

Dated 2ND FEBRUARY 2018

TUNBRIDGE WELLS BOROUGH COUNCIL

- AND -

PRIME FINANCE (TUNBRIDGE WELLS) S.A.R.L.

AGREEMENT

**Under section 106 of the
Town and Country Planning
Act 1990 relating to land at
Former ABC Cinema Site
Mount Pleasant Road
Royal Tunbridge Wells
Kent TN1 1PN**

**Planning Reference
17/02262/FULL**

This Agreement is made on

2ND FEBRUARY

2018

Between

- (1) **Tunbridge Wells Borough Council** of Town Hall Royal, Tunbridge Wells, Kent TN1 1RS (**Council**) and
- (2) **PRIME FINANCE (TUNBRIDGE WELLS) S.A.R.L.** (incorporated in Luxembourg) of 5 Rue Goethe, L-1637, Luxembourg (**Landowner**)

(together the **Parties**)

Whereas

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- (B) The County Council is the education authority, the social care authority, the libraries authority and local highway authority for the purposes of the 1980 Act for the area within which the Site is located.
- (C) The Landowner is the freehold owner of the Site pursuant to title number K372657.
- (D) Pursuant to the Planning Application the Landowner has applied to the Council for full planning permission for the Development.
- (E) The Council's planning committee resolved to grant the Planning Permission subject to the completion of this Agreement.
- (F) The Parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Landowner and its successors in title in relation to the part of the Site over which the Landowner(s) have a legal interest.
- (G) The Landowner has submitted (and the Council has independently verified) a viability assessment which confirms that the Landowner is unable to financially support onsite or offsite affordable housing and full developer contributions. The Council has reviewed where the need is greatest and the Parties have agreed to the contributions and obligations set out in this Agreement.

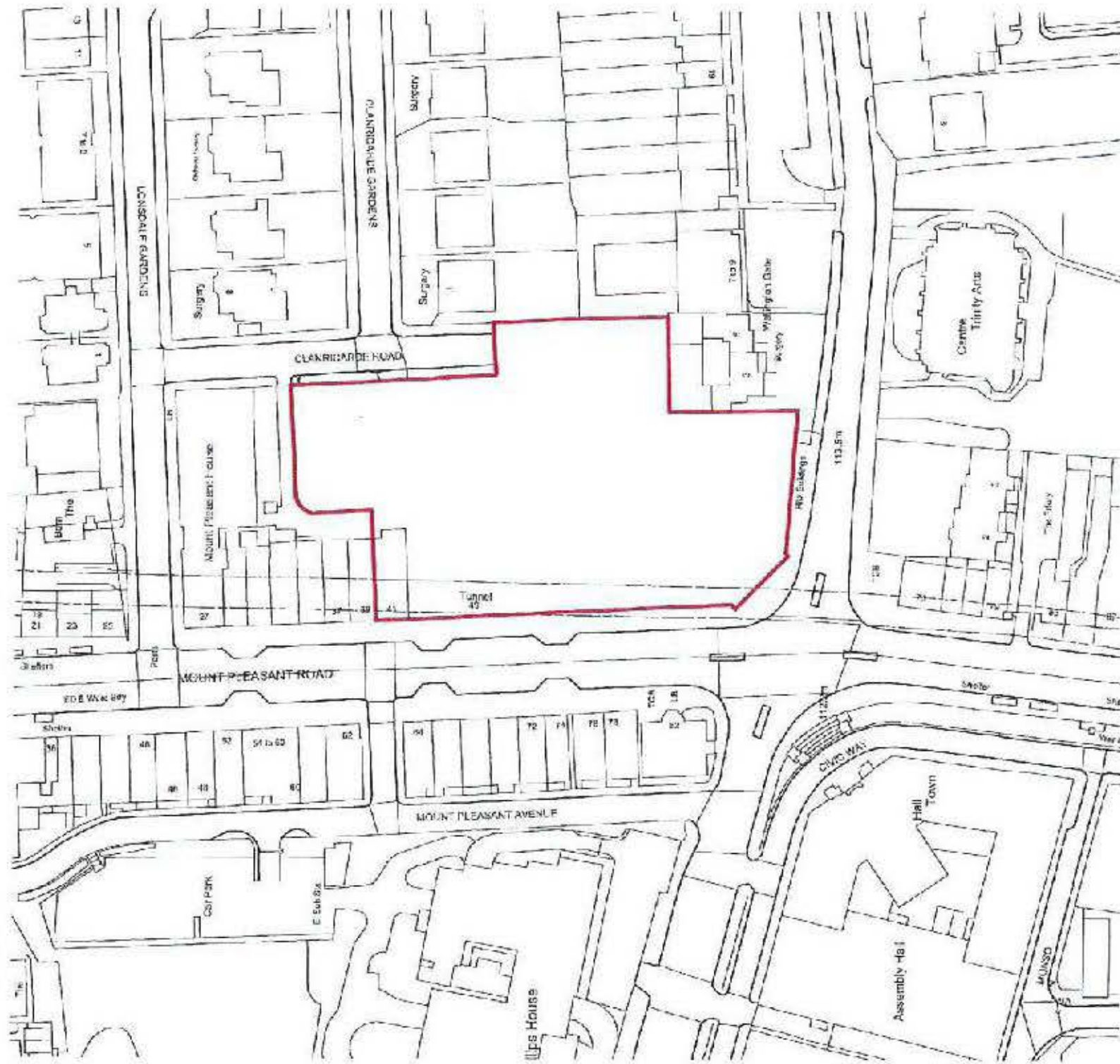
It is agreed

1 Interpretation

1.1 In this Agreement, the following words and expressions have the following meanings:

1980 Act means the Highways Act 1980

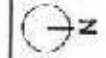
1990 Act means the Town and Country Planning Act 1990



LOCATION PLAN

NOTES:
 1. ALL CONTRACTORS TO NOTIFY ARCHITECTS OF SITE VARIATIONS AFFORDING INFORMATION ON THIS DRAWING. THIS DRAWING IS COPYRIGHT OF GLENN HOWELLS ARCHITECTS.

Glenn Howells Architects take no responsibility for the location of legal corners in relation to this drawing and advise a separate drawing be completed by a specialist Surveyor in order to establish exact boundaries.



TITLE PLAN BOUNDARY AS PER LAND REGISTRY FILE No. K3/2657

AREA:
 8,299 sqm
 0,879 ha.

Date	Rev	By	Details
18.07.09		SC	Draft for comments
18.07.09	A	SC	Correction to boundary to right of access strip
18.07.09	B	SC	Revised 4th of 1/20/09 access strip area. Final issue

LOCATION KEY:



PLANNING

Glenn Howells Architects

Head Office: 54-57 Cavendish St, Dunedin, 9111 NZ
 Tel: 03 477 9855 F: 03 477 9284
 email: gha@glennhowells.co.nz

Project:
 The Helixway (former ARC Cinema Site)
 To: Zaha Architects

Client:
 Police Planning (for Zaha Architects) SARL

Drawing Title:
 SIDE PLAN

Date	Scale	Client
06/11/09	1:1250@A3	SC

Project Ref.	Drawing No.	Revision
K34	2009-034-0006	U



Adult/Youth Recreation Contribution means either the sum of £194,328.00 (one hundred and ninety four thousand three hundred and twenty eight pounds) (Option A Contribution) or the sum of £184,915.00 (one hundred and eighty four thousand nine hundred and fifteen pounds) (Option B Contribution) towards Calverley grounds and/or the Rusthall playing fields expansion

All in Tender Price Index means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors

Borough means the Borough of Tunbridge Wells

Car Club Contribution means £20,000 (twenty thousand pounds) regardless of whether Option A or Option B is selected to be used towards 1 Co-Wheels Car Club car (including membership fee and marketing fee) to be made available for use by the occupiers of the Development

Commencement Date means the date on which the Development is Commenced

Commenced means the implementation of the Development in accordance with section 56(4) of the 1990 Act but for the purposes of this Agreement the following shall not constitute implementation:

- (a) site investigations or surveys
- (b) site decontamination
- (c) the demolition of any existing buildings or structures
- (d) the clearance or regrading of the Site
- (e) works connected with infilling
- (f) construction of boundary fencing or hoardings
- (g) construction of temporary accesses and/or highway works
- (h) landscaping works
- (i) laying of sewers and other services
- (j) creation of site compounds and any noise attenuation works

and the terms "Commence" and "Commencement" shall be construed accordingly

Common Local Wildlife Contribution means the sum of £8,370 (eight thousand three hundred and seventy pounds) (Option A Contribution) or the sum of £7,672.50 (seven thousand six hundred and seventy two pounds and fifty pence) (Option B Contribution) towards mitigation of recreational pressures on Tunbridge Wells Common

Contribution(s) means the Council Contributions and the County Council Contribution

Council Contributions means:

- (a) the Adult/Youth Recreation Contribution and
- (b) the Common Local Wildlife Contribution and
- (c) the Sustainable Transport Contribution and
- (d) the GP Surgery Contribution and
- (e) the Parking Restrictions Contribution and
- (f) the Car Club Contribution

County Council means The Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ

County Council Contribution means the Education Contribution and the Cultural Hub Contribution

Cultural Hub Contribution means either the sum of £37,960.92 (thirty seven thousand nine hundred and sixty pounds and ninety two pence) (Option A Contribution) or the sum of £34,797.51 (thirty four thousand seven hundred ninety seven pounds and pence) (Option B Contribution) towards Tunbridge Wells Cultural and Learning Hub

Development means a mixed use redevelopment comprising 3,039 sq.m Gross Internal Area (GIA) retail uses (Use Class A1/ A2), 1,895 sq.m GIA restaurant use (Use Class A3), 1,049 GIA sq.m cinema (Use Class D2) and 99 dwellings (Use Class C3) together with the provision of car and cycle parking, highway works, public realm improvements, and associated works, the realignment of Public Right of Way ref WBX17 and extinguishment of Public Right of Way ref WBX18, and either:-

- (a) an additional nine (9) dwellings (Use Class C3) and an additional 372 sqm GIA office uses (Use Class B1) or
- (b) an additional 1,144 sq.m GIA medical centre (Use Class D1)

Education Contribution means the Primary Education Sum and the Secondary Education Sum

General Building Cost Index means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors

GP Surgery Contribution means the sum of £76,392.00 (seventy six thousand three hundred and ninety two pounds) payable where Option A is selected by the Landowner to be spent solely on the extension, refurbishment and/or upgrade of the Lonsdale Surgery, or failing that the Kingswood Surgery and/or the Grosvenor and St James Medical Centre or as a contribution towards the cost of a new primary healthcare facility serving this population (NHS West Kent CCG) or a nil contribution where Option B is selected by the Landowner

Housing Unit(s) means any dwelling to be erected on the Site pursuant to the Planning Permission including, for the avoidance of doubt, any flats, maisonettes or apartments

Indexed means adjusted by reference to the relevant index pursuant to the provisions of clause 8 save that where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Agreement) issued or caused to be issued from time to time by the Building Costs Information Service, the Royal Institute of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Council or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Council shall approve

Interest means interest at 4 per cent above the base lending rate of the National Westminster Bank plc from time to time

New Permission means a planning permission authorising the redevelopment of the Site in a manner which would, if such redevelopment were completed, cause the Landowner to be in breach of any or all of the provisions contained in this Agreement

Option A means the Development where it includes an additional nine (9) dwellings (Use Class C3) and an additional 372 sq.m GIA office uses (Use Class B1)

Option B means the Development where it includes an additional 1,144 sq.m GIA medical centre (Use Class D1)

Option A Contributions shall mean those contributions listed in the first column of the table in Schedule 1 comprised of a total sum of £601,305.97 (six hundred and one thousand three hundred and five pounds and ninety seven pence)

Option B Contributions shall mean those contributions listed in the second column of the table in Schedule 1 comprised of a total sum of £501,693.41 (five hundred and one thousand six hundred and ninety three pounds and forty one pence)

Option Notice shall mean a notice to be given by the Landowner to the Council electing whether Option A or Option B is to be implemented

Option Notice Receipt shall mean a receipt to be issued by the Council (or deemed to be issued as appropriate) within 21 days from the date of the Council's receipt of the Option Notice

Occupation means the beneficial occupation of Housing Units or other parts of the Development other than occupation for the purposes of construction and fitting out, security, marketing, staff training or repair and **Occupied** shall be construed accordingly

Parking Restrictions Contribution means the sum of £2,000 (two thousand pounds) regardless of whether Option A or Option B is selected towards the cost of implementing a Traffic Regulation Order or alternative measures to restrict or manage on street parking

Plan means the plan attached to this Agreement showing for identification purposes only the Site

Planning Application means an application for planning permission for the Development more specifically described in the application made by the Landowner to the Council and given reference number 17/02262/FULL

Planning Permission means the planning permission granted in pursuance of the Planning Application for the Development in the form set out in Schedule 3 and including any renewal of the Planning Permission and/or the variation of the Planning Permission (including its conditions)

Primary Education Sum means either the sum of £65,649.00 (sixty five thousand six hundred and forty nine pounds) (Option A Contribution) or £59,832.00 (fifty nine thousand eight hundred and thirty two pounds) (Option B Contribution) towards the expansion of Broadwater Down Primary School to mitigate the additional demand for primary school education arising from the new residents of the Development

Public Realm Contribution means the sum of £100,000 (one hundred thousand pounds) regardless of whether Option A or Option B is selected to be used towards public realm works to the north of Church Road/Mount Pleasant Road junction.

Reasonable Endeavours means all those reasonable steps which a prudent and determined person or company anxious to achieve the stated objective would take

Retail Price Index All Items Index of Retail Prices issued by the Office for National Statistics

Secondary Education Sum means either the sum of £46,606.05 (forty six thousand six hundred and six pounds and five pence) (Option A Contribution) or the sum of £42,476.40 (forty two thousand four hundred and seventy six pounds and forty pence) (Option B Contribution) towards the enhancement of St Gregory's Secondary School to mitigate the additional demand for secondary education arising from the new residents of the Development

Site means the freehold property being land lying to the west of Mount Pleasant Road, Tunbridge Wells registered at HM Land Registry under the title number K372657 and shown for identification edged red on the Plan

Specialist means a person qualified to act as an expert having not less than ten years' professional experience in relation to developments in the nature of the Development and where possible property in the same locality as the Site

Sustainable Transport Contribution means the sum of £50,000 (fifty thousand pounds) regardless of whether Option A or Option B is selected towards exploration of and implementation of measures to deter private car use and manage public parking in Tunbridge Wells town centre

Working Day means any day from Monday to Friday inclusive which is not Christmas Day, Good Friday, a statutory holiday or a day between Christmas Day and New Year's Day

1.2 In this Agreement:

- (a) the clause headings do not affect its interpretation;
- (b) unless otherwise indicated, references to clauses and schedules are to clauses of and schedules to this Agreement and references in a schedule to a part or paragraph are to a part or paragraph of that schedule;
- (c) references to any statute or statutory provision include references to:
 - (i) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- (d) references to the Site include any part of it;
- (e) references to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act and references to the County Council include any successor including any local highway authority exercising powers under the 1980 Act;
- (f) including means "including, without limitation";
- (g) any covenant by the Landowner not to do any act or thing includes a covenant not to knowingly permit or allow the doing of that act or thing;
- (h) where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually

2 Effect of this Agreement

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 The Landowner is the registered proprietor with freehold title of all the freehold land and premises as the same is shown for the purposes of identification only edged coloured red on the Plan and is registered at the Land Registry under title number K372657
- 2.3 The covenants obligations restrictions and requirements imposed upon the Parties by this Dccd
 - (a) are entered into pursuant to the provisions of section 106 of the 1990 Act
 - (b) are planning obligations for the purposes of section 106 of the 1990 Act

- (c) relate to the Site
 - (d) are entered into with intent to bind the Landowner's interest in the Site and each and every part thereof into whosoever hands the same may come
 - (e) are enforceable by the Council as local planning authority
 - (f) are executed by the respective Parties as a deed
- 2.4 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of Local Government Act 1972 section 33 of the Local Government (Miscellaneous Provisions) Act 1982 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.5 Except as so far as legally and equitably permitted nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.6 The obligations in this Agreement will not be enforceable against a statutory undertaker carrying out its statutory functions including after any transfer of the statutory apparatus, and any land upon or in which the statutory apparatus is situated, by the Landowner to that statutory undertaker.
- 2.7 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.8 The obligations in this Agreement will not be enforceable against any persons who purchase or occupy a completed Housing Unit or their mortgagee.
- 2.9 The obligations in this Agreement will not be enforceable against any party acquiring an interest in the Site solely by way of registered legal charge or mortgage, unless that party takes possession of the Site, in which case they will be bound (as an owner) by the obligations of this Agreement which apply in relation to any parts of the Site over which it has a legal charge but not further or otherwise.
- 2.10 No person will be liable for any breach of the terms of this Agreement relating to a part of the Site over which they have no legal interest or any breach occurring after the date on which they part with their interest in the Site or their interest in the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 2.10.
- 2.11 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 2.12 If it is adjudged by the Planning Inspectorate, any Court or other tribunal of competent jurisdiction that any obligation within this Agreement is not compliant with the Community

Infrastructure Levy Regulations 2010 then any clauses relating to such obligations shall cease to have legal effect and that part of the Agreement shall be construed as severable from the remainder of this Agreement to the effect that the Agreement shall be construed and be enforceable as if the said part was never included in this Agreement.

3 Commencement Date

The obligations contained in clauses 4 to 5 and the schedules referred to in those clauses (save for paragraph 1(a) and paragraphs 2.1 – 2.5 of Schedule 1) do not come into effect until the Commencement Date, the remainder of this Agreement shall take effect immediately on the date of this Agreement.

4 Obligations of the Parties

- 4.1 The Landowner covenants with the Council to perform and observe the covenants obligations restrictions and requirements contained herein
- 4.2 The Landowner shall permit the Council and its authorised employees and agents upon reasonable notice to enter the Site at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed have been performed or observed **SUBJECT TO** compliance by the Council and its authorised employees and agents at all times with the Landowner's site regulations and requirements and health and safety law and good practice
- 4.3 The Landowner covenants to pay within 5 working days of completion of this Deed the Council's reasonable and properly incurred legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed
- 4.4 The Landowner agrees with the Council to comply with the relevant obligations set out in Schedule 1 according to the selection by the Landowner of either Option A or Option B.
- 4.5 The Council agrees with the Landowner to comply with the obligations set out in Schedule 2.
- 4.6 The Council agrees with the Landowner that it will issue the Planning Permission within two Working Days of the date of this Agreement.
- 4.7 The Council agrees with the Landowner to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.
- 4.8 If the performance of any of the Landowners obligations and/or covenants under this Agreement shall be prevented or delayed by any cause outside the direct control of the Landowner the Landowner shall give notice of such circumstances to the Council and the Landowner may at the Council's discretion be relieved by the Council from the performance of the obligation for such period but no longer than shall have been reasonable having regard to the circumstances in question.

5 Termination of this Agreement

- 5.1 Save for Clause 4.3 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 without the consent of the Landowner or expires prior to Commencement of Development
- 5.2 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 or modification variation or amendment thereof) granted after the date of this Deed
- 5.3 If the Council agrees following an application under section 73 of the 1990 Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and apply in equal terms to the new planning permission **UNLESS** the Council in determining the application for the new planning permission (or the Secretary of State determining the section 78 appeal in relation to that application) indicates that consequential amendments are required to this Deed to reflect the impact of the section 73 application in which circumstances a separate deed under section 106 or s.106A of the 1990 Act (as the case may be) will be required to secure relevant planning obligations or other planning benefits relating to the new planning permission **BUT** nothing in this deed shall in any way fetter the Council's discretion in relation to the section 73 application or the determination thereof

6 Notices

- 6.1 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other similar communication to be given under this Agreement must be in writing and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below SAVE THAT any of the Parties may by written notice notify the other Parties of an alternative address (which address must be based in England) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below:

The Council:	Tunbridge Wells Borough Council
Address:	The Head of Planning Services Tunbridge Wells Borough Council Town Hall Royal Tunbridge Wells Kent TN1 1RS
Reference	17/02262/FULL Former ABC Cinema Site
With a copy to:	The Section 106 Monitoring Officer
Where required:	The Head of Customers and Communities Tunbridge Wells Borough Council

Town Hall
Royal Tunbridge Wells
Kent TN1 1RS

The Landowner: Prime Finance (Tunbridge Wells) S.A.R.L.

Address: 5 Rue Goethe, L-1637, Luxembourg

With a copy sent to Farrer & Co, 66 Lincolns Inn Fields, London WC2A 3LH (reference KKP/83327.6) or such other firm of solicitors duly notified to the Council by the Landowner

6.2 Any such notice or other communication given in accordance with this clause shall conclusively be deemed to have been received:

(a) if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day; or

(b) if sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h00 on the day two (2) Working Days after the date of posting.

6.3 Any notice or request by the Landowner for approval consent certificate direction authority agreement action expression of satisfaction or other similar communication required pursuant to this Agreement shall cite the clause or paragraph of this Agreement to which such notice or request relates.

6.4 This clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution.

7 Determination of Disputes

7.1 Subject to clause 7.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this clause 7. The notice is to propose a Specialist appropriate to the dispute and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

7.2 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

7.3 The Specialist is to act as an independent expert and:

- (a) each party may make written representations within ten Working Days of their appointment and will copy the written representations to the other party;
- (b) each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- (c) the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- (d) the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
- (e) the Specialist is to have regard to all representations and evidence before them when making their decision, which is to be in writing, and is to give reasons for his decision; and
- (f) the Specialist is to use all Reasonable Endeavours to publish their decision within 30 Working Days of their appointment.

7.4 Responsibility for the costs of referring a dispute to a Specialist under this clause 7, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

7.5 The decision of the Specialist is to be final and binding on the parties except in the case of manifest error.

7.6 This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

8 Local Land Charge

8.1 This Deed is a local land charge and shall be registered as such

8.2 Where in the opinion of the Landowner any of the provisions of this Deed have been satisfied the Landowner shall be entitled to apply to the Council for confirmation to that effect and (subject to the payment of the Council's reasonable and properly incurred costs and charges in connection therewith) upon the Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Council shall as soon as is reasonably practicable issue a written confirmation to such effect to the Landowner

8.3 The Council shall upon the written request of the Landowner (and subject to the payment of the Council's reasonable and properly incurred costs and charges in connection therewith) at any time after all the obligations of the Landowner under this Deed have been performed or otherwise discharged and the Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this Deed

9 Successors in Title

- 9.1 The Landowner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Council to the intent that the obligations in this Deed shall be enforceable not only against the Landowner but also against the successors in title of the Landowner and any person claiming through or under the Landowner an interest or estate in the Site or any part thereof

10 Powers of the Council

- 10.1 Nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Council under all and any legislative instrument including statutes by-laws statutory instruments orders and regulations for the time being in force in the exercise of its function as a local authority

11 Severability

- 11.1 If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected impaired or called into question

12 Rights of Third Parties

- 12.1 The Parties intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed save for the successors in title to the Parties and in the case of the Council the successor to its statutory functions

13 Change of Ownership and New Interest

- 13.1 The Landowner warrants that at the date of this Deed
- (a) they have full authority to enter into this Deed
 - (b) no person other than the Landowner has any legal or equitable interest in the Site
 - (c) they know of no impediment to the validity of this Deed
 - (d) there is no subsisting breach of the terms of any mortgage or legal charges secured on the Site and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed
 - (e) they shall make good any loss to the Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so
- 13.2 The Landowner shall give the Council immediate written notice of any conveyance transfer lease assignment mortgage or other disposition entered into in respect of all or any part of the Site or 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

- (a) the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address) and
- (b) the nature and extent of the interest disposed of by reference to a plan

13.3 In the event that the Landowner's existing interest in the Site shall be determined (whether by surrender merger forfeiture or otherwise) and the Landowner shall acquire another interest in the Site (written notice of which shall be given to the Council) and the Planning Permission shall have either been Implemented or shall remain capable of Implementation then the Landowner as the case may be will within twenty-eight (28) days from a written request from the Council execute or procure the execution of another Deed on the same terms mutatis mutandis as this Deed

14 Waiver

14.1 No waiver (whether expressed or implied) by the Council of any breach or default or delay 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 from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and no single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

15 Indexation

15.1 All the Contributions payable to the Council pursuant to this Agreement shall be Indexed.

15.2 The Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase (if any) in the All in Tender Price Index between the quarterly index figure immediately preceding the date of this Deed and the quarterly index figure for the quarter immediately preceding the date of actual payment

15.3 The Education Contribution payable pursuant to this Deed shall be increased in the same proportion as the percentage increase (if any) in the General Building Cost Index between the quarterly index figure immediately preceding the date of this Deed and the quarterly index figure for the quarter immediately preceding the date of actual payment

15.4 The Cultural Hub Contribution payable pursuant to this Agreement shall be increased in the same proportion as the percentage increase (if any) in the Retail Price Index between the quarterly index figure immediately preceding the date of this Agreement and the quarterly index figure for the quarter immediately preceding the date of actual payment

16 Interest

16.1 If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

17 Agreements and Declarations

17.1 The Parties agree that

- (a) nothing in this Deed constitutes a planning permission and
- (b) nothing in this Deed grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function

18 Jurisdiction

- 18.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.
- 18.2 Subject to clause 7, the courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.
- 18.3 The Landowner irrevocably authorises Farrer & Co of 66 Lincolns Inn Fields, London WC2A 3LH to accept service of all legal process arising out of or connected with this Deed and service on Farrer & Co of 66 Lincolns Inn Fields, London WC2A 3LH (reference KKP/83327.6) or such other firm of solicitors duly notified to the Council by the Landowner shall be deemed to be good service on the Landowner

19 Execution

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

Schedule 1 - Landowner's Obligations

1 Notices

- 1.1 The Landowner covenants with the Council that it shall provide the Council with no less than twenty (20) Working Days prior notice of:
- (a) the intended Commencement Date and the Landowner shall not Commence the Development unless and until this notice has been provided to the Council; and (shall subsequently notify the Council promptly (and in any event within five (5) Working Days) of the Commencement Date;
 - (b) the intended date of first Occupation of the Development;
 - (c) the intended date of Occupation of the 25th Housing Unit; and
 - (d) the intended date of Occupation of the 50th Housing Unit.

2 THE OPTION NOTICE

- 2.1 The Landowner covenants that it will provide the Option Notice to the Council prior to Commencement of Development
- 2.2 The Landowner covenants that it shall not Commence Development until the Option Notice has been given to the Council
- 2.3 The Landowner covenants that it shall not Commence Development until the Option Notice Receipt has been issued by the Council or deemed to have been issued where the Landowner on giving the Option Notice to the Council does not receive an Option Notice Receipt within 21 days from the date of the Council's receipt of the Option Notice
- 2.4 The Landowner covenants with the Council that it will not seek to discharge condition 2 of the Planning Permission within six (6) months of the date of the Planning Permission
- 2.5 Clause 2.4 above shall not apply where the Option Notice given to the Council elects to implement Option B and the Landowner has received or is deemed to have received the Option Notice Receipt

3 COUNCIL AND COUNTY COUNCIL CONTRIBUTIONS

- 3.1 Where the Option Notice records that the Landowner's election is Option A then the Landowner covenants with the Council that it shall pay the Option A Contributions in accordance with the terms of this Agreement
- 3.2 Where the Option Notice records that the Landowner's election is Option A then references to the Contributions shall be construed as references to the Option A Contributions and for each individual Contribution to the figures displayed under Option A in the table below.

- 3.3 Where the Option Notice records that the Landowner's election is Option B then the Landowner covenants with the Council that it shall pay the Option B Contributions in accordance with the terms of this Agreement
- 3.4 Where the Option Notice records that the Landowner's election is Option B then references to the Contributions shall be construed as references to the Option B Contributions and for each individual Contribution to the figures displayed under Option B in the table below.
- 3.5 For the avoidance of any doubt the Landowner shall pay either the Option A Contributions or the Option B Contributions and nothing in this Agreement requires the Landowner to pay both the Option A and Option B Contributions

Contribution	Option A	Option B
Primary Education Sum	£65,649.00	£59,832.00
Secondary Education Sum	£46,606.05	£42,476.40
Cultural Hub Contribution	£37,960.92	£34,797.51
GP Surgery Contribution	£76,392.00	nil
Adult/Youth Recreation Contribution	£194,328.00	£184,915.00
Sustainable Transport Contribution	£50,000.00	£50,000.00
Car Club Contribution	£20,000.00	£20,000.00
Parking Restrictions Contribution	£2,000.00	£2,000.00
Common Local Wildlife Contribution	£8,370.00	£7,672.50
Public Realm Contribution	£100,000.00	£100,000.00
Total	£601,305.97	£501,693.41

3.6 Common Local Wildlife Contribution

- (a) The Landowner covenants that it shall pay to the Council the Common Local Wildlife Contribution before the first Occupation of the Development.
- (b) The Landowner covenants that it shall not Occupy the Development unless and until the Common Local Wildlife Contribution has been paid to the Council

3.7 Sustainable Transport Contribution

- (a) The Landowner covenants that it shall pay to the Council the Sustainable Transport Contribution before Occupation of 25 Housing Units.
- (b) The Landowner covenants that it shall not Occupy more than 25 Housing Units unless and until the Sustainable Transport Contribution has been paid to the Council.

3.8 Parking Restrictions Contribution

- (a) The Landowner covenants that it shall pay to the Council the Parking Restrictions Contribution before Commencement of the Development.
- (b) The Landowner covenants that it shall not Commence the Development unless and until the Parking Restrictions Contribution has been paid to the Council.

3.9 Car Club Contribution

- (a) The Landowner covenants that it shall pay to the Council the Car Club Contribution before Occupation of 25 Housing Units.
- (b) The Landowner covenants that it shall not Occupy more than 25 Housing Units unless and until the Car Club Contribution has been paid to the Council.

3.10 Adult/Youth Recreation Contributions

- (a) The Landowner covenants that it shall pay to the Council 50% of the Adult/Youth Recreation Contribution before the Occupation of 25 Housing units.
- (b) The Landowner covenants that it shall not Occupy any more than 25 Housing Units unless and until 50% of the Adult/Youth Recreation Contribution has been paid to the Council.
- (c) The Landowner covenants that it shall pay to the Council the remaining 50% of the Adult/Youth Recreation Contribution before the Occupation of any more than 50 Housing Units.
- (d) The Landowner covenants that it shall not Occupy any more than 50 Housing Units unless and until the remaining 50% of the Adult/Youth Recreation Contribution has been paid to the Council.

3.11 Cultural Hub Contribution

- (a) The Landowner covenants that it shall pay to the Council the Cultural Hub Contribution before Occupation of 25 Housing Units.
- (b) The Landowner covenants that it shall not Occupy more than 25 Housing Units unless and until the Cultural Hub Contribution has been paid to the Council.

3.12 GP Surgery Contribution

The Landowner covenants that where it elects Option A the following shall apply:

- (a) The Landowner covenants that it shall pay to the Council 50% of the GP Surgery Contribution before the Occupation of 25 Housing Units.
- (b) The Landowner covenants that it shall not Occupy more than 25 Housing Units unless and until 50% of the GP Surgery Contribution has been paid to the Council.
- (c) The Landowner covenants that it shall pay to the Council the remaining 50% of the GP Surgery Contribution before the Occupation of any more than 50 Housing Units.
- (d) The Landowner covenants that it shall not Occupy any more than 50 Housing Units unless and until the remaining 50% of the GP Surgery Contribution has been paid to the Council.

3.13 Education Contribution

- (a) The Landowner covenants that it shall pay to the Council 50% of the Education Contribution before the Occupation of 25 Housing Units.
- (b) The Landowner covenants that it shall not Occupy more than 25 Housing Units unless and until 50% of the Education Contribution has been paid to the Council.
- (c) The Landowner covenants that it shall pay to the Council the remaining 50% of the Education Contribution before the Occupation of any more than 50 Housing Units.
- (d) The Landowner covenants that it shall not Occupy any more than 50 Housing Units unless and until the remaining 50% of the Education Contribution has been paid to the Council.

3.14 Public Realm Contribution

- (a) The Landowner covenants that it shall pay to the Council the Public Realm Contribution before the Commencement of the Development
- (b) The Landowner shall not Commence the Development unless and until the Public Realm Contribution has been paid to the Council.

Schedule 2 - The Council's Obligations

1 Council's Contributions

Use of contributions

- 1.1 The Council covenants with the Landowner that it shall apply the Council Contributions for the purposes for which the same were paid as specified in the relevant paragraphs of this Agreement (which for the avoidance of doubt may include professional and other fees and investigative works and studies incurred and/or undertaken by the Council) and not to use any financial contributions contained in this Agreement otherwise than for the purposes for which they are paid provided that for the avoidance of doubt the Council shall be entitled to treat any accrued interest (if any) or any interest payable by the Landowner under this Agreement as if it were part of the principal sum paid by the Landowner.

2 Repayment of contributions

- 2.1 In the event that any part or all of any of the Council Contributions have not been allocated or committed or used for the purpose for which they were paid within ten (10) years from the date of receiving the respective Contributions, or where a Contribution(s) is paid in instalments on the date of the last respective instalment, and unless the Council and the Landowner agree otherwise the Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the Council's reasonable and properly incurred administration expenses
- 2.2 The Council covenants with the Landowner not to demand payments or enforce the provisions of this Agreement in any way that is contrary to the provisions of paragraph 3.5 of Schedule 1 of this Agreement

3 Education Contribution

- 3.1 The Council shall not transfer the Education Contribution (or any part thereof) to the County Council unless the Council is satisfied that the County Council will spend the contribution for the purposes for which the same were paid as specified in the relevant paragraphs of this Agreement
- 3.2 If the Council is of the view that the Education Contribution will not be spent in accordance with Paragraph 3.1 above or if the Education Contribution has not been transferred to the County Council within ten (10) years from the date of receiving the Education Contribution, or where the Education Contribution is paid in instalments on the date of the last respective instalment the Council shall repay such of the Education Contribution as the Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Council's administrative expenses

4 Cultural Hub Contribution

- 4.1 The Council shall not transfer the Cultural Hub Contribution (or any part thereof) to the County Council unless the Council is satisfied that the County Council will spend the contribution for

the purposes for which the same were paid as specified in the relevant paragraphs of this Agreement

- 4.2 If the Council is of the view that the Cultural Hub Contribution will not be spent in accordance with Paragraph 4.1 above or if the Cultural Hub Contribution has not been transferred to the County Council within ten (10) years from the date of receiving the Cultural Hub Contribution, or where the Cultural Hub Contribution is paid in instalments on the date of the last respective instalment the Council shall repay such of the Cultural Hub Contribution as the Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Council's administrative expenses

5 Option Notice Receipt

- 5.1 The Council covenants with the Landowner to use reasonable endeavours to issue the Option Notice Receipt prior to the expiry of 21 days from the date of receipt of the Option Notice

Schedule 3
Draft Planning Permission



Prime Finance (Tunbridge Wells) SARL
C/O Turley
FAO Miss Alice Fitton
9 Colmore Row
Birmingham
B3 2BJ

PLANNING DECISION NOTICE

APPLICANT:	Prime Finance (Tunbridge Wells) SARL
DEVELOPMENT TYPE:	Major Others
APPLICATION REFERENCE:	17/02262/FULL
PROPOSAL:	<p>Full planning application for mixed use redevelopment comprising 3,039 sqm Gross Internal Area (GIA) retail uses (Use Class A1/ A2), 1,895 sqm GIA restaurant use (Use Class A3), 1,049 GIA sqm cinema (Use Class D2) and 99 dwellings (Use Class C3) together with provision of car and cycle parking, highway works, public realm improvements, and associated works, realignment of Public Right of Way ref WBX17 and extinguishment of Public Right of Way ref WBX18, and either:-</p> <p>(a) 9 additional dwellings (Use Class C3) and 372 sqm GIA office uses (Use Class B1);</p> <p>Or</p> <p>(b) 1,144 sqm GIA medical centre (Use Class D1)</p>
ADDRESS:	Former ABC Cinema Site, Mount Pleasant Road, Royal Tunbridge Wells, Kent, TN1 1PN

The Council hereby **GRANTS** permission/consent for the proposal referred to above subject to the following Condition(s):

Standard time limit for implementation

- (1) The works hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Confirmation of which development option will be implemented

- (2) Prior to the commencement of the construction works hereby approved, the developer shall inform the Local Planning Authority in writing, which of the options for development as set out in the description of development will be implemented.

Reason: To clarify the nature of the development to be implemented. Such details are fundamental to the application and are therefore required prior to its commencement.

Approved plans

- (3) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan	2084-GHA-P-000
Site Plan	2084-GHA-P-001
Proposed Site Plan	2084-GHA-P-002
Development Blocks	2084-GHA-P-003
Floor Plans	
Floor Plan Ground-2 & Block D Ground – AOD +104.3 to +108.9 OFFICE	2084-GHA-P-100A *
Floor Plan Ground-1 & Block D L01 AOD +108.0 to 109.4 OFFICE	2084-GHA-P-101 *
Floor Plan Ground & Block D L02 – AOD +112.4 to +113.0 OFFICE	2084-GHA-P-102 *
Floor Plan L01 & L03 Resi A+B (AOD +118.4) Resi C (AOD +119.4) Resi D (AOD +115.7)	2084-GHA-P-103
Floor Plan L02 & L04 Resi A+B (AOD +121.5) Resi C (AOD +122.5) Resi D (AOD +118.9)	2084-GHA-P-104
Floor Plan L03 & L05 Resi A+B (AOD +124.7) Resi C (AOD 125.7) Resi D (AOD +122.0)	2084-GHA-P-105
Floor Plan L04 Resi (AOD +127.8 to +128.8)	2084-GHA-P-106
Floor Plan L05 Resi (AOD +131)	2084-GHA-P-107
Floor Plan L06 Resi (AOD +134.1)	2084-GHA-P-108A
Roof Plan	2084-GHA-P-109A
North Elevation – Block A	2084-GHA-P-200B
South Elevation – Block A	2084-GHA-P-201A
East Elevation 1/2 - Block A & B	2084-GHA-P-202A
East Elevation 2/2 – Block B and Cinema	2084-GHA-P-203A
West Elevation - Block A & B (Courtyard)	2084-GHA-P-204A
South Elevation - Block B & C	2084-GHA-P-205
East Elevation - Block C	2084-GHA-P-206A
West Elevation - Block C	2084-GHA-P-207
North Elevation - Block C	2084-GHA-P-208
West Elevation - Block D	2084-GHA-P-209 *
East Elevation - Block D	2084-GHA-P-210 *

North Elevation - Block D & Cinema	2084-GHA-P-211 *
South Elevation - Block D & Cinema	2084-GHA-P-212 *
Proposed Sections:	
East West Section A-A Looking North & East West Section B-B Looking North	2084-GHA-P-300A
East West Section C-C Looking North & East West Section D-D Looking North	2084-GHA-P-301A
East West Section E-E Looking North & East West Section F-F Looking South	2084-GHA-P-302A
North South Section G-G Looking West & North South Section H-H Looking West	2084-GHA-P-303
North South Section J-J Looking West & North South Section K-K Looking East	2084-GHA-P-304A
North South Section L-L Looking East & North South Section M-M Looking East	2084-GHA-P-305A
Façade Bay Studies:	
Façade Bay Study 01 Mount Pleasant Road – Retail	2084-GHA-P-400A
Façade Bay Study 02 Mount Pleasant Road – Restaurant	2084-GHA-P-401B
Façade Bay Study 03 Mount Pleasant Road - Block A & B	2084-GHA-P-402A
Façade Bay Study 04 Church Road - Block A	2084-GHA-P-403A
Façade Bay Study 05 Courtyard Block C	2084-GHA-P-404A
Façade Bay Study 06 Clanricarde Road - Block D	2084-GHA-P-405A
Façade Bay Study 07 Mount Pleasant Road – Cinema	2084-GHA-P-406A

Or, in the event of the medical centre option being implemented, in accordance with the following plans in substitution for those marked * above:

Floor Plan Ground-2 & Block D Ground – AOD +104.3 to +108.6 MED. CENTRE	2084-GHA-P-110
Floor Plan Ground-1 & Block D L01 – AOD +107.7 to +109.58 MED. CENTRE	2084-GHA-P-111
Floor Plan Ground & Block D L02 – AOD +112.88 to +113.0 MED. CENTRE	2084-GHA-P-112
West Elevation – Block D MED. CENTRE	2084-GHA-P-213
East Elevation – Block D MED. CENTRE	2084-GHA-P-214
North Elevation – Block D MED. CENTRE & Cinema	2084-GHA-P-215
South Elevation – Block D MED. CENTRE & Cinema	2084-GHA-P-216

Reason: To clarify which plans are approved for each option.

Public footpaths – diversion and stopping up order

- (4) The development hereby approved shall not be commenced unless and until the Diversion and stopping Up Order(s) required in relation to the public rights of way that cross the site have been confirmed and no part of the development hereby approved shall be occupied until the Walkway Agreement that establishes public access through the site has been executed.

Reason: To ensure that there are adequate facilities for the pedestrians to walk through the site.

- Construction Environmental Management Plan
- (5) Prior to the commencement of the construction works a Construction Environmental Management Plan shall be submitted to and approval in writing by the Local Planning Authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003). unless previously agreed in writing by the Local Planning Authority.

The Plan shall include:

- (i) An indicative programme for carrying out the works, including the sequence of construction
- (ii) Measures to minimise the production of dust on the site
- (iii) Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and, where appropriate, the use of noise mitigation barriers
- (iv) Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site
- (v) Design and provision of site hoardings
- (vi) Management of traffic visiting the site(s) including temporary parking or holding areas
- (vii) Provision of off road parking for all site operatives
- (viii) Measures to prevent the transfer of mud and extraneous material onto the public highway
- (ix) Measures to manage the production of waste
- (x) Measures to minimise the potential for pollution of groundwater and surface water
- (xi) The location and design of site office(s) and storage compounds
- (xii) The location of temporary vehicle access points to the site during the construction works
- (xiii) The arrangements for public consultation and liaison during the construction works
- (xiv) The routing of construction vehicles between the site and the trunk road network

Reason: This information is required prior to the commencement of development in order to protect the amenity of local residents and in the interests of highway safety.

- Hours of demolition and construction
- (6) During the demolition and construction phases, no works of demolition or construction shall take place other than within the hours Monday to Friday 08.00 to 18.00 hours, Saturday 08.00 to 13.00 hours and not at all Sundays or Bank Holidays.

Reason: To prevent disturbance to nearby residential properties.

- Land contamination
- (7) The development hereby permitted (with the exception of demolition works) shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the Local Planning Authority:
- 1) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors

- potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation, based on 1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment 2), if remediation is deemed necessary following 1) and 2) above. This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 4) A Closure Report is submitted upon completion of any remediation works undertaken pursuant to 3) above. The closure report shall include full verification details as set out in 3) This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

Reason: To prevent pollution of controlled waters and to comply with the National Planning Policy Framework. Such details are fundamental to the application and are therefore required prior to its commencement.

Archaeology – watching brief

- (8) No development shall take place until the applicant has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded.

The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

Levels

- (9) The development shall be undertaken in accordance with the levels details indicated on the approved plans.

Reason: To ensure a satisfactory appearance on completion of the development.

Restriction of amalgamation of units

- (10) None of the retail units, as identified on drawings ref 2084-GHA-P-110 and 2084-GHA-P-111, shall be amalgamated without the prior consent of the Local Planning Authority.

Reason: To allow the Local Planning authority to control the size of retail units in the interests of highway safety, due to the size of servicing vehicles likely to be attracted to larger retail units, particularly if used for convenience retailing.

Flexibility for the A1 uses

- (11) The retail units hereby approved, as identified on drawings ref 2084-GHA-P-110 and 2084-GHA-P-111, shall be used for A1 (Retail) or A2 (Financial and professional services), or a mix thereof, as defined in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to these Classes in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: To ensure the development is delivered in accordance with the details hereby approved.

Flexibility for the A3 uses

- (12) The areas indicated as cinema use (Use Class D2) and office use (Use Class B1a) or medical centre use (Use Class D1) (dependant on which option is implemented) on the approved plans shall be used for those purposes only, and notwithstanding the provisions of the General (Permitted Development) Order (England) 2015 as amended (or any subsequent amendment, modification, replacement or alteration of this amendment), not for any other use without the express grant of planning permission.

Reason: In order to ensure that the development is delivered in accordance with details hereby approved.

Noise from plant

- (13) Prior to the first use of any residential or non-residential unit, details of any plant (including ventilation, refrigeration, air source heat pumps and air conditioning) or ducting system to be used in pursuance of this permission shall be submitted to and approved in writing by the Local Planning Authority. The rating level of noise emitted from the proposed plant and equipment to be installed on the site (determined using the guidance of BS 4142 : 2014 Rating for industrial noise affecting mixed residential and Industrial areas) shall be low as can be possible. In general this is expected to be 5dB below the existing measured background noise level LA90,T, unless an alternative target level has been agreed in writing by the Local Planning Authority. (In exceptional circumstances, such as areas with a very low background or where assessment penalties total above 5, the applicant's consultant should contact the Environmental Protection Team to agree a site specific target level). The development shall be carried out in accordance with the approved details.

Reason: To protect residential amenity.

Internal/external sound levels – residential

- (14) Prior to the commencement of construction works, a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in back garden and other relevant amenity areas will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - shall be submitted to and approved in writing by the Local Planning Authority.

The assessment shall also specifically include noise from the adjacent licensed premises and from commercial premises included in the development itself particularly the outside seating areas. The assessment of these elements should not be restricted to use of the BS8233 methodology as it is not suitable for this purpose. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation of the premises and be retained thereafter.

Reason: To protect residential amenity. Such details are fundamental to the application and are therefore required prior to its commencement.

Commercial/residential noise transmission

- (15) The ceiling and floor that separates any residential and commercial unit shall resist the transmission of airborne sound such that the weighted standardised difference (DnT, W + Ctr) shall not be less than 53 decibels. The weighted standardized difference (DnT, W) a spectrum adaption term, Ctr, is quoted according to BS EN ISO 10140; 2011 Acoustics- Measurement of sound insulation in buildings and of building elements- Part 4: Field measurements of airborne sound insulation between rooms.

Reason: To protect residential amenity.

Extraction/treatment of fumes/odours

- (16) Prior to the first operation of any unit to be used for A3 or A4 purposes, a scheme and maintenance schedule for the extraction and treatment of fumes and odours generated from cooking or any other activity undertaken on the premises, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be designed in accordance with the DEFRA publication Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems January 2005. Any equipment, plant or process provided or undertaken in pursuance of this condition shall be installed prior to the first operation of the premises and these shall thereafter be operated and retained in compliance with the approved scheme.

Reason: To protect the amenity of nearby properties from fumes and odours.

Surface water drainage details (KCC 1 of 2)

- (17) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated within the curtilage of the site with an agreed rate of discharge to the adjacent combined sewer without increase to flood risk on or off-site. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

Implementation and management of surface water drainage (KCC 2 of 2)

- (18) No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

a) a timetable for its implementation, and

b) a management and maintenance plan for the lifetime of the development to secure the operation of the sustainable drainage system throughout its lifetime.

Reason: To ensure that any measures to mitigate flood risk and protect water quality on/off the site are fully implemented and maintained (both during and after construction), as per the requirements of paragraph 103 of the NPPF and its associated Non-Statutory Technical Standards.

Foul drainage (Southern Water)

- (19) Development shall not commence until a drainage strategy detailing the proposed means of foul disposal and a implementation timetable, has been submitted to and approved in writing by the local planning authority in consultation with Southern Water. The development shall be carried out in accordance with the approved scheme and timetable.

Reason: To avoid unacceptable additional use of existing drainage infrastructure and to avoid pollution of the surrounding area. Such details are fundamental to the application and are therefore required prior to its commencement.

Air quality

- (20) No development shall commence until the developer has developed a scheme detailing and where possible quantifying what measures or offsetting schemes are to be included in the development which will reduce the transport related air pollution of the development during construction and when in occupation. The report should be submitted to and approved by the Local Planning Authority, prior to development. (The developer should have regard to the DEFRA guidance from the document Low Emissions Strategy -using the planning system to reduce transport emissions January 2010.)

Reason: To ensure a satisfactory standard of development which meets the needs of current and future generations. Such details are fundamental to the application and are therefore required prior to its commencement.

Tree Works

- (21) The tree works associated with this development shall be undertaken in accordance with the submitted Arboricultural Report (Hal Appleyard, July 2017) or any variation thereof as approved in writing by the Local Planning Authority, which details the works to be undertaken with regard to the retained trees, and in accordance with the principles set out in the current edition of BS 5837 and other current best practice guidance, and proposals for arboricultural supervision of such works.

Reason: To safeguard existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

Tree Protection

- (22) The approved development shall be carried out in such a manner as to avoid damage to the existing trees, including their root systems, to be retained by observing the following:
- (a) All trees to be preserved shall be marked on site and protected during any operation on site by temporary fencing in accordance with BS 5837:2005, and in accordance with the approved Tree Protection Plan and Arboricultural Report (Hal Appleyard, July 2017), to the satisfaction of the Local Planning Authority (or any variation thereof as approved in writing by the Local Planning Authority). Such tree protection measures shall remain throughout the period of construction

- (b) No fires shall be lit within the spread of branches or upwind of the trees and other vegetation;
- (c) No materials or equipment shall be stored within the spread of the branches or Root Protection Areas of the trees or other vegetation;
- (d) No roots over 50mm diameter shall be cut, and no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches or Root Protection Areas of the trees and other vegetation;
- (e) Ground levels within the spread of the branches or Root Protection Areas (whichever the greater) of the trees and other vegetation shall not be raised or lowered in relation to the existing ground level, except as may be otherwise agreed in writing by the Local Planning Authority.
- (f) No trenches for underground services shall be commenced within the Root Protection Areas of trees which are identified as being retained in the approved plans, or within 5m of hedgerows shown to be retained without the prior written consent of the Local Planning Authority. Such trenching as might be approved shall be carried out to National Joint Utilities Group recommendations.

Reason: To protect and enhance the appearance and character of the site and locality.

External Materials

- (23) Prior to the commencement of construction works, final written details and / or samples as appropriate of any materials to be used externally (including walls, balustrades and balconies, window frames, doors, rainwater goods) shall be submitted to and approved in writing by the Local Planning Authority. A sample brick panel relating to each part of the building shall be constructed on site, measuring at least 1m x 1m showing joint size, mortar finish, and colour and type of brick, and the approved panel shall remain on site until the work on these buildings has been completed. An additional brick sample panel shall be constructed representing the curved section of the corner building. Consideration should be given to the use of snapped headers here. The development shall be carried out in accordance with the approved materials details unless otherwise agreed in writing by the Local Planning Authority. For the avoidance of doubt, this condition does not apply to the part of the building containing the cinema, which is the subject of a separate condition.

Reason: To safeguard the characteristics of the locality. Such details are fundamental to the application and are therefore required prior to its commencement.

Cinema materials and design of cladding

- (24) Prior to the commencement of construction works of the part of the building containing the cinema (including the retail units beneath the cinema) details of the materials to be used for the cladding of the cinema elevations, including the design of any patterns to be incorporate within the cladding material, and any associated lighting, shall be submitted to, and approved in writing by, the Local Planning Authority. For the avoidance of doubt, it should not necessarily be assumed that metal cladding is the only appropriate material and the submitted details are required to indicate alternative options that have been considered. The development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the characteristics of the locality. Such details are fundamental to the application and are therefore required prior to its commencement.

Design details

- (25) Prior to the commencement of the construction works, details and drawings of the following matters shall be submitted to, and approved in writing, by the Local Planning Authority:

- large-scale constructional cross sections of key parts of each building block to show window frames and dressings (lintels, sills, reveals etc), doors and doorways, depths of recession between structural elements and infill panels, copings, windows, balustrades and balconies, external services and plant.

The development shall be constructed in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the character and appearance of the conservation area. Such details are fundamental to the application and are therefore required prior to its commencement.

Landscaping details

- (26) Construction works shall not commence until details of the proposed hard and soft landscaping and boundary treatments, together with a programme for implementation, have been submitted to and approved in writing by the Local Planning Authority for approval. The hard landscape proposals shall including hard surfacing/paving materials, street furniture and seating. The soft landscaping details shall include schedules of plants (noting species, plant sizes and proposed numbers/densities), details of planting medium depths, written specifications (including cultivation and other operations associated with the establishment and management of the podium roof), a programme of implementation and a 5 year management plan. A detailed specification for the construction details of the extensive and intensive green roofs shall also be provided. The landscaping shall be installed and thereafter maintained in accordance with the agreed details and programme.

Reason: To ensure a satisfactory external appearance to the development in the interests of enhancements to biodiversity and surface water management. Such details are fundamental to the application and are therefore required prior to its commencement.

Water feature

- (27) Prior to first occupation of any part of the building hereby approved, details of the water feature, including a timescale for its provision and arrangements for maintenance shall be submitted to, and approved in writing by, the Local Planning Authority. The water feature shall be provided in accordance with the approved details and in accordance with the agreed timescale and thereafter retained and maintained in accordance with the approved details.

Reason: To safeguard the characteristics of the locality.

Public art

- (28) Prior to first occupation of any part of the building hereby approved, details of how public art will be incorporated within the development (to include, but not necessarily limited to, the water feature, cinema cladding, and the provision of 'Weisbaden' stainless steel cycle stands on the adjacent highway), including a timescale for its provision and arrangements for its maintenance shall be submitted to, and approved in writing by, the Local Planning Authority. The public art shall be provided in accordance with the approved details and agreed timescale, and thereafter retained and maintained in accordance with the approved details.

Reason: To safeguard the characteristics of the locality.

Biodiversity enhancement

- (29) No construction works shall take place until a scheme for the enhancement of biodiversity (including provision of bird and bat boxes and living roofs), and including a programme of implementation and monitoring has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and programme, and shall be permanently maintained.

Reason: To protect and enhance existing species and habitat on the site in the future. Such details are fundamental to the application and are therefore required prior to its commencement.

External lighting

- (30) No external lighting shall be installed until a detailed scheme of lighting has been submitted to, and approved in writing by the Local Planning Authority. This scheme shall take note of and refer to the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2005 (and any subsequent revisions) and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The scheme of lighting shall be installed, maintained and operated in accordance with the approved scheme unless the Local Planning Authority gives its written consent to any variation.

Reason: To protect the visual amenity of the area.

Energy conservation

- (31) The development shall be carried out in accordance with the energy conservation measures as specified in the Energy Report, or in accordance with any alternative measures that have been agreed in writing by the Local Planning Authority prior to the commencement of development.

Reason: To ensure a satisfactory standard of development which meets the needs of current and future generations.

Renewable Technologies

- (32) Prior to the commencement of construction, final details of the location and appearance of the proposed PV panels and air source heat pumps, shall be submitted to, and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory standard of development which meets the needs of current and future generations.

Water Conservation

- (33) Prior to the commencement of construction, written and illustrative details for water conservation within the development, shall be submitted to, and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory standard of development which meets the needs of current and future generations.

Sustainability (BREEAM)

- (34) The development hereby approved shall achieve a minimum BREEAM rating of Very Good. The development shall not begin operation until a final BREEAM certificate has been issued certifying that Very Good rating has been achieved. This certificate should be submitted to and approved in writing by the Local Planning Authority prior to the first operation of the development hereby approved.

Reason: To ensure a satisfactory standard of development, which meets the needs of current and future generations.

Section 278 works

- (35) Prior to the commencement of construction, final details of the off site highway works subject of a Section 278 Agreement and as shown generally referred to below, and a programme for their implementation, shall be submitted to and approved in writing by the Local Planning Authority, in consultation with the Local Highway Authority. The works shall be completed in accordance with the agreed timescale.

- Minor kerb alignment to Church Road site access radii
- Minor kerb alignment on Mount Pleasant Road / Lonsdale Gardens junction to protect listed pillars and provision of bollards
- Bicycle stand provision on public highway on Church Road
- Making good pavements on Church Road and Mount Pleasant Road
- Additional street tree(s) on Mount Pleasant Road.

Reason: In the interests of highway safety and to ensure an acceptable pedestrian environment. Such details are fundamental to the application and are therefore required prior to its commencement.

- Provision of residential parking spaces
- (36) Prior to the commencement of construction, a programme for the provision of the residential parking spaces and, if the medical centre option is implemented, for the medical centre as well, in relation to the timescale for the occupation of the dwellings they serve and, if appropriate, the medical centre, shall be submitted to and approved in writing by the Local Planning Authority. The parking spaces shall be provided in accordance with the agreed programme. If the medical centre option is implemented, there should be a clear demarcation between the residential and medical centre spaces. The parking spaces shall be retained for the use of the occupiers of, and visitors to, the development, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude the use of such facilities.

Reason: Development without provision of adequate accommodation for the parking and turning of vehicles is likely to lead to parking inconvenient to other road users. Such details are fundamental to the application and are therefore required prior to its commencement

- Service Vehicle Management Plan
- (37) Prior to the occupation of any part of the development a Service Vehicle Management Plan to secure the implementation of the vehicle size restriction and discourage servicing from the public highway shall be submitted to and approved in writing by the Local Planning Authority. The approved Service Vehicle Management Plan shall be implemented on occupation of the development and remain operative thereafter.

Reason: In the interests of highway safety and to ensure an acceptable pedestrian environment.

- Electric Vehicle Charging Points
- (38) Prior to the commencement of construction works, details of the location and specification of electric vehicle-charging points to serve the residential parking spaces, including a timescale for their provision, shall be submitted to and approved in writing by the Local Planning Authority. The charging points shall be provided in accordance with the approved details unless previously agreed otherwise in writing by the Local Planning Authority.

Reason: To ensure a satisfactory standard of development which meets the needs of current and future generations. Such details are fundamental to the application and are therefore required prior to its commencement.

- Cycle parking for dwellings
- (39) Prior to the first occupation of any dwelling hereby approved, cycle storage facilities to serve that dwelling shall be provided in accordance with the submitted cycle parking storage details and such facilities shall thereafter be retained.

Reason: To ensure the provision and retention of adequate off-street parking facilities for bicycles in the interests of promoting sustainable transport modes.

Travel Plan / Residents Welcome Pack

- (40) Residents Welcome Pack shall be made available to all new residents online and as a booklet, containing information and incentives to encourage the use of sustainable transport modes by new occupiers, including the following:

- 1) Maps showing the site in relation to walking, local buses, cycle routes, cycle stands, the nearest bus stops, and rail stations
- 2) Approximate time it takes to walk or cycle to various local facilities
- 3) Site specific public transport information including up to date public transport timetables
- 4) Links to relevant local websites with travel information such as public transport operator information, cycling organisations and the Council
- 5) Details of Car Club scheme
- 6) Information on public transport season tickets and offers
- 7) Information on specific incentives including "Walk to Work" or "Cycle to Work" initiatives
- 8) Information on the health, financial and environmental benefits of sustainable travel

Reason: In the interests of sustainable development.

Refuse storage

- (41) Prior to the first occupation of any dwelling or commercial unit hereby approved, refuse storage facilities to serve that dwelling or commercial unit shall be provided in accordance with the submitted refuse storage details and such facilities shall thereafter be retained.

Reason: To ensure the provision and retention of adequate refuse storage facilities.

Roof Top Plant

- (42) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, no roof top plant or equipment (including telecommunications equipment), with the exception of any relating to the provision of renewable energy technologies, as approved under Condition 32, shall be erected on any part of the building hereby approved without the prior consent of the Local Planning Authority.

Reason: In the interests of visual amenity and the character and appearance of the conservation area.

Informative(s):

- (1) As the development involves construction, the applicant's attention is drawn to the Mid Kent Environmental Code of Development Practice, the terms of which should be met in carrying out the development.
- (2) This development is the subject of an Obligation under Section 106 of the Town and Country Planning Act 1990.
- (3) As the site is adjacent to Network Rail's operational railway infrastructure, Network Rail strongly recommends the developer contacts Asset Protection Kent <AssetProtectionKent@networkrail.co.uk> prior to any works commencing on site. More information can also be obtained from Network Rail's website at www.networkrail.co.uk/asp/1538.aspx.

- (4) Southern Water advise that should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site. The applicant is advised to discuss the matter further with Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk".
- (5) The applicant is required to enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure or to connect to the public sewerage system in order to service this development.
- (6) Southern Water further advise that land uses such as general hardstanding that may be subject to oil/petrol spillages should be drained by means of oil trap gullies or petrol/oil interceptors; no land drainage or ground water should enter the public sewers network; and wastewater grease traps should be provided on the kitchen waste pipes or drains installed and maintained by the owner or operator of the premises.
- (7) Kent Highways advise that it is the responsibility of the applicant to ensure , before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries> The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.
- (8) Kent County Council recommends that all developers work with a telecommunication partner or subcontractor in the early stages of planning for any new development to make sure that Next Generation Access Broadband is a fundamental part of the project. Access to superfast broadband should be thought of as an essential utility for all new homes and businesses and given the same importance as water or power in any development design. Please liaise with a telecom provider to decide the appropriate solution for this development and the availability of the nearest connection point to high speed broadband. We understand that major telecommunication providers are now offering Next Generation Access Broadband connections free of charge to the developer. For advice on how to proceed with providing access to superfast broadband please contact broadband@kent.gov.uk
- (9) No works considered necessary for associated realignment of vehicular access surfacing that affect the grade II listed lamp standards at the junction of Mount Pleasant and Clarincade Gardens shall be carried out until a listed building consent application is submitted and approved.

- (10) The applicant is advised that the residential units hereby permitted would not be eligible for any on-street parking permits. Prospective purchasers should be made aware of this to avoid any misunderstanding. This should be stated, for instance, within the Residents Welcome Pack, details of which are required to be submitted for approval under condition 40.

The Council's approach to this application:

Note to Applicant: APPROVAL

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

IMPORTANT: YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES

NOTIFICATION TO APPLICANT FOLLOWING REFUSAL OF CONSENT OR GRANT OF CONSENT SUBJECT TO CONDITIONS

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority (LPA) to refuse permission for the proposed development, or to grant it subject to Conditions, then you can appeal to the Secretary of State (SoS) under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 or Control of Advertisements Regulations 1989.

Please see "Development Type" on page 1 of the decision notice to identify which type of appeal is relevant for the following:

- If this is a decision to refuse planning permission for a Householder application or a Minor Commercial application and you want to appeal the decision, or any of the conditions imposed, then you must do so within 12 weeks of the date of this notice.
- In all other cases, you will need to submit your appeal against the decision, or any of the conditions imposed, within 6 months of the date of this notice.

For applications relating to Enforcement Notices:

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice and if you want to appeal against the decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is subsequently served and relates to the same or substantially the same land and development and if you want to appeal against the decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder or minor commercial application decision] of the date of this notice, whichever period expires earlier.

Appeals must be made using a form which you can get from The Planning Inspectorate, Room 3/13, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online at www.planningportal.gov.uk/pcs.

The SoS can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The SoS need not consider an appeal if it seems to the SoS that the LPA could not have granted advertisement consent for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

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

The **COMMON SEAL** of **TUNBRIDGE WELLS BOROUGH COUNCIL** was affixed to this deed in the presence of

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Authorised Signatory



EXECUTED as a DEED by **PRIME FINANCE (TUNBRIDGE WELLS) S.A.R.L.** acting by one Manager

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Manager