

DATED 11<sup>th</sup> May 2022

TUNBRIDGE WELLS BOROUGH COUNCIL

-and-

THE KENT COUNTY COUNCIL

-and-

SYLVIA CHRISTINA BUDGEN ON BEHALF OF THE ESTATE OF DAVID WOOD

MARK WOOD AND WILLIAM MOORE ON BEHALF OF THE ESTATE OF MOLLIE WOOD

-and-

SYLVIA CHRISTINA BUDGEN

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DEED OF AGREEMENT PURSUANT TO  
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
RELATING TO THE DEVELOPMENT OF  
Owlshnest Wood Tonbridge Road Pembury Royal Tunbridge Wells TN2 4QN  
Planning Application Ref No 19/01600/FULL

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Mid Kent Legal Services  
Tunbridge Wells Borough Council  
Town Hall  
Civic Way  
Tunbridge Wells  
Kent TN1 1RS  
Ref.: T011147



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THIS DEED OF AGREEMENT is dated the 1<sup>st</sup> day of May 2022

**BETWEEN**

- 1) **TUNBRIDGE WELLS BOROUGH COUNCIL** of Town Hall, Civic Way, Tunbridge Wells, Kent TN1 1RS (the "**Borough Council**")
- 2) **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone, Kent ME14 1XQ (the "**County Council**")
- 3) **SYLVIA CHRISTINA BUDGEN ON BEHALF OF THE ESTATE OF DAVID WOOD** of Great Fowle Halle Farmhouse, Darman Lane, Paddock Wood, Tonbridge TN12 6PW (the "**First Owner**")
- 4) **MARK WOOD AND WILLIAM MOORE ON BEHALF OF THE ESTATE OF MOLLIE WOOD** of Tyes Barn, Plawhatch Lane, Sharpthorne, West Sussex RH19 4JQ (the "**Second Owner**") and
- 5) **SYLVIA CHRISTINA BUDGEN** of Great Fowle Halle Farmhouse, Darman Lane, Paddock Wood, Tonbridge TN12 6PW (the "**Third Owner**"),  
the First Owner, Second Owner and Third Owner together being the "**Owner**"

**RECITALS**

- A. The Borough Council is the local planning authority for the area within which the Land is situated
- B. The County Council is the local highways authority for the area within which the Land is situated
- C. The Application was made to the Borough Council on 7 June 2019
- D. The Borough Council by its Planning Committee at its meeting held on 10 June 2020 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
- E. The First Owner, Second Owner and Third Owner are interested in the Land by virtue of being the registered proprietors of 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 has 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. 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

### **1 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 Schedules

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

**"Application"** means the application for planning permission submitted by Quantum Group Ltd and Octopus Healthcare Development Ltd to the Borough Council to carry out the Development at the Site and given the registered reference number 19/01600/FULL

<b>"Bed Space"</b>	means a bed space to be provided within the Care Home
<b>"Bed Space and Staff Training Opportunities Contract"</b>	means a binding contract to be entered into by the Care Home Operator and the Trust on reasonable commercial terms for the provision of : <ul style="list-style-type: none"> <li>(a) 10 Bed Spaces for use by the Trust for step down care for patients discharged from Tunbridge Wells Hospital and</li> <li>(b) training room space and training (to include manual handling and dementia training) for Trust staff</li> </ul> <p>as those matters are set out in paragraph 3.1 (a) (b) (c) (d) (e) (f) and (g) of the Heads of Terms) which for the avoidance of doubt includes any replacement or amended contract securing the matters detailed in paragraph (a) and (b) above a copy of which has been provided to the Head of Planning Services</p>
<b>"Care Home"</b>	means the health and wellbeing facility to supply private nursing and step down care, including to the Tunbridge Wells Hospital, to be provided pursuant to the Planning Permission
<b>"Care Home Operator"</b>	means the care home operator that shall operate the Care Home (currently proposed to be Priory CC41 Limited but shall include any other such care home operator that may operate the Care Home from time to time)
<b>"Commencement of Development"</b>	means the carrying out of a material operation (as that term is defined in section 56(4) of the 1990 Act) comprised in the Development which is not a Preparatory Operation and the words <b>"Commence"</b> and <b>"Commence Development"</b> shall be construed accordingly
<b>"Deed"</b>	means this deed of agreement together with all Schedules and Appendices

<b>"Development"</b>	means the demolition of the existing residential dwelling, ancillary outbuildings, pool house and bunker to incorporate a 76 bed health and wellbeing facility to supply private nursing care and step down care to adjacent hospital with associated care parking, signalised entrance junction, landscaping and amenity space along with proposed community access of existing lake for recreational and leisure use as set out in the Application pursuant to the Planning Permission
<b>"General Building Cost Index"</b>	means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
<b>"Head of Planning Services"</b>	means the Borough Council's Head of Planning Services or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging his duties and functions
<b>"Heads of Terms"</b>	means the Heads of Terms agreed between the Trust and Priory CC41 Limited (being the proposed Care Home Operator as at the date of this Deed) attached at Appendix 3
<b>"Highway Contribution"</b>	means the sum of £18,500 (eighteen thousand five hundred pounds) Index Linked payable under the terms of this Deed to be applied by the County Council to provision of the Highway Purpose
<b>"Highway Purpose"</b>	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 studies reasonably incurred and /or undertaken by the County Council)
<b>"Implementation"</b>	means the carrying out of any act pursuant to the Planning Permission which constitutes a material operation within the

	meaning of section 56 of the 1990 Act
<b>"Index Linked"</b>	means adjusted by reference to the relevant index pursuant to the provisions of Clause 20
<b>"Interest Rate"</b>	means 4% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment
<b>"Land"</b>	means the land against which this Deed may be enforced as detailed in Schedule 1 and shown for identification purposes only edged red on Plan 1
<b>"LEMP"</b>	means the landscape and ecology management plan agreed pursuant to the relevant condition of the Planning Permission or such other revision of that document as may be agreed from time to time in writing by the Borough Council
<b>"LEMP Area"</b>	means the area within the Land as shown outlined in orange on Plan 2 to be managed in accordance with the LEMP and to which the public will be permitted to have access in accordance with Schedule 4
<b>"Occupy"</b>	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 <b>"Occupation"</b> <b>"Occupier"</b> or <b>"Occupied"</b> shall be construed accordingly
<b>"Parties"</b>	means the Owner, the County Council and the Borough Council as the context so requires and <b>"Party"</b> means any one of them
<b>"Plan 1 "</b>	means the plan labelled as such and appended to this Deed at Appendix 1

<b>"Plan 2"</b>	means the plan labelled as such and appended to this Deed at Appendix 2
<b>"Plan 3"</b>	means the plan labelled as such and appended to this Deed at Appendix 3
<b>"Planning Permission"</b>	means planning permission for the Development to be granted pursuant to the Application
<b>"Practical Completion"</b>	means the practical completion of any works carried out pursuant to the Planning Permission or as the context may allow any part, section or phase thereof and confirmed by the issue of a certificate of practical completion confirming such practical completion and the term <b>"Practically Complete"</b> shall be construed accordingly
<b>"Preparatory Operation"</b>	means an operation or item of work of or connected with or ancillary to: <ul style="list-style-type: none"> <li>a) archaeological investigation</li> <li>b) site survey work</li> <li>c) exploratory boreholes and trial pits</li> <li>d) site clearance (but excluding demolition of a building or structure)</li> <li>e) site reclamation and remediation works</li> <li>f) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage, gas, electricity, telecommunications or other media or utilities</li> <li>g) construction of temporary access and service road(s)</li> <li>h) the erection of fences and hoardings around the Land</li> </ul>
<b>"Site"</b>	means the land on which the Development may be provided pursuant to the Planning Permission as shown outlined in



red on Plan 3

- “Statutory Undertakers”** means any public gas transporter, water or sewerage undertaker, electricity supplier or public telecommunications operator
- “Tunbridge Wells Hospital”** means Tunbridge Wells Hospital, Pembury, Tunbridge Wells, Kent TN2 4QJ
- “Trust”** means the Maidstone and Tunbridge Wells NHS Trust of Maidstone Hospital Hermitage Lane, Maidstone, Kent ME16 9QQ, which is a statutory body established under the Health and Social Care Act 2012 and a NHS body for the purposes of the National Health Service Act 2006 or its successor in title or successor to its statutory functions
- “Working Day”** means a day which is not a Saturday, Sunday or bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

## **2 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 the County Council (as the case may be) 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 Reference to any officer of the Borough Council or the County Council (as the case may be) means such officer or such other officer as may be lawfully designated by the Borough Council or the County Council (as the case may be) for the purposes of discharging such duties and functions
- 2.9 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
- 2.10 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
- 2.11 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
- 2.12 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

### **3 Legal Basis**

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act 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 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's interest 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 and where applicable by the County Council; and
- 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 and County Council (as the case may be) pursuant to the powers contained in section 111 of 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

#### **4 Conditionality**

- 4.1 With the exception of this Clause 4 and Clauses 1, 2, 3, 5.2, 5.3 and 7 to 25 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission

#### **5 Covenants and Obligations of the Owner**

- 5.1 The Owner covenants with the Borough Council and the County Council to perform and observe the covenants obligations, restrictions and requirements contained herein
- 5.2 The Owner shall permit the Borough Council and the County 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 the County Council and their authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice
- 5.3 The Owner covenants to pay before completion of this Deed:

5.3.1 the Borough Council's reasonable and proper legal and administrative costs and disbursements incurred in connection with the negotiation, preparation and execution of this Deed

5.3.2 the County Council's reasonable and proper legal and administrative costs and disbursements incurred in connection with the negotiation, preparation and execution of this Deed,

in each case, whether or not this Deed is delivered in accordance with Clause 25

5.4 The Owner covenants to pay before completion of this Deed to the Borough Council the sum of £750 in connection with the monitoring and administration of this Deed by the Borough Council

5.5 The Owner covenants to pay before Commencement of Development

5.5.1 to the Borough Council the sum of £1500 in connection with the monitoring and administration of this Deed by the Borough Council

~~5.5.2 to the County Council the sum of £ in connection with the monitoring and administration of this Deed by the County Council~~

## **6 Covenants and Obligations of the Borough Council and the County 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 Borough Council's covenants as set out herein

6.2 The County 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 County Council's covenants as set out herein

## **7 Release and Exclusions**

7.1 Save for Clause 5.2 the obligations contained in this Deed shall not be binding upon nor enforceable against any Statutory Undertaker with any existing interest in any part of the Land for the purpose of the supply of electricity gas water or sewerage drainage or public telecommunication services or acquires an interest in any part of the Land for such purposes

7.2 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 or County Council in relation to any subsisting or any antecedent breach, non-performance or non-observance arising prior to parting with such interest

## 8 Determination of the Planning Permission

8.1 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 (without the consent of the Owner) or expires prior to Implementation of the Planning Permission

## 9 Future Permissions

9.1 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

## 10 Variations to the Planning Permission

10.1 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 section 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 any section 73 application or the determination thereof

## **11 Disputes and Expert Determination**

- 11.1 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
- 11.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 11.1 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
- 11.3 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
- 11.4 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 each 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
- 11.5 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

- 11.6 Nothing in this Clause 11 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

## **12 Notices**

- 12.1 Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that:

### *Notification of Implementation*

- 12.1.1 it shall provide the Borough Council and the County Council with no less than 20 Working Days prior notice of the intended date of Implementation of the Planning Permission and the Owner shall not Implement the Planning Permission unless and until this notice has been provided to the Borough Council

- 12.1.2 it shall subsequently notify the Borough Council and the County Council promptly and in any event within 5 Working Days of the actual date of Implementation of the Planning Permission

### *Notification of Commencement of Development*

- 12.1.3 it shall provide the Borough Council and the County 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

- 12.1.4 it shall notify the Borough Council and the County Council promptly and in any event within 5 Working Days of the actual date of Commencement of Development

### *Notification of Occupation*

- 12.1.5 it shall provide the Borough Council and the County 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

*Notification of Practical Completion*

12.1.6 it shall provide the Borough Council and the County Council with the final certificate of Practical Completion of the Development

12.2 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 Services**

Tunbridge Wells Borough Council

Town Hall

Civic Way

Tunbridge Wells

Kent

TN1 1RS

Reference: Land at Owlsnest Wood Tonbridge Road  
Pembury Royal Tunbridge Wells TN2 4QN

**The County Council**

The Kent County Council

**Address**

**General Counsel**

Kent County Council

Sessions House

County Hall

Maidstone

Kent ME14 1XQ Ref:



**The Owner**

**Mark Wood**

**Address**

**C/O Jonathan Rowe**

Cooper Burnett

Napier House 14-16 Mt Ephraim Rd

Tunbridge Wells

TN1 1EE

12.3 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:

12.3.1 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

12.3.2 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

12.4 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

12.5 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

12.6 Any approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or other communication requested from the Borough Council or County Council by the Owner shall not be unreasonably withheld, conditioned or delayed.

### **13 Local Land Charge**

- 13.1 This Deed is a local land charge and shall be registered as such
- 13.2 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 and proper 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
- 13.3 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

### **14 Successors in Title**

- 14.1 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

### **15 Powers of the Borough Council and County Council**

- 15.1 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 or the County 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

### **16 Severability**

- 16.1 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

## **17 Rights of Third Parties**

17.1 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 and the County Council the successor to its statutory functions

## **18 Change of Ownership and New Interest**

18.1 The Owner warrants that

18.1.1 they have full authority to enter into this Deed

18.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land

18.1.3 they know of no impediment to the validity of this Deed

18.1.4 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

18.1.5 they shall make good any loss to the Borough Council and the County Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so

18.2 The Owner shall give the Borough Council and the County 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

18.2.1 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

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

18.3 The Parties agree that a mortgagee of the Land 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 and the security of its charge over the Land shall take effect subject to this Deed

## **19 Waiver**

19.1 No waiver (whether expressed or implied) by the Borough Council or the County 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 or the County 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

## **20 Indexation**

20.1 The Highway Contribution 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 of November 2019 and the monthly index figure for the month of the date of actual payment

20.2 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 or the County Council (as the case may be) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council or the County Council (as the case may be) shall approve

## **21 Interest**

21.1 If any sum or amount due under this Deed has not been paid to the Borough Council or the County Council (as the case may be) by the date it is due the Owner shall pay

the Borough Council or the County Council (as the case may be) 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

## **22 VAT**

22.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT

22.2 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

## **23 Agreements and Declarations**

23.1 The Parties agree that

23.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and

23.1.2 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

## **24 Jurisdiction**

24.1 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

24.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England

## **25 Delivery**

25.1 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 )



Seal No: 3672

Authorised Signatory

The COMMON SEAL of THE KENT )  
COUNTY COUNCIL was affixed to )  
this Deed in the presence of )



419-2022

Authorised Signatory

EXECUTED AS A DEED by SYLVIA CHRISTINA BUDGEN  
ON BEHALF OF THE ESTATE OF DAVID WOOD  
acting by a grant of probate dated 19 November 2012

\_\_\_\_\_  
[Redacted Signature]  
Sylvia Christina Budgen

in the presence of

Witness sign: [Redacted]

Witness name: MAGDA J MARTEL

Witness address: 1 TUNED COTTAGES  
HARTLEY ROAD  
CEWBLICK  
TN17 3QR

EXECUTED AS A DEED by MARK WOOD AND WILLIAM MOORE  
ON BEHALF OF THE ESTATE OF MOLLIE WOOD  
acting by a grant of probate dated 28 April 2020

\_\_\_\_\_  
[Redacted Signature]  
Mark Wood

\_\_\_\_\_  
[Redacted Signature]  
William Moore

in the presence of

Witness sign: [Redacted]

Witness name: MAGDA J MARTEL

Witness address: 1 TUNED COTTAGES  
HARTLEY ROAD  
CEWBLICK  
TN17 3QR

[Redacted Signature]  
VERITY DONALDSON  
Berry & Lamberts Solicitors  
First Floor  
Hearts of Oak House  
4 Pembroke Road  
Sevenoaks  
Kent TN13 1XR

EXECUTED AS A DEED by SYLVIA CHRISTINA BUDGEN



in the presence of

Witness sign:



Witness name: MACIDA J MARKEE

Witness address: 1 TURNED COTTAGE

HARTLEY ROAD

CRANBROOK

TN17 3QL



## SCHEDULE 1: THE LAND

The land against which this Deed is enforceable comprises all that land and premises shown edged red on Plan 1 comprising land of which

- [redacted] and the Second owner together are*
1. the First Owner ~~is~~ the registered proprietor of the freehold of that part of the Land registered at the HM Land registry with title number K798116

*[redacted] and the Third owner together are*

  2. the Second owner ~~is~~ the registered proprietor of the freehold of that part of the Land registered at the HM Land registry with title number K201172
  3. the Third Owner is the registered proprietor of the freehold of those parts of the Land registered at the HM Land registry with title numbers K884600 and TT22710

## SCHEDULE 2: FINANCIAL CONTRIBUTIONS

### Highway Contribution

- 1 The Owner covenants that it shall pay to the County Council the Highway Contribution before Commencement of Development and shall notify the Borough Council that this payment has been made
- 2 The Owner covenants that it shall not Commence Development unless and until the Highway Contribution has been paid to the County Council and the Borough Council has been notified of this payment
- 3 The County Council covenants with the Owner that it shall apply the Highway Contribution for the Highway Purpose or for such other purposes for the benefit of the Development as achieve the same objectives and not to use the Highway Contribution otherwise than for such purposes **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 21 as if it were part of the principal sum paid by the Owner
- 4 In the event that all or any part of the Highway Contribution remains unspent or has not been allocated or committed or used for the Highway Purpose within 10 years from the date of payment unless the County Council and the Owner agree otherwise the County Council covenants on written request from the Owner to repay such sum or amount (or such part thereof) together with any accrued interest (if any)

### SCHEDULE 3: BED SPACES AND TRAINING ROOM

- 1 Prior to the Commencement of Development , the Owner shall:
  - (a) procure that the Care Home Operator enters into and completes a Bed Space and Staff Training Opportunities Contract with the Trust; and
  - (b) provide a copy of the completed Bed Space and Staff Training Opportunities Contract to the Head of Planning Services
  
- 2 The Owner shall not Commence Development until the Head of Planning Services has confirmed in writing within 15 Working Days of receipt of the completed Bed Space and Staff Training Opportunities Contract that it complies with the Heads of Terms PROVIDED THAT confirmation shall be deemed 15 Working Days from receipt if the Head of Planning Services does not provide a written response within this timeframe.
  
- 3 The Owner shall ensure that a Bed Space and Staff Training Opportunities Contract is in effect for the lifetime of the Development .

## SCHEDULE 4

### LEMP- MANAGEMENT AND MAINTENANCE

#### LEMP AREA AND PUBLIC ACCESS

- 1 The Owner shall comply with the terms and requirements of the LEMP and be responsible for the management, maintenance and monitoring of the LEMP Area in accordance with specifications set out in the LEMP
- 2 The Owner shall ensure that the public have access to the LEMP Area between 9am and 4pm each day.
- 3 The Owner shall ensure that the LEMP Area is secured and the gated access is locked outside daylight hours
- 4 Provided such closures and restrictions to public access are kept to a reasonable minimum, the Owner shall be permitted to:
  - a) restrict access to the LEMP Area in order to carry out nature conservation management or maintenance works required under the LEMP;
  - b) close or prohibit public access to the LEMP Area where in their reasonable opinion consider that such closure is necessary for health and safety reasons or in the case of emergencies;
  - c) remove any person participating in anti-social behaviour or who is a nuisance to occupiers of the Development and/or occupiers of neighbouring land; and
  - d) temporarily close the LEMP Area for not more than 1 (one) day per year to assert rights of proprietorship and to prevent public or private rights from coming into being by means of prescription or other process of law.

APPENDIX 1

Plan 1 : the Land

**PLANNING**

Marshley  
Wo

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 1:1000 Scale. Like figure dimensions.  
 Check all dimensions on site before work proceeds. report discrepancies to architect.  
 © by Studio Dept

NOTES:

- Existing Building Foot Print  
1136.74 m<sup>2</sup>
- Existing Built Floor Area  
2302.04 m<sup>2</sup>
- Existing Volume of Built Form  
9797.60 m<sup>3</sup>
- Existing Hard Standing  
2077.40 m<sup>2</sup>
- Proposed Building Foot Print  
1898.9 m<sup>2</sup>
- Proposed Built Floor Area  
4007.38 m<sup>2</sup>
- Proposed Volume of Built Form  
14488.50 m<sup>3</sup>
- Proposed Hard Standing  
2732.88 m<sup>2</sup>
- Number of Existing Known Trees Removed  
Site Grade A | 12th Grade B | 23 Grade C | 19 Grade V
- Number of New Trees to be Planted  
1000.



Plan 1

C	1/21/19	Red line boundary corrected	GP
A	2/26/19	Volume was added to drawing	GP
A	2/26/19	Annotations per Planning Department requirements	GP
Rev	Date	Description	Drawn



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 Email: enquiries@qls.com.uk | Web: www.quantumland.co.uk  
 Tel: 01494 531025 | Fax: 01494 531026

Owisnest Wood,  
 Tunbridge Road, Pembury,  
 Tunbridge Wells, TN2 4QN

Drawing Title  
**Existing Location Plan**

**ARCHITECTURAL**

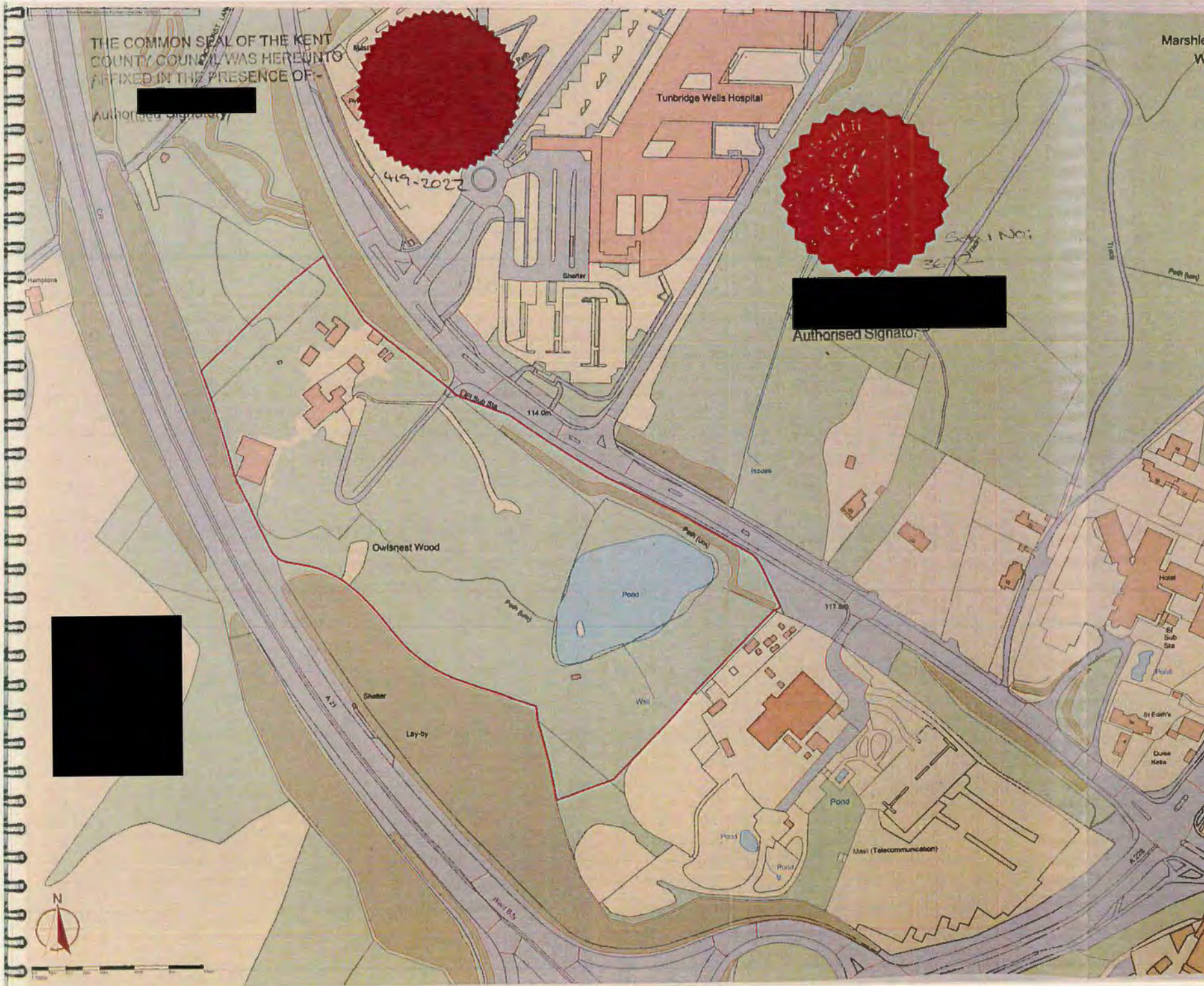
Drawn by	Checked by
GP	JC
Scale	Date
1:1000@A1	Dec'14
Drawing Number	Project
891-101	C

THE COMMON SEAL OF THE KENT  
 COUNTY COUNCIL WAS HEREUNTO  
 AFFIXED IN THE PRESENCE OF-  
 [Redacted Signature]

[Redacted Signature]  
 Authorised Signatory

419-2022

Site No:  
 36/2



## APPENDIX 2

### Plan 2 : LEMP Area Plan

THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-

Authorised Signatory



4-19-2022

Shelter

Authorised Signatory

Scale No. E 3672

114.0m

LEI Sub Sta

Refer to highways details for junction layout

Proposed Entrance

# PLANNING

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Do Not Scale: Use by reference.  
Check all dimensions on site before work proceeds. Major dimensions to be checked.  
© 2018 Quantum

Scale:



Proposed Site

## Plan 2

1	2018/00	Amendments following pre-planning comments	GP
2	2018/01	Amendments following pre-planning comments	GP
3	2018/02	Amendments following pre-planning comments	GP
4	2018/03	Amendments following pre-planning comments	GP
5	2018/04	Amendments following pre-planning comments	GP
6	2018/05	Amendments following pre-planning comments	GP
7	2018/06	Amendments following pre-planning comments	GP
8	2018/07	Amendments following pre-planning comments	GP
9	2018/08	Amendments following pre-planning comments	GP
10	2018/09	Amendments following pre-planning comments	GP
11	2018/10	Amendments following pre-planning comments	GP
12	2018/11	Amendments following pre-planning comments	GP
13	2018/12	Amendments following pre-planning comments	GP
14	2019/01	Amendments following pre-planning comments	GP
15	2019/02	Amendments following pre-planning comments	GP
16	2019/03	Amendments following pre-planning comments	GP
17	2019/04	Amendments following pre-planning comments	GP
18	2019/05	Amendments following pre-planning comments	GP
19	2019/06	Amendments following pre-planning comments	GP
20	2019/07	Amendments following pre-planning comments	GP
21	2019/08	Amendments following pre-planning comments	GP
22	2019/09	Amendments following pre-planning comments	GP
23	2019/10	Amendments following pre-planning comments	GP
24	2019/11	Amendments following pre-planning comments	GP
25	2019/12	Amendments following pre-planning comments	GP
26	2020/01	Amendments following pre-planning comments	GP
27	2020/02	Amendments following pre-planning comments	GP
28	2020/03	Amendments following pre-planning comments	GP
29	2020/04	Amendments following pre-planning comments	GP
30	2020/05	Amendments following pre-planning comments	GP
31	2020/06	Amendments following pre-planning comments	GP
32	2020/07	Amendments following pre-planning comments	GP
33	2020/08	Amendments following pre-planning comments	GP
34	2020/09	Amendments following pre-planning comments	GP
35	2020/10	Amendments following pre-planning comments	GP
36	2020/11	Amendments following pre-planning comments	GP
37	2020/12	Amendments following pre-planning comments	GP
38	2021/01	Amendments following pre-planning comments	GP
39	2021/02	Amendments following pre-planning comments	GP
40	2021/03	Amendments following pre-planning comments	GP
41	2021/04	Amendments following pre-planning comments	GP
42	2021/05	Amendments following pre-planning comments	GP
43	2021/06	Amendments following pre-planning comments	GP
44	2021/07	Amendments following pre-planning comments	GP
45	2021/08	Amendments following pre-planning comments	GP
46	2021/09	Amendments following pre-planning comments	GP
47	2021/10	Amendments following pre-planning comments	GP
48	2021/11	Amendments following pre-planning comments	GP
49	2021/12	Amendments following pre-planning comments	GP
50	2022/01	Amendments following pre-planning comments	GP



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Tel: 01882 531100 | Fax: 01882 531100

Owsnest Wood,  
Tonbridge Road, Pembury,  
Tunbridge Wells, TN2 4QN

## Proposed Site Plan

## ARCHITECTURAL

Drawn by	JO	Checked by	GP
Scale	1:500@A1	Date	Mar15
Drawing Number	891-202	Revision	1

A21

Shelter

Well



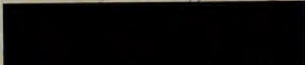


## APPENDIX 3

### Plan 3: the Site

THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-

Authorized Signatory



Authorized Signatory

# PLANNING

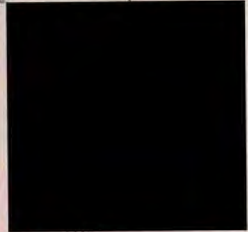
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### NOTES

- Existing Building Foot Print 1126.74 sqm
- Existing Built Floor Area 2324.04 sqm
- Existing Volume of Built Form 2927.50 cu m
- Existing Hard Standing 2017.46 sqm
- Proposed Building Foot Print 1468.0 sqm
- Proposed Built Floor Area 2627.26 sqm
- Proposed Volume of Built Form 14481.00 cu m
- Proposed Hard Standing 2732.00 sqm

Number of Existing Known Trees Removed 0 (0% Grade A | 0% Grade B | 23 Grade C | 4 Grade D)

Number of New Trees to be Planted 42



Plan 3

1	2004-11	Proposed building footprint	100%
2	15/01/17	Final site boundary and setbacks	100%
3	20/01/17	Final site boundary and setbacks	100%
4	15/01/17	Final site boundary and setbacks	100%
5	15/01/17	Final site boundary and setbacks	100%
6	15/01/17	Final site boundary and setbacks	100%
7	15/01/17	Final site boundary and setbacks	100%
8	15/01/17	Final site boundary and setbacks	100%
9	15/01/17	Final site boundary and setbacks	100%
10	15/01/17	Final site boundary and setbacks	100%
11	15/01/17	Final site boundary and setbacks	100%
12	15/01/17	Final site boundary and setbacks	100%
13	15/01/17	Final site boundary and setbacks	100%
14	15/01/17	Final site boundary and setbacks	100%
15	15/01/17	Final site boundary and setbacks	100%
16	15/01/17	Final site boundary and setbacks	100%
17	15/01/17	Final site boundary and setbacks	100%
18	15/01/17	Final site boundary and setbacks	100%
19	15/01/17	Final site boundary and setbacks	100%
20	15/01/17	Final site boundary and setbacks	100%
21	15/01/17	Final site boundary and setbacks	100%
22	15/01/17	Final site boundary and setbacks	100%
23	15/01/17	Final site boundary and setbacks	100%
24	15/01/17	Final site boundary and setbacks	100%
25	15/01/17	Final site boundary and setbacks	100%
26	15/01/17	Final site boundary and setbacks	100%
27	15/01/17	Final site boundary and setbacks	100%
28	15/01/17	Final site boundary and setbacks	100%
29	15/01/17	Final site boundary and setbacks	100%
30	15/01/17	Final site boundary and setbacks	100%
31	15/01/17	Final site boundary and setbacks	100%
32	15/01/17	Final site boundary and setbacks	100%
33	15/01/17	Final site boundary and setbacks	100%
34	15/01/17	Final site boundary and setbacks	100%
35	15/01/17	Final site boundary and setbacks	100%
36	15/01/17	Final site boundary and setbacks	100%
37	15/01/17	Final site boundary and setbacks	100%
38	15/01/17	Final site boundary and setbacks	100%
39	15/01/17	Final site boundary and setbacks	100%
40	15/01/17	Final site boundary and setbacks	100%
41	15/01/17	Final site boundary and setbacks	100%
42	15/01/17	Final site boundary and setbacks	100%
43	15/01/17	Final site boundary and setbacks	100%
44	15/01/17	Final site boundary and setbacks	100%
45	15/01/17	Final site boundary and setbacks	100%
46	15/01/17	Final site boundary and setbacks	100%
47	15/01/17	Final site boundary and setbacks	100%
48	15/01/17	Final site boundary and setbacks	100%
49	15/01/17	Final site boundary and setbacks	100%
50	15/01/17	Final site boundary and setbacks	100%



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Email: info@quantumland.co.uk | Phone: +44 (0)181 606 0000  
Tel: 01252 531800 | Fax: 01252 531800

Project: Owsnest Wood, Tonbridge Road, Pembury, Tunbridge Wells, TN2 4QN

Drawing Title: Proposed Location Plan

Client: ARCHITECTURAL

Drawn by: JC Checked by: GP

Date: 1:1000@A1 Issue: Dec 14

Drawing Number: 891-201 Revision: F



**APPENDIX 4**

**HEADS OF TERMS**

**HEADS OF TERMS FOR AGREEMENT BETWEEN NHS TRUST AND THE CARE HOME OPERATOR IN  
RELATION TO OWLSNEST WOOD**

**1. PURPOSE AND STATUS OF THIS DOCUMENT**

- 1.1 This document relates to planning application ref: 19/01600/FULL (the "Application") and the proposed development ("Development") of a site known as Owlsnest Wood (the "Site"). The Application was submitted by Octopus Development Limited and proposed the following:

*Demolition of the existing residential dwelling, ancillary outbuildings, pool house and bunker to incorporate a 76 bed health and wellbeing facility to supply private nursing care and step down care to adjacent hospital with associated care parking, signalised entrance junction, landscaping and amenity space along with proposed community access of existing lake for recreational and leisure use.*

- 1.2 The Application was considered by the local planning authority, Tonbridge Wells Borough Council (the "Council"), and a resolution to grant planning permission was made on 10 June 2020. Issue of permission was to be subject to the completion of a legal agreement pursuant to S106 of the Town and Country Planning Act 1990 to secure certain developer obligations. Those obligations include requirements to secure 10 beds in the health and wellbeing facility (the "Care Facility") proposed in the Development for the use of Maidstone and Tunbridge Wells the Trust (the "Trust") for step down care from Pembury Hospital; and to make a training room available to the Trust for use by the staff of Pembury Hospital.
- 1.3 Following the resolution to grant further discussions have been held with officers of the Council. It has been agreed that in order to progress the S106 agreement provisions in relation to these obligations, heads of terms will be agreed with the Trust for a legal agreement to document and secure these arrangements between the Trust and the Owner and/or the operator of the Care Facility – which is intended to be Priory CC41 Limited ("Priory"). This document is intended to provide evidence of agreement by the Owner, the Trust and Priory to these heads of terms to the Council, with the intention that they may also be appended to the S106 agreement with an obligation to enter into legally binding arrangements with the NHS that give effect to these heads of terms.
- 1.4 This document therefore sets out the heads of terms that it is proposed will form the basis for such arrangements and has been agreed between the Owner, the Trust and Priory.
- 1.5 This document is not itself a binding legal contract and all terms are subject to terms of the final detailed contract.

**2. PARTIES**

- 2.1 Priory is the intended operator of the Care Facility but the contractual arrangements with the Trust may be entered into with either Priory or another Care Facility operator which may be a different entity. The S106 agreement makes provision for this and in any event, the obligations in a S106 agreement will pass to any successor in title to the Owner or any person deriving title from them, by operation of the statutory provisions.

**3. HEADS OF TERMS**

- 3.1 The Trust and Priory agree to the following as non-binding heads of terms for a potential agreement between the Trust and Priory to secure certain benefits from the Development as follows:

- (a) From the date no later than 6 months prior to the opening of the Care Facility and every 6 months thereafter Priory will contact the Trust to advise as to the number of bedspaces available within the Care Facility;
- (b) If any beds are available or will soon be available, to offer such beds (up to a maximum of 10 beds) to the Trust for use by patients of the Trust and to provide the same at such cost, times and for such duration as shall be agreed in line with the Trust's requirements;
- (c) Priory will regularly update the Trust of any upcoming training sessions relating to dementia care and/or manual handling being given to Priory's staff (the latter to be given by external providers) that the Trust's staff may participate in, and to facilitate the Trust staff being able to attend such training sessions;
- (d) Priory will keep the Trust updated as to potential availability of rooms within the Care Facility that might be available to the Trust for training sessions, and to facilitate use by the Trust of such rooms for its reasonable use in order that it may provide training sessions to its staff;
- (e) Priory and the Trust will endeavour to share best practice with one another relating to elderly care;
- (f) Priory will allow the Trust's staff to access the community area around the lake and the area to be covered by any LEMP at reasonable times;
- (g) Priory and the Trust will agree to continue to collaborate in order to improve the provision of healthcare at the Hospital and on the Development.

3.2 Any reference to Priory in the terms above should be interpreted as including any appropriate contractor, Care Facility provider or successor in title to Priory.

