

Dated

3<sup>rd</sup> June 2019

**West Suffolk Council**

**Suffolk County Council**

**The Right Honourable Edward Richard William Earl of Derby  
DL**

**C. Hoare and Co.**

**Deed of Variation of an agreement made under  
section 106 of the Town and Country Planning Act  
1990**

Relating To

Hatchfield Farm Newmarket Suffolk

THIS DEED is dated

3rd June

2019

#### Parties

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St Edmunds Suffolk IP33 3YU ("the Council").
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council").
- (3) **THE RIGHT HONOURABLE EDWARD RICHARD WILLIAM EARL OF DERBY DL** of The Estate Office, Knowsley, Prescot, Merseyside, L34 4AG ("the Owner").
- (4) **C.HOARE AND CO.** (company registration number 240822) whose registered office is at 37 Fleet Street, London, EC4P 4DQ ("the Mortgagee").

#### Background

- (A) The Owner owns the freehold interest in the Land
- (B) This Deed is supplemental to and varies the Existing Agreement.
- (C) The Council is the successor council to Forest Heath District Council
- (D) The Council, the County Council, the Owner and the Mortgagee have agreed to vary the Existing Agreement on the terms set out in this Deed.

#### Operative Provisions

##### 1. INTERPRETATION

The meanings ascribed to expressions and definitions in the 2015 Agreement are to be applicable to those expressions and definitions where used in this Deed except as modified or varied by this Deed and subject to the following:-

##### 1.1 Definitions:

**2015 Agreement** : the Town and Country Planning Act 1990 Section 106 Planning Obligation Agreement relating to Development at Hatchfield Farm, Newmarket, Suffolk dated 30 April 2015 between (1) the Council; (2) the County Council; (3) the Owner; and (4) the Mortgagee;

**2019 Agreement**: the option agreement and deed of variation made under Town and Country Planning Act 1990 Section 106 Planning Obligation Agreement relating to Development at Hatchfield Farm, Newmarket, Suffolk dated 13 May 2019 between (1) the Council; (2) the County Council; (3) the Owner; and (4) the Mortgagee

**Existing Agreement**: the 2015 Agreement as modified and varied by the 2019 Agreement

1.2 References to the Owner and the Mortgagee include references to their successors in title. References to the Council include any successor local planning authority exercising planning powers under the Town and Country Planning Act 1990. References to the County Council include any successor carrying out the functions presently carried out by the County Council.

1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.4 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 1.5 A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to the "Land" is to the whole and any part of it.
- 1.8 Except where a contrary intention appears, references to clauses and Schedules are to the clauses and Schedules of this Deed and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.9 Clause, Schedule and paragraph headings shall not affect the interpretation of this Deed.
- 1.10 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this Deed, the definitions and interpretations in the Definitions section of the 2015 Agreement as amended by the 2019 Agreement and as further amended by this Deed shall apply to this Deed.
- 1.11 A reference to "writing" or "written" excludes fax and email.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

**2. APPLICATION OF AND VARIATIONS TO THE EXISTING AGREEMENT**

- 2.1 This Agreement is made pursuant to the provisions of sections 106 and 106A of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of the Town and Country Planning Act 1990
- 2.2 This Agreement is made with the intent to bind the Owners and the Mortgagees interest in the Land
- 2.3 This Agreement is enforceable by the Council and the County Council as local planning authorities
- 2.4 This Agreement is executed as a Deed.
- 2.5 From and including the date of this Agreement, the 2015 Agreement shall be read and construed as modified and varied by the provisions set out in Schedule 1.
- 2.6 The 2015 Agreement shall remain fully effective as varied by the 2019 Agreement and by this Agreement and the terms of the 2015 Agreement shall have effect as though the provisions contained in the 2019 Agreement and this Agreement had been originally contained in the 2015 Agreement.
- 2.7 The terms and obligations set out in the Existing Agreement as modified and varied by this Agreement shall continue in full force and effect and shall be deemed by virtue of this Agreement to apply to and bind the Land and the development to be carried out pursuant to the Planning Permission

**3. TERMINATION OF THIS AGREEMENT**

If the Existing Agreement comes to an end pursuant to Clause 5.1 of the Existing Agreement, then this Agreement shall determine with immediate effect.

**4. CONSENT OF MORTGAGEE**

The Mortgagee confirms and consents to the modification and variation of the Existing Agreement.

**5. REGISTRATION OF THIS AS A LOCAL LAND CHARGE**

For the avoidance of doubt the provisions of Clause 4.16 of the 2015 Agreement shall apply to this Agreement and the Council shall act accordingly

**6. DISPUTES**

If any dispute arises relating to or arising out of the terms of this Agreement, the provisions of Clause 8 of the 2015 Agreement shall apply and any party may give to the others written notice requiring the dispute to be determined under Clause 8 of the 2015 Agreement.

**7. COSTS**

On completion of this Deed the Owner shall pay:

- 7.1 the Council's reasonable and proper legal and professional costs and disbursements in connection with this Deed; and
- 7.2 the County Council's reasonable and proper legal and professional costs and disbursements in connection with this Deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE 1  
MODIFICATIONS AND VARIATIONS TO THE 2015 AGREEMENT**

1. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Affordable Housing" " at page 3 of the 2015 Agreement shall be deleted and replaced with the following:-

"Affordable Housing" means Affordable Housing For Rent and Shared Ownership Housing and or as an alternative to Shared Ownership Housing only and with the approval of the Council at the time of submission of the Affordable Housing Scheme any other housing product contained within the definition of Other Affordable Routes to Home Ownership and all of which Affordable Housing shall be provided in accordance with the provisions of the Nationally Described Space Standards published by HM Government from time to time or such successor policy document published by HM Government"
2. In the section entitled "Definitions" in the 2015 Agreement, new definitions of "Affordable Housing Nomination Agreement" and "Affordable Housing Nomination Rights" shall be inserted at page 3 of the 2015 Agreement after the definition of Affordable Housing Dwellings as follows:-

"Affordable Housing Nomination Agreement" means an agreement substantially in the form of the Councils standard nominations agreement from time to time and subject to such amendments as may reasonably be required by the Approved Body and agreed by the Council to secure the Affordable Housing Nomination Rights for the Council and dealing with the allocation of the Affordable Housing Dwellings by the Approved Body which shall apply to all of the Affordable Housing Dwellings and Nomination Agreement shall have the same meaning"

"Affordable Housing Nomination Rights" means the ability for the Council to nominate 100% of the occupants on the first letting of the Affordable Housing for Rent and 75% of the occupants on subsequent lettings of Affordable Housing for Rent and the ability for the Council to nominate 100% of the occupants on the first disposal of the Shared Ownership Housing and 75% of the occupants on subsequent disposals of the Shared Ownership Housing"
3. In the section entitled "Definitions" in the 2015 Agreement, a new definition of "Affordable Housing Phase Scheme" shall be inserted at page 3 of the 2015 Agreement prior to the definition of Affordable Housing Scheme as follows:-

"Affordable Housing Phase Scheme" means a scheme for affordable housing relating to a Phase of the Development which shall reflect the Affordable Housing Scheme"
4. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Affordable Housing Scheme" at page 3 and 4 of the 2015 Agreement shall be deleted and replaced with the following:-

"Affordable Housing Scheme" means that the Affordable Housing Phase Schemes when read together shall include the following requirements :

  - (i) provide that thirty percent (30%) of the Dwellings will be Affordable Housing Dwellings,
  - (ii) provide a plan which identifies the precise location of the Affordable Housing Dwellings so that there shall be no more than 15 Affordable Housing Dwellings clustered together in any one part of the Land ,
  - (iii) provide a plan which identifies the number of houses and/or flats and/or bungalows (and the number of bedrooms in each house and in each flat and in each bungalow) that shall be Affordable Housing Dwellings,

(iv) provide a plan to identify the number of wheelchair adapted units to be provided and provides details of the internal specification and room sizes to demonstrate compliance with Building Regulations 2015 Part M(4) Category 3

(v) provide information to show the precise total area of each of the Affordable Housing Dwellings (in square metres),

(vi) provide information to show the precise tenure of the Affordable Housing Dwellings to reflect 70% Affordable Housing to Rent and 30% Shared Ownership Housing, and

(vii) provide a list of Approved Bodies who will be approached to take a transfer of the Affordable Housing Dwellings is provided

and for the avoidance of doubt each Affordable Housing Phase Scheme shall unless otherwise agreed in writing by the Council when reviewed together reflect the following in terms of types and tenure of the Affordable Housing Dwellings across the whole Development:-

Twenty x 1 bedroom apartments all of which shall be Affordable Housing for Rent

Eight x 1 bedroom bungalows of which two shall be Shared Ownership Housing and six shall be Affordable Housing for Rent

Eight x 2 bedroom bungalows of which two shall be Shared Ownership Housing and six shall be Affordable Housing for Rent

Fifty seven x 2 bedroom houses of which twenty four shall be Shared Ownership Housing and thirty three shall be Affordable Housing for Rent

Two x 3 bedroom wheelchair adapted bungalows which comply with Building Regulations 2015 Part M(4) Category 3 and which shall be Affordable Housing for Rent

Twenty x 3 bedroom houses eight of which shall be Shared Ownership Housing and twelve shall be Affordable Housing for Rent

Five x 4 bedroom houses all of which shall be Affordable Housing for Rent"

5. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Affordable Rented Housing" at page 4 of the 2015 Agreement shall be deleted and replaced with the following:-

"Affordable Housing For Rent" means the affordable housing for rent as defined in Annex 2 of the NPPF with rent charged at a level up to 80% of the equivalent market rent and which level shall not exceed the local housing allowance rate unless otherwise agreed in writing with the Council"

and all references to Affordable Rented Housing in the 2015 Agreement shall be references to Affordable Housing For Rent

6. In the section entitled "Definitions" in the 2015 Agreement, references to Homes and Communities Agency in line 2 and line 6 of the definition of Approved Body at page 5 of the 2015 Agreement shall be deleted and replaced with the words "Regulator of Affordable Housing"

7. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Car Share Contribution" at page 5 of the 2015 Agreement shall be deleted

8. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Chargee" at page 5 of the 2015 Agreement shall be deleted and replaced with the following:-

"Chargee" means any mortgagee or chargee (or any receiver or manager or any administrative receiver or any administrator howsoever appointed or such person

appointed under any security document to enable a mortgagee or chargee to realise its security) of the whole or part of any of the Affordable Housing Dwellings or any successors in title to such mortgagee or chargee or receiver or administrator including a Housing Administrator"

9. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Education Contribution" at page 6 of the 2015 Agreement shall be deleted and replaced with the following:-

"Education Contribution" means the sum of four thousand two hundred and twenty six pounds (£4,226.00) per Dwelling to be spent on a new or enlarged primary school in Newmarket"
10. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Homes and Communities Agency" at page 6 of the 2015 Agreement shall be deleted
11. In the section entitled "Definitions" in the 2015 Agreement, a new definition of "Housing Administrator" shall be inserted at page 6 of the 2015 Agreement prior to the definition of Housing Needs Register as follows:-

"Housing Administrator" has the meaning ascribed to it in the Housing and Planning Act 2016"
12. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Library Contribution" at page 7 of the 2015 Agreement shall be deleted and replaced with the following:-

"Library Contribution" means the sum of one hundred and twelve pounds and fifty pence (£112.50) per Dwelling to be spent on improvements to Newmarket Library to meet the increased demand caused by the Development"
13. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Moratorium Period" at page 7 of the 2015 Agreement shall be deleted
14. In the section entitled "Definitions" in the 2015 Agreement, in the definition of "Phase" at page 8 of the 2015 Agreement the words "as approved with" shall be deleted and replaced with the words "approved pursuant to"
15. In the section entitled "Definitions" in the 2015 Agreement, a new definition of "NPPF" shall be inserted at page 7 of the 2015 Agreement prior to the definition of New Permission as follows:-

"NPPF" means the National Planning Policy Framework published in February 2019 (as may be amended from time to time or such other national policy that may from time to time replace or update this framework) or any successor policy thereto issued by HM Government"
16. In the section entitled "Definitions" in the 2015 Agreement, a new definition of "Other Affordable Routes to Home Ownership" shall be inserted at page 8 of the 2015 Agreement prior to the definition of Owners Interest as follows:-

"Other Affordable Routes to Home Ownership" has the meaning ascribed to it in Annex 2 of the NPPF"
17. In the section entitled "Definitions" in the 2015 Agreement, the definition of "PCT" at page 8 of the 2015 Agreement shall be deleted
18. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Pre School Contribution" at page 8 of the 2015 Agreement shall be deleted and replaced with the following:-

- "Pre School Contribution" means the sum of one thousand two hundred and thirty nine pounds and fifty nine pence (£1239.59) per Dwelling to be spent on a new or enlarged pre school facility in Newmarket"
19. In the section entitled "Definitions" in the 2015 Agreement the following words shall be inserted at the end of paragraph (c) of the definition of Protected Tenant at page 9 of the 2015 Agreement:-
- "and has become a 100% Staircaser"
20. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Rayes Lane Crossing Contribution" at page 9 of the 2015 Agreement shall be deleted and replaced with the following:
- "Rayes Lane Crossing Contribution" means a sum of money being not less than four hundred and ninety six thousand nine hundred pounds (£496,900.00) to be utilised by the County Council for the provision of the Rayes Lane Crossing Works"
21. In the section entitled "Definitions" in the 2015 Agreement, a new definition of "Rayes Lane Crossing Works" shall be inserted at page 9 of the 2015 Agreement after the definition of Rayes Lane Crossing Contribution as follows:-
- "Rayes Lane Crossing Works" means the works for the improvement of the Rayes Lane/Fordham Road horse crossing and the horsewalk and footway which shall be generally in accordance with the Rayes Lane Crossing Works Drawing"
22. In the section entitled "Definitions" in the 2015 Agreement, a new definition of "Rayes Lane Crossing Works Drawing" shall be inserted at page 9 of the 2015 Agreement after the new definition of Rayes Lane Crossing Works as follows:-
- "Rayes Lane Crossing Works Drawing" means drawing number 13115/18G attached hereto at Annex 1
- and the referred to drawing is the drawing attached to this Agreement at Annex 1
23. In the section entitled "Definitions" in the 2015 Agreement, a new definition of "Regulator of Affordable Housing" shall be inserted at page 9 of the 2015 Agreement after the new definition of Rayes Lane Crossing Works Drawing as follows:-
- "Regulator of Affordable Housing" means the public body set up to fund and regulate the provision of Affordable Housing in England or any successor body"
24. In the section entitled "Definitions" in the 2015 Agreement, the definition of "RTA Purchaser" at page 10 of the 2015 Agreement shall be deleted
25. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Shared Ownership Housing" at page 10 of the 2015 Agreement shall be deleted and replaced with the following:-
- "Shared Ownership Housing" means shared ownership housing as referred to within the definition of Other Affordable Routes to Home Ownership in Annex 2 of the NPPF"
26. In the section entitled "Definitions" in the 2015 Agreement, the definition of "Travel Plan" at page 10 of the 2015 Agreement shall be deleted and replaced with the following:-
- "Travel Plan" means the Travel Plan dated December 2018 as approved by the County Council by letter dated 23 January 2019"
27. Clause 1.5.2 at page 14 of the 2015 Agreement shall be deleted
28. In Clause 2.7 at page 15 of the 2015 Agreement, the following words shall be inserted at the beginning of the clause:-



- "Subject to the provisions of the First Schedule which shall apply to a Chargee and a mortgagee of an Approved Body ....."
29. In Clause 2.8 at page 15 of the 2015 Agreement, the following words shall be inserted at the beginning of the clause:-  
"Subject always to paragraph 2 of the First Schedule.."
  30. In the First Schedule paragraph 1.1 at page 22 of the 2015 Agreement, the following words shall be inserted after "Commence Development":-  
"in any Phase"
  31. In the First Schedule paragraph 1.1.2 at page 22 of the 2015 Agreement, the following word shall be inserted after "Housing":-  
"Phase"
  32. In the First Schedule paragraph 1.1.3 at page 22 of the 2015 Agreement, the following words shall be inserted after "Housing":-  
"Phase"
  33. In the First Schedule paragraph 1.2 at page 22 of the 2015 Agreement, shall be deleted and replaced with the following:-  
"1.2 To provide the Affordable Housing Dwellings for each Phase in accordance with the relevant Affordable Housing Phase Scheme"
  34. In the First Schedule paragraph 1.7 at page 23 of the 2015 Agreement, the following words shall be inserted at the end of the paragraph:-  
"and shall be in accordance with the provisions of Part Two of this Schedule"
  35. In the First Schedule paragraph 2 at page 23 of the 2015 Agreement, the following words shall be inserted at the beginning of the paragraph:-  
"Subject to paragraph 3.."
  36. In the First Schedule paragraph 3.1.1 at page 23 of the 2015 Agreement, the following words shall be deleted:-  
"or receiver appointed by a Chargee"
  37. In the First Schedule paragraph 3.1.2 at page 23 of the 2015 Agreement, the following words shall be deleted:-  
"any RTA Purchaser"  
and replaced with the following words:-  
"any Protected Tenant"
  38. In the First Schedule paragraph 3.2 at page 24 of the 2015 Agreement and all its sub paragraphs 3.2.1 to 3.2.5 inclusive shall be deleted and replaced with the following:-  
"3.2 Any Chargee claiming the protection granted by paragraph 3.1.1 above:  
3.2.1 must first give written notice to the Council of its intention to dispose of an Affordable Housing Dwelling, and  
3.2.2 use reasonable endeavours over a period of twelve weeks from the date of such written notice to dispose of the Affordable Housing Dwelling to another Approved

Body or to the Council for a consideration at not less than the amount due and outstanding to the Chargee under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses incurred by the Chargee in respect of the mortgage or charge and if such disposal has not taken place within such twelve week period the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing provisions contained in this Agreement which shall determine absolutely

**PROVIDED THAT** at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage"

39. In the First Schedule Part Two paragraph B at page 25 of the 2015 Agreement, the following words shall be inserted as a new paragraph 7:-

"a requirement for the Approved Body to provide the Council with the Affordable Housing Nomination Rights and enter into the Affordable Housing Nomination Agreement with the Council immediately upon completion of the transfer of the Affordable Housing Dwellings to the Approved Body"

40. In the Third Schedule paragraph 1.1 at page 27 of the 2015 Agreement shall be deleted and replaced with the following:-

"1.1 not to Commence Development prior to paying the Rayes Lane Crossing Contribution to the County Council Provided Always that in the event that the costs associated with and incurred by the County Council in the completion of the Rayes Lane Crossing Works exceed the Rayes Lane Crossing Contribution the Owner shall forthwith and in any event prior to the Occupation of any Dwelling pay to the County Council the difference between the cost (as certified by the County Council) of completing the Rayes Lane Crossing Works and the sum paid to the County Council by the Owner as the Rayes Land Crossing Contribution"

41. In the Third Schedule paragraph 1.3 at page 27 of the 2015 Agreement shall be deleted and the next paragraph shall be paragraph 1.4

42. In the Third Schedule paragraph 2.4 at page 28 of the 2015 Agreement shall be deleted and replaced with the following:-

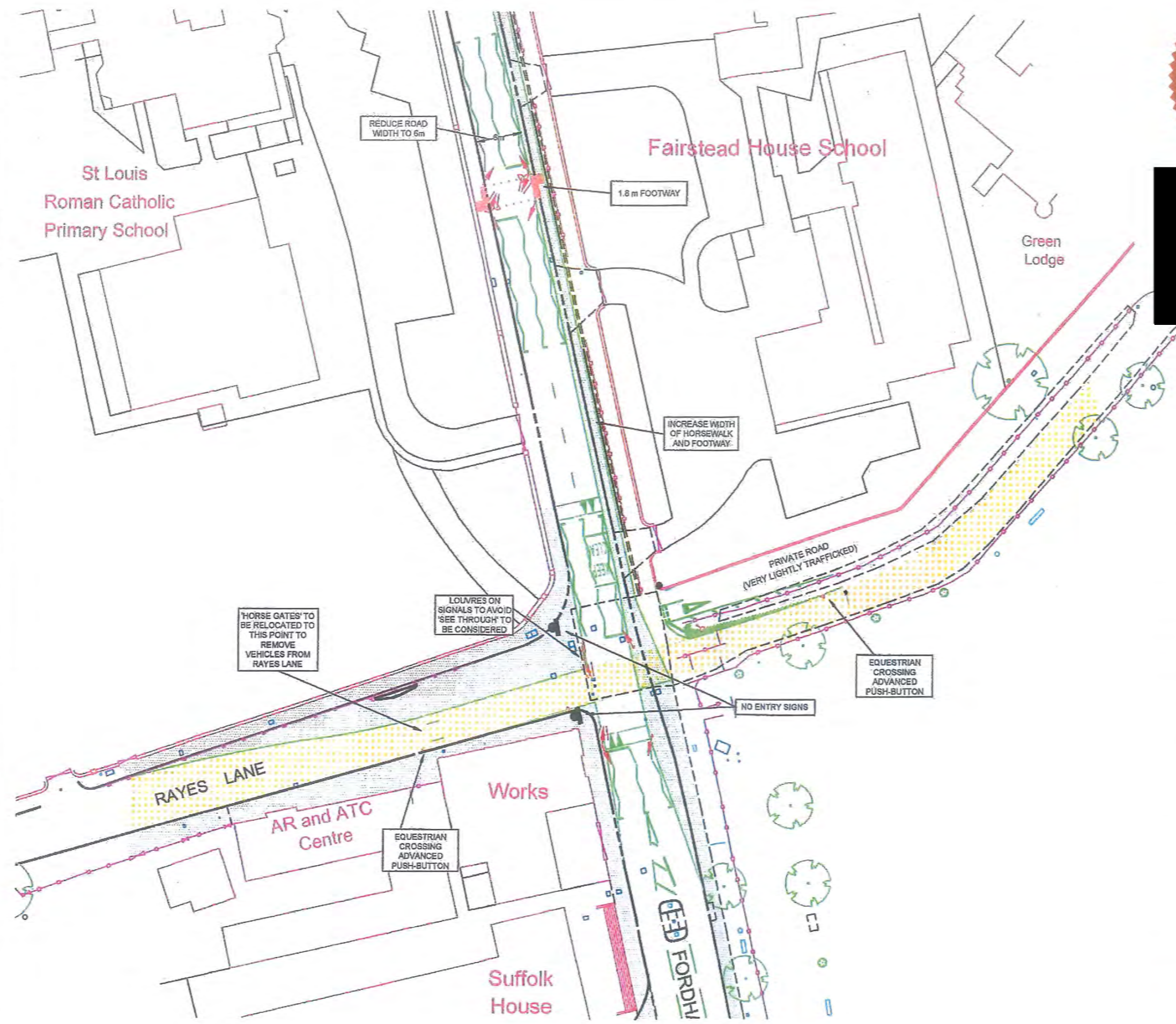
"to utilise the Rayes Lane Crossing Contribution on carrying out the Rayes Lane Crossing Works"

43. In the section entitled "Definitions" in the 2015 Agreement the words and figures "one hundred and sixty five pounds (£165.00)" in line 1 and 2 of the definition of Healthcare Contribution on page 6 shall be deleted and replaced with the words and figures "three hundred and seventy nine pounds and fifty pence (£379.50)"

44. In the Fourth Schedule paragraph 1.1 at page 28 of the 2015 Agreement shall be deleted and replaced with the following:-

"1.1 not to Commence Development prior to depositing 50% of the Healthcare Contribution with the Council"

45. In the Fourth Schedule paragraph 1.2 at page 28 of the 2015 Agreement the number "360" in line 1 shall be deleted and replaced with "150"



**KEY:**

- PROPOSED ROAD MARKINGS / AMENDMENTS
- EXISTING / PROPOSED FOOTWAY
- EXISTING / PROPOSED HORSE WALK
- TACTILE PAVING
- RAISED TABLE
- EXTENDED VERGE
- SIGNAL HEAD

**NOTES:**

1. Layout subject to highway boundary, detailed design, road safety audit and highway authority approval.

**PRELIMINARY**

**COTTEE** Transport Planning

Fir Lodge  
Threshelfords Business Park  
Feering  
Essex  
CO5 9SE  
Tel: 01376 573400  
Fax: 01376 573480  
email: info@cottee-tp.co.uk  
www.cotteetransportplanning.co.uk

Client  
**THE NEWMARKET HORSEMEN'S GROUP**

Project  
**NEWMARKET**

Title  
**EQUESTRIAN / PEDESTRIAN CROSSINGS FEASIBILITY OPTION**

Drawn **ANDREW FIRMIN** Checked **MAC**

Scale **1:500 @ A3** Date **FEB 2015**

Drawing No. **13115/18G**

Cottee Highway & Transportation Consultants Ltd. accept no responsibility for any unauthorised amendments to this drawing. Only figured dimensions are to be worked to.

EXECUTED AS A DEED BY THE )  
COMMON SEAL OF WEST SUFFOLK )  
COUNCIL BEING AFFIXED IN THE )  
PRESENCE OF )

[REDACTED]

AUTHORISED OFFICER



EXECUTED AS A DEED BY THE )  
COMMON SEAL OF SUFFOLK )  
COUNTY COUNCIL BEING )  
AFFIXED IN THE PRESENCE OF )

[REDACTED]

AUTHORISED OFFICER



EXECUTED AS A DEED BY )  
THE RIGHT HONOURABLE EDWARD )  
RICHARD WILLIAM EARL OF DERBY DL )



.....

in the presence of:

Witness signature



.....

Witness name



.....

Address



.....



.....

Occupation



.....

EXECUTED AS A DEED BY )  
C HOARE & CO ACTING BY )



~~AUTHORISED SIGNATORY~~



~~AUTHORISED SIGNATORY~~

