or at the Council's and County Council's risk to gain access to the Site in order to monitor compliance with this Deed following Commencement of Development.
- 6.13 All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owners and/or given by the Council or the County Council or their officers in accordance with this Deed shall be in addition to any other approvals consents agreements or confirmations that may be required by the 1980 Act the 1990 Act or by any other statute or regulations.
- 6.14 Where payment of any sum payable as aforesaid is made after the Due Date Interest shall be payable on that sum from the Due Date until the date of actual payment.

6.15 Where this Deed imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Due Date the Owners covenant with the Council or the County Council:-

6.15.1 to give notice of the Due Date to the Council or the County Council not more than 7 Working Days after such Due Date

6.15.2 that if the notice of a Due Date is not given in accordance with Clause 6.15.1 above the Council or the County Council shall be entitled in its reasonable discretion to determine the Due Date and shall give notice thereafter to the Owners of its determination

6.15.3 to make any and all payments due under this Deed to the Council and the County Council on the Due Date and attach a fully completed Payment Notice with such payment.

6.16 Nothing in this Deed shall be construed as granting permission to the Owners and/or the Developer or their agents or servants from time to time to carry out works on a highway.

## **7 WAIVER**

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

## **8 DISPUTES**

8.1 All differences and disputes which may arise between the parties hereto concerning this Deed shall:-

8.1.1 where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties in dispute but who in default of such agreement shall be appointed by the President of the Law Society of England on the application of any of the parties in dispute;

8.1.2 where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or

director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.

8.1.3 where the difference of dispute relates to the Council or the County Council refusing or failing to give its agreement, approval or consent or dispersion of satisfaction be referred to the determination (as expert and not as arbitrator) of an independent chartered surveyor being a partner or director practising in a leading firm of surveyors based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute or in default of that agreement appointed by the President of the Royal Institute of Chartered Surveyors on the application of any of the parties in dispute.

8.2 If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) in relation to any such matter which either Clauses 8.1.1 or 8.1.2 hereto is applicable.

8.3 Except as aforesaid any expert appointed pursuant to Clauses 8.1.1 or 8.1.2 or any other person shall:-

8.3.1 on his appointment serve written notice thereof on the parties in dispute;

8.3.2 consider any written representations by or on behalf of those parties which are received by him within 20 Working Days of such service and immediately forward a copy of the written representation of one party to the other party;

8.3.3 allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within 15 Working Days of receipt by the other party thereof;

8.3.4 have an unfettered discretion to determine the reference to him;

8.3.5 serve notice of his determination as soon as he has made it and in any event not more than 25 Working Days after the conclusion of any hearing that takes place or 25 Working Days after he received any file or written representation;

8.3.6 give full and clear reasons for his decision; and

8.3.7 be paid his proper fee and expenses in connection with such reference by the parties in dispute in such shares as he may determine and his determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on him written notice in their opinion he has unreasonably delayed making his determination he shall be ipso facto discharged and be entitled only to his reasonable expenses prior to such discharge and another person shall be appointed in his place as such expert.

8.4 The provisions of this clause shall not affect the ability of the Council and the County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, consequential and interim orders and relief

## **9 COVENANTS NOT BINDING**

The Affordable Housing Units shall be used only for the purposes of Affordable Housing but the obligations in this Deed shall not bind the following:-

9.1 a mortgagee, chargee or receiver with respect to the Affordable Housing Units and the Affordable Housing Land loan facilities have been provided to a Registered Provider and where the mortgagee or chargee has taken possession of the Affordable Housing Units or the Affordable Housing Land and is seeking to dispose of them pursuant to its power of sale or other remedies under the terms of its mortgage or charge

9.2 a tenant of an Affordable Rented Unit who has exercised a statutory right to acquire or right to buy such Dwelling or or successor in title to such tenant or any mortgagee or chargee exercising any of its powers or pursuant to its mortgage or charge of the Affordable Rented Unit

9.3 a person occupying a Shared Ownership Unit who exercises his right to acquire or right to buy a 100% share in such Dwelling or his successor in title or any mortgagee or chargee of his

## **10 NOTICE OF COMMENCEMENT AND CHANGE IN OWNERSHIP**

The Owners agree with the Council to give to the Council and the County Council :

- 10.1 written notice of the intended Commencement Date 20 (Twenty) Working Days prior to that date.
- 10.2 within 7 Working Days of the Commencement of Development written notice of the Commencement of Development ; and
- 10.3 immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed 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 Site or unit of occupation purchased by reference to a plan

## **11 NOTICES**

- 11.1 Any notice consent approval or other communication required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post or recorded delivery post
- 11.2 The address for service of any such notice, consent, approval or other communication shall be on all of the parties at the addresses aforesaid or such other address for service as shall have been previously notified in writing
- 11.3 Notices to any successor in title to the Owners shall be that successor in title's last known address
- 11.4 Notices to the County Council shall be addressed to the Assistant Chief Executive, Governance Services at the address aforesaid or such other address for service as shall have been previously notified in writing
- 11.5 A notice, consent, approval or other communication under this Deed shall be deemed to have been served as follows:
  - 11.5.1 if personally delivered, at the time of delivery;
  - 11.5.2 if sent by pre-paid first class post, at the expiration of 2 Working Days after envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

11.5.3 if sent by recorded delivery, at the time delivery was signed for; or

11.5.4 if a notice, consent approval or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day

11.6 For the avoidance of doubt, where proceedings have been issued in an English Court the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings

## **12 INDEXATION**

The Owners agree with the County Council that the Traffic Regulation Order Contribution shall be Indexed by the application of the following formula:-

$$A = \frac{B \times C}{D}$$

where:-

A is the sum actually payable on the relevant Due Date;

B is the original Traffic Regulation Order Contribution sum specified in Clause 1 hereof;

C is the Index for the month preceding the relevant Due Date;

D is the Index for the month preceding the date of this Deed; and

C divided by D is equal to or greater than 1.

## **13 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales

## **14 DELIVERY**

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

## **SCHEDULE 1**

### **Details of the Owners' Titles and description of the Site**

The First Owner has the freehold interest in the Site registered at the Land Registry under Title Nos ESX136123 and ESX17634 and free from encumbrances

The Second Owner has the freehold interest in the Site registered at the Land Registry under Title No SX75040 and free from encumbrances

Land south-west of Strand Meadow Burwash East Sussex TN19 7BS

## **SCHEDULE 2**

**Not Used**

## **SCHEDULE 3**

### **The Owners' Covenants with the Council**

#### **PART 1 AFFORDABLE HOUSING**

1. Not to Commence the Development until an Affordable Housing Tenure Plan has been submitted to and approved by the Service Manager- Communities and Economy
2. Not to Occupy or permit Occupation of more than ten (10) Open Market Dwellings until :
  - 2.1 all the Affordable Housing Units have been constructed ready for Occupation and
  - 2.2 the Affordable Housing Land has been transferred to the Registered Provider and written evidence of such transfer has been provided to the Council such transfer :
    - 2.2.1 to be at no cost to the Registered Provider and
    - 2.2.2 to be free from financial encumbrances; and
  - 2.3 to include all rights of access (including to a highway built to adoption standards over a road to be built to adoption standards) and rights to passage of services



and Utilities and provision of services and Utilities to the Affordable Housing Land and the Affordable Housing Units of sufficient capacity for their use together with all other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Land and the Affordable Housing Units and with no unusual or onerous covenants included in the transfer which conflict with the nature of the use of the Affordable Housing Land and the Affordable Housing Units;

3. Not to transfer the Affordable Housing Land to the Registered Provider unless the Registered Provider has first entered into a Nominations Agreement with the Council substantially in the form set out in Schedule 5 and until such time as the Nominations Agreement is entered into, not to Occupy or allow the Occupation of the Affordable Housing Units, other than in accordance with the Nominations Procedure set out in the Nominations Agreement
4. Not to construct the Affordable Housing Units otherwise than in accordance with the Standards
5. Not to make the Affordable Rented Units available to rent other than on fixed term assured shorthold tenancies and in accordance with Rother District Council's Tenancy Strategy 2012 or such other similar document as may replace it from time to time and for nomination by the Council as to 100% of the initial lettings and 75% of all subsequent lettings through the Choice Based Lettings System
6. In nominating persons for the Affordable Housing Units the Council will give priority to persons (or couples where one person) who being on its housing register are Qualifying Persons with a Local Connection PROVIDED THAT in respect of Shared Ownership Units where the initial sale or resale is referred back to a Zone Agent if the Owners satisfy the Service Manager – Community and Economy that there are no applicants who are Qualifying Persons with a Local Connection, the Owners may on condition that they first obtain the consent in writing of the Service Manager- Community and Economy (such consent not to be unreasonably withheld) allocate that Shared Ownership Unit otherwise than in accordance with the terms of this Deed
7. Not to use or Occupy or dispose of or permit or allow the use or Occupation of any Shared Ownership Unit other than for Shared Ownership by way of a Long Lease
8. Not to use or occupy or dispose of or permit or allow the use or occupation of any Affordable Rented Unit other than as Affordable Rented Housing by virtue of an Assured

Tenancy pursuant to the Housing Act 1988 and the Housing Act 1996 or for such other tenancy as may be prescribed from time to time by the HCA or be approved by the Council's Service Manager- Community and Economy and on initial lets of such Affordable Rented Units where a rent and service charge equivalent to 80% of market rent exceeds Local Housing Allowance not to make such Units available for rent other than at a rent and service charge of no more than the current level of Local Housing Allowance

9. If any tenant of an Affordable Rented Unit is in arrears for a period of 3 consecutive months (equal to 3 consecutive months of gross rent) then the Owners shall consult with the Service Manager-Community and Economy on how to best support and advise the tenant on how to meet his or her rent obligations

## **PART 2 LANDSCAPED AREA AND RECREATION LAND**

1. Not to Commence the Development until the Specification has been submitted to and approved in writing by the Council and the Owners have entered into arrangements for the execution of the Works either entering into an agreement with a reputable contractor or contractors who shall be first approved by the Council or by arranging to execute the Works themselves and in determining whether such arrangements are satisfactory the Council may demand evidence regarding the expertise of the contractor or the Owners to execute the Works and the Owners shall supply such evidence to the Council on request
2. To carry out and complete all the Works including taking all appropriate measures to mitigate the impact on wildlife in the Landscaped Area and Recreation Land as identified in the Ecology Report unless otherwise agreed in writing with the Council no later than the Occupation of the tenth 10th Open Market Dwelling to be Occupied and not to Occupy more than ten (10) Open Market Dwellings until i) the Owners have obtained Confirmation of Practical Completion from the Council showing that the Works have been completed to the satisfaction of the Council in accordance with the Specification and ii) where the Landscaped Area and Recreation Land is to be transferred to a Management Company, they have entered into an agreement for the transfer of the Landscaped Area and Recreation Land to that Management Company PROVIDED THAT notice of entering into such agreement shall be given to the Council within 7 days of entering into the agreement and a copy of the agreement shall be sent with such notice to the Council
3. Upon completion of the Works to notify in writing the Service Manager - Strategy and Planning and at the same time to pay to the Council the Inspection Fee whereupon the Service Manager - Strategy and Planning shall arrange for the inspection of the Works

and shall issue Confirmation of Practical Completion in respect of the Works if he is satisfied acting reasonably that the Works have been completed in accordance with the approved Specification and there are no defects to be remedied PROVIDED THAT if in the reasonable opinion of the Service Manager - Strategy and Planning he considers acting reasonably that there are defects in any of the Works or if the Works do not accord with the approved Specification then he will notify the Owners in detail stating what actions need to be taken by the Owners to remedy the matters raised in the notice AND the Owners covenant with the Council to undertake any necessary works to address the matters set out in the notice from the Service Manager - Strategy and Planning in a prompt manner and shall thereafter notify the Service Manager - Strategy and Planning who shall arrange for the further inspection of the Works and the provisions set out above shall once more apply until such time as the Service Manager - Strategy and Planning is satisfied acting reasonably that the Works have been completed in accordance with the Specification and there are no defects to be remedied and he shall issue Confirmation of Practical Completion

4. From the date of issue of Confirmation of Practical Completion and during the Maintenance Period to maintain in a good and workmanlike manner the Works in accordance with the Specification
5. On the expiry of the Maintenance Period the Owners shall notify the Service Manager - Strategy and Planning and at the same time pay to the Council a further Inspection Fee who shall arrange for the further inspection of the Works and shall issue Confirmation of Final Completion in respect of the said works if he is satisfied acting reasonably that the said Works have been completed in accordance with the approved Specification and there are no defects to be remedied PROVIDED THAT if in the reasonable opinion of the Service Manager - Strategy and Planning he considers there are defects in any of the Works or they do not accord with the approved Specification then he will so notify the Owners stating in detail what actions need to be made by the Owners to remedy the matters raised in the notice AND the Owners covenant with the Council to undertake any necessary works to address the matters properly set out in the notice from the Service Manager - Strategy and Planning in a prompt manner and shall thereafter notify the Service Manager - Strategy and Planning that any defects have been remedied and he shall arrange for the inspection of the said works and the provisions set out above shall once more apply until such time as the Service Manager - Strategy and Planning is satisfied acting reasonably that the said works have been completed in accordance with the Specification and there are no defects to be remedied and he shall issue Confirmation of Final Completion

6. From the date of issue of Confirmation of Practical Completion:

- 6.1 not to use or permit or allow to be used the Landscaped Area other than as open space and /or ecological area and an undeveloped buffer zone between the Residential Site and the developed land to the east and not to use the Recreation Land for any purpose other than for public recreational use and access and not to use the said areas for any trade or business or residential development and no development requiring planning permission shall at any time be carried out on the Landscaped Area and Recreation Land and
- 6.2 to allow all members of the public without having to obtain any consent access at all times to the Recreation Land for the purpose of recreational use
- 6.3 to maintain the Landscaped Area and Recreation Land free of obstructions and in a clean, tidy and safe condition at all times and in particular to maintain those measures identified in the Ecology Report to minimise the impact of the Development upon wildlife

7. From the date of issue of Confirmation of Final Completion the Owners shall either maintain or make their own arrangements to maintain the Footpath and Landscaped Area and Recreation Land at their election shall procure the maintenance of the Footpath and Landscaped Area and Recreation Land by appointing a Management Company in which case they shall transfer the freehold interest in the Footpath and Landscaped Area and Recreation Land to that Management Company and for the avoidance of doubt the following shall apply from the date of issue of Confirmation of Final Completion :

- 7.1 Any transfer to the Management Company shall include a payment to the Management Company by the Owners sufficient to fund the maintenance of the Footpath and Landscaped Area and Recreation Land for a period of 12 years the exact amount to be approved by the Council and which forward funding shall be paid to the Management Company no later than the date of transfer to the Management Company;
- 7.2 where the Owners retain the ownership of the Footpath and Landscaped Area and Recreation Land and appoint a Management Company the Owners shall pay to the Management Company a payment to fund the maintenance of the Footpath and Landscaped Area and Recreation Land for a period of 12 years, the exact amount to be approved by the Council as part of the approval of the Specification;

- 7.3 not to transfer or dispose of any Dwelling unless there is included in the transfer or disposal of that Dwelling a covenant by the purchaser or transferee to pay an annual charge as may be reasonably determined by the Owners or the Management Company as the case may be for the maintenance of the Landscaped Area and Recreation Land
- 7.4 where a Management Company is created and constituted:
- 7.4.1 full details of its memorandum and articles of association (which shall provide that any income to the Management Company is retained and applied to the maintenance of the Landscaped Area and Recreation Land) shall be delivered to the Council prior to Occupation of any Dwelling;
- 7.4.2 prior to Occupation of any Dwelling the owner of the Landscaped Area and Recreational Area shall have in place a mechanism for recovery of the maintenance costs from future owners and occupiers of the Dwellings by way of a covenant in the terms set out in Paragraph 7.3 and such covenant shall be inserted in every transfer or disposal of each Dwelling;
- 7.5 In the event of the failure of the Owners or any Management Company appointed to manage the Footpath and Landscaped Area and Recreation Land to comply with its obligations under this agreement to the standards set out in the Specification the Council shall have the option at its own discretion to step in to manage and maintain the Footpath and Landscaped Area and Recreation Land and recover the costs of doing so from the Owners which shall be recoverable as a simple debt and in the event that the Management Company either ceases to exist or goes into administration or otherwise fails to manage and maintain the said areas any funds received or held by the Management Company from the owners or occupiers of the Dwellings or otherwise shall be paid to the Council to use for such management and maintenance
- 7.6 Where a Management Company already exists and is constituted the Specification shall include the same provisions as in Paragraph 7.1 and additionally shall include details of provisions for ring fencing any funds or income received or paid to it solely in respect of the management and maintenance of the Footpath and Landscaped Area and Recreation Land

7.7 Not to transfer to a Management Company the unencumbered freehold interest in the Footpath and Landscaped Area and Recreation Land except on the following terms:

7.7.1 title to be deduced in accordance with the Land Registration Act 2002;

7.7.2 the land comprising the Footpath and Landscaped Area and Recreation Land will be transferred free of financial charges but with all rights and easements and other matters contained and referred to in the registered title to the Site;

7.7.3 vacant possession of the Footpath and Landscaped Area and Recreation Land shall be given on the date of the transfer in accordance with the provisions of this Deed;

7.7.4 completion shall take place on a date falling no later than 3 months after the issue of the Confirmation of Final Completion unless otherwise agreed with the Council (or where there is a dispute between the parties as to the form of transfer which is referred for determination under clause 8 of this Deed then two weeks after the receipt of the expert's determination); and

7.7.5 the transfer shall include the restrictive covenants set out in Paragraph 6.1 - 6.3 above and they shall be expressed to be binding on the Landscaped Area and Recreation Land

8. Until the Landscaped Area and Recreation Land are transferred to the Management Company following the completion of the Works, they shall be maintained and insured by the Owners at all times to the reasonable satisfaction of the Council with all grass regularly mown and trees hedges and shrubs kept in good order with any necessary trimming or lopping or replanting all in accordance with the approved Specification to the reasonable satisfaction of the Service Manager - Strategy and Planning PROVIDED THAT amendments to the approved Specification shall be permitted to be made by agreement with the Council

### **PART 3 FOOTPATH**

1. Prior to Occupation of the final Dwelling to construct and provide the Footpath in accordance with the approved Specification and not to Occupy or allow the Occupation of

the final Dwelling until the Footpath has been constructed and provided in accordance with the Specification and open for use to the public

2. Not to use the Footpath or allow or permit the Footpath to be used other than as a footpath for public recreational use and access from the Residential Site to the Recreation Ground Site at all times without having to seek the permission of the Owners and for the public to pass and repass on foot including with domestic pets and once constructed not to use the Footpath for any trade or business or residential development and no development requiring planning permission shall be carried out on the Footpath;
3. To maintain the Footpath including any gates and boundary fences in a good, clean and tidy condition and free of obstructions in accordance with the provisions of Part 2 paragraph 7
4. To provide a gate ramp or steps or other means of access (to be approved as part of the Specification) connecting without interruption the Residential Site and the Recreation Ground

#### **PART 4 PARISH LAND**

1. Prior to the Occupation of any of the Dwellings to
  - 1.1 consult with the Parish Council as to the manner in which the Parish Council require the Parish Land to be laid out and not to Occupy or allow or permit the Occupation of any of the Dwellings until such consultation has taken place
  - 1.2 offer to transfer the freehold title of the Parish Land to the Parish Council free of financial encumbrances substantially in accordance with the form of transfer TP1 in Schedule 10 but subject to such minor modifications as may be agreed between the parties
  - 1.3 Provided always that if the Parish Council do not agree to and complete the transfer of the Parish Land within two months of the offer in Paragraph 1.2 the provisions of Part 3 Paragraph 7 sub paragraphs 7.1 7.2 7.3 7.4 7.5 7.7 and Paragraph 8 will apply to the Parish Land and the Parish Land will be treated as part of the Recreational Land from that date
2. If the Parish Council do complete the transfer of the Parish Land prior to the Occupation of more than ten (10) Open Market Units to

- 2.1 lay out and provide land for recreation or allotments as requested by the Parish Council on the Parish Land including, where the Parish Council chooses allotments to be provided, at least one standpipe for water at a convenient place on the Parish Land the exact location to be agreed with the Parish Council on the Parish Land and
- 2.2 transfer the freehold title of the Parish Land to the Parish Council free of financial encumbrances substantially in accordance with the form of transfer TP1 in Schedule 10 but subject to such minor modifications as may be agreed between the parties

and not to occupy more than ten (10) Open Market Units until the freehold title to the Parish Land has been provided as set out in paragraph 2.1 above and transferred to the Parish Council as set out in paragraph 2.2) above

#### **SCHEDULE 4**

##### **Council's Covenants with the Owners**

1. The Council covenants with the Owners to enter into a Nomination Agreement with the Registered Provider substantially in the form set out in Schedule 5
2. At the written request of the Owners the Council shall provide written confirmation of discharge of the obligations contained in this Deed when satisfied that such obligations have been performed



**SCHEDULE 5**  
**The Form of Nomination Agreement**

THIS DEED OF NOMINATION RIGHTS is made the            day of            20

**BETWEEN:**

- (1)     [            ] (the "**Council**"); and
- (2)     [            ] (the "**Registered Provider**").

**WHEREBY IT IS AGREED** as follows:

**1        DEFINITIONS**

1.1     In this Agreement where the context admits the following expressions shall have the following meanings:

- "Affordable Housing"**            means housing provided to specified eligible households whose needs are not met by the open market. Affordable Housing should:
- (a)     meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices
  - (b)     include provision for the home to remain at an affordable price for future eligible households
- "Affordable Housing Land"**     means all that land forming part of the Site upon which the Affordable Housing Units are to be built together with any ancillary or associated land
- "Affordable Housing Units"**     means the 8 Affordable Rented Units and the 4 Shared Ownership Units constructed or to be constructed on the Affordable Housing Land pursuant to planning permission reference RR/2017/582/P

- "Affordable Rented Units"** means the 8 Affordable Housing Units to be offered and occupied for affordable rent as a tenure which is referred to in the National Planning Policy Framework published in March 2012 as offering flexible tenancies at a maximum of 80% of gross local Market Rents as defined in the latest edition of the Red Book (the RICS valuation – Professional Standards 2012 or other such document amending consolidating or replacing it) which may be increased annually by any increase in the Consumer Prices Index plus 0.5% reflecting the properties' size and location as verified by a valuation in accordance with the Royal Institution of Chartered Surveyors Valuation and Appraisal Standards (Fifth Edition as updated and amended from time to time) certified by a member of the Royal Institution of Chartered Surveyors and which shall be offered for rent by a Registered Provider in accordance with the terms of this Agreement
- "HCA"** means the Homes and Communities Agency for England being the national housing and regeneration agency formed on 1 December 2008 pursuant to the Housing and Regeneration Act 2008 which expression shall include any successor organisation to the HCA
- "Main Agreement"** means the Agreement made under (inter alia) Section 106 of the Town and Country Planning Act 1990 in respect of the Site and made the [ ] day of [ ] 2018 between (1) the Council (2) Richard Charles Kirkham and Carol Christine Kirkham (3) Russell Brett Beswick and Sharon Anne Beswick and (4) East Sussex County Council
- "Nominated Tenant"** means a person being a Qualifying Person with a Local Connection nominated by the Council pursuant to its rights set out in this Agreement

**"Qualifying Person with a Local Connection"**

means a person who is in need of Affordable Housing who is not easily able to compete in the local housing market who has a Local Connection which shall mean (in order of priority):

- (a) has resided in the District of Rother for a period of at least 3 out of the preceding 5 years as their only or principal home (not in a caravan that is sited on an unlicensed site , or a non permanent or holiday site)
- (b) has close relatives who reside in the District of Rother as their only or principal home and have done so for at least the previous 5 years (close relatives being parents, adult children or brothers or sisters, including corresponding step relationships (and grandparents, grandchildren, aunts or uncles and non adult children will only be considered as a local connection in certain circumstances as agreed by the Service Manager - Community and Economy)
- (c) has (or any family member included the application has) permanent paid employment (or a confirmed offer of such) in the District of Rother

**"Registered Provider"**

means the Registered Provider the party to this Agreement or such other Registered Provider from the list set out in Schedule 7 of the Main Agreement as may be first approved in writing by the Service Manager - Community and Economy and being a provider of social housing registered as such under Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 with the HCA

**"Shared Ownership"**

means a type of tenure whereby a Registered Provider grants a long lease of at least 125 years of a Shared Ownership Unit in a form approved by the HCA to a lessee who may purchase a share in the freehold of that unit (in respect of a house) or in the retained equity in the long lease (in respect of a flat)

<b>"Shared Ownership Units"</b>	means all those 4 Affordable Housing Units to be provided for Shared Ownership
<b>"Site"</b>	means the land against which the Main Agreement may be enforced as shown edged blue and red on the plan attached thereto known as land at Strand Meadow, Burwash, East Sussex
<b>"Working Day"</b>	means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom
<b>"Year"</b>	means 1 January to 31 December
<b>"Zone Agent"</b>	means a local Help to Buy agent appointed by the HCA (or other or equivalent successor at the time, appointed by the HCA) which acts as a first point of contact for families and single households seeking to buy a home through the HCA's Help to Buy affordable home ownership products in the South East of England the Agent first establishing whether applicants meet eligibility criteria before assessing their financial circumstances to ensure that they can afford home ownership longer term

## **2 AGREEMENT**

- 2.1 The parties hereby agree to comply with the provisions of this Agreement for a period of ONE HUNDRED AND TWENTY FIVE YEARS (125) from the date hereof
- 2.2 The Council shall have the right from the date hereof to nominate persons to occupy the Affordable Housing Units in accordance with the terms of this Agreement

## **3 NOMINATION TERMS**

- 3.1 Save where nomination agreements for Shared Ownership Units are operated through a Zone Agent the Council agrees to make nominations for Nominated Tenants to the Affordable Housing Units on its current standard nomination form using its standard procedures in use at the time of nomination and to nominate Qualifying Persons with a Local Connection

- 3.2 The Registered Provider agrees to use the Council's standard forms or procedures to give notice to the Council immediately when a vacancy arises
- 3.3 The Affordable Housing Units shall only be occupied by persons who meet the criteria set out in this Agreement
- 3.4 The Registered Provider agrees to comply with the covenants in the Main Agreement in relation to the Affordable Housing Units provided or to be provided at the Site
- 3.5 Where a Local Connection is required to be demonstrated it will need to be evidenced with copies of any documentary evidence submitted to the Council to demonstrate eligibility within the terms of this Agreement and the Council shall decide whether such evidence meets the requirements of a Local Connection
- 3.6 The Council reserves the right to exercise its discretion when considering allocation under the terms of this Agreement in order to ensure a balanced and mixed community is maintained

#### **4 NOMINATION PROCEDURE FOR AFFORDABLE RENTED AND SHARED OWNERSHIP UNITS – FIRST LETTINGS**

- 4.1 The Registered Provider covenants with the Council that the Council shall have the right to nominate up to 100% of the Affordable Housing Units and before letting an Affordable Rented Unit or disposing of or granting Shared Ownership leases on Shared Ownership Units for the first time shall give to the Council at least 20 Working Days' notice in writing for the anticipated date on which each Affordable Housing Unit will be available for occupation and the Council shall within 20 Working Days of such notice supply to the Registered Provider the names and addresses of at least 3 Nominated Tenants in respect of each Affordable Housing Unit
- 4.2 The Registered Provider will by notice in writing offer an assured tenancy or a lease or a share (of up to no more than 80%) as appropriate of the Affordable Rented Unit or the Shared Ownership Unit to the first Nominated Tenant and such Nominated Tenant shall have 5 Working Days from the date of receipt of the notice in which to accept such an offer in writing. If the first Nominated Tenant does not accept such offer in writing within 5 Working Days the Registered Provider will by notice in writing offer a tenancy or lease or share of the Affordable Housing Unit to the second Nominated Tenant who shall have 5 Working Days from the date of receipt of the notice in which to accept such offer in writing. If the second Nominated Tenant does not accept such offer in writing within 5 Working Days the Registered Provider will by notice in writing offer a tenancy or lease or share of

the Affordable Housing Unit to the third Nominated Tenant who shall have 5 Working Days from the date of receipt of the notice in which to accept such offer in writing

- 4.3 At any time after the tenancy or share or lease of any Affordable Housing Unit has been offered to a Nominated Tenant in accordance with the preceding provisions of this clause and no written acceptance has been received within the prescribed time limit or in the event that the Council shall have failed to nominate a Tenant within the time limit prescribed in clause 4.1 the Registered Provider shall in respect of each such Affordable Housing Unit be entitled on giving notice in writing to the Council to offer a Tenancy of the Affordable Housing Unit to a person who is not a Nominated Tenant provided that person is a Qualifying Person with a Local Connection In the event of the Registered Provider declining to accept a Nominated Tenant the Registered Provider shall give to the Council written reasons for refusal (hereinafter called "the Refusal Notice") within 10 working days of the Registered Provider's receipt of the name of the Nominated Tenant and the Council shall within 5 working days of receipt of the Refusal Notice supply to the Affordable Housing Provider the name and address of a further Nominated Tenant and in the event that such further Nominated Tenant shall be declined by it the Council shall within a further 5 days of receipt of the further Refusal Notice supply to the Registered Provider the name and address of a further Nominated Tenant and if that further Nominated Tenant shall be declined by it the Registered Provider shall thereafter nominate a tenant from its own housing list being a Qualifying Person with a Local Connection
- 4.4 The Registered Provider shall not decline a Nominated Tenant where the Council has a statutory duty to house them under the current homelessness legislation unless there is a reasonable risk to other residents in that location from a member of the household of the Nominated Tenant
- 4.5 Where the Registered Provider and the Council agree that a Shared Ownership Unit either initially or on resale shall be allocated by the Zone Agent such allocation shall be to a Qualifying Person with a Local Connection save that if no suitable qualifying nominees are available to be put forward the Registered Provider may with the Council's consent dispose of the Shared Ownership Unit in accordance with paragraph 3.6 below
- 4.6 Where the initial sale or resale of a Shared Ownership Unit is referred back to the original Zone Agent and the Registered Provider satisfies the Service Manager - Community and Economy that there are no Qualifying Persons with a Local Connection for that Shared Ownership Unit, the Registered Provider may on condition that it first obtains the consent in writing of the Service Manager - Community and Economy to the proposed applicant (such consent not to be unreasonably withheld) allocate that Shared Ownership Unit otherwise

than in accordance with paragraph 4.5 above to another Qualifying Person with a Local Connection

## **5 SUBSEQUENT LETTINGS**

The Registered Provider further grants to the Council the right to nominate from its housing register a Qualifying Person with a Local Connection in respect of three out of every four Affordable Housing Units which become true voids. For the purpose of this Agreement the definition of true and non-true voids shall be as follows:

### **True voids comprise:**

- Voids within new build/newly rehabilitated schemes;
- Voids created through tenant moves to landlords where no reciprocal arrangements exist;
- Voids created through tenant transfers to another local authority where no reciprocal arrangements exist;
- Voids created by the death of a tenant where there is no statutory right of succession;
- Voids created by tenants buying or renting their own property in a private sector;
- Voids created by eviction or abandonment of property;
- Voids created by permanent decants

### **Non-true voids comprise:**

- Voids created through tenant transfers where tenants move within the Registered Provider's own Housing Stock;
- Voids created through re-housing via mobility schemes where a reciprocal arrangement exists;
- Voids created by decants who are returning

## **6 ENFORCEMENT**

- 6.1 It is hereby agreed that the provisions of this Agreement shall not be binding upon nor enforceable against the following:

- 6.1.1 a mortgagee, chargee or receiver in possession of the Site who has provided loan facilities to the Registered Provider and is exercising its powers of disposal of the Site under such charge or mortgage;
  - 6.1.2 a tenant of a Affordable Housing Unit who has exercised the right to acquire the whole of the Affordable Housing Unit pursuant to the Housing Act 1996 or any mortgagee, chargee or successor in title to such tenant exercising any of its powers by or pursuant to its mortgage of the Affordable Housing Unit;
  - 6.1.3 a shared ownership lessee who has acquired the freehold reversion of the Affordable Housing Unit (if a house) or 100% equity in the lease of the Affordable Housing Unit (if a flat) or any mortgagee, chargee or receiver or successor in title;
  - 6.1.4 a tenant of an Affordable Housing Unit who has exercised the benefit of a voluntary purchase grant or any mortgagee, chargee or successor in title
- 6.2 The obligations contained in this Deed are covenants for the purpose of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982
- 6.3 If the Registered Provider shall transfer the Affordable Housing Land or any part of it to another Registered Provider the said transfer shall require that Registered Provider to enter into an agreement with the Council in similar terms to those contained herein

**Schedule of Affordable Housing Units**

**8 Affordable Rented Units**

**4 Shared Ownership Units**



## **SCHEDULE 6**

### **The Approved Registered Providers - in no particular order**

Clarion Housing Group Limited

Hyde Housing Association Limited

Optivo Horizon Limited

Orbit Housing Association

Saxon Weald Housing Association

Moat Housing Group Limited

Places for People Group Limited

English Rural Housing Association

Hastoe Housing Association

and any other Registered Provider that the Council may approve from time to time

**SCHEDULE 7**  
**OWNERS' COVENANTS WITH THE COUNTY COUNCIL**

The Owners covenant with the County Council as follows:-

**PART 1 SECTION 278 AGREEMENT**

1. Prior to Commencement of Development to enter into the Section 278 Agreement with the County Council to secure the carrying out of the Highway Works paying all of the County Council's proper and reasonable legal fees relating to the said Section 278 Agreement
2. Not to Commence Development until they have entered into the Section 278 Agreement with the County Council to secure the carrying out of the Highway Works paying all of the County Council's proper and reasonable legal fees relating to the said Section 278 Agreement
3. To carry out and complete the Highway Works in accordance with the Section 278 Agreement prior to Occupation of any part of the Development
4. Not to Occupy or permit or allow the Occupation of any part of the Development until the Highway Works have been completed in accordance with the Section 278 Agreement

**PART 2 HIGHWAY WORKS**

The Highways Works shall comprise:

- 1.1 The construction of the new access road into the Site forming a continuation of Strand Meadow
- 1.2 The existing turning head at the end of Strand Meadow to be retained and formalised and separated from the main through route by carriageway markings
- 1.3 The footway that runs along the north western side of Strand Meadow (for an approximate length of 50m from the proposed access) to be removed to allow for additional on-street parking .
- 1.4 The construction of a pedestrian crossing with dropped kerbs and tactile paving provided where the footpath ends to the north of the new parking area

1.5 Widening of the carriageway to retain a 4.8m width along that section of road by narrowing the footpath on the south side of Strand Meadow to a width of approximately 2.7m.

1.6 In the event that a Traffic Regulation Order is approved following payment of the Traffic Regulation Order Contribution the implementation of parking restrictions around the turning head

together with any other ancillary works reasonably required by the Director

### **PART 3 TRAFFIC REGULATION ORDER CONTRIBUTION**

The Owners hereby covenant with the County Council:-

1. To pay the Traffic Regulation Order Contribution in full to the County Council prior to Commencement of Development;
2. Not to Commence Development until the Traffic Regulation Order Contribution has been paid to the County Council in full.

## **SCHEDULE 8**

### **COUNCIL AND COUNTY COUNCIL COVENANTS**

#### **PART 1 Council's Covenants with the Owners**

1. At the written request of the Owners the Council shall provide written confirmation of discharge of the obligations contained in this Deed when satisfied that such obligations have been performed
2. To procure that the Service Manager – Strategy and Planning (or any person duly authorised by him) promptly inspects the Works when required and does not unreasonably withhold or delay the issue of either the Confirmation of Practical Completion or the Confirmation of Final Completion
3. To enter into a Nominations Agreement with the Registered Provider
4. The Council shall provide to the Owners if requested to do so such evidence as the Owners shall reasonably require in order to confirm the expenditure of the sums paid by the Owners under this Deed



**PART 2 County Council's covenants with the Owners**

To enter into a Section 278 Agreement for the Highway Works as envisaged by Paragraph 1 of Part 1 of Schedule 7

**SCHEDULE 9  
ECOLOGY REPORT**



**LAND TO THE SOUTH-WEST OF STRAND MEADOW,  
BURWASH, EAST SUSSEX  
ECOLOGICAL ASSESSMENT REPORT**



**Park Lane Group  
February 2017**

The Ark Partnership, P.L.C.  
Adrian Street, 21st Floor, 200 Colindale Avenue, London, NW9 1NL  
Tel: 020 8737 0494 Fax: 020 8737 0495 Email: [info@arkpartnership.co.uk](mailto:info@arkpartnership.co.uk)  
[www.arkpartnership.co.uk](http://www.arkpartnership.co.uk)  
Credit: Park Lane Group, Registered No. 1864811 (VAT Registration No. 256548092)



**LAND TO THE SOUTH-WEST OF STRAND MEADOW,  
BURWASH, EAST SUSSEX  
ECOLOGICAL ASSESSMENT REPORT**

**Park Lane Group  
February 2017**



## Contents Record

This Report has been issued and amended as follows:

Issue	Revision	Description	Date	Signed
1	Draft	Issue to Client	08.07.11	APL
2	Draft	Issue to Client	01.08.11	APL
3	Final	Issue to Client	18.08.11	APL
4	Final	Issue to Client	27.02.17	APL

Approved by: A. P. Leftwich

Signed: \_\_\_\_\_

Position: Director

Date: \_\_\_\_\_

## **CONTENTS**

### **1. INTRODUCTION**

### **2. METHODOLOGY**

#### **2.1 Desk Study**

#### **2.2 Walkover Surveys**

#### **2.11 Surveys for Hazel Dormouse**

#### **2.13 Surveys for Bats**

#### **2.18 Surveys for Reptiles**

### **3. RESULTS**

#### **3.2 Nature Conservation Context**

#### **3.5 Extended Phase I Habitat Survey**

#### **3.32 Protected Species Surveys**

#### **3.53 Additional Species Recorded**

### **4. EVALUATION**

#### **4.3 Nature Conservation Context**

#### **4.7 Habitats**

#### **4.14 Protected Species**

#### **4.48 Additional Species**

### **5. BIODIVERSITY GAIN**

#### **5.1 Impacts upon TPO Resource**

#### **5.3 RPA Mitigation Work**

#### **5.9 Canopy Spread Mitigation Work**

#### **5.12 Protected Species**

#### **5.15 Arboricultural Method Statement**

#### **5.22 Supervision & Reporting**

### **6. CONCLUSIONS**

## **TABLES**

**Table 1 – Floral List**

**Table 2 – Floral Survey of Hedgerows/Boundaries**

**Tables 3 to 5 – Bat Activity Survey Results**

**Tables 6 & 7 – Reptile Survey Results**

## **FIGURES**

**Figure 1 – Location Plan**

**Figure 2 – Phase I Habitat Plan**

**Figure 3 – Location of Protected Species Interests**

**Figure 4 – Distribution of Slow Worm**

## **APPENDICES**

**Appendix 1 – Block Plan and Sections**

**Appendix 2 – Photographs**  
**Appendix 3 – Ancient Woodland Resources**

## **1. INTRODUCTION**

- 1.1 Park Lane Group has commissioned The Ash Partnership (UK) Ltd. to undertake an ecological assessment of land to the south-west of Strand Meadow in Burwash, East Sussex. This area of land is located on Figure 1 and is hereafter referred to as the 'Site'. It is centred at OS Reference TQ675251.
- 1.2 The Site consists of three consecutive horse-grazed fields surrounding by hedgerows and scrub vegetation, along with a small watercourse running east to west arising from a spring.
- 1.3 The Site is allocated for use for housing purposes, landscaping and amenity open space under the provisions of Policy BL1 of the Rother District Local Plan adopted in July 2006. The proposed layout of the residential development has undergone iterative changes and is now based on *Block Plan & Sections Dwg. 4702/15/2 Rev E* dated January 2017 by Pump House Designs – see Appendix 1. The remainder of the Site will be set aside as a landscape buffer and proposed amenity land.
- 1.4 This Report assesses the ecological value of the Site and identifies any mitigation and enhancement measures that might be commensurate in developing the land.

## **2. METHODOLOGY**

### **Desk Study**

- 2.1 A formal data request Desk Study was not undertaken for this project, but instead a review of the Natural England website [www.magic.gov.uk](http://www.magic.gov.uk) was made to assess for the presence of statutorily protected sites and Ancient Woodland.

### **Walkover Surveys**

- 2.2 Walkover surveys were initially completed in August and September 2010, and these have since been updated by third visit in early August 2016.
- 2.3 An informal list of flowering plants (or macrophytes) has been compiled, see Tables 1 and 2. All plants were identified to species level, wherever possible, using Stace (1997) in accordance with the nomenclature of Preston *et al.* (2003). Their national status was assessed using Preston *et al.* (2003) and county status using Hall (1980).
- 2.4 A Phase I Habitat Plan was produced based on Joint Nature Conservation Committee (2003), using the standardised categorization of habitats and their colour-coding, see Figure 2.
- 2.5 The field boundaries were assessed for the presence of Ancient Woodland Vascular Plants or AWVPs (Rose, 1999), see Table 2. AWVPs are associated with current/former woodland of long continuity, and are used to define stands of Ancient Woodland.
- 2.6 The Site was also assessed for evidence and/or potential to contain protected and nationally uncommon species, in particular for *Meles meles*, Hazel Dormouse *Muscardinus avellanarius*, roosting bats and reptiles.

### **Surveys for Hazel Dormouse**

- 2.11 All wooded parts of the Site were carefully searched for evidence of Hazel Dormouse, which includes the presence of nests and characteristically gnawed nuts, especially hazelnuts. The location of potential Hazel Dormouse habitat is shown on Figure 3.
- 2.12 Ground searching involves examining tree bases, exposed roots, hollows and leaf accumulations. Litter and topsoil searches help to expose recently fallen and old hazelnuts, and these are gathered for examination both in the field and later under a microscope.

### **Surveys for Bats**

#### Roosting Bats

- 2.13 Trees within the Site and its boundary were carefully examined and searched for evidence of bat and bird occupation. This includes a search for potential features such as rot holes, woodpecker holes, natural cavities, lifting plates of bark, dead wood and dense Ivy *Hedera helix*, where bats could roost or birds (including owls) could roost/nest.
- 2.14 The search technique involved a walk around the tree and observations using binoculars and ladder as necessary. Should a more detailed inspection be warranted, and where feasible, cavities would be explored using an endoscope.
- 2.15 Typical evidence of roosting bats can be difficult to find but may include staining around holes and adherent droppings on the trunk, leaves and underlying vegetation. This differs from evidence of roosting/breeding birds which typically includes white staining and nesting material.

#### Flight Activity

- 2.16 A series of three activity surveys were undertaken in 2016 – (i) at sunset on the evening 13<sup>th</sup> September, (ii) pre-dawn on the morning of 14<sup>th</sup> September and (iii) at sunset on the evening 15<sup>th</sup> September, respectively.
- 2.17 There were three surveyors present on each occasion and their locations are shown on Figure 3. Each had a Bat Box Duet detector linked to an Edirol digital recorder, and recordings were made of any passing bat that was either heard or seen – see Tables 3 to 5. At the same time the direction of movement was noted along with any additional information such as feeding buzzes etc. Abbreviations used on the Tables include:

- S&H – bat seen and call heard;

- SNH – bat seen but call not heard;
- HNS – call heard but bat not seen.

### Surveys for Reptiles

- 2.18 Given the presence of potential reptile habitat within the Site, coupled with the finding of a single Slow Worm *Anguis fragilis* during the August 2010 walkover, a targeted survey was also undertaken during September/October 2010.
- 2.19 Best practice is based upon *Froglife Advice Sheet 10* (HSBI, 1999) combined with *English Nature Species Conservation Handbook, 1994 et seq.*. This involves deploying heat traps in suitable habitat areas and features within the Site based on HSBI (1998) recommendations. In line with current Natural England guidance, a series of ten survey visits was undertaken in order to confirm the size of the reptile population(s).
- 2.20 The 2010 survey consisted of 150 heat traps (a mix of 110 roofing felts and 40 corrugated tin sheets) set out within Site. Allowing for unsuitable areas of the Site, the trapping density was therefore well in excess of 100 traps/ha. Each heat trap was numbered and located on a plan.
- 2.21 Each survey was undertaken either between 0800 to 1000 hours in the morning, or between 1600 to 1800 hours in the late afternoon, during ideal weather conditions. On each survey occasion, any reptiles observed is quickly identified, a note made of the trap number, species, sex/age (if appropriate) and any distinguishing marks.
- 2.22 These results were updated by a second survey undertaken in August/September 2016. This involved 80 heat traps set in a series of parallel lines across the Site, and these were examined on 7 occasions.

### **3. RESULTS**

3.1 The Site consists of three adjoining fields that run north-east to south-west from the southern end of Strand Meadow, see Photographs 1 to 3 in Appendix 2. They are referred to in this Report as follows:

- North Field – Slopes towards the north-west and lies immediately south of Strand Meadow. It is bordered to the west and south-west by a small un-named watercourse, and to the north and south by residential housing.
- Central Field – Slopes towards the north and is bordered to the north-east by the small un-named watercourse, and to the east by residential housing. Hedgerows border the western and southern boundaries.
- South Field - Slopes towards the north and is bordered on all sides by hedgerows.

#### **Nature Conservation Context**

3.2 No statutory sites of nature conservation interest are present within a 2km radius of the Site.

3.3 There is, however, a concentration of Ancient Woodland in the area surrounding Burwash, see Appendix 3. The nearest such resources to the Site are:

- Honeybrook Wood situated approximately 500m to the north-west of the Site; and
- Park Wood situated approximately 750m to the north-west of the Site, respectively.

3.4 The tree-lined boundaries of the Site would therefore need to be considered within this context.

#### **Extended Phase I Habitat Survey**

##### Survey Conditions

3.5 The 2010 surveys were undertaken in late summer, and the three fields were being grazed/poached by five horses at the time of survey. Constraints on the botanical recording were therefore inevitable, but the survey results are nevertheless considered a relatively good indication of the botanical interest.

3.6 The 2016 survey was also undertaken in summer and followed light grazing by goats and the presence of a fenced enclosure with pigs in the North Field.



- 3.7 Much of the Site is dominated by the scrub and this was influenced by the horse browsing. In 2010 the vegetation was variously grazed/poached and had tracks and accumulations of droppings within the Site, as well as shelters within the larger area of scrub. These patterns had largely disappeared by 2016 and the vegetation was more rank.
- 3.8 In 2010 there has been re-fencing work along the north-eastern boundary of the North Field and the eastern boundary of the Central Field, and this had involved scrub clearance. As a result there was extensive regenerating Bramble *Rubus fruticosus* agg. throughout the eastern side of the North Field as well as an area of bare ground.

#### Principal Habitats & Plant Species

- 3.9 Photographs of the principal habitats of interest within the Site are provided in Appendix 2.
- 3.10 A total of 111 macrophyte species was recorded, indicating that this is floristically a relatively species-rich Site, see Table 1. Most were herbs associated with the grazed fields.
- 3.11 The range of habitat types present is shown on the Phase I Habitat Plan, see Figure 2. The Site is moderately diverse with eight principal habitat types, as defined by JNCC (2003), being present as follows:
- Dense and Scattered Scrub (A2.1 & A2.2);
  - Scattered Broad-leaf Trees (A3.1);
  - Tall Ruderal Vegetation (C3.1);
  - Poor Semi-Improved Grassland (B6);
  - Wet Grassland (B5);
  - Acid/Neutral Flush (E2.1);
  - Running Water (G2); and
  - Bare Ground (J4).

In addition, there are fences (2.4).

#### Dense & Scattered Scrub

- 3.12 The field boundaries mostly consist of former hedgerows, tree-lined watercourses and strips of mature scrub with occasional standard trees. With the exception of one newly laid hedgerow, the boundaries are no longer managed and are therefore effectively tree screens.

- 3.13 Within the fields the scrub is dominated by Bramble, but there are also localised stands and individual trees of Grey Willow *Salix cinerea*, Hazel *Corylus avellana*, Blackthorn *Prunus spinosa* and Ash *Fraxinus excelsior*. The current extensive cover of Bramble, backed up by former aerial photographs suggest that the fields are likely to have been colonised during a period of disuse. The pattern would certainly imply colonisation of a neglected field from the boundary edges.
- 3.14 The tree-lined field boundaries have been divided into the following lengths and the floral assemblages are shown on Table 2:
1. **Western boundary/watercourse to North Field** – A line of mature trees dominated by Hazel, Grey Willow and localised Ash, with an understorey of Bramble and Ivy *Hedera helix*. There is a concentration of nine AWVPs here including Field Maple *Acer campestre*, Midland Hawthorn *Crataegus laevigata*, Holly *Ilex aquifolium*, Soft Shield-fern *Polystichum setiferum*, the sedges *Carex remota* and *Carex pendula*, Primrose *Primula vulgaris* and Sanicle *Sanicula europaeus*.
  2. **Southern internal boundary/watercourse to North Field** – Running along the minor watercourse, this is mostly a stand of Grey Willow with localised Holly and Ash. Occasional AWVPs occur here such as Tutsan *Hypericum androcaemum*.
  3. **Western boundary to Middle Field & South Field** – This is a former hedgerow with signs of having previously being laid. It is dense and links directly with boundary no. 1. There is a mix predominantly of Ash, Pedunculata Oak *Quercus robur*, Hawthorn *Crataegus monogyna* and Hazel.
  4. **Eastern boundary to Middle Field** – Mostly consisting mature trees in the southern half such as Hazel and Holly, over a ground flora of Ivy. There are introductions here presumably from nearby residential properties such as Sycamore *Acer pseudoplatanus*, Apple *Malus domestica* and Wild Pear *Pyrus communis*. The northern half of the boundary has been recently laid to approximately 1.5m height and thickened up with further tree planting.
  5. **Southern boundary to Middle Field** – There is a small internal length of mature trees on the southern side of dry ditch, mostly consisting of Hazel and Holly. In addition, a single Midland Hawthorn is present here.
  6. **Eastern Boundary to South Field** – This boundary is varied in composition, being influenced by the landscaping within the adjacent residential properties. The most frequent species are Holly, Bramble and localised Hazel; but Apple and localised Virginia-creeper *Parthenocissus quinquefolia* are also evident.
  7. **Southern boundary to South Field** – This adjoins a road and there is field access via a gate. The boundary is composed of Hawthorn mixed with localised Hops *Humulus lupulus*.

### Scattered Broad-leaf Trees

- 3.15 Disparate trees in excess of 300mm diameter at breast height (dbh) occur within the North Field such as Pedunculate Oak and Goat Willow *Salix caprea*, as well as mature Hazel stools along the lower western and southern slopes. There is a large Goat Willow at 500mm dbh near to the northern corner of the Site.
- 3.16 In the Middle Field there are few significant field trees other than a Goat Willow at approximately 500mm dbh in the south-western corner and a large Pedunculate Oak on the eastern boundary measuring approximately 800mm dbh.
- 3.17 There are no field trees within the South Field other than a small cluster of Ash in the north-eastern corner.

### Tall Ruderal Vegetation

- 3.18 Stands of Nettle *Urtica dioica* and Broad-leaved Dock *Rumex obtusifolius* are present and are typically associated with horse-grazed fields. They are relatively resistant to grazing as they are unpalatable, and therefore persist once established.
- 3.19 There are also three colonies of Himalayan Balsam *Impatiens glandulifera*, curiously within the Site, associated with the underlying wet soils. This otherwise wetland species will have colonised here from the nearby un-named watercourse.

### Poor Semi-Improved Grassland

- 3.20 The grassland is very damp and during the winter months becomes permanently waterlogged in places. It is therefore dominated by Yorkshire Fog *Holcus lanatus* and has wetland species such as Bristle Club-rush *Isolepis setacea* and Marsh Cudweed *Gnaphalium uliginosa* present.
- 3.21 It is floristically not particularly species-rich and, although this might have been due to a slight under-estimation due to the horse-grazing, this was confirmed by the summer 2016 survey. However, there are species present that are indicative of better quality grasslands such as Greater Bird's-foot Trefoil *Lotus pediculatus*, Common Knapweed *Centaurea nigra*, Common Sorrel *Rumex acetosa*, Lesser Stitchwort *Stellaria graminea* and Meadow Vetchling *Lathyrus pratensis*.
- 3.22 Large areas of the field are floristically species-poor and appear to represent either previously scrubbed over areas or heavily disturbed grassland.

### Wet Grassland

- 3.23 There were areas of wet ground at the time of both the August/September 2010 and August 2016 surveys – including minor puddles of standing water. The largest of these areas was associated with Lesser Spearwort *Ranunculus flammula*, while the remainder had abundant Creeping Buttercup *R. repens* and wetland species such as Cuckooflower *Cardamine pratensis*.

---

### Acid/Neutral Flush

- 3.24 This habitat is the most interesting resource within the Site, as it is a nationally uncommon habitat. Although flushes typically have bryophytes present, there are few associated with the habitat on this Site other than the liverwort *Pellia epiphylla* around the eastern spring. This may be due to horse poaching and/or selective grazing, or perhaps occasional seasonal summer droughts.
- 3.25 There are four separate flushes all being defined by wet mud with slowly percolating water running down the slope – see Photographs 3 and 4. They have affinities with the M36 *Lowland Springs and Streambanks of Shaded Conditions* community type (Rodwell, 1998). These flushes have a characteristic vegetation consisting of Bristle Club-rush, Lesser Spearwort, Creeping Buttercup, the grasses *Glyceria notata* and *Agrostis stolonifera*, the rushes *Juncus acutiflorus* and *J. bufonius*, Bog Stitchwort *Stellaria uliginosa* and Square-stalked St. John's-wort *Hypericum tetrapterum*.
- 3.26 The flushes are defined as follows:
1. Two flushes on the lower slopes at approximately 65m AOD, one in the north-western corner of the North Field and one in the north-western corner of the Central Field. These are particularly floristically species-rich, the one in the Central Field having been heavily poached by the horses.
  2. The largest flush at approximately 75m AOD along the eastern boundary, which surrounds the spring that feeds into the un-named watercourse. This is heavily shaded by Grey Willow and has ferns such as *Dryopteris dilatata* and *D. felix-mas*, and patches of Opposite-leaved Golden-saxifrage *Chrysosplenium oppositifolium* and bryophytes such as *Pellia epiphylla*. It is very boggy and difficult to access.
  3. A small flush at approximately 75m AOD in the eastern half of the North Field, that appears to lie on the same spring-line as that of the watercourse. It is the least floristically species-rich and had been heavily grazed at the time of survey.

### Running Water

- 3.27 The small un-named watercourse arises from a spring near the eastern boundary, as shown on the Ordnance Survey, and is clearly associated with the various flushes and areas of wet ground.
- 3.28 The stream mostly lies beneath scrub and is much poached by the horses. Although much of its length was not accessible, where examined it was found to be very impoverished with only a few individuals of Himalayan Balsam, Wavy Bittercress *Cardamine flexuosa* and Broad Buckler-fern *Dryopteris dilatata*. It may also suffer from low groundwater levels during the summer months, when the springhead probably retreats downstream leaving behind drying muddy conditions.

- 
- 3.29 It emerges briefly within the field, where it has been heavily poached by the horses. Here there is Plicate Sweet-grass *Glyceria notata*, rushes such as *Juncus effusus*, *J. articulatus* and *J. bufonius*, Brooklime *Veronica beccabunga* and Water-pepper *Persicaria hydropiper*.
- 3.30 The watercourse then diverts northwards along the western boundary of the North Field, where it becomes heavily shaded. Here wetland species include Remote Sedge *Carex remota* and Opposite-leaved Golden-saxifrage.

#### Bare Ground

- 3.31 This disturbed ground was a result of scrub clearance work, and the regeneration was slow probably as a result of horse disturbance coupled with a prolonged summer drought. This area had revegetated by the time of the summer 2016 survey.

#### **Protected Species Surveys**

- 3.32 The Site was carefully searched for evidence of protected species, where access permitted. Results for each of the species groups are provided below.

---

#### Dormouse

- 3.36 There is potentially good-quality Dormouse habitat along the scrub-lined western boundary of the Site, where there are concentrations of Hazel, Grey Willow and occasional Honeysuckle *Lonicera periclymenum* and Bramble – all favoured species used for nesting/foraging behaviour. Further potential habitat is highlighted on Figure 3.
-

- 3.37 Searches in both 2010 and 2016 confirmed the presence of hazelnuts under many of the Hazel stools but none had the characteristic feeding evidence of Hazel Dormouse. No nests were found
- 3.38 It is therefore concluded that Hazel Dormouse is either absent or possibly very localised along the Site boundary.

#### Bats

- 3.39 None of the trees within the Site were found to contain suitable features that might be occupied by roosting bats. They are mostly too small in diameter to have physical defects associated with age and pathogens, and few have any significant concentrations of adherent mature Ivy.
- 3.40 It was not possible to clearly assess all of the boundary trees, and therefore it remains possible that unidentified tree roosts might be associated with (i) the western boundary of the Site, and possibly (ii) the eastern boundary of the Central and South Fields.
- 3.41 The bat activity surveys, see Tables 3 to 5, confirmed the presence of three bat species within the Site and its immediate vicinity – these being Common Pipistrelle *Pipistrellus pipistrellus*, Brown Long-eared Bat *Plecotus auritus* and an undetermined *Myotis* sp.
- 3.42 A Common Pipistrelle roost of up to 2 individuals was detected off-Site and is thought to be associated with the residential housing along the eastern edge of the existing terminus to Strand Meadow. This is implied by:
- An individual emerging very early after sunset, and at the start of the typical emergence period for on two occasions, indicating the close proximity of a roost.
  - Typical pre-dawn re-entry flight behaviour, with numerous passes over the residential houses.
- 3.43 Brown Long-eared Bat appear to use the western tree-lined boundary for flights that might be associated with commuting from a roost, as early emergence after sunset was detected on 13<sup>th</sup> September at 23 minutes past sunset, i.e. well before their typical emergence time. This is partly re-enforced by the recording a individual on 14<sup>th</sup> September at just 37 minutes before dawn – again suggesting a nearby roost.
- 3.44 As there are Ivy-clad trees along the western boundary it is therefore possible that there is a small roost of perhaps one or two individuals here. Otherwise, they will most likely be associated with an inter-connecting wooded feature in close proximity.

### Birds

- 3.45 No nests were found within the Site, however, there is abundant suitable breeding habitat along most of the boundaries to support typical woodland and arable bird species.

### Reptiles

- 3.46 The North and Central Fields are tussocky in places, especially where scattered Bramble has developed, while all three fields have extensive scrub edge habitat. In areas of the North Field where scrub has been cleared, there is also deep thatch. All of these features indicate that the Site has relatively good potential for reptile occupation.
- 3.47 In 2010 a single adult Slow Worm *Anguis fragilis* (a pregnant female) was found basking within the regenerating Bramble scrub along the northern boundary of the North Field.
- 3.48 The 2010 survey undertaken between Thursday 30<sup>th</sup> September and Friday 8<sup>th</sup> October during varied autumnal weather confirmed the presence of Slow Worm population on Site. Only low numbers of Slow-worm were recorded during the survey, with a peak count of just three individuals – see Table 6.
- 3.49 The most recent survey in 2016 between 25<sup>th</sup> August and 15<sup>th</sup> September similarly only detected Slow Worm and recorded a peak count of 10 individuals – see Table 7. This included first year juveniles that confirm successful breeding occurred on Site during 2016 as well as in 2010.
- 3.50 The Slow Worm population is widely distributed within the North Field and eastern side of the Central Field - see Figure 4.

### Amphibians

- 3.51 Approximately six juvenile Common Toad *Bufo bufo* were noted during the August/September 2010 walkover and under some of the heat traps during the reptile survey. A single Common Frog *Rana temporaria* was also noted under one of the heat traps.
- 3.52 There are no waterbodies within or adjacent to the Site. There are, however, at least two waterbodies in the fields to the north within a 500m radius of the Site. These could be associated with amphibian populations.

### **Additional Species Recorded**

- 3.53 Giant Puff-ball *Langermannia gigantea* were recorded within the North and Central Fields in autumn 2010. This is a relatively uncommon species in Sussex, but can be frequent where it occurs.

---

## 4. EVALUATION

- 4.1 The proposed layout of the residential development has undergone iterative changes and is now based on *Block Plan & Sections Dwg. 4702/15/2 Rev E* dated January 2017 by Pump House Designs – see Appendix 1. The remainder of the Site will be set aside as a landscape buffer and proposed amenity land.
- 4.2 The layout has sought to minimise losses to the principal ecological assets within the Site by means of the following:
- None of the peripheral boundaries will be lost, the development utilising the existing entrance off Strand Meadow, thereby retaining nearly all of the most significant trees and hedgerow-type assets.
  - Retaining the spring and associated flush habitat between the North and Central Fields.

### Nature Conservation Context

- 4.3 No statutory site of nature conservation interest would be adversely impacted by the proposed development.
- 4.4 Extensive tracts of Ancient Woodland are located within the surrounding 5km radius landscape. There is no such woodland within or adjacent to the Site, and therefore no impacts upon Ancient Woodland are anticipated.
- 4.5 There are, however, a number of large/veteran trees and Ancient Woodland Vascular Plants (AWVPs) along some of the boundaries. The most significant concentrations lie along the un-named watercourse that forms part of the western Site boundary and the boundary between the North and Central Fields, where a total of 10 AWVPs were recorded. This would suggest that this watercourse has been wooded for at least a century or more.
- 4.6 All of the Ancient Woodland ground flora within the Site will therefore be retained, and so no significant adverse impacts upon this resource are anticipated.

### Habitats

- 4.7 Excluding the wooded boundaries, all of which are to be retained, the most significant habitats within the Site are the Acid/Neutral Flushes and minor watercourse as these represent nationally uncommon habitats. Impacts upon these habitats are discussed below.

### Flushes

- 4.8 The flushes within the Site are likely to be examples of the **M36 Lowland Springs and Streambanks of Shaded Conditions** community type (Rodwell, 1998).



Unusually, however, there appear to be relatively few bryophytes associated with the flush communities within this Site. This may be due to sustained horse poaching and/or selective grazing, perhaps combined with the impact of summer droughts. Small flushes are certainly sensitive to drought conditions and indeed no true aquatic species are evident.

- 4.8 Flushes may be associated with a range of uncommon species such as wetland plants, mosses, liverworts and invertebrates for example. In addition, the spring-fed watercourse would warrant retention due to the importance of maintaining the local hydrology.
- 4.9 While the flush and the upper catchment surrounding the spring line (see Target Notes TN1 & TN15 on Figure 2) will be retained within the proposed development scheme, the two lower flushes associated with the 65m AOD contour (see Target Notes TN13 & TN14 on Figure 2) would be lost beneath the development footprint.
- 4.10 It is therefore recommended that these two lower impacted flushes would warrant translocating as deep cut turves, and the material used either to (i) extend the existing flushes or (ii) create a new receptor feature along the spring-fed watercourse.
- 4.11 This would require careful design and implementation to provide a satisfactory receptor site, and careful relocation work to install the vegetation at the correct water height. The following principles will need to be considered:
- Re-installing the turves at the correct height relative to ground level;
  - Considering the use of a vertical membrane to maintain the hydrological gradient; and
  - Considering the use of a weir to maintain the spring feed and/or divert spring water into a receptor area.

#### Un-named Stream

- 4.12 The length of channel along the western boundary of the North Field will be retained, however, it is assumed that outfalls will be required to accommodate surface water drainage from the North and Central Fields
- 4.13 It is therefore recommended that mitigation is undertaken to minimise scour within the stream channel by either (i) minimising the slope of the pipe and/or (ii) armouring the channel bed against rapid flows during high rainfall events; and

#### **Protected Species**

- 4.14 Relevant protected species groups that are known to be present within the Site are Slow Worm and breeding birds; while bats and Hazel Dormouse also have potential to occur. These species are discussed further below.

—

—

—

—

---

**Hazel Dormouse**

---

- 4.24 No evidence of Hazel Dormouse was found during the Site walkover, or during nut searches beneath Hazel trees. However, it is accepted that this species might still occasionally occur here seasonally, and this could only be confirmed by a targeted nest tube survey.
- 4.25 The only parts of the Site where Hazel Dormouse might be anticipated are the various external and internal tree-lined boundaries. All of these will be retained and no significant breaks in aerial continuity will occur as the new access road will exploit existing access gaps that have been present within the Site for many years.
- 4.26 No direct impact upon any resident Hazel Dormouse population would therefore be predicted. Although indirect impacts due to cat predation might increase, there is no appropriate mitigation that could offset such adverse impact.

**Bats**

- 4.27 No suitable roosting features were detected within the Site other than Ivy-clad mature trees along the external boundaries. None of these trees will be lost to the development and therefore there should be no roost loss.
- 4.28 Anticipated flight lines would tend to be along the Site boundaries, as well as along the small un-named stream, and all of these features will be retained. The eastern side of the Site will not be developed, and will therefore remain available for bat foraging including the wet spring-line where a higher flying insect biomass would be anticipated.
- 4.29 The proposed development will therefore retain most of the existing foraging habitat, however, unless light levels are carefully considered these flight corridors will not be usable by light sensitive species such as Brown Long-eared and *Myotis* bat species. By contrast, aerial hawking species such as pipistrelle are frequently attracted to lighting and this appears to be associated with an increase in insect biomass.

4.30 The type of lighting used within a development, as well as its location and intensity, is of importance to bats. The type of lighting used is important as only those which emit ultraviolet (UV) radiation will attract insects. Metal halide and Mercury-vapour lamps emit high levels of UV and are therefore very attractive to insects, while low-pressure Sodium lamps emit negligible UV (mostly monochromatic orange light) and are therefore least attractive. High-pressure Sodium lamps include some Mercury-vapour and are therefore intermediate in attraction to insects (Kunz & Racey, 1998).

4.31 It is therefore recommended:

- i. Minimise lighting proposals, e.g. avoid footpath or garden lighting, or use low-intensity light bollards instead if warranted.
- ii. Any security lighting to be sensor-activated and fitted with a downcaster to minimise the lamp source and the luminous intensity being viewed from the horizontal. This form of lighting will minimise light spillage beyond the edge of the development.

4.32 In this regard, it is assumed that the lighting scheme will need to comply with the *Guidance Notes for the Reduction of Obtrusive Light by the Institute of Lighting Engineer*. The Environmental Zone for the Site is likely to be E2, i.e. one for low district brightness areas in rural, small villages or dark urban areas. Therefore the two main criteria that will probably need to be met are:

1. Light trespass on the vertical plane of any adjacent building to be < 5 Lux.
2. Source Intensity of the light fitting should be less than 7.5kcd.

### ***Reptiles***

4.33 Only Slow Worm has been confirmed within the Site, although the fields also have potential for additional species such as Grass Snake *Natrix natrix* and Common Lizard *Lacerta vivipara*.

4.34 The 2010 and 2016 surveys have confirmed that the Slow Worm population would appear to be small and relatively restricted within the North Field and eastern side of the Central Field - see Figure 3. The predicted distribution from the capture records suggests that the Slow Worm population is mostly restricted to the open areas of the Site on higher ground. These areas would be predicted as they are likely to be warmer and drier than the lower slopes on the western side of the Site, and they are also less shaded.

4.35 Juveniles from 2016, 2010 and sub-adults from 2009 have been found during the surveys, so confirming that there is a breeding population within the Site.

4.36 Assuming factors of between 4 and 10 times the peak count, a population of between 40 and 100 individuals might be predicted, briefly increasing up to

perhaps 200 individuals during July/August.

#### Impact Assessment

- 4.37 Compared to the development footprint, the predicted distribution of resident Slow Worm is partly further to the east and therefore would at least in part be retained *in situ* within the Landscape Buffer.
- 4.38 Comparative to the size of the undeveloped area of the Site, there is clearly sufficient carrying capacity immediately outside the development footprint, and it would be appropriate to displace individuals here. To achieve this it is recommended that the following measures are undertaken to further increase the reptile carrying capacity Landscape Buffer:
1. Provision of three artificial hibernacula within the Landscape Buffer.
  2. Creation of long grass areas excluded from grazing/mowing, which can be varied between years to prevent scrub development.
- 4.39 To displace Slow Worm (and any other undetected reptiles) from the development footprint, it is recommended that the following measures are undertaken:
3. Erect a reptile exclusion fence to prevent reptiles entering the construction area.
  4. Deploy heat traps at a density of at least 100 traps/ha to capture any reptiles within the construction area.
  5. Undertake a minimum of 15 capture sessions, and to continue therefore after 5 consecutive session with no captures.

#### ***Amphibians***

- 4.40 Great Crested Newt *Triturus cristatus* (GCN) are fully protected in the UK on Schedule 5 of the Wildlife and Countryside Act, 1981 (as amended by the Countryside and Rights of Way Act, 2000), and on Schedule 2 of the Conservation (Natural Habitats &c.) Regulations, 1994.
- 4.41 There are no suitable static waterbodies within the Site, or the immediate surroundings, that could provide suitable breeding conditions for a GCN population. However, as there are a cluster of waterbodies to the north of the Site that lie within a 500m radius, Natural England and the Local Planning Authority require that consideration is given to the possible occurrence of GCN within the Site boundary.
- 4.42 The Site is separated from the nearby waterbodies shown on the Ordnance Survey by open fields and a minor watercourse. These waterbodies all lie close

to woodland, the favoured terrestrial habitat of GCN, and therefore the majority of any populations here would be anticipated to remain close to their natal waterbody. Only a very smaller percentage would be anticipated to extend up to 500m radius, sufficient to reach the Site, and then even fewer are likely to then cross the minor watercourse.

- 4.43 It is therefore considered unlikely that GCN would occur within the Site, and therefore amphibians are given no further consideration within this Report.

#### ***Breeding Birds***

- 4.44 Breeding birds are protected under the Wildlife and Countryside Act 1981 and amendments, and in accordance with the CROW Act 2000. This legislation makes it necessary to ensure that breeding birds are not disturbed or harmed during the nesting season. There is a high expectation of breeding birds to be present within this Site.
- 4.45 Any clearance or excavation of scrub/woodland vegetation within the Site will need to ensure that breeding birds are not disturbed or harmed. Breeding and/or foraging birds will be anticipated during the breeding season that runs between mid-March and August.
- 4.46 It is therefore recommended that any disturbing work is restricted to the autumn and winter months.
- 4.47 If this is not possible for any reason, then any building or scrub clearance must be undertaken under the supervision of a suitably qualified and experienced Ecologist, surveying for nesting behaviour prior to any clearance work. The clearance work would, however, be at risk as should breeding birds be noted, all work would need to halt until the breeding had been completed.

#### **Additional Species**

- 4.48 Giant Puffballs occur within this Site, in the North and Central Fields, of which the North Field colony would be impacted to the development. This species is very localized within England but receives no statutory protection.
- 4.49 This species occurs as an underground series of hyphae, which will have spread out over an unknown area of the Site, with the characteristic fruiting bodies appearing somewhere within this area.
- 4.50 It is therefore unclear on the extent to which this species will be impacted by the proposed development. However, on the assumptions that (i) at least one of the two colonies will not be impacted and (ii) these species produce copious spores and therefore there is probably a high chance of additional colonies being present, this species is considered likely to be retained within the Site after the proposed residential development.

## 5. BIODIVERSITY GAIN

- 6.1 Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 places a duty on all Local Planning Authorities (LPAs) to conserve biodiversity – including restoring and enhancing species, populations and habitats, as well as protecting them.
- 6.2 The recent National Planning Policy Framework (NPPF) of March 2012, Section 11, para. 109 also requires that *'the planning system should contribute to and enhance the natural and local environment by ... minimising impacts on biodiversity and providing net gains in biodiversity where possible ...'*. The NPPF sets out principles that the LPAs should seek to apply when determining planning applications to conserve and enhance biodiversity. These include (i) encouraging opportunities to incorporate biodiversity in and around developments and (ii) refusing planning permission that would cause loss/deterioration of irreplaceable habitats unless *'... the need for, and the benefits of, the development in that location clearly outweigh the loss'* (see para. 118).
- 6.3 The LPA may seek to address local Biodiversity Action Plan (BAP) targets through this mechanism, but otherwise is recommended that appropriate biodiversity enhancements the proposed development layout would include:
- Incorporating native tree and shrub species within the landscaping for the residential development.
  - Including a range of plant species that will provide nectar/pollen-rich flowers through the seasons within the landscaping for the residential development.
  - Installing a wildlife pond within the Landscape Buffer.
  - Installing 10 bat boxes, to include Schwegler 1WQ wall-mounted boxes on appropriate façades of the new buildings and at least two tree-mounted Schwegler 1FW Hibernation Box on mature trees.
  - Installing a series of 20 Hazel Dormouse Nest Boxes along the western boundary trees.
  - Installing two Tawny Owl Boxes (Schwegler No. 5 Boxes) on mature trees within the Site.

## **6. CONCLUSIONS**

- 6.1** No impacts upon any statutory site of nature conservation interest will occur as a result of the proposed development of the Site.
- 6.2** Habitat mitigation is proposed in respect of development impacts upon Acid/Neutral Flushes within the Site, see paras. 4.10 to 4.11, and also a small un-named stream, see para. 4.13.
- 6.3** Protected species have been confirmed within the Site include. Bats (including Common Pipistrelle, Brown Long-eared Bat and a single record of an undetermined *Myotis* species) and Slow Worm, while a range of breeding birds are also likely to breed here. Appropriate mitigation to maintain these resident populations in favourable conservation status are presented in section 4 of this Report.
- 6.4** Biodiversity gains are also provided in respect of Section 40 of the NERC Act 2006 and NPPF 2012, as set out in section 6 of this Report. A range of biodiversity enhancement measures are therefore proposed in section 5 of this Report.



## **TABLES**

TABLE 1 - PROVISIONAL FLORAL LIST

SPECIES	COMMON NAME	ABUNDANCE (DAFOR)				
		Poor Semi-Improved Grassland	Lower Seepage	Upper Seepage	Stream	Scrub Woodland & Bramble Scrub

**Ferns & Horsetails (4 spp.)**

<i>Dryopteris dilatata</i>	Broad-leaved Buckler-fern	-	-	-	R	-
<i>Dryopteris felix-mas</i>	Male Fern	-	-	-	-	R
<i>Equisetum arvense</i>	Field Horsetail	R	R	-	-	-
<i>Pteridium aquilinum</i>	Bracken	LO	-	-	-	-

**Grasses, Sedges & Rushes (12 spp.)**

<i>Agrostis capillaris</i>	Common Bent	O	-	-	-	-
<i>Agrostis stolonifera</i>	Creeping Bent	-	O	O	-	-
<i>Arrhenatherum elatius</i>	False Oat-grass	R	-	-	-	-
<i>Festuca rubra</i>	Red Fescue	O	-	-	-	-
<i>Glyceria notata</i>	Plicate Flote-grass	-	LO	-	-	-
<i>Holcus lanatus</i>	Yorkshire Fog	F	-	-	-	-
<i>Isolepis setacea</i>	Bristle Club-rush	R	O-LF	O	-	-
<i>Juncus acutiflorus</i>	Sharp-flowered Rush	-	R	-	-	-
<i>Juncus bufonius</i>	Toad Rush	-	R-LO	O	-	-
<i>Juncus inflexus</i>	Hard Rush	-	R	-	-	-
<i>Lolium perenne</i>	Perennial Rye-grass	O	-	-	-	-
<i>Poa annua</i>	Annual Meadow-grass	R-LO	-	-	-	-

**Herbs (35 spp.)**

<i>Achillea millefolium</i>	Yarrow	R	-	-	-	-
<i>Anthriscus sylvestris</i>	Cow Parsley	R	-	-	-	R-LO
<i>Cardamine flexuosa</i>	Wavy Bittercress	-	-	R	-	-
<i>Cerastium fontanum</i> agg.	Mouse-ear Chickweed	R	-	-	-	-
<i>Cirsium arvense</i>	Creeping Thistle	O	-	-	-	-
<i>Cirsium palustre</i>	Marsh Thistle	-	R	-	-	-
<i>Epilobium parviflorum</i>	Hoary Willowherb	-	R	-	-	-
<i>Epilobium</i> sp.	A willowherb	-	O	O	-	-
<i>Galium palustre</i>	Marsh Bedstraw	-	R	-	-	-
<i>Geranium robertianum</i>	Herb Robert	R	-	-	-	-
<i>Geum urbanum</i>	Wood Avens	R	-	-	-	-
<i>Glechoma hederacea</i>	Ground-ivy	R-LO	-	-	-	R
<i>Gnaphalium uliginosum</i>	Marsh Cudweed	R	-	R	-	R-LO
<i>Heracleum sphondylium</i>	Hogweed	R	-	-	-	-
<i>Hypericum tetrapterum</i>	Square-stalked St. John's-wort	-	O	-	-	-
<i>Impatiens glandulifera</i>	Himalayan Balsam	LO	-	R	-	-
<i>Lathyrus pratensis</i>	Meadow Vetchling	O	O	-	-	-
<i>Lotus corniculatus</i>	Common Bird's-foot Trefoil	R	-	-	-	-
<i>Lotus pedunculatus</i>	Greater Bird's-foot Trefoil	-	O	R	-	-
<i>Prunella vulgaris</i>	Selfheal	R	-	-	-	R
<i>Ranunculus flammula</i>	Lesser Spearwort	-	O-LF	-	-	-
<i>Ranunculus repens</i>	Creeping Buttercup	O	O	O	-	-
<i>Rumex acetosa</i>	Common Sorrel	O	R	-	-	-
<i>Rumex crispus</i>	Curled Dock	LO	-	-	-	-
<i>Rumex obtusifolius</i>	Broad-leaved Dock	R-LO	-	-	-	-
<i>Senecio jacobaea</i>	Common Ragwort	R	-	-	-	-
<i>Sison amomum</i>	Stone Parsley	R	-	-	-	-
<i>Solanum dulcamara</i>	Bittersweet	R	-	-	-	-
<i>Sonchus asper</i>	Prickly Sow-thistle	R	-	-	-	-
<i>Sonchus oleraceus</i>	Smooth Sow-thistle	R	-	-	-	-
<i>Stellaria alsine</i>	Bog Stitchwort	-	-	R	-	-
<i>Stellaria graminea</i>	Lesser Stitchwort	R	-	-	-	-
<i>Taraxacum officinale</i> agg.	Dandelion	R	-	-	-	-
<i>Trifolium repens</i>	White Clover	O	-	-	-	-
<i>Veronica chamaedrys</i>	Germander Speedwell	LO	-	-	-	-

**Trees & Shrubs**

<i>Acer campestre</i>	Field Maple	-	-	-	-	R (sapling)
<i>Corylus avellana</i>	Hazel	R (stools)	-	-	-	R-LO
<i>Fraxinus excelsior</i>	Ash	R	-	-	-	F-LA
<i>Hedera helix</i>	Ivy	LO	-	-	LO	LO-F
<i>Ilex aquifolium</i>	Holly	-	-	-	-	R (sapling)
<i>Lonicera periclymenum</i>	Honeysuckle	-	-	-	-	LO
<i>Malus domestica</i>	Apple	-	-	-	-	R
<i>Prunus spinosa</i>	Blackthorn	-	-	-	-	O-LF
<i>Salix caprea</i>	Goat Willow	O	-	-	-	O-F
<i>Sambucus nigra</i>	Elder	-	-	-	-	R

TABLE 2 - FLORAL SURVEY OF HEDGEROWS/BOUNDARIES

SPECIES	COMMON NAME	North Field		Middle Field		Southern Field	
		Western Boundary	Southern Boundary	Western Boundary	Eastern Boundary	Southern Boundary	Eastern Boundary
<b>Ferns &amp; Horsetails</b>							
<i>Dryopteris affolata</i>	Broad-leaved Buckler-fern	R	R	-	-	-	-
<i>Dryopteris felix-mas</i>	Male Fern	R	R	-	-	-	-
<i>Polystichum setiferum</i>	Soft Shield-fern	R	-	-	-	-	-
<b>Grasses, Sedges &amp; Rushes</b>							
<i>Carex pendula</i>	Pendulous Sedge	LO	-	-	-	-	-
<i>Carex remota</i>	Remote Sedge	R	-	-	-	-	-
<b>Herbs</b>							
<i>Alliaria petiolata</i>	Hedge Garlic	-	-	-	-	R	-
<i>Anthriscus sylvestris</i>	Cow Parsley	O	R-LO	-	-	R	-
<i>Chrysosplenium oppositifolium</i>	Opposite-leaved Golden-saxifrage	LO	-	LO	-	-	-
<i>Digitalis purpurea</i>	Foxglove	-	-	-	-	-	R
<i>Galium aparine</i>	Cleavers	-	-	-	-	-	R
<i>Geranium robertianum</i>	Herb Robert	R	-	R	-	-	-
<i>Geum urbanum</i>	Wood Avens	-	R	-	-	-	-
<i>Glechoma hederacea</i>	Ground-ivy	-	R-LO	-	-	-	-
<i>Mercurialis perennis</i>	Perennial Dog's-mercury	-	-	-	-	-	-
<i>Primula vulgaris</i>	Primrose	LO	-	-	-	-	-
<i>Sanicula europaea</i>	Sanicle	R	-	-	-	-	-
<i>Solanum dulcamara</i>	Bittersweet	-	-	-	-	-	R
<i>Stechys sylvatica</i>	Hedge Woundwort	R	-	-	-	-	-
<i>Stellaria holostea</i>	Greater Stitchwort	-	-	R-LO	-	-	-
<i>Tamus communis</i>	Black Bryony	-	-	R	-	-	-
<i>Hypericum androsaemum</i>	Tutsan	-	R	-	-	-	-
<b>Trees &amp; Shrubs</b>							
<i>Acer campestre</i>	Field Maple	LO	R	-	-	-	-
<i>Acer pseudoplatanus</i>	Sycamore	-	-	-	R	-	-
<i>Corylus avellana</i>	Hazel	F	O	-	F	-	LO
<i>Crataegus laevigata</i>	Midland Hawthorn	R	-	-	-	R	-
<i>Crataegus monogyna</i>	Hawthorn	-	-	O	-	-	A
<i>Fraxinus excelsior</i>	Ash	LF	R	F	-	R	-
<i>Hedera helix</i>	Ivy	F	LO	O	F	-	F
<i>Humulus lupulus</i>	Hops	-	-	-	-	-	-
<i>Ilex aquifolium</i>	Holly	R	LO	-	F	-	F
<i>Lonicera periclymenum</i>	Honeysuckle	R	-	-	R	-	-
<i>Malus domestica</i>	Apple	-	-	-	R	-	-
<i>Parthenocissus quinquefolia</i>	Virginia-creeper	-	-	-	-	-	-
<i>Prunus spinosa</i>	Blackthorn	R (sapling)	-	R	-	-	-
<i>Pinus communis</i> s.l.	Pear	-	-	-	R	-	-
<i>Quercus robur</i>	Pedunculate Oak	R	R	O	O	-	R
<i>Rosa canina</i> spp.	A dog rose	-	-	R	-	-	-
<i>Rubus fruticosus</i> spp.	Bramble	-	O	O	-	-	O-LF
<i>Salix chorea</i>	Grey Willow	F	F	LO	-	-	-
<i>Sambucus nigra</i>	Elder	-	-	R	R	R	R
<i>Taxus baccata</i>	Yew	R (sapling)	-	-	-	-	-
		10	8	9	8	5	3
No. Tree/Shrub Species =							
		9	3	0	1	2	0
No. AWWPs (as defined by Rose, 1998) =							
		9	6	7	4	5	1
No. Woody Species (as per Schedule 3 of 1997 Regs) =							
		7	3	1	0	0	2
No. Woodland Species (as per Schedule 2 of 1997 Regs) =							

TABLE 3 - BAT EMERGENCE ACTIVITY SURVEY ON 13TH SEPTEMBER 2016

TIME	TIME RELATIVE TO SUNSET (Mins)	COMMON PIPITS (RELLE <i>Pipistrellus pipistrellus</i> )			BROWN LONG-EARED BAT <i>Plecotus auritus</i>			WHISKERED/BRANDT'S BAT <i>Myotis sp.</i>		
		Surveyor 1 [Nr. gated entrance at north end of Site]	Surveyor 2 [At junction between NE & central fields]	Surveyor 3 [At southern end of central field]	Surveyor 1 [Nr. gated entrance at north end of Site]	Surveyor 2 [At junction between NE & central fields]	Surveyor 3 [At southern end of central field]	Surveyor 1 [Nr. gated entrance at north end of Site]	Surveyor 2 [At junction between NE & central fields]	Surveyor 3 [At southern end of central field]
18:42	-33 [Start]	-	-	-	-	-	-	-	-	-
21:19	0 [Sunset]	-	-	-	-	-	-	-	-	-
19:35	+16	1 x S&H - flying west across road from houses.	-	-	-	-	-	-	-	-
19:37	+18	1 x HNS - flying over western tree-lined boundary. Feeding buzz.	-	-	-	-	-	-	-	-
19:38	+19	-	-	-	-	-	-	-	-	-
19:39	+20	1 x HNS - flying over western tree-lined boundary. ++ Feeding buzzes.	-	-	-	-	-	-	-	-
19:40	+21	-	-	1 x HNS	-	-	-	-	-	-
19:41	+22	-	-	1 x HNS	-	-	-	-	-	-
19:42	+23	-	-	1 x S&H - briefly seen between trees along boundary.	-	-	-	-	-	-
19:47	+28	1 x HNS - flying along western tree-lined boundary.	-	-	-	-	-	-	-	-
19:48	+29	-	-	-	-	-	-	-	-	1 x S&H - faint recording, individual seen crossing southern field E to W.
19:50	+31	-	-	-	-	-	-	-	-	-
19:57	+38	1 x HNS - circling along western tree-lined boundary.	-	1 x HNS	-	-	-	-	-	-
19:58	+39	-	-	-	-	-	-	-	-	-
19:59	+40	-	-	-	-	-	-	-	-	-
20:00	+41	1 x HNS	-	-	-	-	-	-	-	-
20:07	+48	-	-	-	-	-	-	-	-	-
20:11	+52	-	-	-	-	-	-	-	-	-
20:12	+53	-	-	-	-	-	-	-	-	-
20:19	+60 [End]	1 x HNS	-	-	-	-	-	-	-	-

TABLE 4 - PRE-DAWN BAT RE-SURVEY ON 14TH SEPTEMBER 2016

TIME	TIME RELATIVE TO SUNSET (Mins)	COMMON PIPISTRELLE <i>Pipistrellus pipistrellus</i>			BROWN LONG-EARED BAT <i>Plecotus auritus</i>			WHISKERED BRANDT'S BAT <i>Myotis sp.</i>		
		Surveyor 1 (Nr. gated entrance at north end of Site)	Surveyor 2 (At junction between NE & central fields)	Surveyor 3 (At southern end of central field)	Surveyor 1 (Nr. gated entrance at north end of Site)	Surveyor 2 (At junction between NE & central fields)	Surveyor 3 (At southern end of central field)	Surveyor 1 (Nr. gated entrance at north end of Site)	Surveyor 2 (At junction between NE & central fields)	Surveyor 3 (At southern end of central field)
05:30	Start [-66]									
05:50	-46	1 x HNS								
05:54	-42	1 x HNS								
05:57	-39	1 x S&H - flying across road from west to east.								
06:08	-38	1 x S&H - circling over houses at southern end of Strand Meadow.								
06:09	-37									
06:05	-31	2 x S&H - circling briefly over houses, one chasing the other then gone (? east).								
06:08	-30	1 x HNS								
06:13	-23	1 x HNS								
06:36	Dawn [0]									

TABLE 6 - BAT EMERGENCE ACTIVITY SURVEY ON 16TH SEPTEMBER 2016

TIME	TIME RELATIVE TO SUNSET (mins)	COMMON PIPITSTRELLE <i>Pipistrellus pipistrellus</i>			BROWN LONG-EARED BAT <i>Plecotus auritus</i>			WHISKERED/BRANDT'S BAT <i>Myotis sp.</i>		
		Surveyor 1 (Nr. gated entrance at north end of Site)	Surveyor 2 (At junction between NE & central fields)	Surveyor 3 (At southern end of central field)	Surveyor 1 (Nr. gated entrance at north end of Site)	Surveyor 2 (At junction between NE & central fields)	Surveyor 3 (At southern end of central field)	Surveyor 1 (Nr. gated entrance at north end of Site)	Surveyor 2 (At junction between NE & central fields)	Surveyor 3 (At southern end of central field)
18:40	-32 [Start]	-	-	-	-	-	-	-	-	-
18:41	0 [Sunset]	-	-	-	-	-	-	-	-	-
19:28	+17	1 x HNS	-	-	-	-	-	-	-	-
19:32	+20	1 x HNS (feint)	-	-	-	-	-	-	-	-
19:33	+21	1 x HNS	-	-	-	-	-	-	-	-
19:34	+22	1 x S&H - briefly spotted flying around large oak at end of Strand Meadow.	-	-	-	-	-	-	-	-
19:36	+24	1 x HNS	-	-	-	-	-	-	-	-
19:37	+25	-	-	-	-	-	-	-	-	-
19:38	+26	-	-	-	-	-	-	-	-	-
19:40	+28	-	-	-	-	-	-	-	-	-
19:41	+29	1 x HNS	-	-	1 x S&H - flying along western boundary.	-	-	-	-	-
19:42	+30	-	1 x HNS	-	-	-	-	-	-	-
19:43	+31	-	-	-	-	-	-	-	-	-
19:46	+34	-	1 x HNS	-	-	-	-	-	-	-
19:47	+35	-	-	1 x HNS	-	-	-	-	-	-
19:48	+36	-	-	-	-	-	-	-	-	-
19:49	+37	-	-	-	-	-	-	-	-	-
19:50	+38	1 x S&H - circling around large oak at end of Strand Meadow. Feeding buzzes.	-	-	-	-	-	-	-	-
19:51	+39	-	-	-	-	-	-	-	-	-
19:52	+40	-	-	-	-	-	-	-	-	-
19:57	+45	1 x HNS	-	-	-	-	-	-	-	-
20:06	+53	-	-	-	-	-	-	-	-	-
20:07	+54	-	-	1 x HNS	-	-	-	-	-	-
20:08	+55	-	-	-	-	-	-	-	-	-
20:11	+59	-	-	-	-	-	-	-	-	-
20:12	+60 [End]	-	-	-	-	-	-	-	-	-

TABLE 6 - REPTILE CAPTURE RESULTS IN 2010

SESSION NO.	DATE	TIME OF DAY	TEMP (C)	WEATHER CONDITIONS	SLOW WORM <i>Anguis fragilis</i>		
					HEAT TRAP NO.	Adult	Sub-Adult
1	30-Sep-2010	AM	15	Early mist, heavy dew, no wind, sunny during survey.	-	-	-
2		PM	18	Warm, overcast with slight breeze.	F156	1m	-
3		AM	16	Misty start, very slight breeze.	T14	1f	-
4	2-Oct-2010	PM	17	Warm, hazy sunshine.	F340	-	2
T73					-	1f	-
F118					-	-	1
					F182	1f	-
5	4-Oct-2010	AM	16	Overnight rain, wet vegetation at start of survey but warm beneath traps.	-	-	-
		PM	18	Sunny all day, still weather conditions.	T14	1f	-
6					F340	-	-
				F256	-	-	1
				F67	2m	-	-
				T73	1f	1f	1
				F122	-	-	-
				T52	-	1m	-
7	7-Oct-2010	AM	16	Misty start, hazy sunshine through heavy cloud.	-	-	-
8		PM	16	Slight breeze, very humid.	T73	1f	-
					T52	-	1m
9	8-Oct-2010	AM	18	Warm and sunny.	F118	-	1
					T14	1f	-
10		PM	17	Moderate wind, but warm beneath traps.	T14	1f	-

TABLE 7 - REPTILE CAPTURE RESULTS IN 2017

SESSION NO.	DATE	TIME OF DAY	TEMP (C)	WEATHER CONDITIONS	SLOW WORM <i>Anguis fragilis</i>				Total Count
					HEAT TRAP NO.	Adult	Sub-Adult	Juvenile	
1	25th August	PM	17	Sunny, slight breeze, partially cloudy during survey.	X45	1f	-	-	10
					X56	-	-	2	
					X70	-	-	1	
					173	1m	-	2	
					243	1m	-	-	
					U	-	-	1	
					105	-	-	1	
					X56	-	-	2	
					U	-	-	1	
					166	-	-	1	
2	31st August	PM	19	Sunny, still weather conditions.	111	-	-	1	8
					109	1m	-	1	
					122	-	-	1	
					X56	-	-	1	
3		AM	16	Cool, overcast weather, diffuse sunshine.	173	1m	-	-	2
					X21	1m	-	-	
4	13th September	PM	21	Sunny, after hot day, still conditions.	X33	1m	-	-	8
					X56	-	-	2	
					243	2f	-	-	
					U	-	-	1	
5		AM	19	Heavy dew, warm conditions with slight breeze.	131	-	-	1	0
					-	-	-	-	
6	14th September	PM	19	Sunny all day, still weather conditions.	X56	-	-	1	3
					U	1f	-	-	
					116	-	-	1	
7	15th September	AM	15	Heavy dew, warm conditions with slight breeze.	-	-	-	0	



## **FIGURES**

**FIGURE 1 – LOCATION PLAN**

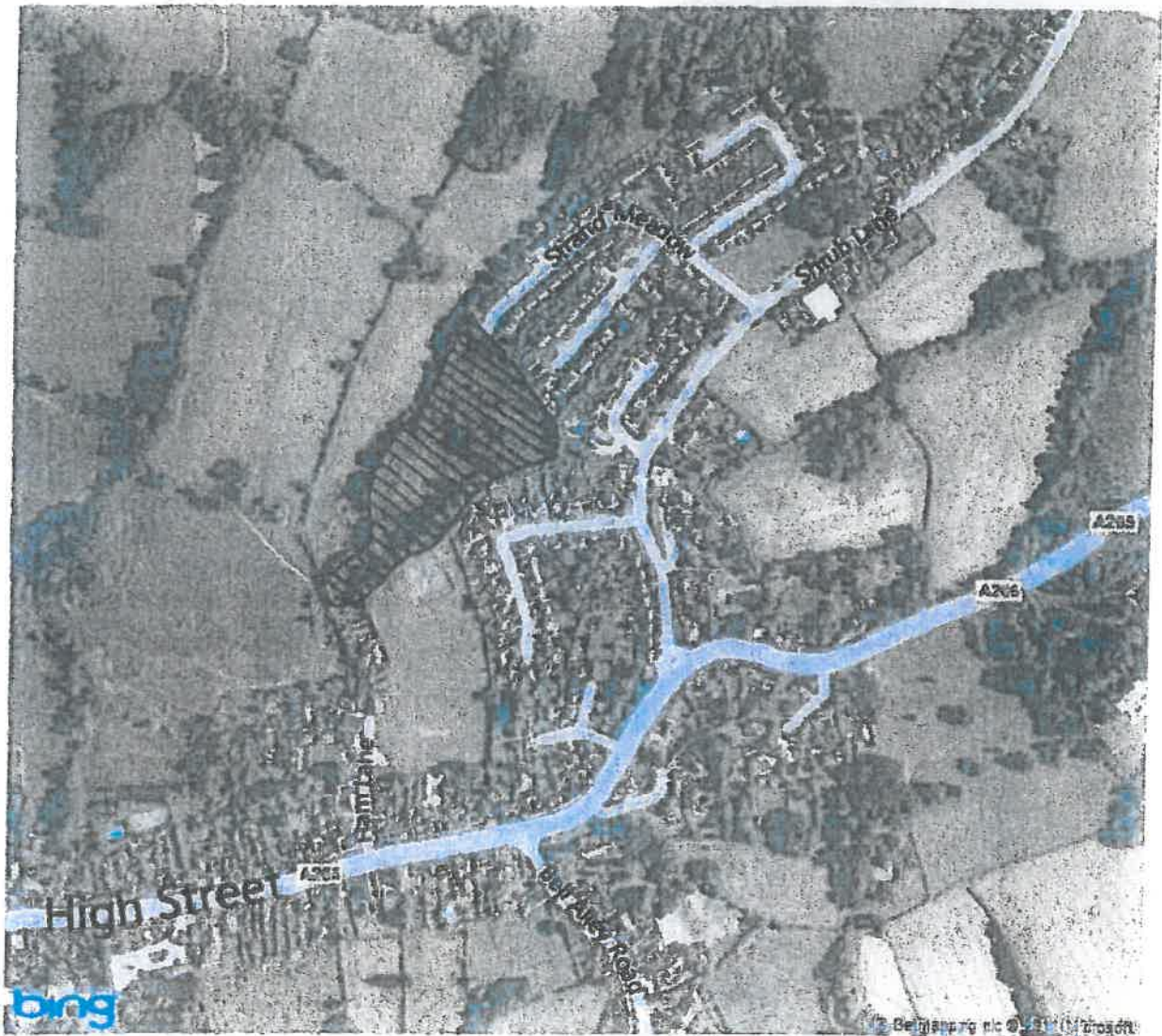
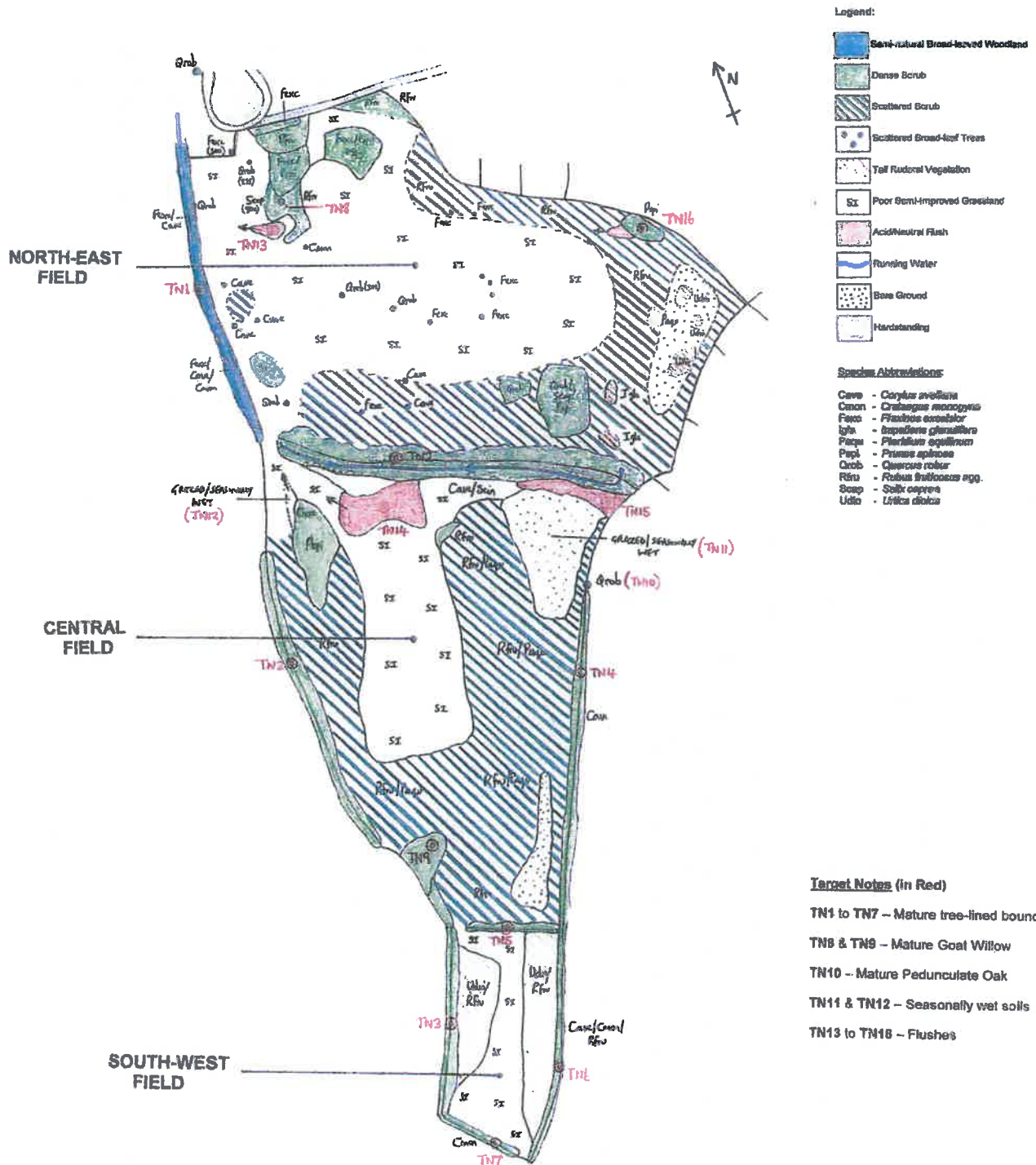
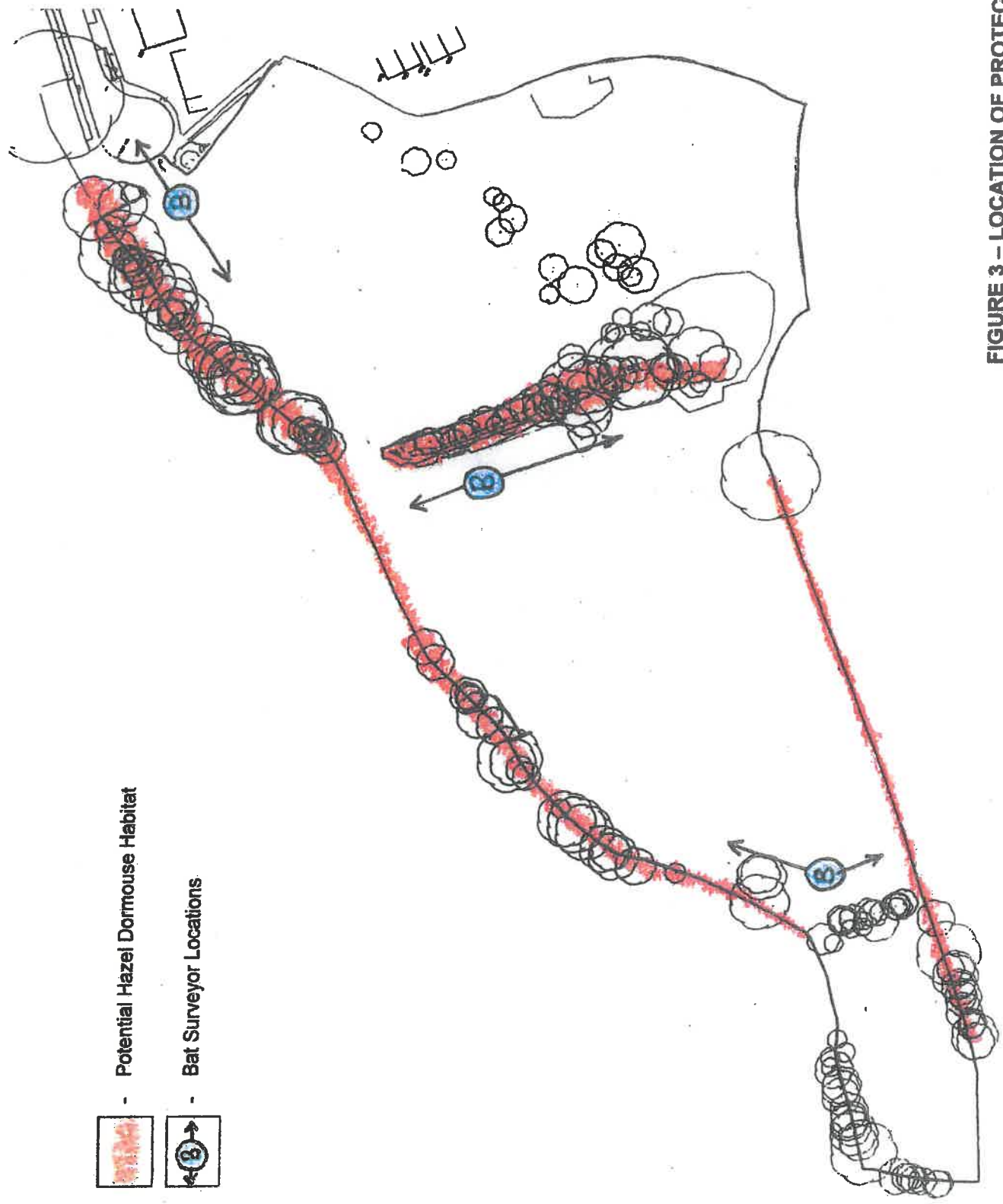


FIGURE 2 – PHASE I HABITAT PLAN

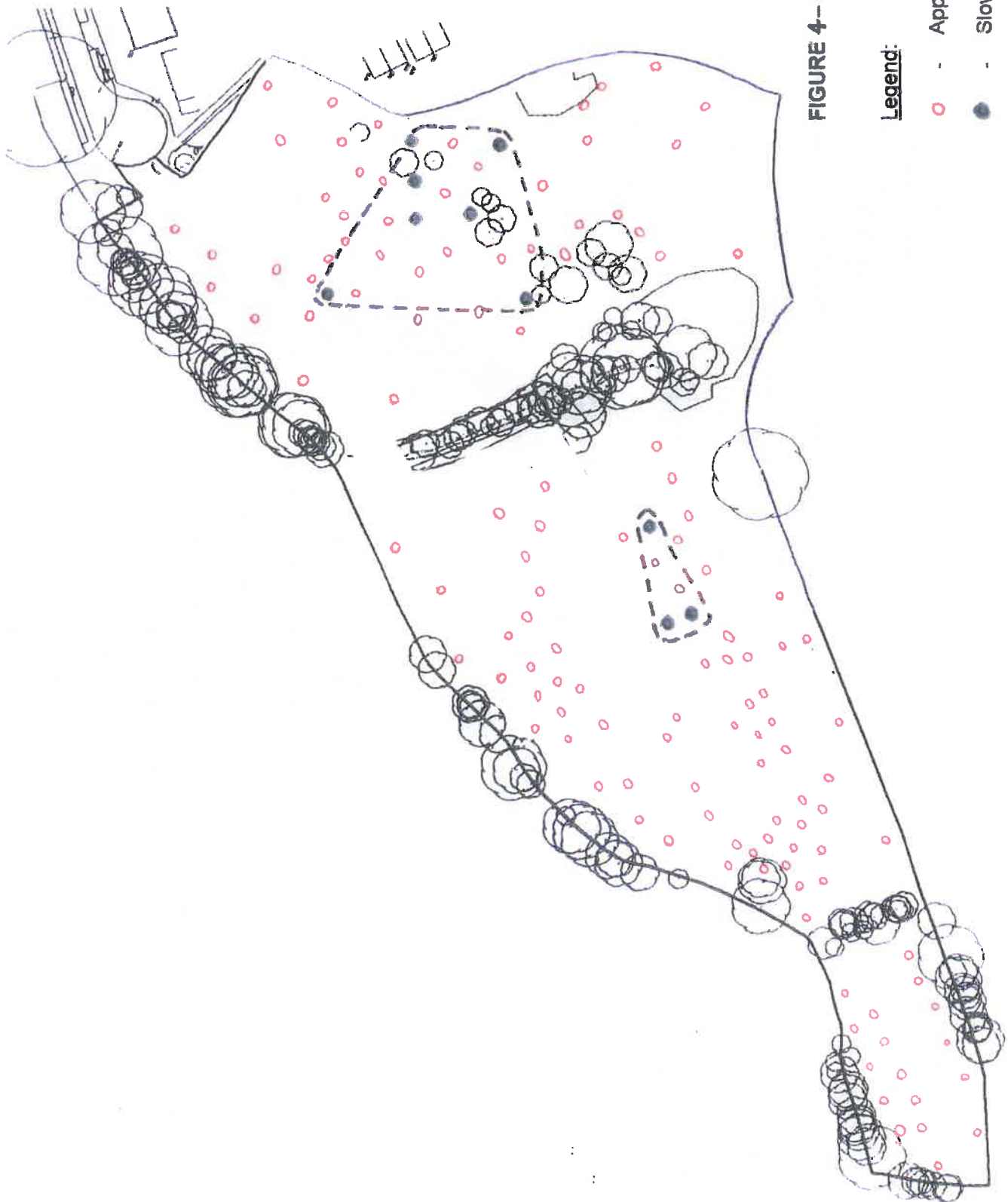


**Legend:**

- Potential Hazel Dormouse Habitat
- Bat Surveyor Locations



**FIGURE 3 – LOCATION OF PROTECTED SPECIES INTERESTS**



**FIGURE 4-- DISTRIBUTION OF SLOW WORM**

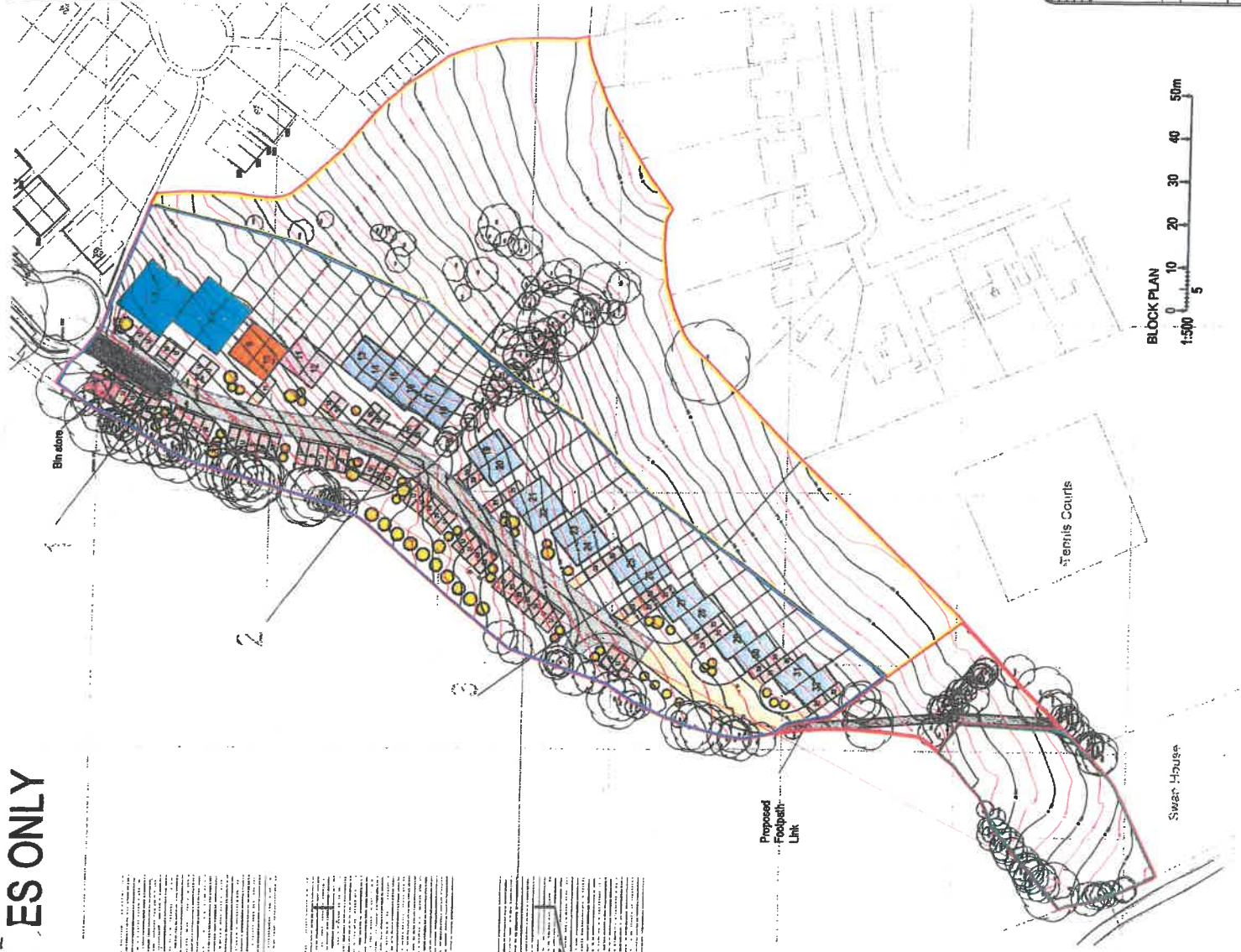
**Legend:**

- - - - - Approximate location of Heat Trap
- Slow Worm record
- ⊖ Areas where Slow Worm confirmed

## **APPENDICES**

## **Appendix 1**

FOR ILLUSTRATIVE PURPOSES ONLY



**GENERAL NOTES**

ALL INFORMATION ON THIS DRAWING IS THE PROPERTY OF PUMPHOUSE DESIGNS AND SHOULD NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF PUMPHOUSE DESIGNS.

THESE DRAWINGS ARE TO BE USED IN CONNECTION WITH THE DEVELOPMENT OF THE PROJECT AND ARE NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN PERMISSION OF PUMPHOUSE DESIGNS.



**Pumphouse**  
DESIGNS

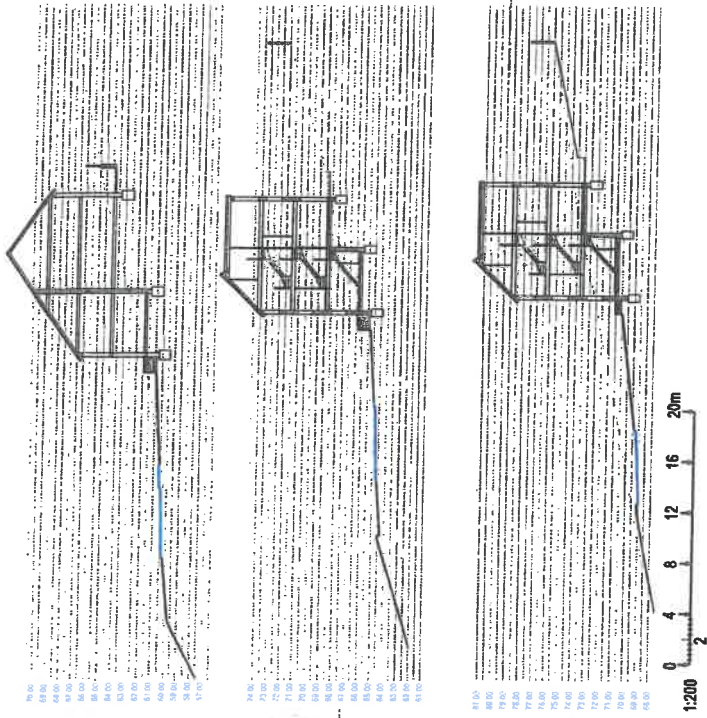
Architectural Consultants

PO Box 11111  
Auckland  
New Zealand

T: 011 634 07120  
F: 011 634 07118

www.pumphouse.co.nz

DATE	15/12/16
SCALE	AS SHOWN
PROJECT	LAND TO THE SOUTH WEST STRAND MEADOW BURWASH
CLIENT	Park Lena Homes (S.L.) Ltd
PROPOSED DEVELOPMENT	RUC2 PANA 1 RESIDENS
DRAWN BY	MATTHEW GERREN
DATE	MAY 2016
SCALE	1:500 @ A1
DRAWING NO.	4702 / 15 / 2 / E



- LEGEND:**
- PARKING SPACES (38 ALLOCATED, 35 UNALLOCATED)
  - PEDESTRIAN FOOTPATH
  - SHARED SURFACE ROAD
  - ROAD
  - PRIVATE ACCESS ROAD & DRIVEWAYS
  - 2 BED DWELLINGS - PRIVATE (6 UNITS)
  - 3 BED DWELLINGS - PRIVATE (14 UNITS)
  - 2 BED DWELLINGS - AFFORDABLE (2 UNITS)
  - 3 BED DWELLINGS - AFFORDABLE (2 UNITS)
  - 1 BED & 2 BED FLATS - AFFORDABLE (8 UNITS)
  - BIN STORE FOR FLATS
  - PLANNING APPLICATION BOUNDARY
  - PROPOSED HOUSING DEVELOPMENT
  - POTENTIAL ALLOTMENT LAND
  - PROPOSED LANDSCAPE BUFFER
  - PROPOSED PUBLIC OPEN SPACE
  - PROPOSED FOOTPATH LINK



## **Appendix 2**

**Photograph 1**



**North Field looking south.**

**Photograph 2**



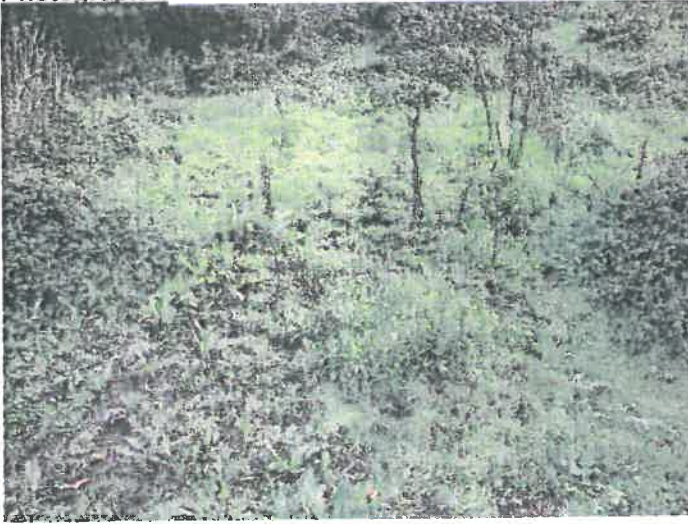
**Central Field looking north.**

**Photograph 3**



**South Field looking south.**

**Photograph 4**



**Flush within North Field.**

**Photograph 5**



**Close-up of Flush Vegetation**

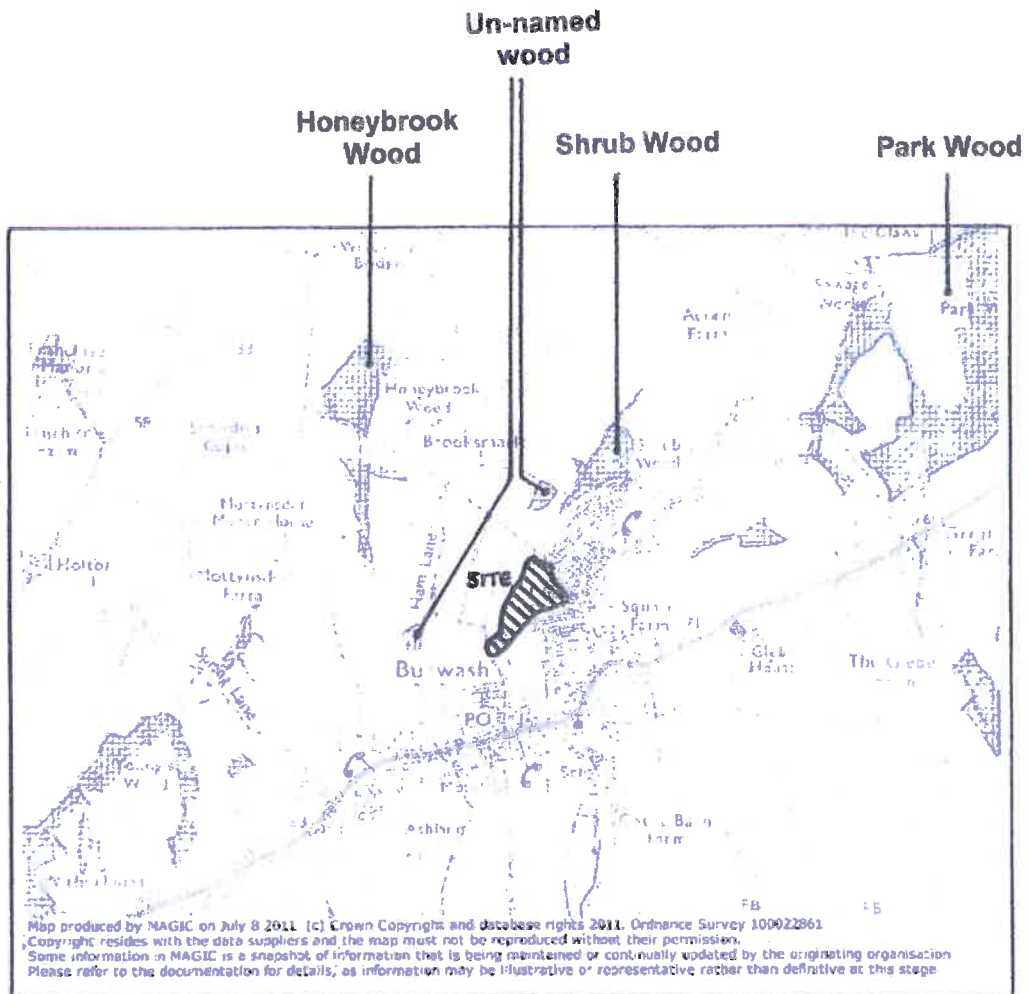
**Photograph 6**



**Layout of Reptile Heat Traps**

## **Appendix 3**

# APPENDIX 3 – ANCIENT WOODLAND RESOURCES



**MAGIC**



**Ancient Woodland2 (England)**

-  Ancient & Semi-Natural
-  Ancient Replanted
-  Forestry Commission Woodland (England)
-  National Inventory of Woodland and Trees (England)

**SCHEDULE 10**

**TP1**

**Land Registry**  
**Transfer of part of registered title(s)**

**TP1**

**Any parts of the form that are not typed should be completed in black ink and in block capitals.**

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

Give full name(s) of all of the persons transferring the property.

Complete as appropriate where the transferor is a company.

Give full name(s) of all the persons to be shown as registered proprietors.

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

1	Title number(s) out of which the property is transferred: ESX17634
2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:
3	Property: Land at Strand Meadow, Burwash, East Sussex  The property is identified  <input checked="" type="checkbox"/> on the attached plan and shown: edged red  <input type="checkbox"/> on the title plan(s) of the above titles and shown:
4	Date:
5	Transferor:  <i>For UK incorporated companies/LLPs</i> Registered number of company or limited liability partnership including any prefix:  <i>For overseas companies</i> (a) Territory of incorporation:  (b) Registered number in the United Kingdom including any prefix:
6	Transferee for entry in the register: Burwash Parish Council  <i>For UK incorporated companies/LLPs</i> Registered number of company or limited liability partnership including any prefix:  <i>For overseas companies</i> (a) Territory of incorporation:  (b) Registered number in the United Kingdom including any prefix:



Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
  - in the first box, or
  - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, or
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to *Joint property ownership* and *practice guide 24: private trusts of land* for further guidance. These are both available on the GOV.UK website.

7 Transferee's intended address(es) for service for entry in the register:

c/o Parish Clerk  
PO Box 61  
Etchingham  
East Sussex TN19 7YZ

8 The transferor transfers the property to the transferee

9 Consideration

- The transferor has received from the transferee for the property the following sum (in words and figures):
- The transfer is not for money or anything that has a monetary value
- Insert other receipt as appropriate: Pursuant to the provisions of an agreement under Section 106 of the Town and Country Planning Act 1990 dated the day of 2018

10 The transferor transfers with

- full title guarantee
- limited title guarantee

11 Declaration of trust. The transferee is more than one person and

- they are to hold the property on trust for themselves as joint tenants
- they are to hold the property on trust for themselves as tenants in common in equal shares
- they are to hold the property on trust:



Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

## 12 Additional provisions

### Definitions

12.1 "Buildings" means the dwellings garages walls fences canopies or any other structures constructed or in the course of construction on the Retained Land by the Transferor) and "Building" means any one of them (as the context requires)

"Plan" means the plan attached hereto and marked "Plan"

"Public Authority" means all statutory corporations local or other authorities and all bodies exercising statutory rights powers or obligations

"Retained Land" means the land comprised in title numbers ESX136123,ESX17634 and SX75040 and each and every part of it and not being the Property

"Services" means foul and surface water drainage mains water soil gas electricity telephone broadband and communication signals and similar services

"Service Installations" means pipes watercourses gutters mains wires cables ducts soakaways and other equipment for the supply of water electricity gas communications signals or for the disposal of foul and surface water to be laid under the Property

"Service Undertaker" means any undertaker authority or other person responsible for the supply and /or provision of electricity gas water drainage telecommunications or any other utility service

"Water Services" means mains water

"Water Installations" means pipes and other equipment for the supply of water to be laid under the Property

### 12.2 Rights granted for the benefit of the Property

12.2.1 The right upon giving reasonable notice to enter the Retained Land for the purpose of complying with the proper requirements of any Public Authority where such compliance cannot be undertaken from the Property (but for the avoidance of doubt this right shall not extend to any Buildings nor any areas which have been transferred to a residential plot purchaser now or hereafter on the Retained Land) causing as little damage and disturbance as possible and making good any damage caused thereby as soon as shall be reasonably practicable to the satisfaction of the Transferor

12.2.2 The right upon giving reasonable notice to enter upon adjoining parts of the of the Retained Land (but not any Buildings or private gardens) in order to inspect maintain repair or renew -any boundary structure separating the Property and the Retained Land where such inspection maintenance repair or renewal cannot be undertaken from the Property causing as little damage and disturbance as possible and making good any damage caused thereby as soon as reasonably practicable to the reasonable satisfaction of the Transferor.

12.2.3 A right of subjacent and lateral support and shelter from the Retained Land but not so as to prevent the

intended development of the Retained Land

12.2.4 A right of way at all times in common with all others entitled to the like right to pass and repass with or without vehicles and equipment to and from the Property

12.2.5 The right upon obtaining the prior written consent of the Transferor (such consent not to be unreasonably withheld or delayed) to use all and any Water Installations in on or over the Retained Land for the transmission of Water Services to and from the Property subject to the Transferee paying a fair and reasonable proportion of the cost of repairing cleaning maintaining reinstating and renewing the Water Installations as and when the Transferor has given the Transferee written notice of such costs (or until such time as the Water Installations are adopted and maintained at the public expense) or at the expense of the Service Undertaker

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

12.3 Rights reserved for the benefit of other land

12.3.1 The right upon giving reasonable notice to enter upon adjoining parts of the Property with or without equipment vehicles workmen and materials in order to inspect maintain construct repair or renew any part of the Retained Land or Buildings thereon where such inspection maintenance construction repair or renewal cannot be undertaken from the Retained Land causing as little damage and disturbance as reasonably practicable

12.3.2 The right upon giving reasonable notice to enter the Property with or without equipment vehicles workmen and materials for the purpose of complying with the proper requirements of any Public Authority where such compliance cannot be undertaken from the Retained Land (but for the avoidance of doubt this right shall not extend to any Buildings situated on the Property).

12.3.3 The right upon giving reasonable notice to enter the Property with or without workmen equipment vehicles and materials to fulfil any requirements of the any relevant planning permission and associated Section 106 Agreements where such requirements cannot be fulfilled from the Retained Land.

12.3.4 Upon giving reasonable notice the full and free right and liberty for the Transferor and its successors in title to all or any part of the Retained Land with all necessary workmen materials equipment and appliances to enter such parts of the Property as may be necessary for the purposes of carrying out any building works on the Retained Land that relate to the maintenance repair or renewal of the Footpath making good any damage caused thereto as soon as shall be reasonably practicable to the satisfaction of the Transferee

12.3.5 A right of subjacent and lateral support from the Property

12.3.6 The right upon giving reasonable notice to the Transferee of the intention so to do for the Transferor and any Service Undertaker to enter the Property with workmen vehicles and materials and appliances and lay the Service Installations under the Property or make

connections to the Service Installations thereunder for the transmission of Services to and from the Retained Land for the benefit of the Retained Land and thereafter to maintain repair alter and renew the same

12.3.7 The right to use the Service Installations under the Property for the transmission of Services to and from the Retained Land subject to the Transferor paying a fair and reasonable proportion of the proper and reasonable cost of repairing cleaning maintaining reinstating and renewing the Service Installations into which such connections have been made as and when the Transferee has given the Transferor written notice of such costs (or until such time as the Service Installations are adopted at public expense)

12.3.8 The right upon giving reasonable notice and intention so to do for the Transferor and any Service Undertaker to enter upon the Property with all necessary workmen and appliances in order to maintain repair and renew any water lagoon or any water attenuation scheme situated upon the Property including any Service Installations serving the same

12.3.9 The full and free right at any time to develop any part of the Retained Land and to build and execute works thereon in connection therewith

Include words of covenant.

#### 12.4 Restrictive covenants by the Transferee

So as to bind the Property and any part or parts thereof into whosoever's hands the same may come the Transferee hereby covenants with the Transferor and its successors in title for the benefit of the Retained Land that the Transferee and the persons deriving title under the Transferee will at all times hereafter observe and perform the following covenants and restrictions:-

12.4.1 Not to use the Property otherwise than as allotments or the Footpath other than as a footpath.

12.4.2 To keep and maintain the Property and any landscaping on it in a neat and tidy condition and to properly maintain any structures or erections thereon in good repair and condition

12.4.3. Not to park or deposit anything on or otherwise obstruct the Footpath (other than in case of emergency)

12.4.4 Not to do or knowingly permit or suffer to be done upon the Property any act or thing which may result in loss or damage or interference with the Service Installations or Services within the Property and / or the Footpath which may be or become maintainable at the public expense or which are used jointly with the Transferor or with the owners or occupiers of the Retained Land or which are used solely by the owner and occupiers of the Retained Land.

12.4.5 Without prejudice to the generality of the foregoing not to construct erect place plant or permit any structure erection or works of excavation of any kind whether permanent or temporary or any trees or large shrubs which are likely to cause damage to any Service Installations which serve the Retained Land without the prior written

consent of the appropriate Service Undertaker

12.4.6 Not to do anything nor require the Transferor to do anything which would contravene or render the Transferor unable to comply with the Planning Permission RR/2017/582/P and associated Section 106 Agreements.

12.4.7 Not to transfer grant a lease or tenancy or otherwise dispose of the Property without first procuring that the intending transferee, lessee, tenant or other disposee enters into a deed of covenant with the Transferor to observe and perform the obligations on the part of the Transferee contained in clause 12.7 of this Transfer and the Transferee must deliver such executed deed of covenant to The Transferor and to pay all costs incidental to the preparation and execution of such deed

Include words of covenant.

Restrictive covenants by the transferor

#### 12.5 Transferor's Restrictive Covenants

So as to bind the Property and any part or parts thereof into whosoever's hands the same may come the Transferor hereby covenants with the Transferee and its' successors in title for the benefit of the Property that the Transferor and the persons deriving title under the Transferor will at all times observe and perform the following covenants and restrictions:

12.5.1 Not to permanently park or deposit anything on or otherwise obstruct the Footpath located on the Retained Land (save in case of emergency)

12.5.2 Not to do or knowingly permit or suffer to be done upon the Retained Land any act or thing which may result in loss or damage to or interference with the Service Installations or Services to the Property and / or Footpath which may be or become maintainable at the public expense or which shall be used jointly with the Transferor or with the owners and occupiers of the Retained Land

#### 12.6 Transferee Positive Covenants

12.6.1 To maintain repair renew all walls hedges or fences along the boundaries of the Property

12.6.2 To keep cut and well maintained any grassed or open areas on the Property

12.6.3 To maintain the Footpath including any gates and boundary fences in a good clean and tidy condition and free from obstruction

12.6.4 To comply with all the obligations in the Planning Permission RR/2017/582/P and associated Section 106 Agreement insofar as they relate to the Property

12.6.5 The Transferee must not transfer, grant a lease or tenancy or otherwise dispose of the Property without procuring that the intending transferee, lessee, tenant or other disposee enters into a deed of covenant with the Transferor to observe and perform the obligations on the part of the Transferee contained in clause 12.7 of this Transfer and to deliver such executed deed of covenant to

the Transferor, as applicable.

12.6.6 To keep and properly maintain the fences on the boundaries of the Property in good repair and condition

#### 12.7 Agreements and Restrictions

12.7.1 The Transferee shall not by virtue of this Transfer acquire or be entitled to any easement or right of light or air which would prejudice the free use or enjoyment of the Retained Land or any adjoining or neighbouring land shall be deemed to be had by licence or consent and not as of right

12.7.2 the Transferee acknowledges that the Property will not by virtue of this Transfer have any rights easements or the benefit of any other matters over the Retained Land other than those (if any) which are expressly mentioned in or granted by this Transfer and the provisions of Section 62 of the Law of Property Act 1962

12.7.3 Any person exercising the rights in 12.2 and 12.3 will not do so unreasonably and will cause as little damage and inconvenience as possible and will repair any damage caused as quickly as possible and all works shall be executed in accordance with good building practice

12.7.4 The Transferor and Transferee will if reasonably requested by the other and at the costs of the party making such request enter into any necessary deed of grant or variation in respect of easements relating to the Service Installations intended to benefit the Property or the Retained Land or any part or parts thereof

12.7.5 If the Transferee comprises two or more people any agreement or obligation in this deed will bind them both individually and jointly

12.7.6 Unless the context otherwise requires in each case reference to the Transferor shall include all future owners of the Retained Land or any part or parts thereof and references to the Transferee shall include all future owners of the Property or any part or parts thereof

Other

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 11 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to *Joint property ownership* and *practice guide 24: private trusts of land* for further guidance.

### 13 Execution

#### WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

© Crown copyright (ref: LR/HO) 08/15

**SCHEDULE 11  
DRAFT SECTION 278 AGREEMENT**

**DATED** \_\_\_\_\_ **20[ ]**

**EAST SUSSEX COUNTY COUNCIL**

**and**

[ ]

**and**

[ ]

**A G R E E M E N T**

**under Section 278 of the  
Highways Act 1980**

**relating to Land at [ ] East Sussex**

**East Sussex County Council  
County Hall  
St. Anne's Crescent  
Lewes  
East Sussex BN7 1UE**

**ref. PH/[ ]/**

**THIS AGREEMENT** is made the                    day of                    20[ ]

**BETWEEN**

**(1) EAST SUSSEX COUNTY COUNCIL** of County Hall, St. Anne's Crescent, Lewes, East Sussex BN7 1SW (hereinafter called "the County Council") of the first part and

**(2) [                    ]** (Company Number [                    ]) of/whose registered office is situate at [                    ] (hereinafter called "the Developer") of the second part and

**(3) [                    ]** (Company Number [                    ]) of/whose registered office is situate at [                    ] (hereinafter called "the Surety") of the third part

**RECITALS**

**WHEREAS :**

(1) The Developer has applied for and been granted planning permission ("the Planning Permission") by                    Borough/District Council                    (under reference [                    ]) for development comprising [                    ] ("the Proposed Development") on land shown for the purposes of identification only edged red on the plan annexed hereto ("the Land")

(2) The County Council considers that before the Proposed Development is Occupied/ is Commenced it will be necessary for certain Highway Works (as hereinafter defined) to be carried out in order that the traffic which will be generated by the Proposed Development can be accommodated satisfactorily on the surrounding highway network.

(3) For the area within which the Proposed Development is to be situated the County Council is for the purposes of the Highways Act 1980 ("the 1980 Act") and Section 111 of the Local Government Act 1972 ("the 1972 Act") respectively the Highway Authority and a local authority

(4) Section 278 of the 1980 Act provides that a highway authority may if satisfied it will be of benefit to the public enter into an agreement with any person for the execution by the authority of any works which the authority may be authorised to execute on terms that the person pays the whole or part of the cost of the works

(5) The County Council is authorised to execute the Highway Works contemplated by this Agreement and is satisfied that they will be of benefit to the public but is desirous that the



Developer undertakes the said works on its behalf on the terms hereinafter contained and accordingly propose to invoke its further powers under Section 111 of the 1972 Act and Section 1 of the Localism Act 2011 ("the 2011 Act") to be used in conjunction with its said powers under Section 278 of the 1980 Act in order to enter into this Agreement in the following terms

- (6) The parties hereto have therefore agreed to enter into this Agreement pursuant to Section 278 and Section 38 of the 1980 Act Section 111 of the 1972 Act and Section 1 of the 2011 Act and all other powers them enabling for the purposes specified in Clause 2.1 below

**IT IS HEREBY AGREED** as follows:-

## **1 INTERPRETATION**

IN this Agreement unless the context otherwise requires:-

**"Accredited Supervisor"** means a supervisor who is accredited under the New Roads and Street Works Act 1991

**"Approach Road"** means , East Sussex

**"Bond Sum"** means the sum of [ (£ ) ] being the amount which is in the opinion of the Director the cost of carrying out the Highway Works within the period specified in Clause 5.2 hereof or such other sum as may be notified to the Developer upon the grant of any extension of time under this Agreement in accordance with Clause 6.2 hereof. The Bond Sum shall on each Review Date be increased by an amount equal in proportion to any increase in the RP Index over the period of twelve calendar months ending on the day before the Review Date SAVE THAT the Bond Sum as increased shall not exceed [ POUNDS (£ )]

**"CDM"** means the Construction (Design and Management) Regulations 2015 and any successor legislation

**"Commencement of Development"**

shall refer to the Proposed Development and shall have the same meaning as ascribed to a "material operation" by Section 56(4) of the Town and Country Planning Act 1990 and "Commence" and "Commenced" shall be construed accordingly

**"Competent Person in Health and Safety"**

means an employee/contractor/consultant with health and safety training experience and qualifications

**"Director"**

means the Director of Communities, Economy and Transport for the time being of the County Council and shall include his duly authorised agents and representatives and any successor of his

**"Exception Report"**

means the report from the Developer to the Director on each recommendation of the Safety Audit that the Developer proposes should be implemented

**"Highway Drawing"**

means the drawing(s) numbered [ ] annexed hereto which have incorporated the findings of a Stage Two Safety Audit and which may be subject to amendments as agreed by the Director

**"Highway Works"**

means the highway works described in the Schedule hereto and the Highway Drawing

**"Land"**

means the freehold land as described in Recital (1)

**"Occupation"**

means first beneficial occupation for any use permitted by the Planning Permission but not including occupation for the purposes of construction fitting out marketing security or repair and Occupy and Occupied shall be construed accordingly.

**"Proposed Development"**

has the meaning assigned to it in Recital (1)

**“Review Date”** means the anniversary of the date hereof and each subsequent anniversary thereof

**“RP Index”** means the Index of Retail Prices prepared by the Office for National Statistics or any successor Ministry or department and published by the Office for National Statistics or in the event that the reference base used to compile the Index changes after the date of this Agreement the figure taken to be shown in the Index after the change is to be the figure that would have been shown in the Index if the reference base current at the date of this Agreement had been retained or if the RP Index shall cease to exist then there shall be substituted such other index as may replace the same or the County Council shall determine in consultation with the Developer.

**"Safety Audit"** means a Safety Audit (which shall include a site visit) and which has been approved by the Director in writing and carried out at the Developer's expense by a consultant independent of the Highway Works design consultant and reference herein to a Stage One Stage Two Stage Three or Stage Four Safety Audit shall be construed accordingly and the results of which shall be submitted together with the appropriate Exception Report to the Director on receipt of such by the Developer

**“Specified Date”** means the date upon which an obligation arising under this Agreement is due to be performed or payment is to be made

**"Statutory Undertaker"** shall have the meaning ascribed to it by Section 329 of the 1980 Act and shall include persons authorised under any

enactment to carry on an undertaking for the supply of electricity gas water and any sewerage undertaking and shall also include the Environment Agency the holder of a licence to operate telecommunication systems the Civil Aviation Authority and the holder of a licence to supply cable television

**"Statutory Undertakers' Works"** shall mean all works required by any Statutory Undertaker to be carried out in connection with the Highway Works

- 1.2 Unless the context requires otherwise references in this Agreement to a clause schedule or paragraph are references respectively to a clause schedule or paragraph of this Agreement
- 1.3 Where any party to this Agreement comprises two or more persons any obligations and covenants on the part of that party contained or implied in this Agreement shall be deemed to be joint and several obligations on the part of those persons and references to that party shall include references to each or any of those persons
- 1.4 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment modification or re-enactment of it for the time being in force
- 1.5 The headings to this Agreement do not and will not by implication form any part of this Agreement and shall have no legal force whatsoever
- 1.6 The expression "the County Council" shall include its successors in title and any statutory successor authority of it and the expression "the Developer " shall include all persons deriving title to the Land under it and shall include (if appropriate) two or more owners of the legal estate

## **2 PRELIMINARY**

### **2.1 Enforceability**

- 2.1.1 This Agreement is entered into pursuant to Section 278 and Section 38 of the 1980 Act Section 111 of the 1972 Act and Section 1 of the 2011 Act and all other powers

enabling for the purposes of securing the construction of the Highway Works at no cost to the County Council.

2.1.2 In the event of a breach by the Developer (or its successors in title as described in clause 1.6 above) of clause 3.2 hereof the County Council shall have full power pursuant to Section 278 (5) and (6) of the 1980 Act and Section 111 of the 1972 Act to execute such works as are necessary to carry out its obligations under this Agreement and may for that purpose enter the Land

## **2.2 Expiry**

If the Planning Permission shall expire or shall have been revoked before either the Proposed Development or the Highway Works have been commenced this Agreement shall forthwith determine and cease to have effect

## **2.3 Commencement**

The obligations and covenants contained in this Agreement shall take effect on the date hereof

## **2.4 Fettering of discretion**

Nothing in this Agreement shall fetter or restrict the discretion of the County Council in the exercise of its powers under any statutory enactment or other enabling power for the time being in force

## **2.5 Service of Notices**

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by prepaid registered or recorded delivery post to the party to be delivered at its address herein specified or such other address as may from time to time be notified for the purpose by notice in writing

## **2.6 Requirements to be Reasonable**

Subject to Clause 2.4:-

2.6.1 where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party

hereto under this Agreement the same shall not be unreasonably withheld or delayed and

2.6.2 where any requirements or decisions are to be made by the Director under the terms of this Agreement they shall be made or imposed upon reasonable grounds and

2.6.3 where any payment is required to be made by the Developer under the terms of this Agreement (other than those required under Clauses 4.2 4.3 4.4 and 4.5) the Developer shall be entitled to require the County Council to first produce to him a statement of account in that respect

## 2.7 **Covenants**

The Developer hereby covenants with the County Council as specified in Clauses 3 to 9 and the County Council hereby covenants with the Developer as specified in Clauses 4.1.5 and 10

## 2.8 **Contracts ( Rights of Third Parties ) Act 1999**

Nothing in this Agreement confers or purports to confer on any third party any benefit or rights to enforce any terms of this Agreement

## 2.9 **Assignment**

This Agreement may not be assigned by the Developer and/or the Surety without the consent of the County Council which consent shall not be unreasonably withheld.

## 3 **PRE-COMMENCEMENT MATTERS**

3.1 The Highway Works shall not be commenced until:-

3.1.1 The Director has given his written approval to:-

3.1.1.1 all drawings and specifications for the Highway Works (which drawings and specifications shall incorporate the findings of a Stage Two Safety Audit of the Highway Works and which specifications shall comply with the East Sussex County Council Highway Construction Specification for Developers, supplemented by the Specification for Highway Works published by the

Highways Agency) ("the Contract Documents") such approval to be given before invitations to tender are sought

3.1.1.2 the acceptance of the contractor and any subcontractor of his (which contractor and subcontractor shall be accredited for the purposes of the New Roads and Street Works Act 1991) whose tender for the Highway Works the Developer proposes to accept together with satisfactory documentary evidence of the total cost of the construction of the Highway Works ("the Construction Costs") and the total cost of the Statutory Undertakers' Works ("the Statutory Undertakers' Costs) such acceptance to be given before the contract for the Highway Works is awarded

3.1.1.3 a preliminary programme of work for the Highway Works ("the Programme") and a detailed programme of works incorporating the principles of the Programme ("the Final Programme")

3.1.1.4 detailed proposals and drawings showing the traffic management measures to be implemented throughout the duration of the Highway Works (including any temporary signing and routing of construction and haulage traffic) ("the Approved Traffic Measures") together with satisfactory documentary evidence of the estimated total costs thereof ("the Approved Traffic Measures Costs")

3.1.1.5 detailed proposals and drawings showing all signs road markings and permanent street lighting and traffic signal installations (both vehicular and pedestrian)

3.1.1.6 detailed proposals of alterations to Statutory Undertakers' plant apparatus or other equipment and the submitted details shall include all drawings (if any) received from any Statutory Undertaker showing existing and proposed services

3.1.1.7 a schedule of the condition of the Approach Road to include an admission of liability in respect of construction traffic which will use the Approach Road for the purpose of Section 59(3) of the 1980 Act

3.1.2 the Notice pursuant to clause 5.1 has been delivered to the County Council

3.1.3 all land required for or in connection with the Highway Works is owned by or under the control of the Developer or the County Council

3.1.4 the Developer shall have publicised the Highway Works in such a way and to such an extent as the Director considers necessary in order to advise properly members of the public as to the nature timing duration and progress of the Highway Works

3.2 The Highway Works shall not be brought into use and the Proposed Development under the Planning Permission or any other subsequent permission shall not be Occupied or brought into use until the Director shall have issued the Certificate referred to in Clause 7.1 and the County Council agrees to use its reasonable endeavours to expedite the issuing of consents after service of the Notice by the Developer upon the County Council pursuant to Clause 5.1

## **4 FINANCIAL PROVISIONS**

### **4.1 Bond**

4.1.1 If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement and the Director determines that failure does not adversely affect safety (the decision of the Director in this respect being final) the Director may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement send to the Developer and to the Surety notice in writing (hereinafter referred to as the "Default Notice"):-

4.1.1.1 Specifying the work (hereinafter referred to as the "Default Work") to be carried out in order that the Highway Works may be executed or completed as the case may be in accordance with this Agreement and

4.1.1.2 Containing an estimate by the Director of:-

4.1.1.2.1 the cost of carrying out the Default Work; and

4.1.1.2.2 the cost of maintaining the Highway Works for the Maintenance Period

4.1.1.2.3 such sums as will in the opinion of the Director cover the Council's necessary proper administrative and legal



expenses (together hereinafter referred to as the "Default Cost") which cost:-

(i) shall not exceed the Bond Sum.

(ii) shall not exceed 25% of the Bond Sum should the Default Notice be served after the issue of the Preliminary Certificate.

4.1.2 Provided that the Director has determined that the breach does not adversely affect safety (thereby enabling the service of the Default Notice) the Council shall take no further action until twenty-eight (28) days (or such other period as may be agreed in writing by the Council and the Developer) from the date of the Default Notice

4.1.3 On the happening of any one of the events referred to in Clause 4.1.4 of this Agreement the Surety shall forthwith pay the Default Cost to the Council

4.1.4 The events referred to in Clause 4.1.3 of this Agreement are:-

4.1.4.1 The Director determines at his absolute discretion (with such a decision being final) that the breach does affect safety

4.1.4.2 Any failure by the Developer to complete the Highway Works within the time period referred to at paragraph 4.1.2 of this Agreement and in accordance with the Contract Documents and the Highway Drawing and all other requirements of this Agreement.

4.1.4.3 A receiving order in bankruptcy is made in respect of the Developer's estate or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation)

4.1.5 THE County Council HEREBY COVENANTS with the Developer and with the Surety:-

4.1.5.1 To use its best endeavours in consultation with the Surety to mitigate any loss or damage sustained by reason of any default by the Developer by taking such reasonable steps as the County Council shall think fit.

4.1.5.2 to apply all monies received from the Surety as hereinbefore mentioned towards the expenditure involved in executing or completing the Highway Works and maintaining and making good all defects for the Maintenance Period and defraying the Council's administrative and legal expenses incurred in respect thereof

4.1.5.3 In the event of the sum paid by the Surety to the County Council exceeding the cost of executing or completing the Highway Works and maintaining and making good all defects as aforesaid together with the amount of the County Council's usual establishment charges to repay to the Surety within twenty-eight days after the date of the Certificate of Final Completion the amount of such excess with interest calculated at half-yearly rests on the unexpended balance for the time being of the sum paid by the Surety to the County Council at the rate of interest prevailing from time to time on monies held in a deposit account with the County Council's bankers.

4.1.6 The liability of the Surety shall be reduced to twenty-five per centum (25%) of the Bond Sum upon the issue of the Preliminary Certificate.

4.1.7 The liability of the Surety shall cease and determine absolutely on the issue of the Certificate of Final Completion.

**4.2 Design Check and Inspection Fee**

4.2.1 Upon execution of this Agreement the Developer shall pay to the County Council the sum of [    POUNDS] (£          ) equal to ten per centum (10%) of the total of the Construction Costs and the Approved Traffic Measures Costs such sum being the charge for the Director's design checks and inspection of the Highway Works ("the Design Check and Inspection Fee")

4.2.2 If the County Council shall grant to the Developer an extension of time in accordance with Clause 6.2 hereof then the Developer shall pay such further Design Check and Inspection Fee as is determined by the Director in his absolute discretion as necessary to reimburse to the County Council the additional cost (if

any) incurred in inspecting the Highway Works by reason of the grant of such extension of time and such further Design Check and Inspection Fee will be payable to the County Council forthwith on demand and be due to the County Council as a debt

4.2.3 Receipt by the County Council of the sum referred to in Clauses 4.2.1 and 4.2.2 shall not create any contractual relationship between the County Council and the Developer as to the inspection of the Highway Works nor absolve the Developer from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the County Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty check of the engineering design or inspection of the Highway Works by the County Council.

#### **4.3 Traffic Signs Fee**

Upon execution of this Agreement the Developer shall pay to the County Council the sum of THREE HUNDRED POUNDS (£300) such sum being the cost of the supply erection and removal of signs to Diagram 7014 under the Traffic Signs Regulations & General Directions 2002.]

#### **4.4 Construction Traffic Management Fee**

Upon execution of this Agreement the Developer shall pay to the County Council the sum of ([ POUNDS (£ )]) being the cost to the County Council of ensuring compliance with the Approved Traffic Measures.

#### **4.5 Indemnity**

The Developer shall fully and completely release and indemnify and keep indemnified the County Council from and against

4.5.1 any claims under Section 10 of the Compulsory Purchase Act 1965 and under Part I and Part II of the Land Compensation Act 1973 (or any other enactment or provision replacing or re-enacting the same) arising out of or in connection with or

incidental to the carrying out of the Highway Works and/or use of the Highway Works or any part thereof and

4.5.2 all actions claims charges costs damages demands expenses and proceedings (including claims relating to the infringement or disturbance or destruction of any right easement or privilege) arising out of or in connection with or incidental to the carrying out of the Highway Works and their subsequent use (unless caused directly by or through the negligence or other tortious action of the County Council).

4.5.3 For the avoidance of doubt such indemnification referred to in this clause 4.5 shall include all fees reasonably incurred by claimants and those of the County Council or its agent or contractor in negotiating any claims (together with Value Added Tax payable upon the claimants' professional advisors' fees) and statutory interest payments to claimants and their professional advisors together with the County Council's reasonable legal costs in making such payments of compensation fees and interest.

4.5.4 The Developer shall have the County Council's interest endorsed on an existing policy of insurance to cover the indemnity in Clause 4.5.2 and the certificate of insurance shall be produced to the Director prior to the commencement of the Highway Works.

4.5.5 The policy referred to in clause 4.5.4 above shall have a minimum third party public liability cover of £10million ("the Cover") and the Developer hereby undertakes to maintain the Cover until the issue of the Final Certificate and on notice from the Director the Developer shall increase the Cover to such additional amount of cover as specified in the notice.

#### **4.6 Costs**

The reasonable and proper professional and administrative costs of the County Council of preparing this Agreement shall be paid by the Developer on the execution hereof.

## **4.7 Payment of Sums Due**

4.7.1 The Developer agrees with the County Council that where this Agreement imposes a requirement for the making of a payment or the undertaking of an act or the cessation of an activity on a Specified Date:-

4.7.1.1 notice of the Specified Date shall be given to the County Council as appropriate not more than seven days after such Specified Date

4.7.1.2 if the notice of a Specified Date is not given the County Council as appropriate shall be entitled in its absolute discretion to determine the Specified Date and shall give notice to the Developer of its determination

4.7.1.3 the Developer shall make any and all payments due under this Agreement to the County Council as appropriate

4.7.2 All sums payable under this Agreement shall (unless otherwise stated in this Agreement) become due fourteen days after the Specified Date ("the Due Date") and shall henceforth be debts due to the County Council recoverable by action as a simple contract debt and may be deducted from any monies due to the Developer from the County Council under any contract agreement or arrangement whatsoever.

4.7.3 If any such sums are not paid by the Due Date then the Developer shall thereafter be liable to pay to the County Council interest on the same calculated on a daily basis at a daily rate of 1/365th of the annual rate of interest of 4% per annum greater than the National Westminster Bank PLC base rate in force from time to time from the Specified Date to the date of payment thereof.

## **5 EXECUTION OF HIGHWAY WORKS**

### **5.1 Notice of Commencement**

To give the County Council fourteen days prior written notice ("the Notice") of the date on which the Highway Works are to commence ("the Start Date").

## **5.2 Time for completion**

To execute forthwith and complete the Highway Works in accordance with the Highway Drawing and the Contract Documents to the reasonable requirements and reasonable satisfaction of the Director for no charge whatsoever to the County Council within [ ] of the Start Date ("the Completion Date") PROVIDED ALWAYS that there shall be excluded from any calculation of the period of [ ] any time during which the Highway Works or the part thereof for the time being remaining to be executed cannot be carried out on account of any act of God fire explosion flood war industrial action sabotage national emergency government direction or direction of a statutory authority.

## **5.3 Supervision**

To ensure throughout the duration of the Highway Works that they are supervised by an Accredited Supervisor as necessary for the proper superintendence of the Highway Works.

## **5.4 Statutory Undertakers Requirements**

To comply at its own expense at all times with the special requirements of any Statutory Undertakers and to pay (if in any case a Statutory Undertaker requires that the County Council shall be responsible for the cost of any removal protection or alteration of its apparatus) on the Specified Date the costs incurred or to be incurred by the County Council due to the removal protection or alteration of Statutory Undertakers' apparatus necessitated by the Highway Works.

## **5.5 Approved Traffic Measures and Final Programme**

To ensure that the Approved Traffic Measures and Final Programme are implemented retained and adhered to as far as reasonably practicable throughout the duration of the Highway Works.

## **5.6 Testing of Materials**

Throughout the duration of the Highway Works and the Maintenance Period as defined in Clause 8.1 to undertake routine testing of materials used in and workmanship in connection with the construction of the Highway Works when required and to a standard agreed by the

Director and shall forthwith send a copy of the results of such testing (free of charge) to the County Council.

## **5.7 Notice of Cessation and Recommencement**

5.7.1 To notify the Director in writing if before completion of the construction of the Highway Works the Highway Works shall cease for a period of more than one week and any such notice shall specify the dates of the cessation and re-commencement of the Highway Works.

5.7.2 In the event of any failure by the Developer to notify the Director of the dates of any cessation or re-commencement of the Highway Works in accordance with the provisions of Sub-Clause 5.7.1 the amount of any Design Check and Inspection Fee pursuant to Clause 4.2 shall be increased by such amount as specified by the Director to reimburse the County Council with the additional costs incurred in inspecting the Highway Works by reason of any such failure as aforesaid such additional cost to be paid to the County Council on request.

## **5.8 Noise Insulation**

To carry out such works and investigations as may be deemed appropriate and notified as necessary by the County Council to be carried out under the Noise Insulation Regulations 1975 (as amended) as a result of the Highway Works and reimburse by the Due Date the County Council's actual costs of carrying out statutory functions under the aforesaid Regulations.

## **5.9 NRSA Notices/TMA Roadspace**

To ensure that the necessary notices are served under the New Roads and Street Works Act 1991 and that the necessary road space is booked under the Traffic Management Act 2004.

## **5.10 Health and Safety**

5.10.1 To comply with the Health and Safety at Work Act 1974 and all other current relevant legislation approved codes of practice British-European Harmonised

Standards and relevant industry best guidance applicable to the safe undertaking of the Highway Works.

5.10.2 To have suitable and sufficient safe working systems in place for ensuring that all contractors engaged on the Highway Works are competent to fulfil their relevant functions pursuant to the CDM and any other applicable legislation and subsequent amending legislation and evidence of the existence of such systems shall be provided to the satisfaction of the Director at the Director's request.

5.10.3 To ensure that a Competent Person in Health and Safety is employed until the issue of the Certificate of Final Completion.

5.10.4 The Developer hereby confirms that he has the competence to perform the duties imposed on a client by the CDM.

5.10.5 The Developer is hereby appointed pursuant to regulation 4 of the CDM to act as the only client in respect of the Highway Works.

## **6 COUNTY COUNCIL'S POWERS**

### **6.1 Testing of Workmanship and Materials**

The Director shall have full power to:

6.1.1 Check and test all materials and workmanship and the costs actually incurred by the Director in undertaking such testing shall be paid by the Developer on the Specified Date.

6.1.2 Reject any materials or workmanship which he may reasonably and properly consider not to be in accordance with the Contract Documents and/or the Highway Drawing or which show faults or signs of weakness or damage by frost or other weather condition or any other cause or any other defect whatsoever of any kind and to order their removal from the Highway Works and to require other proper materials or workmanship to be substituted for them whether the works have been carried out or the materials supplied or procured by the Developer or otherwise and



such work shall forthwith at the Developer's own cost be re-executed made good or replaced with proper materials and workmanship as the case may require and the Director's directions on such subjects are to be final and binding on the Developer and shall be promptly attended to by the Developer.

## **6.2 Works in default**

6.2.1 If any works to be carried out by the Developer under this Agreement are not carried out and completed in accordance with the Developer's obligations and covenants contained in this Agreement and to the satisfaction of the Director by the Completion Date or within such further time as the Director may in his discretion by notice in writing to the Developer allow then without prejudice to its other rights or remedies and powers against the Developer for such non-performance or non-observance then after the Director has first given twenty-eight (28) days notice in writing (except in the case of emergency when no notice shall be necessary) to the Developer and the Surety of his intentions in that behalf the County Council may enter the Land and carry out and complete the said works and the Developer or in default the Surety shall upon demand pay to the County Council all the cost it has incurred including the necessary cost of preparation and service of such notices the outstanding works and all the associated supervision and administration.

6.2.2 That should the Developer become bankrupt or enter into any composition with its creditors or if the Developer being a company shall enter into liquidation whether compulsory or voluntary (not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction) then in any such case the County Council shall be entitled to exercise its rights under the provisions of this Clause and recover any loss from the Surety.

## **6.3 Access for County Council**

The Developer shall at all times:

- 6.3.1 permit the County Council to enter onto and upon and remain upon with or without workmen plant and machinery so much of the land in the ownership of or under the control of the Developer as shall be necessary for the County Council to carry out its obligations under this Agreement but so that the County Council shall not obstruct or delay the carrying out of the Highway Works; and
- 6.3.2 give the County Council free and unrestricted access to every part of the Highway Works during their construction upon reasonable prior notice except in the event of emergencies and at any time during the Maintenance Period.

#### **6.4 Determination by the County Council**

If the Developer fails to perform or observe any of the conditions stipulations or obligations on its part contained herein or if a receiving order in bankruptcy is made against the Developer or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangements (otherwise than for the purpose of amalgamation or reconstruction) the County Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clauses 4.1 and 6.2 hereof and such other Clauses as may be necessary for their interpretation) by notice in writing signed by the Director and delivered to the Developer or sent by post to the address stated in this Agreement.

### **7 PRELIMINARY CERTIFICATE**

- 7.1 When the carrying out of the Highway Works shall have been executed and completed (including the payment of all charges levied by any Statutory Undertaker in connection with the Highway Works) to the reasonable satisfaction of the Director in accordance with the Contract Documents and the Highway Drawing and any sewer constructed as part of the Highway Works in connection with an Agreement under S104 Water Industry Act 1991 has been certified by the appropriate Water Company as being or having been on maintenance the Director shall forthwith issue a preliminary certificate (or letter in lieu thereof) to that effect ("the Preliminary Certificate") and the Developer hereby agrees and declares that on

the issue of the Preliminary Certificate the Highway Works (insofar as they are not already public highway) shall become public highway open for use by the public at large.

7.2 Before the issue of the Preliminary Certificate the Developer shall:

7.2.1 provide in accordance with the detailed design approved pursuant to Clause 3.1.1.5 to the satisfaction of the Director all such signs road markings signal installations (both vehicular and pedestrian) street lighting and sources of illumination electrical cables and apparatus for the supply of electrical power for such signs street lighting and signals.

7.2.2 make payment of all sums due under this Agreement to the County Council together with interest thereon (if any) and including (but not by way of limitation)

7.2.2.1 the costs of providing all or any of such things as aforesaid as the County Council may at the request of the Developer agree to provide.

7.2.2.2 the costs of the service and posting of notices and the making and bringing into effect of any road traffic regulation orders or other orders that may be necessary in the Director's opinion as a result of the Highway Works.

7.2.3 make payment of all charges levied by any Statutory Undertaker in connection with the Highway Works.

7.2.4 deliver to the County Council the results of a Stage Three Safety Audit which has been carried out to the satisfaction of the Director by a professional and independent Safety Auditor whose identity has been approved by the Director.

7.2.5 undertake and have completed such remedial works as have been identified by the Stage Three Safety Audit in Clause 7.2.4 above as being necessary to the satisfaction of the Director.

7.2.6 undertake and have completed such works to the Approach Road as have been identified by the Director as being necessary to reinstate the Approach Road in accordance with the schedule of condition provided under Clause 3.1.1.7 hereof

- 7.3 After the execution hereof should further legal advice need to be given including attendance at meetings in connection with this Agreement called at the request of the Developer and all costs associated with any action taken pursuant to the provisions of clause 4.1 of this Agreement the Developer agrees to pay all such additional costs so incurred by the County Council.

## **8 POST-COMPLETION MATTERS**

### **8.1 Maintenance Period**

- 8.1.1 To maintain the Highway Works (including all grassed and planted areas) and to include all such routine maintenance and repair as may be necessary to facilitate the use of the Highway Works by vehicles and members of the public generally (as appropriate) to the satisfaction of the Director at its own expense for a period of twelve months or in the event of construction vehicles continuing to use the Highway Works in connection with the construction of the Proposed Development such longer period as the Director may stipulate ("the Maintenance Period") from the date that the Preliminary Certificate is issued.
- 8.1.2 To pay to the County Council any costs incurred by it during the Maintenance Period in respect of the maintenance and/or replacement of damaged equipment and the supply of electricity to the street lighting signs traffic signals and other apparatus provided in accordance with Clause 7.2.1.
- 8.1.3 At the discretion of the Director deliver to the County Council the results of a Stage Four Safety Audit which has been carried out to the satisfaction of the Director by a professional and independent Safety Auditor whose identity has been approved by the Director and undertake and complete such remedial works as have been identified by the Stage Four Safety Audit as being necessary to the satisfaction of the Director.

## **8.2 Certificate of Final Completion**

At such time as:-

- 8.2.1 all works of maintenance notified to the Developer by the Director within the Maintenance Period in respect of the Highway Works have been executed and completed to the Director's satisfaction in all respects; and
- 8.2.2 all sums due under this Agreement to the County Council have been duly paid; and
- 8.2.3 the Director has confirmed in writing that the Stage Four Safety Audit has been acted upon to his satisfaction; and
- 8.2.4 the Developer has without cost to the County Council executed or procured the execution by all necessary parties of such deeds as are in the opinion of the County Council necessary to secure to the County Council full drainage rights in respect of such parts of the surface water drainage system of the highway as are situate outside the limits of the Highway Works and the County Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds; and
- 8.2.5 the Developer has delivered to the County Council two complete sets of "as built" drawings showing the Highway Works as actually constructed; and
- 8.2.6 the Developer has delivered the Health & Safety file for the Highway Works as required by CDM the information content of which shall be as defined by the Approved Code of Practice and Guidance to the CDM and as specified by the Director

the Director shall forthwith issue a certificate (or letter in lieu thereof) ("the Certificate of Final Completion") which shall confirm that the Maintenance Period is then deemed to have been duly completed and shall release the Surety from all liability hereunder.

## **9 DECLARATION UNDER SECTION 38 OF THE 1980 ACT**

The County Council and the Developer hereby agree and declare in pursuance of Section 38 of the 1980 Act that upon the issue of the Certificate of Final Completion the Highway Works insofar as they are not already highway maintainable at the public expense will become highway maintainable at the public expense.

## **10 COUNTY COUNCIL'S COVENANTS**

### **10.1 Access for Highway Works**

The County Council will permit the Developer to enter onto and upon and remain upon with or without workmen plant and machinery so much of the land in the ownership of the County Council or under its control (including public highway) as shall be reasonably necessary for the Developer to carry out its obligations under this Agreement and it is hereby agreed and declared that such permission extends (upon reasonable notice and compliance with the provisions of Chapter Eight of the Traffic Signs Manual 2006 as from time to time revised and published by the Department of Transport) to breaking open the said land (subject where appropriate to making good its surface) and without limitation to the foregoing carrying out works in on or under the said land PROVIDED that the appropriate licence for existing publicly maintained highway has been issued by the Director and that the County Council may at any time temporarily prohibit the Developer from entering onto or remaining upon the existing publicly maintained highway if the Director considers that this is necessary.

### **10.2 Publication of Orders etc**

From time to time at the reasonable and proper request and cost of the Developer and then as expeditiously as possible consider the exercise and use of such powers as are available to it to assist the carrying out of the Highway Works and if the County Council in its sole discretion considers it desirable and appropriate it will publish and make or procure the publishing and making of such orders or notices for the temporary or permanent stopping up or diversion or restricted use of publicly adopted highways (including highway drainage and

any public service apparatus) as may in each case be reasonably necessary to facilitate the carrying out of the Highway Works.

**SCHEDULE**

(Highway Works)

The Highway Works are to include:-

[ ] as illustrated on the Highway Drawing together with any other ancillary works reasonably required by the Director.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year before written.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written

THE COMMON SEAL of **ROTHER DISTRICT COUNCIL** was hereunto affixed in the presence of:



[Redacted signature]

Member of the Council

Executive Director

**EXECUTED** as a Deed (but not delivered until dated) by affixing the Common Seal of **EAST SUSSEX COUNTY COUNCIL** in the presence of:-



[Redacted signature]

Authorised Signatory

**EXECUTED AS A DEED** by **RICHARD CHARLES KIRKHAM** in the presence of

[Redacted signature]

Witness signature: .....

Name (PRINT) .....

Address .....

Occupation: .....



EXECUTED AS A DEED by **CAROL**  
**CHRISTINE KIRKHAM** in the presence of: }

Witness signature: .....

Name (PRINT)

Address

Occupation:

EXECUTED AS A DEED by **RUSSELL**  
**BRETT BESWICK** in the presence of: }

Witness signature:

Name (PRINT)

Address

Occupation:

EXECUTED AS A DEED by **SHARON ANNE**  
**BESWICK** in the presence of: }

Witness signature:

Name (PRINT)

Address

Occupation: