

DATED 10th September 2018

TUNBRIDGE WELLS BOROUGH COUNCIL

-and-

CORNFORD HOUSE LIMITED

-and-

HSBC UK BANK PLC

DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF
LAND AT CORNFORD COURT, CORNFORD LANE, ROYAL TUNBRIDGE WELLS, KENT,
TN2 4QX
Planning Application Ref No 17/01151/FULL

Mid Kent Legal Services
Tunbridge Wells Borough Council
Mount Pleasant Road
Royal Tunbridge Wells
Kent TN1 1RS
Ref.: T011049



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THIS DEED OF AGREEMENT is dated the 10th day of September 2018

BETWEEN

- 1) **TUNBRIDGE WELLS BOROUGH COUNCIL** of Mount Pleasant Road, Royal Tunbridge Wells Kent TN1 1RS (the "**Borough Council**") and
- 2) **CORNFORD HOUSE LIMITED** (Company Registration No 04301694) whose registered office is at Cornford Lane, Pembury, Tunbridge Wells, TN2 4QS (the "**Owner**") and
- 3) **HSBC UK BANK PLC** (Company Registration No 09928412) whose address for service is at Securities Processing Centre, P.O. Box 6304, Coventry, CV3 9JY (the "**Mortgagee**")

RECITALS

- A. The Borough Council is the local planning authority and local housing authority for the area within which the Land is situated
- B. The Application was made to the Borough Council
- C. The Borough Council by its Planning Committee at its meeting held on 7 March 2018 resolved that planning permission be granted for the Development subject to conditions and the prior completion of this Deed (without which planning permission would have been refused) making provision for *inter alia* planning obligations
- D. The Owner is a person interested in the Land by virtue of being the registered proprietor with freehold title absolute of the Land as set out in Schedule 1
- E. The Mortgagee is a person interested in the Land by virtue of being the proprietor of a registered charge on the Land as set out in Schedule 1
- F. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010
- G. The Owner and the Mortgagee have agreed to enter into this Deed to regulate the Development and to give effect to the terms of the resolution of the Borough Council's

Planning Committee hereinbefore recited which Deed may also secure other planning benefits

- H. The Borough Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive to and be incidental to the Borough Council's functions
- I. The County Council is the statutory authority responsible for local highways for the area within which the Land is situated
- J. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling

OPERATIVE PROVISIONS

IT IS AGREED as follows

DEFINITIONS

- 1.1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by the interpretation provisions contained in Paragraphs 1.1 to the relevant Schedule

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

"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

"Application" means the application for full planning permission submitted by Mr Ernie Graham of Graham Land and Developments Limited to the Borough Council to carry out the Development at the Land and given the

registered reference number 17/01151/FULL

“Commencement of Development”	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words “Commence” and “Commence Development” shall be construed accordingly
“County Council”	means The Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ who are the local highway authority for the area within which the Land is situated
“County Council Contributions”	means the financial contributions payable to the County Council pursuant to Schedule 2 comprising the Highways Contribution
“Deed”	means this deed of agreement together with all Schedules and Appendices
“Development”	means demolition of existing buildings and erection of a 68 suite integrated community health centre (C2 use class) and associated parking on the Land as set out in the Application pursuant to the Planning Permission
“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
“Index Linked”	means adjusted by reference to the relevant index pursuant to the provisions of Clause 19
“Interest Rate”	means 4% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment
“Land”	means the land against which this Deed may be enforced as detailed in Schedule 1 and shown for identification purposes only edged red on the Plan

“Occupy”	means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations and “Occupation” “Occupier” or “Occupied” shall be construed accordingly
“Parties”	means the Owner the Mortgagee and the Borough Council as the context so requires and “Party” means any one of them
“Plan”	means the plan entitled “Location Plan” (Drawing No A-685 01 Revision C) prepared by Carless & Adams Partnership and dated 10 August 2016 annexed as Appendix 1
“Planning Permission”	means planning permission for the Development to be granted pursuant to the Application subject to conditions a draft of which is annexed as Appendix 2
“Practical Completion”	means the proper issue of one or more certificate(s) of practical completion of any works carried out pursuant to this Deed or as the context may allow any part section or phase thereof by an independent architect civil engineer chartered surveyor or other certifying professional (as the case may be) and the term “Practically Complete” shall be construed accordingly
“Preparatory Operation”	means an operation or item of work of or connected with or ancillary to <ul style="list-style-type: none"> a) archaeological investigation b) exploratory boreholes and trial pits c) site clearance (but excluding demolition of a

building or structure)

- d) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities
- e) the erection of fences and hoardings around the Land and
- f) construction of temporary access and service roads

“Section 106 Monitoring Officer” means the Borough Council’s section 106 Monitoring Officer or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging such duties and functions

“Statutory Undertakers” means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator

“VAT” means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)

“Working Day” means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

INTERPRETATION

- 2.1 A reference to any Clause Plan Paragraph Schedule Appendix or Recital such reference is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in the case of plans attached to) this Deed
- 2.2 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed
- 2.3 Words importing the singular include the plural and vice versa

- 2.4 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 2.5 Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.6 Reference to any Party to this Deed shall include the successors in title to that Party and to any person deriving title through or under that Party and in the case of the Borough Council shall include any successor to its statutory functions
- 2.7 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individual severally
- 2.8 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.9 References in this Deed to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order delegated legislation plans regulations permissions and directions amending re-enacting consolidating replacing or made pursuant to the same as current and in force from time to time
- 2.10 In the event of any conflict between the terms conditions and provisions of this Deed and any document attached hereto or referred to herein the terms conditions and provisions of this Deed shall prevail
- 2.11 Any words following the terms including include in particular for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms

LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the 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 any other enabling powers
- 3.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed

- 3.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act
- 3.2.2 are planning obligations for the purposes of section 106 of the 1990 Act
- 3.2.3 relate to the Land
- 3.2.4 are entered into with intent to bind the Owner and the Mortgagee's interest(s) in the Land as set out in Schedule 1 and each and every part thereof into whosoever hands the same may come
- 3.2.5 are enforceable by the Borough Council as local planning authority
- 3.2.6 are executed by the respective Parties as a deed
- 3.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Borough Council 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

CONDITIONALITY

- 4.1 With the exception of this Clause 4 and Clauses 1 2 3 5.2 5.3 and 7 to 24 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission

COVENANTS AND OBLIGATIONS OF THE OWNER

- 5.1 The Owner covenants with the Borough Council to perform and observe the covenants obligations restrictions and requirements contained herein
- 5.2 The Owner shall permit the Borough Council and its authorised employees and agents upon reasonable notice to enter the Land 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 Borough Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice

The Owner covenants to pay before completion of this Deed the Borough Council's reasonable legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed whether or not this Deed is delivered in accordance with Clause 24

COVENANTS AND OBLIGATIONS OF THE BOROUGH COUNCIL

- 6.1 The Borough Council covenants with the Owner that subject to the Owner carrying out and observing the Owner's covenants obligations restrictions and requirements herein it will perform the covenants on the part of the Borough Council as set out herein

MORTGAGEE'S CONSENT

- 7.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of its charge over the Land shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall have no liability under this Deed unless it takes possession of the Land or any part of the Land in which case the Mortgagee shall be bound by the provisions of this Deed as a person deriving title from the Owner
- 7.2 For the avoidance of doubt, the Mortgagee shall only be liable for any breach of this Deed if it has itself caused the breach whilst mortgagee in possession and shall in no circumstances be liable for any pre-existing breach. The Mortgagee shall have no liability after it has discharged its security or has disposed of the Land which is subject to its security whether by sale or otherwise.

RELEASE AND EXCLUSIONS

- 8.1 Save for Clause 5.2 the obligations contained in this Deed shall not be binding upon nor enforceable against
- 8.1.1 any Statutory Undertaker with any existing interest in any part of the Land or acquires an interest in any part of the Land for the purpose of the supply of electricity gas water or sewerage drainage or public telecommunication services
- 8.1.2 No person shall be liable for breach of any of the planning obligations or other

provisions of this Deed after they shall have irrevocably parted with their entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to the rights of the Borough Council in relation to any subsisting or any antecedent breach non-performance or non-observance arising prior to parting with such interest

DETERMINATION OF THE PLANNING PERMISSION

9.1 Save for Clause 5.3 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 or expires prior to Commencement of Development without the consent of the Owner

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

9.3 If the Borough 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 Borough 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 Borough Council's discretion in relation to the section 73 application or the determination thereof

DISPUTES AND EXPERT DETERMINATION

10.1 In the event of any dispute or difference between the Parties touching or concerning any matter arising out of this Deed (SAVE FOR the amount of any contribution payable pursuant to this Deed or the due date of payment) such dispute or difference shall be referred to an expert ("the Expert") to be appointed on the

application of the Parties by the President (or equivalent person) for the time being of the professional body in England chiefly relevant to such dispute or difference

10.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 10.1 within ten (10) Working Days after a written request by one Party to the others to agree to the appointment of an Expert then the question of the appropriate Expert or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of a Party and such a solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne in equal shares

10.3 The Expert shall act as an expert and save in case of manifest error his decision shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares

10.4 The Expert shall be required to give notice to each of the Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten (10) Working Days in respect of any such submission and supporting material

10.5 Any expert howsoever appointed shall be subject to the express requirement that a decision shall be in writing (and give reasons for his decision) and shall be reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received the last submission or written representation

10.6 Nothing in this Clause 10 shall be taken to fetter or limit the ability of the Borough Council to carry out its functions and duties nor to limit the ability of any of the Parties to refer a dispute to the Courts of England and Wales

NOTICES

- 11.1 Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that
- 11.1.1 it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of carrying out any Preparatory Operation and the Owner shall not carry out any Preparatory Operations unless and until this notice has been provided to the Borough Council
- 11.1.2 it shall subsequently notify the Borough Council promptly and in any event within 5 Working Days of the actual date on which the first Preparatory Operation was carried out
- 11.1.3 it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Commencement of Development and the Owner shall not Commence Development unless and until this notice has been provided to the Borough Council and
- 11.1.4 it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Commencement of Development and
- 11.1.5 it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Occupation of the Development and the Owner shall not Occupy the Development unless and until this notice has been provided to the Borough Council
- 11.1.6 it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the Development
- 11.1.7 it shall provide the Borough Council with the final Certificate of Practical Completion of the Development
- 11.2 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication to be given under this Deed 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 and Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

The Borough Council Tunbridge Wells Borough Council

Address **The Head of Planning & Development**
Tunbridge Wells Borough Council
Mount Pleasant Road
Royal Tunbridge Wells
Kent TN1 1RS

Reference 17/01151/FULL – Cornford Court, Cornford Lane, Royal Tunbridge Wells, Kent, TN2 4QX

With a copy to **The Section 106 Monitoring Officer**

The Owner **Cornford House Limited**

Address Cornford Lane
Pembury,
Tunbridge Wells,
Kent,
TN2 4QS

The Mortgagee **HSBC UK Bank PLC**

Address Securities Processing Centre
P.O. Box 6304
Coventry
CV3 9JY

11.3 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication given pursuant to this Deed shall conclusively be deemed to have been received

11.3.1 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

- 11.3.2 if sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h00 on the day 2 Working Days after the date of posting
- 11.4 Any notice or request by the Owner for approval consent certificate direction authority agreement action expression of satisfaction or other communication required pursuant to this Deed shall cite the Clause or Paragraph of the relevant Schedule to this Deed to which such notice or request relates
- 11.5 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

LOCAL LAND CHARGE

- 12.1 This Deed is a local land charge and shall be registered as such
- 12.2 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Borough Council for confirmation to that effect and (subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) upon the Borough Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Borough Council shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner
- 12.3 The Borough Council shall upon the written request of the Owner (and subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Borough 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

SUCCESSORS IN TITLE

- 13.1 The Owner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Borough Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner

an interest or estate in the Land or any part thereof

POWERS OF THE BOROUGH COUNCIL

- 14.1 Nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Borough 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

SEVERABILITY

- 15.1 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

RIGHTS OF THIRD PARTIES

- 16.1 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 Borough Council the successor to its statutory functions

CHANGE OF OWNERSHIP AND NEW INTEREST

- 17.1 The Owner warrants that
- 17.1.1 they have full authority to enter into this Deed
 - 17.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land
 - 17.1.3 they know of no impediment to the validity of this Deed
 - 17.1.4 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed
 - 17.1.5 they shall make good any loss to the Borough Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so

17.2 The Owner shall give the Borough 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 Land or change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give

17.2.1 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

17.2.2 the nature and extent of the interest disposed of by reference to a plan

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

WAIVER

18.1 No waiver (whether expressed or implied) by the Borough 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 Borough 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

INDEXATION

19.1 All the financial contributions payable pursuant to this Deed shall be Index Linked

19.2 The County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index between the monthly index figure immediately preceding the date of this Deed and the monthly index figure for the month of the date of actual payment

- 19.3 Where reference is made to any index in this Deed 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 Deed) issued or caused to be issued from time to time by the Building Costs Information Service Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Borough Council (in consultation with the County Council where County Council Contributions are affected) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council (in consultation with the County Council where County Council Contributions are affected) shall approve

INTEREST

- 20.1 If any sum or amount due under this Deed has not been paid to the Borough Council by the date it is due the Owner shall pay the Borough Council interest on that amount at the Interest Rate with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment

VAT

- 21.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT
- 21.2 If any VAT is at any time chargeable on any supply made by any Party under or pursuant to this Deed the Party making the payment shall pay the other an amount equal to that VAT as additional consideration subject to receipt of a valid VAT invoice

AGREEMENTS AND DECLARATIONS

- 22.1 The Parties agree that
- 22.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and
- 22.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Borough Council in the exercise of any other statutory function

JURISDICTION

- 23.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England
- 23.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

DELIVERY

- 24.1 This Deed is delivered on the date written at the start and the provisions of this Deed (other than this Clause and Clause 5.3 which shall be of immediate effect) shall be of no effect until this Deed has been dated

IN WITNESS whereof the Parties hereto have executed this 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



_____ 9506
[Redacted Signature] _____
Authorised Signatory

Executed as a deed by **CORNFORD**)
HOUSE LIMITED acting by two)
directors or a director and its)
secretary]



Director



Director/Company Secretary
(Delete as necessary)

Signed as a Deed by)
Lisa Maria Rodgers)
As Attorney of)
HSBC UK BANK PLC)



in the presence of:-

Victoria Jane Glover

(Full name of witness)



(Signature of witness)

Address **HSBC UK Bank plc**
Sheffield Securities
Occupation **Processing Centre**

Bank Official

SCHEDULE 1: THE LAND

The land against which this Deed is enforceable comprises all that land and premises situate at Cornford Court, Cornford Lane, Tunbridge Wells (TN2 4QS) and known as Cornford House, Cornford Lane, Royal Tunbridge Wells, Kent, TN2 4QX as shown on the Plan of which

1. The Owner is the registered proprietor with freehold title absolute of all the freehold land and premises as the same is shown for the purposes of identification only edged red on the Plan and is registered at the Land Registry under title number K591332
2. The Mortgagee is the proprietor of a registered charge dated 7 July 2015 on title number K591332

SCHEDULE 2: FINANCIAL CONTRIBUTIONS

1. Interpretation of this Schedule

- 1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other relevant Schedules

“Highways Contribution” means a contribution in the sum of £32,188 Index Linked

“Highways Works” means the Pembury Road corridor study to be carried out with a view to relieving congestion on the Pembury Road (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council)

2. Highways Contribution

- 2.1. The Owner covenants that it shall pay to the Borough Council the Highways Contribution before Commencement of Development
- 2.2. The Owner covenants that it shall not Commence Development unless and until the Highways Contribution has been paid to the Borough Council
- 2.3. The Borough Council shall not transfer the Highways Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Highways Works and shall not make any such transfer unless the County Council has provided written confirmation to the Borough Council that it will repay to the person who paid the contribution any part of the Highways Contribution which the County Council is holding which is not spent within 5 years of the date of this Deed on the Highways Works) but less any tax that may be payable thereon and the Borough Council's administrative expenses
- 2.4. If the Highways Contribution is not spent within 5 years of the date of this Deed in accordance with Paragraph 2.3 above or if the Borough Council are of the view that

the Highways Contribution will not be spent within 5 years of the date of this Deed in accordance with Paragraph 2.3 the Borough Council shall repay such of the Highways Contribution as the Borough 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 Borough Council's administrative expenses.

APPENDIX 1: PLAN

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9506

Signatory



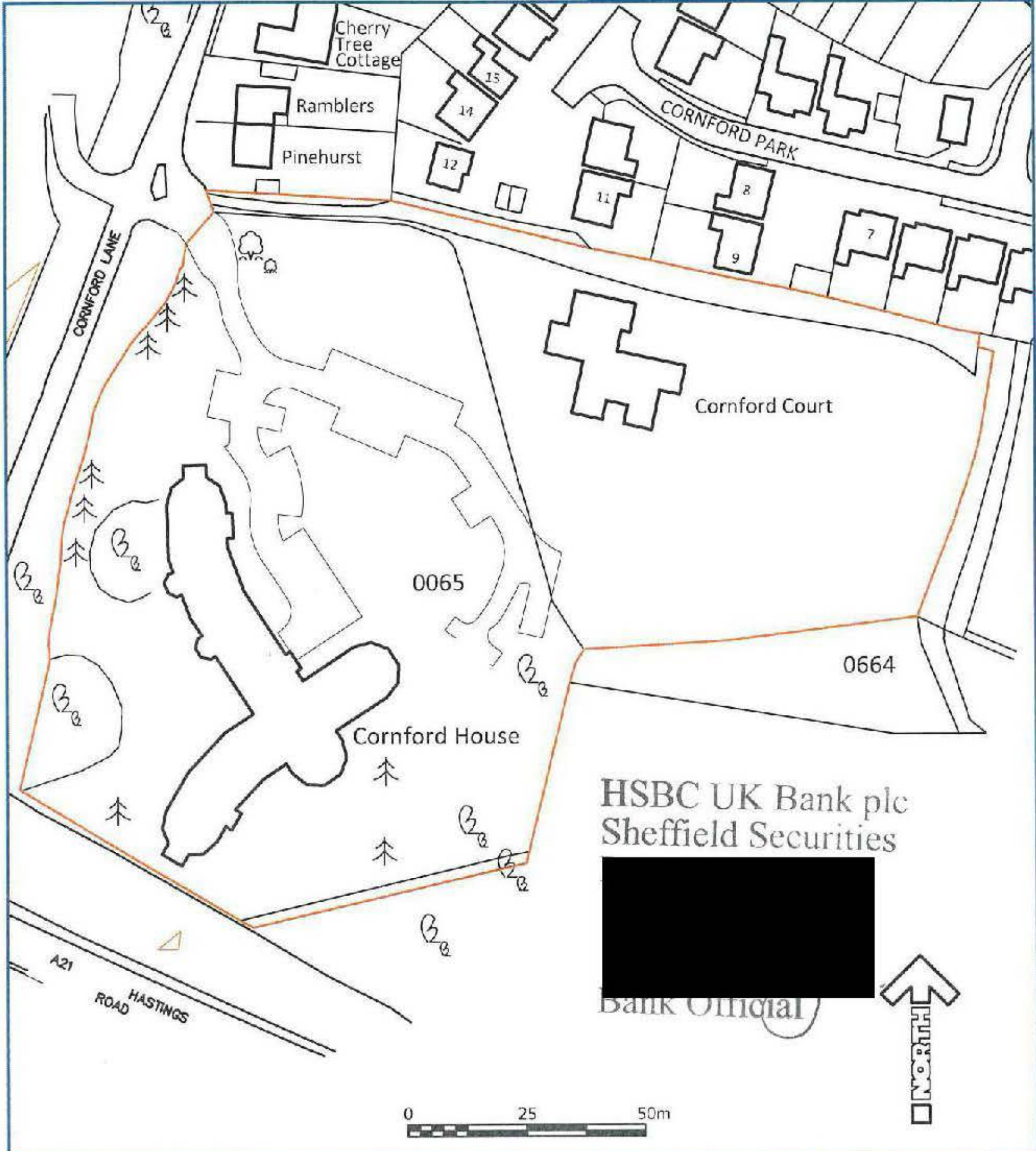
Carless & Adams & Partnership

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Architects
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HSBC UK Bank plc
Sheffield Securities



Bank Official



Project Location	CORNFORD COURT PEMBURY, TUNBRIDGE WELLS, KENT	Title	LOCATION PLAN
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Scale	1:1250@A4	Date	10.08.2016	Drawn	J.E.	Checked	
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Job No.	A - 685	Drawing No.	01	Revision	C
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APPENDIX 2: DRAFT CONDITIONS

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- 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.

- 2/ The development hereby permitted shall be carried out in accordance with the following approved plans:

A-685- 01 B – Site Location Plan
A-685- 100 A5 – Site Plan
A-685- 101 A2 – Basement Plan
A-685- 102 A2 – Ground floor Plan
A-685- 103 A2 – First floor Plan
A-685- 104 A3 – Second floor Plan
A-685- 105 A2 – Existing elevations
A-685- 203 A4 – Proposed elevations

Reason: To clarify which plans have been approved.

- 3/ Prior to the commencement of the development a Code of Construction Practice 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 code shall include:

- An indicative programme for carrying out the works
- Measures to minimise the production of dust on the site(s)
- Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)
- Design and provision of site hoardings
- Management of traffic visiting the site(s) including temporary parking or holding areas
- Provision of off road parking for all site operatives
- Measures (including wheel wash) to prevent the transfer of mud and extraneous material onto the public highway
- Measures to manage the production of waste and to maximise the re-use of materials
- Measures to minimise the potential for pollution of groundwater and surface water
- The location and design of site office(s) and storage compounds
- The location of temporary vehicle access points to the site(s) during the construction works
- The arrangements for public consultation and liaison during the construction works

Reason: To protect the amenity of local residents and in the interests of highway safety. This is pre-commencement to ensure that the site set up is secured at an early stage to ensure highway safety and the amenity of local residents.

- 4/ 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 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.

- 5/ 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 which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements 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.

- 6/ No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; and topographical survey of 'as constructed' features.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with the National Planning Policy Framework.

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

Reason: To avoid pollution of the surrounding area. This is pre-commencement to ensure that suitable drainage is designed at early stage to prevent flood risk.

- 8/ Notwithstanding the details submitted, prior to the commencement of above ground construction works, written details including source/ manufacturer, and samples of bricks, tiles, cladding and all roofing materials to be used externally shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out using the approved external materials.

Reason: In the interests of visual amenity.

- 9/ 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 prior to the commencement of the development of above ground works. 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 rural character and appearance of the locality, neighbouring amenity, and in the interests of biodiversity.

- 10/ Notwithstanding the details submitted, prior to the first occupation of the dwelling hereby permitted, details of a Landscape and Environmental Management Plan (LEMP) for the site in accordance with BS42020 Biodiversity shall be submitted to and approved in writing by the Local Planning Authority. This will include details of avoidance measures with regards to the protected and notable species (such as nesting birds) as well as enhancement measures for biodiversity and the long term design objectives, management responsibility and maintenance schedules for all communal landscape areas. The approved management and monitoring plan shall be implemented in accordance with the approved proposals within it and shall be carried out in perpetuity;

Reason: In the interests of ecology, the landscape and scenic beauty of the area

- 11/ Prior to the commencement of above ground construction works, a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall take account of any protected species that have been identified on the site, and in addition shall have regard to the enhancement of biodiversity generally. It shall be implemented in accordance with the approved proposals within it and shall be carried out in perpetuity.

Reason: To protect and enhance existing species and habitat on the site in the future.

- 12/ Notwithstanding the details submitted, prior to any above ground construction works, details of boundary treatment shall be submitted to and approved in writing by the Local Planning Authority. This should include a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the first occupation of the dwellings hereby approved. Development shall be carried out in accordance with the approved details and shall be permanently maintained.

Reason: In the interests of the amenity of the area.

- 13/ No development shall take place until an Arboricultural method statement (AMS), to cover the following; Arboriculture supervision, phasing of works and construction of the parking area within the RPA of the retained trees, and in accordance with the current edition of BS 5837, has been submitted to and approved in writing by the local planning authority.

Reason: In the interests of the amenity of the area. This is a pre-commencement condition to ensure that trees are protected at an early stage of the development.

- 14/ No development shall take place until details of tree protection in accordance with the current edition of BS 5837 have been submitted to and approved in writing by the local planning authority. All trees to be retained must be protected by barriers and/or ground protection. The approved measures shall be fully implemented prior to any works commencing on site.

Reason: To safeguard existing trees to be retained and to ensure a satisfactory setting and external appearance to the development. This is a pre-commencement condition to ensure that trees are protected at an early stage of the development.

- 15/ Notwithstanding the details submitted, no development shall take place until a landscape scheme, to include hard and soft landscaping, designed in accordance with the principles of the Council's landscape character guidance has been submitted to and approved in writing by the local planning authority. The scheme shall show all existing trees, hedges and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed. It shall detail measures for protection of species to be retained, provide details of on site replacement planting to mitigate any loss of amenity and biodiversity value together with the location of any habitat piles and include a planting specification, a programme of implementation and a 5 year management plan. The landscape scheme shall specifically address the need to provide new planting with positions, size and species to be used.

Reason: No such details have been submitted and to ensure a satisfactory setting and external appearance to the development. This is a pre-commencement condition to ensure that trees are protected at an early stage of the development.

- 16/ All planting, seeding or turfing comprised in the approved details of the landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development which ever is sooner and any trees or plants (including trees and plants shown to be retained which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species , unless the Local Planning Authority gives written consent to any variation.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

- 17/ No development shall take place until a plan of the proposed services into the site has been submitted to and approved in writing. All services shall be installed to NJUG specifications where appropriate.

Reason: To safeguard existing trees to be retained and to ensure a satisfactory setting and external appearance to the development. This is a pre-commencement condition to ensure that trees are protected at an early stage of the development.

18/ No development shall commence 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). 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 the works. 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 protect future occupiers of the site. The reason these details are required prior to commencement are to prevent harm to the environment and protect the health and safety of construction workers and future occupiers.

19/ Prior to the first use of the premises, details of any plant (including ventilation, refrigeration 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 development shall be carried out in accordance with the approved details. The scheme shall ensure that the noise generated at the boundary of any noise sensitive property shall not exceed Noise Rating Curve NR35 (in areas of low background sound levels a target of NR30 shall be achieved) as defined by BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and the Chartered Institute of Building Engineers (CIBSE) Environmental Design Guide 2006. The equipment shall be maintained in a condition so that it does not exceed NR35 as described above, whenever its operating. After installation of the approved plant, no new plant or ducting system shall be used without the prior written consent of the Local Planning Authority

Reason: In the interest of residential amenity.

20/ 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. In exceptional circumstances, such as areas with a very low background or where assessment penalties total above 5 the applicants consultant should contact the Environmental Protection Team to agree a site specific target level.

Reason: In the interest of residential amenity.

21/ Any facilities used for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume of the tanks.

Reason: To prevent pollution of the water environment.

22/ Prior to the commencement of the development hereby approved, 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 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: In the interest of residential amenity.

23/ Prior to the occupation of the development hereby approved, details of the provision of at least 2 'fast charge' electric vehicle-charging points, including a timescale for its provision, shall be submitted to, and approved in writing by, the Local Planning Authority. The charging point shall be provided in accordance with the approved details and in accordance with an agreed timescale and retained thereafter.

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

24/ The area shown on the approved site layout plan as vehicle parking and turning shall be provided, surfaced and drained in accordance with details submitted to and approved in writing by the Local Planning Authority before the buildings they serve are occupied, and shall be retained for the use of the occupiers of, and visitors to, the development in accordance with the details approved in the preceding planning condition, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) 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 vehicular access to this reserved parking space.

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.

25/ Prior to the occupation of the development hereby permitted, written and illustrative details for renewable energy technologies 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

- 26/ Prior to the occupation of the development hereby permitted, written and illustrative details for water conservation within the development, shall be submitted to, and approved in writings 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 generation.

- 27/ Prior to the occupation of the development hereby permitted, written and illustrative details for energy 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 generation.

- 28/ Before the occupation of any part of the building, details of the balconies shall be submitted to and approved in writing, to include, screening panels on the northern terrace shall be installed to a height of 1.8m from the terrace or balcony, to be of obscured glass Pilkington level 3. The balconies shall be installed and maintained thereafter, in accordance with the approved details.

Reason: To protect the residential amenity of the locality.

- 29/ The Integrated Community Health care Centre (Care Home) hereby approved shall be used for no other purpose than (including any proposed in Class C2 (Residential Institutions)) of the schedule of the Town and Country Planning (Use classes) order 1987 (as amended), or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order) only.

Reason: To ensure the development meets the particular need identified to justify the grant of permission notwithstanding the site in the Green Belt.

- 30/ Prior to the commencement of above ground construction works, details of the finished ground floor levels, shown in relation to the existing and proposed site levels as well as eaves and ridge heights of neighbouring buildings, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

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

INFORMATIVES

1/ Your 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/ A formal application for connection to the public sewerage system is required in order to service this development. To initiate a sewer capacity check to identify the appropriate connection point for the development, please contact Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330

303 0119) or www.southernwater.co.uk Your attention is drawn to the need for early consultation with Southern Water regarding the drainage on this site.

3/ Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed. Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.

4/ The applicant/developer should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development along with the need to discuss the potential diversion of the sewer. The applicant/developer should contact Southern Water regarding drainage matters, at Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk in order to progress the required infrastructure.

5/ Detailed design of the proposed drainage system should take into account the possibility of surcharging within the public sewerage system in order to protect the development from potential flooding. The applicant's attention is drawn to the comments of Southern Water and comments regarding diversion of the sewer and the pumping station.

6/ The applicant is advised to review the HSE Publication HSG47 "Avoiding Danger from Underground Services" regarding safe digging practices in proximity to gas mains and review the comments of Scotia Gas Networks.

7/ The applicant, agents, or successors in title, are encouraged to undertake discussion external bodies such as Kent Police Crime Prevention Design Advisors (CPDAs) to ensure that a comprehensive approach is taken to Crime Prevention and Community Safety. CPDA Team are; Kent Police Headquarters, CPDA Team, Sutton Road, Maidstone ME15 9BZ email: pandcr@kent.pnn.police.uk Tel No- 01622 653209/3234.

8/ This development is the subject of an Obligation under Section 106 of the Town and Country Planning Act 1990.